

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

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Environmental Legislation -
The role of CS in Practice
and Employment



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)



STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

June 2021

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INFO CAPSULE

<https://www.icsi.edu/infocapsule/>

CASE DIGEST

<https://www.icsi.edu/student/sample-case-studies/>

SUBJECTWISE MONTHLY UPDATES

<https://www.icsi.edu/student/subjectwise-monthly-updates/>

GUIDELINE ANSWERS

<https://www.icsi.edu/student/academic-portal/guideline-answers/>

Announcement for the Students

*Students are invited to contribute articles for Student Company Secretary e-journal for the month of August at **academics@icsi.edu***

on the topic

***Unearthing Corporate Frauds – The ever-increasing role and scope for
Governance Professional***

*Selected Articles will be published in the August issue of
Student Company Secretary e-journal*

Bi-weekly video interactive sessions for students

An Opportunity to interact directly with the ICSI Academic Officers/Experts

ICSI has created a platform for continued interaction of students on academic queries in a streamlined manner, where module/subject-wise queries shall be answered by the academic officers and experts. It shall help the Institute in educating and training the students more effectively.

The Institute has dedicated two hours a week for interaction with students by academic officers and industry experts through 'Bi-weekly phone-in/video interactive session' for the students.



Enlist Your Queries



Block Your Time



Check the Module-wise Academic Interaction Dates



Interact Directly with Experts and get your Doubts Clarified

For Module-wise schedule details

visit <https://www.icsi.edu/student/academic-portal/>
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Bi-weekly video interactive session for students

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Sessions held so far

| <i>Date</i> | <i>Subjects</i> | <i>Date</i> | <i>Subjects</i> |
|--|---|--------------------------------------|--|
| Tuesday, 6 th April, 2021 | Company Law | Thursday, 13 th May, 2021 | Secretarial Audit, Compliance Management and Due Diligence |
| Thursday, 8 th April, 2021 | Tax Laws | Tuesday, 18 th May, 2021 | Multidisciplinary Case Studies –Securities Laws; FEMA and other Economic and Business Legislations; Insolvency Law |
| Tuesday, 13 th April, 2021 | Governance, Risk Management, Compliances and Ethics | Thursday, 20 th May, 2021 | Advanced Tax Laws |
| Friday, 16 th April, 2021 | Strategic and Financial Management | Wednesday 26 th May, 2021 | Jurisprudence, Interpretation & General Laws |
| Tuesday, 20 th April, 2021 | Setting up of Business Entities and Closure | Thursday, 27 th May, 2021 | Intellectual Property Rights - Laws and Practices |
| Thursday, 22 nd April, 2021 | Drafting, Pleading and Appearances | Tuesday 01 June 2021 | Setting up of Business Entities and Closure |
| Tuesday, 27 th April, 2021 | Corporate Funding and Listings in Stock Exchanges | Thursday, 03 June 2021 | Valuations and Business Modelling |
| Friday, 30 th April, 2021 | Insurance - Law and Practice | Tuesday 08 June 2021 | Labour Laws |
| Tuesday, 04 th May, 2021 | Banking - Law and Practice | Thursday, 10 June 2021 | Corporate Restructuring, Insolvency, Liquidation & Winding-up |
| Thursday, 06 th May, 2021 | Securities Laws and Capital Markets | Tuesday 15 June, 2021 | Resolution of Corporate Disputes, Non-Compliances & Remedies |
| Tuesday, 11 th May, 2021 | Insolvency - Law and Practice | | |

*Bi-weekly video interactive session for students can be accessed at
https://www.icsi.edu/bi_weekly_sessions_for_students/?edit_off=true*



“On the other side of a storm is the strength that comes from having navigated through it. Raise your sail and begin.”

Dear Students,

The above words of Gregory S. Williams, a noted author, come to befit the present times, the situations entailing and the challenges accompanying, quite aptly. It would not be an exaggeration to say that the pandemic which began in 2020 and brought with it, its second wave in 2021 has been trying for all of us on various fronts. Be it our personal health or that of our close family members, the impact has been quite draining. And yet I would commend each one of you for the strength and grit that you have portrayed as you endured the ordeals that came your way.

