THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान
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Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME

GOVERNANCE, RISK MANAGEMENT,COMPLIANCES AND ETHICS

(Supplement Covers Amendments / Developments from August 2021 to November 2022)

MODULE 1

PAPER 1

Lesson 1

Conceptual Framework of Corporate Governance

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; "one-tier", 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 strategicimportance (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 theCode may not be functional or compatible with its governance model. The application of the Codeimplies, 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 helpsthe company achieving the objective underlying the Code’s principles and in any case contributesto 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"

categorycontained 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 notrequired.

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 inconsideration 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 thatbegins after 31 December 2020, while the disclosure shall be provided in the corporate governancereport to be published during 2022.

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

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

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

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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.

"Related Party"

According to Regulation 2(1) (zb) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, related party means a relatedparty as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under theapplicable accounting standards:
Provided that:
(a) any person or entity forming a part of the promoter or promoter group of the listed entity;or
(b) any person or any entity, holding equity shares:
(i) of twenty per cent or more; or
(ii) of ten per cent or more, with effect from April 1, 2023;
in the listed entity either directly or on a beneficial interest basis as provided under section89 of the Companies Act, 2013, at any time, during the immediate preceding financial year; shall be deemed to be a related party:]

Provided 18[further] that this definition shall not be applicable for the units issued bymutual funds which are listed on a recognised stock exchange(s);

"Related Party Transaction"

As per Regulation 2(1) (zc) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, 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 entityor 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 entityor 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);

"Independent Director"

According to Regulation 16(1)(b) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Independent Director means a non-executive director, other than a nominee director of the listed entity:

(i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;

(ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity;

(iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;

(iv) 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;

(v) none of whose relatives—

(A) is holding securities of or interest in the listed entity, its holding, subsidiary or associatecompany 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 capitalof the listed entity, its holding, subsidiary or associate company, respectively, or such highersum 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 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 ortotal 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.

(vi) who, neither himself /herself , nor whose relative(s) —
(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company 68[or any company belonging to the promoter group of the listed entity,] in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed:

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.
(B) is or has been an employee or proprietor or a partner, in any of the three financial yearsimmediately preceding the financial year in which he is proposed to be appointed, of —

(1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
(2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
(C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or
(D) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, anyof its promoters, directors or its holding, subsidiary or associate company or that holds twoper cent or more of the total voting power of the listed entity;
(E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;
(vii) who is not less than 21 years of age.

(viii) who is not a non-independent director of another company on the board of which anynon-independent director of the listed entity is an independent director:
Explanation- In case of a 'high value debt listed entity':
(a) which is a body corporate, mandated to constitute its board of directors in a specific manner in accordance with the law under which it is established, the non- executive directors on its board shall be treated as independent directors;
(b) which is a Trust, mandated to constitute its 'board of trustees' in accordance with the law under which it is established, the non-employee trustees on its board shall be treated as independent directors.

Board of Directors

Regulation 17 of the Securities and Exchange Board of India (Listing Obligations andDisclosure Requirements) Regulations, 2015 provides that:

(1) The composition of board of directors of the listed entity shall be as follows:

(a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;

Provided that the Board of directors of the top 500 listed entities shall have at least oneindependent woman director by April 1, 2019 and the Board of directors of the top 1000listed entities shall have at least one independent woman director by April 1, 2020; Explanation: The top 500 and 1000 entities shall be determined on the basis of marketcapitalisation, as at the end of the immediate previous financial year.

(b) where the chairperson of the board of directors is a non-executive director, at least one- third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entityor is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.- For the purpose of this clause, the expression “related to any promoter" shall have the following meaning:

(i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
(ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall bedeemed to be related to it.
(c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) andthe top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.
Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.
(d) where the listed company has outstanding SR equity shares, atleast half of the board of directors shall comprise of independent directors.

(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution ispassed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

(1C). The listed entity shall ensure that approval of shareholders for appointment of a personon the Board of Directors 80[or as a manager] is taken at the next general meeting or withina time period of three months from the date of appointment, whichever is earlier:

Provided that the appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholdersat a general meeting, shall be done only with the prior approval of the shareholders:

Provided further that the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment.

(2) The board of directors shall meet at least four times a year, with a maximum time gap ofone hundred and twenty days between any two meetings.

(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, includingat least one independent director.

Explanation I – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

(3) The board of directors shall periodically review compliance reports pertaining to all lawsapplicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

(4) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.

(5) (a) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.

(b) The code of conduct shall suitably incorporate the duties of independent directors as laiddown in the Companies Act, 2013.

(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non- executive directors, including independent directors and shall require approval ofshareholders in general meeting.

(b) The requirement of obtaining approval of shareholders in general meeting shall not applyto payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of

sitting fees without approval of the Central Government.

(c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.
(d) Independent directors shall not be entitled to any stock option.

(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-
(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5per cent of the net profits of the listed entity, whichever is higher; or
(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:
Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.
Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 ofthe Companies Act, 2013.

(7) The minimum information to be placed before the board of directors is specified in Part A ofSchedule II.

(8) The chief executive officer and the chief financial officer shall provide the compliancecertificate to the board of directors as specified in Part B of Schedule II.

(9) (a) The listed entity shall lay down procedures to inform members of board of directors aboutrisk assessment and minimization procedures.

(b) The board of directors shall be responsible for framing, implementing and monitoring the riskmanagement plan for the listed entity.

(10) The evaluation of independent directors shall be done by the entire board of directors whichshall include -
(a) performance of the directors; and
(b) fulfillment of the independence criteria as specified in these regulations and their independencefrom the management:
Provided that in the above evaluation, the directors who are subject to evaluation shall notparticipate.
(11). The statement to be annexed to the notice as referred to in sub-section (1) of section 102of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.

Audit Committee

Regulation 18 of the Securities and Exchange Board of India (Listing Obligations andDisclosure Requirements) Regulations, 2015 provides that:

(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:
(a) The audit committee shall have minimum three directors as members.
(b) [At least] two-thirds of the members of audit committee shall be independent directors [and in case of a listed entity having outstanding SR equity shares, the audit committee shallonly comprise of independent directors.
(c) All members of audit committee shall be financially literate and at least one member shallhave accounting or related financial management expertise.

Explanation (1).**-** For the purpose of this regulation, "financially literate" shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (2).**-** For the purpose of this regulation , a member shall be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officeror other senior officer with financial oversight responsibilities.

(d) The chairperson of the audit committee shall be an independent director and he/she shall be present at Annual general meeting to answer shareholder queries.
(e) The Company Secretary shall act as the secretary to the audit committee.
(f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and anyother such executives to be present at the meetings of the committee:
Provided that occasionally the audit committee may meet without the presence of any executives of the listed entity.

(2) The listed entity shall conduct the meetings of the audit committee in the following manner:
(a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

(b) The quorum for audit committee meeting shall either be two members or one third of themembers of the audit committee, whichever is greater, with at least two independentdirectors.

(c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

(3) The role of the audit committee and the information to be reviewed by the auditcommittee shall be as specified in Part C of Schedule II.