Friends, to me true professionalism, as I have often said, is not limited to the boundaries of a course and its curriculum, even further its profile of work; rather, true professionalism, if you ask me, is a way of life. The traits that would be expected of you in your professional journey are the ones that you shall be required to portray in any and every arena of your life. While the pandemic has challenged us in more ways than one, it is the portrayal of professionalism that calls for an optimistic outlook, a positive approach and a never-ending hunt of silver linings despite the clouds surmounting.

Understanding the difficulties facing our students across the country, and to provide as much comfort and ease as possible in your academic journey, the ICSI had decided upon various relaxations, the postponement of June 2021 Examinations being one of them. With the situations easing and the number of cases reducing, it was deemed fit that the Examinations may be conducted in August 2021. Furthermore, realizing the issue of displacement in these times, the ICSI recently opened the window for change of

Examination Centres. An opt-out facility has also been provided for the students of Old Syllabus.

As the old saying goes, that we cannot change the direction of the winds but we can definitely change the direction of the sails of a boat. Similarly, although the pandemic has no doubt created turbulence but with determination, dedication and discipline we can strive to achieve pinnacles of success. July being the 'Student Month' at ICSI, I hope that the activities planned and the initiatives being launched shall prove to be not only knowledge enhancing but shall play a key role in your overall personality development.

Given the fact that the Examinations are approaching, I am sure that you would have put your study mode on geared up yourselves to take a heads on approach to sail through the same.

Stay safe ! Stay healthy !

With warm regards,

(CS Nagendra D. Rao)

President

The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

1. **Bi-weekly video interactive sessions for Students:** The Institute of Company Secretaries of India has created a unique platform to deliberate upon crucial aspects of modules and subjects and clarify academic queries of students in a streamlined manner by Academic Officers and Expert on the subject. The details of the sessions further conducted are as under:

| Session | Date | Subject |
|------------------|-----------------------------|---|
| 15 th | 26 th May, 2021 | Jurisprudence, Interpretation & General Laws |
| 16 th | 27 th May, 2021 | Intellectual Property Rights - Laws and Practice |
| 17 th | 01 st June, 2021 | Setting up of Business Entities and Closure |
| 18 th | 03 rd June, 2021 | Valuations and Business Modelling |
| 19 th | 08 th June, 2021 | Labour Laws |
| 20 th | 10 th June, 2021 | Corporate Restructuring, Insolvency, Liquidation & Winding-up |
| 21 st | 15 th June, 2021 | Resolution of Corporate Disputes, Non-Compliances & Remedies |

The video recordings of the sessions are available on the Academic Portal of the Institute under the tab video lectures.

https://www.icsi.edu/bi_weekly_sessions_for_students/?edit_off=true

2. The **Student Company Secretary e-journal** for Executive / Professional programme students of ICSI has been released for the month of **May, 2021**. The same is available on the Institute's website at the weblink : <https://www.icsi.edu/e-journals/>
3. The **CSEET Communique (e-bulletin)** for the month of **May, 2021** containing the latest updates in respect of Papers of the CSEET has been placed on the ICSI Website. The same is also available at the CSEET Portal at the Institute's website at the weblink : <https://www.icsi.edu/student/cseet/cseet-e-bulletin/>
4. The **CS Foundation course e-bulletin** for Foundation programme students of ICSI has been released for the month of **May, 2021**. The same is available on the Institute's website at the weblink : <https://www.icsi.edu/e-journals/>
5. **Info Capsule Series-6** (151-200) has been published online. The same may be accessed under the ICSI-Publication Portal from the following link: https://www.icsi.edu/media/webmodules/infocapsule/INFO_CAPSULE_SERIES_6.pdf