Nomination and Remuneration Committee

Regulation 19 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that:

(1) The board of directors shall constitute the nomination and remuneration committee asfollows:
(a) the committee shall comprise of at least three directors ;
(b) all directors of the committee shall be non-executive directors; and
(c) at least two-thirds of the directors shall be independent directors.

(2) The Chairperson of the nomination and remuneration committee shall be an independentdirector:
Provided that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

[(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.

(3) The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.
[(3A) The nomination and remuneration committee shall meet at least once in a year.

(4) The role of the nomination and remuneration committee shall be as specified as in PartD of the Schedule II.

Related Party Transactions

Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that:
(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved bythe board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:

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 rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

(1A) Notwithstanding the above, with effect from July 01, 2019 a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed {five} percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) All related party transactions and subsequent material modifications shall require priorapproval of the audit committee of the listed entity:

Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.

Provided further that:

(a) the audit committee of a listed entity shall define "material modifications" and disclose itas part of the policy on materiality of related party transactions and on dealing with relatedparty 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 percent 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) the audit committee shall review, at least on a quarterly basis, the details of related partytransactions entered into by the listed entity pursuant to each of the omnibus approvals given.

(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

(4) All material related party transactions and subsequent material modifications as definedby the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve] such resolutionswhether the entity is a related party to the particular transaction or not:

Provided that prior approval of the shareholders of a listed entity shall not be

required for arelated 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.

Provided further that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolutionplan being approved;

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the followingcases:

(a) Transactions entered into between two government companies;

(b) Transactions entered into between a holding company and its wholly owned subsidiarywhose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

[(c) Transactions entered into between two wholly-owned subsidiaries of the listed holdingcompany, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.]

Explanation. - For the purpose of clause (a), "Government Company (ies) means Government Company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

(6) The provisions of this regulation shall be applicable to all prospective transactions.

(7) [***]

(8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

[(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.

Obligations with respect to Independent Directors

Regulation 25 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that:

(1) No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.

(2) The maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

(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.

(3) The independent directors of the listed entity shall hold at least one meeting in a [financial] year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (3) shall, inter alia-

(a) review the performance of non-independent directors and the board of directors as a whole;

(b) Review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;

(a) Assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

(2) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his /her knowledge, attributable through processes of board of directors, and with his /her consent or connivance or where he /she had not acted diligently with respect to the provisions contained in these regulations.

(3) An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than three months from the date of such vacancy:

Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent

director shall not apply.

(4) The listed entity shall familiarise the independent directors through various programmesabout the listed entity, including the following:

(a) nature of the industry in which the listed entity operates;

(b) business model of the listed entity;

(c) roles, rights, responsibilities of independent directors; and

(d) any other relevant information.

(5) Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as anindependent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

(6) The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.

(7) 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 quantumand for such risks as may be determined by its board of directors.

(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.

(12) A 'high value debt listed entity' shall undertake Directors and Officers insurance (D and O insurance) for all its independent directors for such sum assured and for such risks as maybe determined by its board of directors.

Statement of Deviation(S) or Variation(S)

Regulation 32 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that:
(1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. ,-

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

(2) The statement(s) specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.

(3) The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).

(4) The listed entity shall furnish an explanation for the variation specified in sub-regulation(1), in the directors' report in the annual report.

(5) The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.

(6) Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s)

any comments or report received from the monitoring agency [within forty-five days from the end of each quarter].

(7) Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on[a quarterly basis], promptly upon its receipt.

Explanation,—For the purpose of sub-regulations (6) and (7), "monitoring agency" shall mean the monitoring agency as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

[(7A) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such fundsduring that year in its Annual Report until such funds are fully utilized.]

(8) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which have listed their specified securities on SME Exchange shall respectively be readas "half yearly/half year".

Documents & Information to Shareholders

Regulation 36 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that:

(1) The listed entity shall send the annual report in the following manner to the shareholders:

(a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) either with the listed entity or with any depository;

(b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;

(c) Hard copies of full annual reports to those shareholders, who request for the same.

(2) The listed entity shall send annual report referred to in sub-regulation (1), to the holders of securities, not less than twenty-one days before the annual general meeting.

(3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:

Documents & Information to Shareholders

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(a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) either with the listed entity or with any depository;

(b) Hard copy of statement containing the salient features of all the documents, as prescribedin Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;

(c) Hard copies of full annual reports to those shareholders, who request for the same.

(2) The listed entity shall send annual report referred to in sub-regulation (1), to the holders of securities, not less than twenty-one days before the annual general meeting.

(3) In case of the appointment of a new director or re-appointment of a director theshareholders must be provided with the following information:

Lesson 3

Board Effectiveness

After amendment Regulation16(1)(b)(iv) is read as:
An Independent Director means a non-executivedirector, other than a nominee director of the listed entity whoapart from receiving director'sremuneration, has or had nomaterial pecuniary relationship

with the listed entity, its holding, subsidiary orassociate company, or their promoters, or directors, duringthe **three** immediately preceding financial years or during the current financial year.

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

Regulation 17- Board of Directors

After Regulation 17(1B), a new sun-regulation(1C) is added:
(1C) The listed entity shall ensure that approvalof 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

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.

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 theboard 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 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"**.

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

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 alongwith"** 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.

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.

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.

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

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-generationpromoter 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 ExecutiveChairperson at the same company, while handing over the MD role to Mohit Malhotra, a professionalwho joined the company in 2010.

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

Lesson 4

Board Processes through Secretarial Standards

The Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020. (Notification No: G.S.R. 806(E), Dated December 30, 2020)

The Central Government notified the Companies (Meetings of Board and its Powers) Fourth Amendment Rules,2020 to further amend the Companies (Meetings of Board and its Powers) Rules, 2014.

In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 4, in sub-rule (2), for the word "31st December, 2020", the word "30th June, 2021" shall be substituted.

Impact

MCA vide this notification provides further relaxation till 30th June, 2021 in the requirement of holding Board meetings with physical presence of directors for approval of the restricted matters under Section 173(2) r/w Rule4 of the Companies (Meetings of Board and its Powers) Rules, 2014 on account of current scenario due to COVID-19 pandemic.

Accordingly, up to 30th June, 2021, following restricted matters can be dealt in board meetings held through videoconferencing or other audio-visual means by duly ensuring compliance of Rule 3 of the Companies (Meetings ofBoard and its Powers) Rules, 2014. –

(i) The approval of the annual financial statements;
(ii) The approval of the Board's report;
(iii) The approval of the prospectus;
(iv) The Audit Committee Meetings for consideration of financial statement including consolidated financialstatement if any, to be approved by the board under Section 134(1) of the Companies Act, 2013; and
(v) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

For details: http://www.mca.gov.in/Ministry/pdf/FourthAmdtRules_30122020.pdf

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 otheraudio 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 aboutsuch 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 ofthe Act shall be placed at the scheduled venue of the meeting and where such registers are required tobe 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.

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 orwhere 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 providedunder this sub-section, such company may set off such excess amount against the requirement to spendunder 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 prescribed2% 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 availableto

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 inpersuance 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 companyin 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 obligationtowards 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 ScheduleVII, 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 theCSR 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 betransferred 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 CSRfunds 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

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 financialstatements 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 makeapplication under section 131(1)(*b*) to rectify the error in the Board's report. The Board thushas 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 Councilof Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR),engaged in conducting research in science, technology, engineering and medicine aimedat 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 wellas 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 directoror 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 exceptionalcases: 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 5
Board Committees

Section 36 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 178(8) of the Companies Act, 2013 w.r.t. Nomination and Remuneration Committee and Stakeholders Relationship Committee-Decriminalization of offences

Section 178(8)

Old Penal Provision
In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹25,000 but which may extend to ₹ 1Lakh , or with both.

New Penal Provision
In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 1 Lakh.

Details of Changes
The Penalty for contravention of provision of Section 177(Audit Committee) and 178(Nomination and Remuneration Committee and Stakeholders Relationship Committee) of the Companies Act, 2013, has been fixed and punishment of imprisonment has been removed.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Regulation 18- Audit Committee
In Regulation 18(1)(b) the words **"Atleast"** shall be **inserted** before the words **"two-thirds"**.

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

Schedule II, Part D- Role of Nomination andRemuneration 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, ifrequired;
b. consider candidates from a wide range of backgrounds, having due regard to diversity; and 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 6
Corporate Policies and Disclosures

The Companies (Management and Administration) Amendment Rules, 2020, Dated August 28, 2020

The MCA has notified the Companies (Management and Administration) Amendment Rules, 2020 to further amend the Companies (Management and Administration) Rules, 2014.

In Rule 12(1) of the Companies (Management and Administration) Rules, 2014, a proviso has been inserted, specifying that the companies are not required to attach the extract of Annual Return with the Board's report in Form No. MGT.9, in case the web link of such Annual Return has been disclosed in the Board's report in accordance with Section 92(3) of the Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/Rule_29082020.pdf

Commencement Notification of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 w.r.t. amendment to Section 92(3) of the Companies Act, 2013, Dated August 28, 2020

The MCA has notified the provision of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 related to amendment to Section 92(3) of the Companies Act, 2013 w.e.f. from August 28, 2020.

The amendment provides that every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

For details: http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_29082020.pdf

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS,2020 (OCTOBER 8, 2020)

Forensic Audit Disclosure

Para A of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires the listed companies to disclose certain events or information uponoccurrence without any application of the guidelines for materiality.

As per the amendment, companies will now be required to disclose to Stock Exchange about the forensic audit initiated along with the details as prescribed.
These amendments shall come into force on the date of their publication in the Official Gazette i.e. October 8, 2020.

For details: https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020_47821.html

Format of compliance report on Corporate Governance by Listed Entities (Circular No. SEBI/HO/CFD/CMD2/P/CIR/2021/567 dated May 31, 2021)

As per SEBI (LODR) Regulations, 2015, a listed entity is required to submit a quarterly compliance report on corporate governance in the specified format by SEBI from time to time to recognised Stock Exchange(s). In order to bring about transparency and to strengthen the disclosures around loans/ guarantees/comfort letters/ security provided by the listed entity, directlyor indirectly to promoter/ promoter group entities or any other entity controlled by them, the SEBIhas decided to mandate such disclosures on a half yearly basis, in the Compliance Report on Corporate Governance as per the format of disclosure **annexed** and shall be effective from financial year 2021-22.

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 auditcommittee, who are independent directors, shallapprove 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

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.

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 discloseit 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 listedentity 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 alisted entity is a party but the listed entity is not a party, shall require prior approval of theaudit 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 nota 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

(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)."

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 andthe 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 forapproval 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 (andfor 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 suchfunds 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 reliedupon;
i. Percentage of the counter-party's annual consolidated turnover that is represented by thevalue 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) orrecurring 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 auditcommittee 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 underpoint 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 registeredemail 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 8

Section 6 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 26(9) of the Companies Act, 2013 w.r.t. Matters to be stated in prospectus —

Corporate Governance and Shareholders Rights

Decriminalisation of offences

Section 26(9)

Old Penal Provision

If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 butwhich may extend to ₹ 3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs or both.

New Penal Provision

If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs.

Details of Changes

Omission of imprisonment w.r.t. every person who is knowingly a party to the issue of such prospectus which has contravened the provisions of Section 26 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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.

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.

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.

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 9

Corporate Governance and Other Stakeholders

INSTITUTIONAL INVESTORS- GLOBAL TRENDS

1. NEW CORPORATE GOVERNANCE CODE FOR FINNISH LISTED COMPANIES

Prologue

The new Corporate Governance Code for Finnish listed companies ("2020 CG Code") entered into force this January, and it will replace the previous Corporate Governance (CG) Code applied since 2016 ("2015 CG Code"). 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.

The Making of the Code

In 2018, the Finnish Securities Market Association's board appointed a working group to update the CG Code to reflect the new regulations and the update needs to the 2015 CG Code development targets that had been identified over the years. Furthermore, the Shareholders' Rights Directive was implemented into Finnish company law in 2019 it created a need to amend and update the recommendations provided in the 2015 CG Code.

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.

Which companies must comply with the CG Code?

The Finnish CG Code is applicable to all companies that are listed on Nasdaq Helsinki Ltd (Helsinki Stock Exchange). According to the Rules of the Helsinki Stock Exchange, all issuers of shares that are traded on the official list must comply with the CG Code.

However, issuers of securities other than shares, as well as companies whose shares are listed, for example, on the Nasdaq First North Growth Market Finland (First North) marketplace, are not obliged to comply with the CG Code. Pursuant to the Securities MarketAct, issuers of other securities traded on a regulated market, such as issuers of bonds, must include a CG statement in the management report or in a separate report. These and the companies traded on the First North marketplace may, of course, voluntarily apply the CG Code, either in full or partly.

Key changes to the 2015 CG Code

The key changes to the 2015 CG Code concern remuneration reporting and changes to the recommendations concerning related party transactions and the recommendation concerning the audit committee.

Remuneration reporting – remuneration policy and report for governing bodies

The structure of the remuneration section has been revised to correspond to the requirements of the Second Shareholder Rights Directive. 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 "governing bodies" referred to in the CG Code refer to the governing bodies of the company regulated in the Finnish Limited Liability Companies Act, i.e. the company's board of directors, supervisory board, if any, and the managing director and deputy managing director.

For this reason, the remuneration policy and report only concern the company's board of directors, supervisory board, if any, and the managing director and deputy managing director. It is not recommended that the management team's remuneration will be addressed in the remuneration policy or remuneration report.

However, Information on the remuneration of the rest of the management team will in future be provided on the company's website (on an aggregate level). The remuneration reporting section of the CG Code also includes a checklist to clarify the reporting obligations.

By law, listed companies must present the new remuneration policy to the annual general meeting held after 1 January 2020, i.e. companies listed on the Helsinki Stock Exchange will need to prepare and present their first remuneration policy to the annual general meeting of 2020 and publish the proposal for a remuneration policy earlier in 2020 (see below).

Depending on the content of the charter, preparing the remuneration policy and report can be included in the duties of the boards' remuneration committee (if such has been established).

Deadline for publishing the remuneration policy

It should be noted that although the 2020 CG Code came into force in January 2020, it is not mandatory for listed companies to disclose the remuneration policy from that date. The applicable remuneration policy shall be kept available on the company's website once published (as part of the summons to the annual general meeting or separately) and addressed by the annual general meeting.