6. **Info Capsule** is being issued as an update on daily basis for members and students, covering latest amendments on various laws for the benefit of our members and students. The same is available on the ICSI website at the weblink <https://www.icsi.edu/infocapsule/>
7. Free video lectures of **Online Crash Course /Doubt Clearing Classes** by ICSI-exclusively for students appearing in June 2021 session exam(postponed to August 2021). The details are available at the following link: <https://www.icsi.edu/media/webmodules/123.pdf>
8. **CSEET (July session)** will be held on 10th July 2021.
9. **Subject wise Recorded video lectures** for students of the Institute are being made available at ELearning platform at the website of the Institute www.icsi.edu
10. **Online CSEET classes** are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in July 2021.
Click here to contact coordinators
<https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>
For schedule of CSEET Classes, Please click here
https://www.icsi.edu/media/webmodules/Hurry_up_Join_July_2021_CSEET_Classe.pdf
11. **Crash Course/Revision classes** of Foundation/Executive/Professional Programme by Regional/Chapter Offices for June 2021 Exam Session (postponed to August 2021 session).
Click here to contact coordinators :
<https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>
12. The Institute has decided that the students of Executive and Professional Programme (2012 old Syllabus) shall be allowed one more attempt during the December, 2021 session of examinations.
Click here for details
https://www.icsi.edu/media/webmodules/one_morre_attempt_announcement_100621.pdf
13. Announcement regarding eligibility of students whose registration has lapsed /will lapse, for June 2021 Session of Examination (now scheduled in August 2021).
Click here for details.
https://www.icsi.edu/media/webmodules/Announcement_eligibility_Students_registration_expired_June_2021_Revised.pdf
14. Provisional registration in Executive Programme for CSEET passed candidates who are scheduled to appear in 10+2 (12th) examination during the year 2021.
For details, please click here
https://www.icsi.edu/media/webmodules/CSEET/Announcement%20_students_12th_20211.jpg



Articles

- ENVIRONMENT LAWS - OPPORTUNITIES FOR COMPANY SECRETARIES
- LIABILITY OF A PERSONAL GUARANTORS (PGs) TO CORPORATE DEBTORS (CDs) UNDER IBC

ENVIRONMENT LAWS – OPPORTUNITIES FOR COMPANY SECRETARIES*

Introduction

Protection and Conversation of environment is always on the priorities list of India. Protection and Improvement of environment and safeguarding of forest and wild life is inserted in the Constitution *vide* amendment act 1976 as Article 48A under Directive Principle of States. The Amendment Act of 1976 also added the fundamental duties in the constitution which assigned the duty to the citizens, which includes “protection and improvement of the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”. In line with and to give effect to said Directive Principle of State Policy, our country passed various legislations for protections of environments including Air, Water etc. The Ministry of Environment, Forest and Climate Change (MoEFCC) is the nodal agency for the planning, promotion, co-ordination and overseeing the implementation of India’s environmental and forestry policies and programmes. The MoEFCC discharges the duties under various Environment Laws. Supreme Court through various Judgements also emphasized on the importance of strict enforcement of environment laws. The strict enforcement of these laws calls for the need of professional services in this domain. This has also opened a whole new area of opportunities for Company Secretaries (CS).

Opportunities for the Professionals under the Environment (Protection) Act, 1986

This Act is enacted for the protection and improvement of environment. This Act and rules made there under have prescribed various procedure including safeguards for handling hazardous substances. The Central Government or authorized officers under the act are empowered to take samples and inspect samples of air, water, soil or other substance from any factory, premises or other prescribed place. This law provides for the strict punishment for the company as well as on the person directly in charge of the company. Many rules have been prescribed under this Act which *inter-alia* includes as under:

| S. No. | Rules |
|--------|---|
| 1. | The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 |
| 2. | Rules for the Manufacture, use/import/export and storage of Hazardous Micro organisms / genetically engineered organisms or cells (Rules, 1989) |
| 3. | The Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996 |

* Directorate of Academics

Views expressed in the Article may not express the views of the Institute.

| | |
|-----|--|
| 4. | Batteries (Management & Handling) Rules, 2001 |
| 5. | Plastic Waste Management Rules, 2016 |
| 6. | Bio-Medical Waste Management Rules, 2016 |
| 7. | Construction and Demolition Waste Management Rules, 2016 |
| 8. | Regulation of Poly-chlorinated Biphenyls (PCBs), 2016 |
| 9. | Solid Waste Management Rules, 2016 |
| 10. | Regulation on Lead contents in Household and Decorative Paints Rules, 2016 |
| 11. | Wetland Rules, 2017 |
| 12. | Regulation of Persistent Organic Pollutants Rules, 2018 |

These rules are applicable to various companies operating in different industries. The rules required correct Interpretation and implementation of the law in spirit. A Company Secretary is professional having expertise of Interpretation and is involved in almost all the compliances that may be applicable to an organization. Company Secretaries may easily explore various opportunities that are available in the Act and rules made there under and prove his acumen. This law provides for the strict punishment for the company as well as on the person directly in charge of the company, which requires the expert services of a company secretary in this domain.

Compliances w.r.t. Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016

India has enacted laws to ensure that there is no import of the hazardous wastes from any country to India for disposal. The import of hazardous waste from any country shall be permitted only for the recycling or recovery or reuse. The Company Secretary shall ensure that a company has complied with the following requirements under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016:

- (1) The Company generates the hazardous waste in its establishment and engaged in handling of hazardous wastes as specified in the Schedules to the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016.
- (2) The Occupier for the management of hazardous and other wastes, is required to follow the following steps, namely:-
 - (a) prevention;
 - (b) minimization;
 - (c) reuse,
 - (d) recycling;
 - (e) recovery, utilisation including co-processing;
 - (f) safe disposal

- (3) The occupier is responsible for safe and environmentally sound management of hazardous and other wastes.
- (4) The hazardous and other wastes generated in the establishment of an occupier is required to be sent or sold to an authorised actual user or shall be disposed of in an authorised disposal facility.
- (5) The hazardous and other wastes is required to be transported from an occupier's establishment to an authorised actual user or to an authorised disposal facility in accordance with the provisions of these rules.
- (6) The occupier who intends to get its hazardous and other wastes treated and disposed of by the operator of a treatment, storage and disposal facility is required to give to the operator of that facility, such specific information as may be needed for safe storage and disposal.
- (7) The occupier is required to take all the steps while managing hazardous and other wastes to
 - (a) contain contaminants and prevent accidents and limit their consequences on human beings and the environment; and
 - (b) provide persons working in the site with appropriate training, equipment and the information necessary to ensure their safety.

The non-compliances under these rules may have adverse effects on the company. Therefore, it becomes necessary that proper care shall be taken in compliance of these rules.

Opportunities for the Professionals under the Water (Prevention and Control of Pollution) Act, 1974

This Act is enacted for the prevention and control of water pollution. Under the law, the State Board or any officer empowered by it has the power to take the samples from stream, well, sewage and trade effluent passing from plant, vessel or place. A company secretary being an expert in the capacity of authorized representative may ensure that proper procedure has been followed as prescribed under section 21 of the Act. Certain prohibitions are provided under section 24 of the Act on the use of stream or well for disposal of polluting matter. A CS may devise the system through which the company can ensure the compliance with this section. He may assist in drafting the appeals to be made to the appellate authority under the Act. This law also provides for the strict punishment for the company as well as on the person directly in charge of the company. A CS can act as adviser for the company enabling it and its directors to be safe from the strict liability under the Act.

According to rule 32 of the Water (Prevention and Control of Pollution) Rules, 1975, an application is required to made Central Board for establishing any industry, which is likely to “discharge of sewage” or bringing to use any new “Discharge of sewage”. This application is required in form XIII. The Central Board may depute its officer(s) for verifications and inspection. These officers are empowered to require the applicant to furnish additional information, clarifications, documents etc. A PCS or CS in employment is competent to facilitate the process and consequently, the chances of the organization to obtain the approvals will be much better.