According to the 2020 CG Code the remuneration policy to be proposed to the annual general meeting must be published as an appendix to a stock exchange release no later than three (3) weeks prior to the general meeting dealing with the report, or at an earlier date, e.g. in connection with the publication of the summons to the general meeting.

Following the first annual general meeting following 1 January 2020 and the decision on the remuneration policy, the remuneration policy proposal will be presented to the annual general meeting every four years, or whenever material changes are proposed to it.

Companies must disclose the first new remuneration report for the financial year beginning on or after 1 January 2020, i.e. in practice the first report will be disclosed in 2021, no later than three weeks prior to the general meeting. The remuneration reports for the financial years preceding 1 January 2020 can elect to comply with the instructions for the remuneration statement contained in the 2015 CG Code.

A new element in the remuneration report is the requirement that the report should reflect the development of the remuneration during the past five financial years compared to the development of the average remuneration of the employees and the economic development of the group and the company during the same period.

The new remuneration report may, going forward, be published as an appendix to a stock exchange release at the same time and manner as the financial statements, management report and CG report. The current CG Code allows the remuneration report to be incorporated as part of the CG report.

Advisory decision by the general meeting on the remuneration policy and remuneration report

Under the amended Limited Liability Companies Act, the rules implementing the Shareholders' Rights Directive, the decision by the general meeting concerning the remuneration policy and remuneration report is only advisory in nature. Consequently, shareholders are not allowed to propose changes to the policy or report presented by the board to the general meeting or introduce any alternative policy or report proposals, only to adopt or reject the board's proposals.

However, as the CG Code and Limited Lability Companies Act's provisions require that the general meeting will address the remuneration policy and report, the agenda of the annual general meeting should be updated to include the disclosure and advisory vote on the remuneration policy.

According to the preparatory works of the amended Limited Liability Companies Act's provisions implementing the Shareholders' Rights Directive, the company must take into consideration the decision by the general meeting on the previous remuneration policy as well as positions presented during the general meeting in respect of the remuneration report addressed at the general meeting. Consequently, material positions taken by shareholders should be recorded in the minutes to fulfil this requirement (when supported by a significant minority shareholder or if it gains wide support at the general meeting).

Proposal to elect board members and evaluation of the candidates' independence (Recommendations 1 and 10)

The board of directors should evaluate the independence of the directors and report which of the directors are independent of the company and which are independent of the significant shareholders. The board of directors will re-evaluate the situation every year, and the evaluation will be included in the company's CG statement.

As a new element, the evaluation must also indicate the rationale based on which a board member is found not to be independent (e.g. cross-ownership or familial relationship). An updated evaluation will be published on the company's website if factors affecting the director's independence change during the year.

If the proposal was made by a shareholder, the proposing shareholder's assessment of independence must be provided to the company together with the proposal.

The board of directors can also carry out its evaluation on its own initiative, for example, if a proposal concerning a board member has been received from a shareholder.
The biographical details of all candidates must be presented on the company's website. The publication of the candidates' biographical details on the company's website allows the shareholders to form an opinion on the proposed composition of the board of directors, especially with regard to new director candidates. In the same connection, information about the independence of the candidates must be provided.

Audit committee, Recommendation 16 (and Recommendation 8)

The recommendation concerning the audit committee and the rationale for it have been clarified to comply with existing legislation with respect to the requirement concerning the competence and expertise of members of the audit committee. The recommendation concerning the composition of the board of directors (Recommendation 8) has been updated to reflect that at least one member of the company's audit committee must have the expertise required by law.

The audit committee must have sufficient expertise and experience to be able to challenge and evaluate the company's internal accounting function and the company's internal and external audit function. Due to the mandatory auditing duties, legislation also requires that at least one member of the audit committee must have expertise in accounting or auditing.

In addition, the mandatory duties of the audit committee, such as duties relating to auditing and other duties, have been clarified in the text of the rationale provided in this recommendation.

Other duties of the audit committee may include assessing the use and presentation of alternative key figures, defining principles for monitoring and assessing related party transactions and processing the account of non-financial reporting.

Related party transactions, Recommendation 27

One of the key changes to the Limited Liability Companies Act introduced by the implementation of the Shareholders' Rights Directive in June 2019 included a special decision-making requirement for related party transactions.

The recommendation and its rationale have been revised in their entirety. In future, the recommendation requires that companies define and report their principles for monitoring and assessing related party transactions. The purpose of the principles is to ensure proper

decision making in related party transactions in accordance with the new requirements of the Limited Liability Companies Act.

The board of directors should consider, in particular, how the company identifies related party transactions, who shall be the receiving party for related party transactions reports andhow the procedure will be supervised.

A relevant "related party transaction" is defined as a transaction that is carried out outside the ordinary course of the company's business or that is not carried out on normal business terms. To identify these transactions, the company must be able to identify its related parties and the transactions carried out by the company with the related parties.

The main features of the related party transactions principles will be disclosed in the company's CG report. As a result of that, companies listed on the Helsinki Stock Exchange should without delay review and, if needed, update their related party transactions principles to enable them to fulfil the CG reporting requirements.

It should be noted that the CG report published by a listed company concerning the financial year 2019 must comply with the 2020 CG Code, i.e. there is no possibility to apply the 2015 Code to the CG report (unlike the remuneration report for the financial period 2019, which can be prepared in accordance with the 2015 CG Code).

Key amendments to the CG report under the 2020 CG Code

In addition to the disclosure requirement concerning the related party transactions policy, the CG report will include the corresponding information on the deputy managing director as on the managing director. The term 'other executives' has been replaced by the term 'rest of the management team'. In addition, the recommendation concerning board members' independence and disclosure of the basis of the assessment may have an impact on the content of the CG report.

Management team, Recommendation 21

Recommendation 21, which concerned other executives, has been removed and replaced with instructions concerning the rest of the management team as part of the reporting section.

The term 'other executives' is no longer used in the CG Code in general, and has been replaced by the more accurate 'rest of the management team', which refers to the company's management team with the exclusion of the managing director. Information on the remuneration of the rest of the management team is no longer part of the remuneration report, but it is provided on the company's website.

Repealed recommendations and certain other changes

Recommendations 21 (Organisation of Other Executives) and 24 (Structure of Remuneration) of the 2015 Code have been removed. The contents of these recommendations have, in practice, been transferred to the section dealing with remuneration reporting. In addition, the numbering of two recommendations has been changed: the recommendation concerning

the nomination committee is numbered 18 (18a), and the recommendation concerning the shareholders' nomination board is numbered 19 (18b).

For more details and further reading, please refer:

1. https://www.borenius.com/2020/02/28/new-corporate-governance-code-for-finnish-listed-companies-what-actions-are-required/

2. https://ecgi.global/sites/default/files/codes/documents/corporate-governance-code-2020.pdf

JAPAN STEWARDSHIP CODE 2020

(Revisions to Japan's Stewardship Code in 2020)

Introduction

Japan's stewardship code is a set of regulatory guidelines to establish fiduciary duty by institutional investors on behalf of their clients. The code was proposed in 2012, following fallout from the 2008 financial crisis, and ratified in 2013. The Code defines principles for institutional investors to behave as responsible financial stewards with due regard both to their clients and beneficiaries and to investee companies. The Code primarily targets institutional investors investing in Japanese listed shares.

On 24 March 2020, Japan's Financial Services Agency (FSA) finalized and published the second revised version of Japan's Stewardship Code (the Code). The revised Code (the Revision Code) is intended to progress the Japanese government's corporate governance reform, one of the key pillars of Prime Minister Abe's economic revival program, following revisions to Japan's Corporate Governance Code in 2018.

Since its initial release, the Code has continued to embrace the following approach:

i) ***Soft Law Approach*** – although the Code is not legally binding, the FSA encourages institutional investors to voluntarily adopt the principles of the Code by disclosing a list of institutional investors who have become signatories.
ii) ***Principles-Based Approach*** – the Code adopts a principles-based approach (instead of a rules-based approach) so that the way in which the Code's principles are applied in practice, can differ depending on factors such as the investor's size and investment policies, as long as the purpose and spirit of these principles are followed.

iii) ***"Comply or Explain" Approach*** – the Code adopts a "comply or explain" approach under which an institutional investor can either disclose its intention to comply with a principle or provide sufficient explanation as to why it is not suitable to adopt such principle.

Noteworthy Changes in the Revised Stewardship Code 2020

1. Stress on Sustainability including ESG Factors: There was no mention of sustainability or ESG in the previous version of the Code. In light of the increasing focus on sustainability and

ESG factors in corporate valuation, one of the main purposes of the Revision Code is to

address issues of sustainability including ESG factors. The Revision Code redefines "stewardship responsibilities" and clearly instructs institutional investors to consider sustainability (medium- to long-term sustainability including ESG factors) according to their investment management strategies in the course of their constructive engagement with investee companies.

The Revision Code also requests that institutional investors clearly explain, in their stewardship policies, how they consider sustainability issues according to their investment management strategies. Furthermore, it unequivocally states that in case of dialogue with investee companies, with respect to sustainability issues, institutional investors should ensure that such dialogue is consistent with their investment management strategies and leads to the medium-to long-term increase in corporate value and sustainable growth of investee companies.

2. Disclosure of reasons for votes on agenda items- The previous version of the Code stated that institutional investors should, in principle, disclose voting records for each investee company on an individual agenda item basis, noting that it would contribute to the enhancement of visibility for institutional investors, explicitly to explain why they voted for or against an agenda item. The Revision Code has taken this position further and specifically instructs institutional investors to disclose their voting rationale, whether they voted for or against agenda items, that are considered important from the standpoint of constructive dialogue with investee companies (including those perceived to give rise to a conflict of interest or those that need explanation in light of their voting policy).

3. Application of the Code to Asset Classes other than Listed Shares- The previous version of the Code stated that the Code mainly targets institutional investors investing in Japanese listed shares. While that remains unchanged, the Revision Code explicitly adds that it may also apply to other asset classes, as far as it contributes to fulfilling stewardship responsibilities as defined in the Code.

4. Stewardship activities of Asset Owners such as Corporate Pension Funds- To help corporate pension funds understand stewardship activities set forth in the Code, the Revision Code clarifies stewardship responsibilities of asset owners. The Revision Code instructs asset owners to encourage asset managers to engage in effective stewardship activities accordingly to their size and capabilities, in order to secure the interests of the beneficial owners. When asset owners manage funds and exercise their voting rights by themselves, they should engage in stewardship activities such as holding dialogues with investee companies accordingly to their size and capabilities.

5. Principles applied to Service Providers for Institutional Investors- The Revision Code adds Principle 8, which states that service providers for institutional investors, such as proxy advisors and investment consultants for pensions, should endeavor to contribute to enhancing the functions of the entire investment chain by appropriately providing their services, so that institutional investors can fulfil their stewardship responsibilities.

The Revision Code instructs service providers for institutional investors to establish and disclose clear policies on how to effectively manage circumstances that may give rise to conflicts of interest. The Revision Code notes that other principles of the Code (i.e. Principles

1 - 7), including the guidance, also apply to service providers for institutional investors as longas these principles do not conflict with Principle 8.

Please refer the following link: https://www.fsa.go.jp/en/refer/councils/stewardship/20200324/01.pdf

For proxy advisors, the Revision Code expects them to develop appropriate and sufficient human and operational resources, including setting up a business establishment in Japan, in order to provide asset managers with proxy recommendations based on accurate information on each company. Proxy advisors should also disclose the voting recommendation process such as their primary information source or whether (and how) they conduct dialogue with investee companies to ensure transparency.

Additionally, the Revision Code recommends that proxy advisors actively exchange views with companies as necessary. This may contribute to assurance of transparency, as proxy advisors provide investee companies with opportunities to confirm accuracy of information, on which their proxy recommendations are premised (if requested by investee companies), and provide the opinions submitted by such companies to their clients together with their own recommendations.

For more details, please refer:

1. https://www.borenius.com/2020/02/28/new-corporate-governance-code-for-finnish-listed-companies-what-actions-are-required/

2. https://www.dlapiper.com/en/uk/insights/publications/2020/04/revisions-to-japans-stewardship-code/#:~:text=It%20sets%20out%20the%20principles,constructive%20engagement%20or%20purposeful%20dialogue.

3. https://www.fsa.go.jp/en/refer/councils/stewardship/20140407/01.pdf

4. https://www.investopedia.com/articles/investing/062515/japans-stewardship-code.asp#:~:text=Japan's%20stewardship%20code%20is%20a,crisis%2C%20and%20ratified%20in%202013.

ITALIAN CORPORATE GOVERNANCE CODE, 2020

In January 2020, the Italian Corporate Governance Committee released the new edition of the Corporate Governance Code. The Corporate Governance Code ("Code") applies to all companies with shares listed on the Italian main market (“Mercato Telematico Azionario”, hereinafter “MTA") managed by Borsa Italiana ("companies").

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

The Italian Corporate Governance Code,2020 focuses on the following:

i) Article 1- Role of the board of directors

ii) Article 2- Composition of the corporate bodies

iii) Article 3- Functioning of the board of directors and the role of the chair.

iv) Article 4- Appointment of directors and board evaluation.

v) Article 5- Remuneration

vi) Article 6- Internal control and risk management system.

Sustainability and proportionality are at the heart of the new Corporate Governance Code for listed companies recently approved by the Italian Corporate Governance Committee (the "New CG Code").

The New CG Code - which replaces the current Corporate Governance Code (the "2018 CG Code") and will be applicable on a "comply or explain" basis, starting from the first financial year beginning after 31 December 2020 – has a renewed structure, divided into "Principles" and "Recommendations".

For more details, please refer: https://www.chiomenti.net/public/files/3109/New-Italian-Corporate-Governance-Code-for-listed-companies.pdf
https://ecgi.global/node/8009

Lesson 10

Governance and Compliance Risk

Section 17 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 88 (5) of the Companies Act, 2013 w.r.t. Register of Members- Penalty fixed.

Section 88 (5)

Old Penal Provision

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2) of Section 88 of the Companies Act, 2013, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3 lakhs and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day, after the first during which the failure continues.