Opportunities for the Professionals under the Air (Prevention and Control of Pollution) Act, 1981

This Act was enacted to prevention, control and abatement of air pollution. It contains the provisions related restriction on setting up of plants, discharged air pollutant in excess of prescribed standards etc. The Board under the act is empowered to take samples and inspect the premises of the organizations. A professional may draft the necessary application for obtaining consent for establishment or operation of industrial plant in an air pollution control area. He may keep a track of the standards as may be laid by the State Board and make it part of the corporate compliance framework. He can ensure that proper procedure has been followed as provided under the law for taking samples of air. He may assist in drafting the appeals to be made to the appellate authority under the Act. This law again like the above provides strict punishment for the company as well as on the person directly in charge of the company. Therefore, a CS may prove to be an asset for the company, directors and top management.

Further, he can also monitor various compliances under the Act and Air (Prevention & Control of Pollution) Rules, 1982. Few requirements under the Act and Rules is as under:

1. Prior consent should have been obtained from the State Pollution Control Board for any industrial plant in an air pollution control area.
2. The Company does not discharge or cause or permit to be discharged the emission of any air pollutants in excess of such standards laid down by the State Board under Section 17 (1) (g).
3. The Company should comply with the following conditions as may be laid down in the consent by the State Board, namely:
 - (i) Installation and operation of the control equipment;
 - (ii) Alteration or replacement of the existing control equipment, if any;
 - (iii) Proper Maintenance of the Control Equipment; and
 - (iv) Erection or re-erection of Chimney, as may be necessary.
4. The State Board or any officer authorised by it in this behalf have taken samples of air or emission from any chimney, flue or duct or any other outlet for the purpose of analysis.
5. Ensure that the company does not receive any notice / order from the State Board restraining the company from discharging or causing or permitting to be discharged the emission of any air pollutants.

Opportunities for professionals under Public Liability Insurance Act, 1991

This law is enacted to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance. This law imposes strict liability on the owners. The duty of the owner is to take out insurance policies provided under the Act. Various compliances are required to be complied under this law. A CS can take the responsibilities of complying with the provisions of Act and rules made there under.

Opportunities for the Professionals under NGT Act

National Green Tribunal (NGT) was established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. NGT is having jurisdiction over all the cases where a substantial question relating to environment and such questions have arisen out of the implementation of environmental laws prescribed in schedule 1 of the Act. NGT is the appellate authority under the laws related to Prevention and Control of Pollution of Water, Air, Environment etc. In case of Accidents, NGT is authorized to apply the principle of 'no fault' liability. Therefore, it is necessary that there shall be strict enforcement of Pollution Control Laws, which becomes the duty of a Company Secretary in Employment and Practising Company Secretaries in case of smaller companies. A CS being an expert of corporate laws may also assist in the proceedings before the tribunal. This act also fixes the liability on Company as well as on the person directly in charge of the company. The Penalties under this act may reach to 25 Crores rupees and in case the failure or contravention continues, with additional fine which may extend to 1 Lakh rupees for every day. So it becomes the duty of a company secretary to identify the Environment Laws applicable to the companies and ensure their strict enforcement.

Business responsibility and sustainability reporting

According to SEBI, 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. In view of this, it has prescribed the format of Business Responsibility Report for ESG (Environment, Social and Governance) in November, 2015. SEBI vide circular dated February 6, 2017 mandated the requirement submission of Business Responsibility Report ('BRR') for top 500 listed entities under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("SEBI LODR"). The key principles which are required to be reported by the entities pertain to areas such as environment, governance, stakeholder's relationships, etc.

Now, in May 2021 it has notified new reporting requirement on ESG parameters called the Business Responsibility and Sustainability Report (BRSR) in May, 2021. In terms of new reporting requirement, filing of BRSR is mandatory for top 1000 listed companies (by market capitalization) and the existing BRR is replaced with effect from the financial year 2022-2023. Filing of BRSR is also voluntary for the financial year 2021-22.

The Company Secretary shall ensure that the company complies with the BRSR disclosures requirements.

Environmental Care under CSR initiatives in the Companies Act, 2013

Every company covered under the criteria defined under section 135 of the Companies Act, 2013 is required to constitute a Corporate Social Responsibility Committee. This committee should formulate and recommend to the Board of Directors of the company 'a Corporate Social Responsibility Policy' in accordance with the activities in areas or subject specified in Schedule VII to the Act. Entry (iv) of said schedule provides:

"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.”