New Penal Provision

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2) of Section 88 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of changes:

The penalty amount for non-maintenance of register of members or debenture-holders or other security holders has been fixed for the company and penalty amount for officer in default along with continuing penalty is reduced.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Section 20 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 92 (5) & (6) of the Companies Act, 2013 w.r.t. Annual Return-Reduction of Penalty

Section 92 (5)

Old Penal Provision

If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 50000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 5 lakhs.

New Penal Provision

If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakhs in case of a company and ₹ 50,000 in case of an officer who is in default.

Details of changes

Reduction in amount of monetary Penalty

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Section 63 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 450 of the Companies Act, 2013 w.r.t. Punishment where no specific penalty or punishment is provided

Section 450

Old Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of the Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Companies Act, 2013 the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ₹ 10,000, and where the contravention is continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the contravention continues.

New Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of the Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Companies Act, 2013, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ₹ 10,000, and in case of continuing contravention, with a further penalty of ₹ 1000 for each day after the first during which the contravention continues, subject to a maximum of ₹ 2 Lakhs in case of a company and ₹ 50,000 in case of an officer who is in default or any other person.

Details of Changes

The penal provisions under Section 450 of Companies Act, 2013, which provided for the punishment where no specific penalty or punishment is provided, is relaxed by providing the maximum amount of Penalty.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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REGULATORY TECHNOLOGY (RegTech)

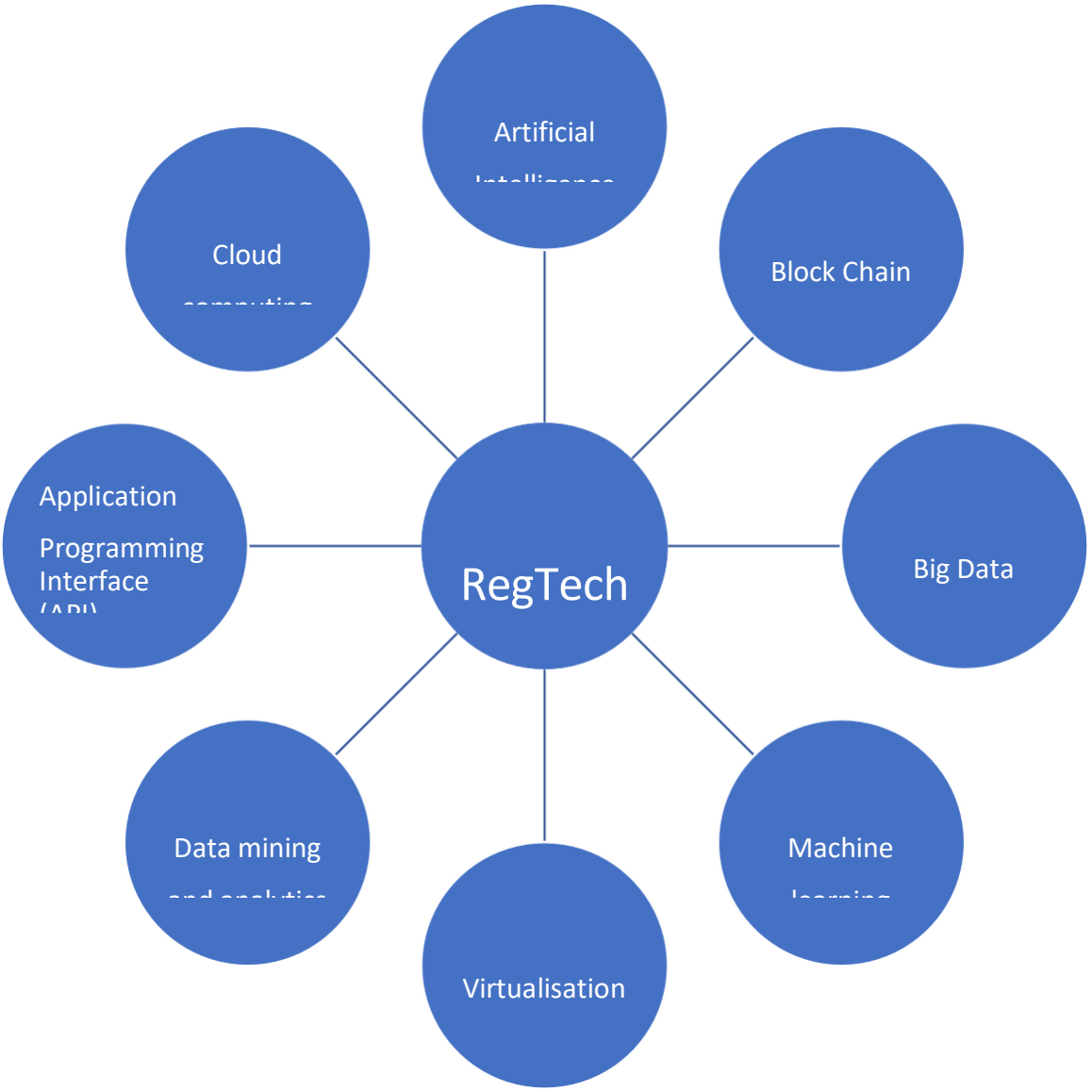
The Financial Service sector has long been brimming with regulations. In an attempt to reduce the vast and ever-increasing burden of these regulatory terms, financial institutions are starting to turn to new technology solutions. Around the world, regulatory changes in the financial sector is increasing 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, litigationand regulatory remediation areas faced by financial institutions (FI), combined with overall reductionin 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 testingfacilities for solutions using machine learning to automate the management of regulation impact andchange. 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 washuge 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 torevive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidencein 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 governancelapses 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 overthe 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 a49% 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 roleof 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 variouspolicies, management, and compensation without concerns about management influence.

Lesson 11

Corporate Governance Forums

To ensure that the companies comply with the provisions of Section 135 and rules made thereunder and genuinely spend the CSR amount on the eligible welfare projects, it is imperative to improve governance and transparency in CSR sphere.

Akin to other areas of corporate activity requiring compliance, need for a dedicated independent professional has been felt in the arena of social responsibility as well. In this regard, an independent CSR Audit/ Review and issue of CSR Audit/Review Report by the Company Secretaries in Practice shall not only give the existing CSR mechanism much neededsupport and give necessary comfort to the stakeholders, regulators and the society at large that the companies are Complying with the legal requirements but will also give authentic information about the Utilisation of CSR funds by the companies in specified CSR activities.

It is heartening to note that The Institute of Companies Secretaries of India (ICSI) hassuggested to Ministry of Corporate Affairs **for 'Requirement of Monitoring Mechanism in CSR'.**

For details: https://taxguru.in/chartered-accountant/icsi-requests-introduction-csr-audit-csr- review-mechanism.html

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 isa 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 March31 of every financial year), business responsibility report describing the initiatives taken by themfrom an environmental, social and governance perspective, in the format as specified by the Boardfrom 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 REPORTINGAND 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

Notification No: G.S.R. 525 (E) Amendment in item no. (ix) of the Schedule VII of the Companies Act, 2013, dated August 24, 2020

In Schedule VII of the Companies Act, 2013, for item (ix) and the entries thereto, the followingitem and entries shall be substituted, namely:-
"(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 StateGovernment; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); NationalLaboratories 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 Defence 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)".

Details of Changes
MCA vide Notification dated August 24, 2020 has widened the scope of CSR Activities by amending item (ix) of the Schedule VII of the Companies Act 2013 to include more entities like Ministry of AYUSH etc., engaged in research and development to whom contribution shallbe treated as Contribution for Corporate Social Responsibility (CSR) Activities as required under Section 135 of Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_26082020.pdf

Lesson 16: CSR and Sustainability

Business responsibility and sustainability reporting by listed entities (Circular No. SEBI/HO/CFD/CMD2/P/CIR/2021/562 dated May 10, 2021)

- SEBI came out with disclosure requirements under Business Responsibility and Sustainability Report (BRSR) covering ESG (Environmental, Social and Governance) parameters.
- 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 to this circular.
- 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 ofleadership indicators is on a voluntary basis. Listed entities should endeavour to report theleadership indictors also.
- 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. The filing of BRSR shall be mandatory for the top 1000 listed companies (by market capitalization) with effect from the financial year 2022 -2023 and shall replace the existing Business Responsibility Report (BRR). Filing of BRSR is voluntary for the financial year 2021 -22.

Lesson 16: CSR and Sustainability

1. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

❖ **New Definitions (Rule 2)**

a) Administrative Overheads

Expenses incurred by the company for '*general management and administration*' of CSR functions in the company. But shall not include expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme;

b) Corporate Social Responsibility (CSR)

It means the activities undertaken by a Company in pursuance of its statutory obligation laid downin section 135 of the Companies Act, 2013 and its rules thereunder.

It shall not include the followings:

i. Activities carried out under the normal course of the business.

   Provide that Companies which are engaged in the R&D works of new vaccine, drug and medical devices in their normal course of business may undertake R&D 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 R&D work shall be carried out in collaboration with any institute or organization mentioned in item (ix) of Schedule VII.

   b. Details of such activity shall be mentioned in the Annual report on CSR included Board 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 internationallevel;

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

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;

c) CSR Committee

"CSR Committee" means the Corporate Social Responsibility Committee of the Board referred toin section 135

of the Act;

d) CSR Policy

"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 theannual action plan;

e) International Organisation

"International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply;

f) Net Profit

It means the net profit of a company as per its financial statement prepared in accordance with theapplicable provisions of the Act, but shall not include the following:

i. any profit arising from any overseas branch or branches of the company, whether operated asa separate company or otherwise; and

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 Companies Act, 2013.

g) Ongoing projects

"Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSRobligation having timelines not exceeding three years excluding the financial year in which it wascommenced, and shall include such project that was initially not approved as a multi-year projectbut whose duration has been extended beyond one year by the board based on reasonable justification;

❖ **CSR Implementation (Rule-4)**

1. The Board shall ensure that the CSR activities are undertaken by the Company itself or through-

i. Section 8 Company, Registered Trust, Registered Society under section 12A, and 80G of Income Tax Act, 1961 established by the Company singly or along with any other Company.

ii. Section 8 Company or a registered Trust or registered Society established by the Central Government or State Government; or

iii. Any entity registered under the act of Parliament or a State Legislature; or

iv. A company established under section 8 of the Act, or a registered public trust or a registered society under section 12A and 80G of IT, Act 1961, and having an established track record of at least 3 years in undertaking similar activities.

2 (a) Every entity, covered under rule 4(1), who intends to undertake any CSR activity shall registeritself with the Central Government by filling e-form CSR-1 with the Registrar w.e.f 01.04.2021.

The Provision of this sub-rule shall not affect the CSR Project/Programmes approved prior to01.04.2021.

(b) The form CSR-1 shall be signed and submitted by the company and shall be verified digitally by the PCA/PCS/PCWA.

(c) On submission of the Form CSR-1 on the portal, a unique CSR registration No. shall be generated by the system automatically.

(d) A Company may engage international organization for designing, monitoring and evaluation of CSR projects or programmes as per its CSR policy.

(e) A company may also collaborate with other companies for undertaking projects or programmesor 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.

(f) 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 CFO or the person responsible for financial management shall certify to the effect.

(g) In case of ongoing project, the Board of a company shall monitor the implementation of the Project with reference to the approved timelines and shall be competent to make modifications, ifany, for smooth implementation of the project within the overall permissible time period.

- **CSR Committees (Rule-5)**

In Rule 5, the following sub rue (2) shall be substituted:

(2) 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 orsubjects 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 orprogrammes;

(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:

Provided that 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.

❖ **Rule-6 (Omitted)**

❖ **CSR Expenditure (Rule-7)**

1. The Board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for financial year.

2. Any surplus arising out of the CSR activities-

a. shall not form part of the business profit of a company, and be ploughed back into the same project or;

b. shall be transferred to Unspent CSR account and spent in pursuance of CSR Policy and annual action plan of the Company, or;

c. transfer such surplus amount to a fund specified in schedule VII,

within a period of 6 Months of the expiry of the financial year.

3. Where a company spends an amount in excess of requirement provided under sub-section 135(5), 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 –

a. 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.

b. 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. Section 8 Company, Registered public trust or registered society having charitable object and CSR registration no.

b. Beneficiaries of 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 180days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than 90 days with the approval of the Board based onreasonable justification.

❖ **CSR Reporting (Rule-8)**

1. The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

2. In case of a foreign company, the balance sheet shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

3. a. Every company having average CSR obligation of Rs.10 Cr. 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 1 crore rupees or more, and which have been completed not less than oneyear before undertaking the impact study.

b. The impact assessment reports shall be placed before the Board and shall be annexed to theannual 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 5% 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 publicaccess.

- **Transfer of unspent CSR amount- (Rule-10)**

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

2. Circulars on Spending of CSR Funds

1. General Circular No. 05/2021, dated April 22, 2021: Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities-reg.

In continuation to General Circular No. 10/2020 dated March 23,2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, the MCA has further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively. The companies may undertake the aforesaid activities in consultation with State Governments subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by MCA from time to time.

https://www.mca.gov.in/Ministry/pdf/GeneralCircularNo5_22042021.pdf

2. General Circular No: 09/ 2021, dated May 05,2021 Clarification on spending of CSR fundsfor 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants' etc. reg.

In continuation to General Circular No. 10/2020 dated March 23, 2020,wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, the MCA has further clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule

VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and developmentprojects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibilitywith other companies, subject to fulfillment of the Companies (CSR Policy) Rules, 2014 and the guidelines issued by the MCA from time to time.

https://www.mca.gov.in/Ministry/pdf/GeneralCircularNo9_05052021.pdf

3.Circular, dated May 20, 2021: Clarification on offsetting the excess CSR spent for FY2019-20

Keeping in view the spread of COVID-19 in India, an appeal dated March 30, 2020 was made to MDs/CEOs of top 1000 companies in terms of market capitalization, to contribute generously to "Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund" (PM CARES Fund). In the appeal, it was mentioned that such contribution may, inter -alia, include the unspentCSR amount, if any, and an amount over and above the minimum prescribed CSR amount for FY2019 -20, which can later be offset against the CSR obligation arising in subsequent financial years. Accordingly, the MCA vide Circular dated May 20, 2021 has clarified that where a companyhas contributed any amount to 'PM CARES Fund' on March 31, 2020, which is over and above the minimum amount as prescribed under Section 135(5) of the Companies Act, 2013 for FY 2019
-20, and such excess amount or part thereof is offset against the requirement to spend under Section135(5) for FY 2020 - 21, in terms of the above mentioned appeal, then the same shall not be viewedas a violation subject to the conditions that: the amount offset as such shall have factored the unspent CSR amount for previous financial years, if any; the Chief Financial Officer shall certifythat the contribution to "PMCARES Fund" was indeed made on March 31, 2020 in pursuance of the appeal and the same shall also be so certified by the statutory auditor of the company; and thedetails of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020 -21 in terms of section 134 (3) (o) of the Companies Act, 2013.

https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxNzU=&docCategory=NotificationsAndCirculars&type=download

SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations,2021 (May 5, 2021)

SEBI vide its Gazetted notification dated May 5, 2021, amended the provisions of SEBI (ListingObligations and Disclosure Requirements) Regulations, 2015, which shall come into force on thedate of their publication in the Official Gazette. The brief of the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 is given hereunder as:-

S.No.	Reference to Chapter No.	Regulation	New Provision
1.	Lesson 13: Internal Control	7(3) - Compliance Certificate	With effect from the recent amendment, the listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, **within thirty days from the end of the financial year**, earlier the same was to be submitted within one month of end of each half of the financial year.
2.	Lesson 5: Board Committees	21 – Risk Managemen tCommittee	**Applicability:** The provisions of this regulation shall be applicable to top 1000 listed entities earlier the same was to be applicable to top 500 listed entities. **Composition:** The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least twothirds of the Risk Management Committee shall comprise independent directors. **Number of meetings:** At least twice in a year, and not more than one hundred and eighty days shall elapse between any two consecutive meetings. **Quorum**: Two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance. **Roles and responsibilities :** the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II

3.	Lesson 6: Corporat e	24 - Corporate governance requirements	A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with

	Policies and Disclosures	with respect to subsidiary of listed entity	other subsidiaries) to less than or equal to fifty percent without passing a special resolution in its General Meeting
4.	Lesson 7: Accounting and Audit related issues, RPTs and Vigil Mechanism	24A – Secretarial Audit and Secretarial Compliance Report	Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity. Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within 60 days from end of each financial year.
5.	Lesson 6: Corporate policies and Disclosures	27 (2) - Corporate Governance	The corporate governance report to be filed within 21 days from the end of each quarter, earlier it was filed within 15 days, in order of uniformity with the submission of shareholding pattern (Regulation 31) and investor grievance report (Regulation 13).
6.	Lesson 13: Internal control	32 - Statement of deviation(s) or variation(s).	Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency **within forty -five days from the end of each quarter.**
7.	Lesson 14: Reporting Lesson 16: CSR and Sustainability	34 - Annual Report	The requirement of submitting a business responsibility report shall be discontinued after the financial year 2021 –22 and thereafter, with effect from the financial year 2022 –23, the **top one thousand listed entities** based on market capitalization shall submit a **business responsibility and sustainability report** describing quantitative and standardized disclosures on ESG parameters to enable comparability across companies, sectors and time, shall form part of the Annual Report.
8.	Lesson 6: Corporate Policies and Disclosure	43A - Dividend Distribution Policy	The **top 1000** listed entities based on market capitalization (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed **on the website of the listed entity** and a web -link shall also be provided in their annual reports. The listed entities other than those specified above may disclose their dividend distribution policies

			on a voluntary basis on their websites and provide a web -link in their annual reports.
9.	Lesson 6: Corporate Policies and Disclosures	44(3) - Voting Results	The listed entity shall submit to the stock exchange, within two working days of conclusion of its General Meeting, details regarding the voting results, earlier it was required to be submitted within forty eight hours of conclusion of its General Meeting.
10.	Lesson 6: Corporate Policies and Disclosures	46 – Website compliance	In addition to the existing website compliance, following new disclosures have been prescribed: 1. Audio or video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means, simultaneously with submission to the recognized stock exchange(s), in the following manner: (i) the presentation and the audio/video recordings shall be promptly made available on the website and in any case, before the next trading day or within twenty - four hours from the conclusion of such calls, whichever is earlier; (ii) the transcripts of such calls shall be made available on the website within five working days of the conclusion of such calls. The requirement for disclosure(s) of audio/video recordings and transcript shall be voluntary with effect from April 01, 2021 and mandatory with effect from April 01, 2022. 2. Secretarial compliance report 3. Disclosure of the policy for determination of materiality of events or information 4. Disclosure of contact details of key managerial personnel who are authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) 5. Disclosures under sub -regulation (8) of regulation 30 of these regulations 6. Statements of deviation(s) or variation(s) 7. Dividend distribution policy 8. Annual return as provided under section 92 of the Companies Act, 2013

11.	Lesson 6: Corporate Policies and Disclosures	Schedule III, Part A, Paragraph A, Clause 4	The financial results shall be disclosed to the Exchange(s) within 30 minutes of end of the meeting for the day on which it has been

			considered by the board, in case if the meeting held for more than one day.
12.	Lesson 6: Corporate Policies and Disclosures	Schedule III, Part A, Paragraph A, Clause 15	The listed entity shall submit Audio/video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means, to the stock exchange(s) within twenty-four hours from the conclusion of such call. The requirement for disclosure(s) of audio/ video recordings and transcript shall be voluntary with effect from April 01, 2021 and mandatory with effect from April 01, 2022

Notification No: G.S.R. 526(E)- The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020, dated August 24, 2020

MCA vide Notification No.: G.S.R. 526(E), dated August 24, 2020 has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 to further amend the Companies (Corporate Social Responsibility Policy) Rules, 2014

1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 2, in sub-rule (1), in clause (e), the following proviso shall be inserted, namely: -
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 and 2022-23 subject to the conditions that:

(i) 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 of the Companies Act, 2013.

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

2) In rule 4(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the words "excluding activities undertaken in pursuance of its normal course of business" shall be omitted. 14

3) In rule 6(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014-

(i) first proviso shall be omitted;
(ii) In the second proviso, the word "further" shall be omitted.

Details of Changes
MCA vide this amendment has notified 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 and 2022-23 subject to the prescribed conditions.

Thereafter, under Rule 6(1) of CSR (Corporate Social Responsibility Policy) Rules, 2014, first proviso has been omitted which states that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company. Similarly, under Rule

4(1) “excluding activities undertaken in pursuance of its normal course of business” has been
also omitted.

For details: http://www.mca.gov.in/Ministry/pdf/csr_26082020.pdf

Section 26 of the Companies (Amendment) Act, 2020 amended Section 134(8) of the Companies Act, 2013 w.r.t. Financial Statement, Board’s Report, etc.

Old Penal Provision

If a company contravenes the provisions of Section 134 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 25 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs, or with both.

New Penal Provision

If a company is in default in complying with the provisions of Section 134 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of Changes

Fixation of Penalty and omission of imprisonment in case of every officer of the company who is in default in complying with the provisions of Section 134 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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