A CS can draft the policy in accordance with this entry. The expertise of the professional in this direction will improve the image of the company in society as a nature friendly business.

Judicial perspective

There are many cases in which the Supreme Court has acted in favour of environment protections. In the case of limestone quarries in the Doon Valley which caused soil erosion, deforestation and other environmental problems, the Supreme Court held that people have the right to live in a healthy environment with minimal disturbance of the ecological balance. In Bhopal Gas Leak case the Supreme Court declared that the right to a pollution-free environment is a part of the right to life under Art 21. In the Vellore Citizens Forum case, the Supreme Court held that ‘sustainable development’ as a balancing concept between ecology and development has been accepted as a part of customary International Law. Hefty fines and liabilities are always fixed by the regulators especially on organizations in environment related matters. Therefore, it has become necessary that the company secretaries (either in employment or in practice) give special emphasize on environment laws and prove to be a savior to the company and the top management.

Conclusion

The courts and administration of the country has always taken strict measures while enforcement of the environment laws. Degrading the environment is an international problem having presence in almost all the nations. The companies may be liable with hefty penalties for non-compliances of environment laws. A CS may act as savior for the company and the top management from the strict liability under various environment Laws.

References

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LIABILITY OF A PERSONAL GUARANTORS (PGs) TO CORPORATE DEBTORS (CDs) UNDER IBC*

Brief Facts

The Central Government, vide notification dated 15th November, 2019, brought into force provisions relating to the Personal Guarantors (PGs) to Corporate Debtors (CDs) with effect from 1st December, 2019. The impugned notification issued in the Gazette of India Extraordinary, by the Ministry of Corporate Affairs, reads as follows:

*In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code only in so far as they relate to **personal guarantors to corporate debtors** shall come into force:*

| Number | Section | Particular of Section |
|--------|--|---|
| (1) | Clause (e) of section 2; | Application of the Code to Personal Guarantors to Corporate Debtors |
| (2) | Section 78 (except with regard to fresh start process) and section 79; | Application & Definitions pertaining to Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms (Chapter I- Preliminary) |
| (3) | Sections 94 to 187 (both inclusive); | Chapter III - Insolvency Resolution Process pertaining to Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms |
| (4) | Clause (g) to clause (i) of sub-section (2) of section 239; | Power of Central Government to make Rule pertaining to Section 239(2)(g) to 239(2)(i) |
| (5) | Clause (m) to clause (zc) of sub-section (2) of section 239; | Power of Central Government to make Rule pertaining to Section 239(2)(m) to 239(2)(zc) |
| (6) | Clause (zn) to clause (zs) of sub-section (2) of section 240; and | Power of Board to make Regulations pertaining 240(2)(zn) to 240(2)(zs) |
| (7) | Section 249. | Amendments of Act 51 of 1993- The Recovery of Debts due to Banks and Financial Institutions Act, 1993 shall be amended in the manner specified in the Fifth Schedule. |

* Chittaranjan Pal, Assistant Director, The ICSI

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

According to the above Notification, the personal guarantors to corporate debtors were brought within the scope of the insolvency proceedings under the Insolvency and Bankruptcy Code, 2016.

Several petitions were filed in different High Courts challenging the said notification and related Rules and Regulations. The common question in the instant matter relates to the *vires* and validity of the Notification and the Hon'ble Supreme Court directed transfer of petitions from High Courts to itself.

Personal Guarantors Separately from other Individuals

The Hon'ble Supreme Court of India in the matter of *Lalit Kumar Jain vs. Union of India & Ors. [Transferred Case (Civil) No. 245/2020 and other writ petitions]* Judgment dated 21st May, 2021 *inter-alia* observed that Parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the Adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity.

On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes – the provisions of which are disparate- is to be common, i.e. through the NCLT. As was emphasized during the hearing, the NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the Committee of the Creditor (CoC) in framing realistic plans, keeping in mind the prospect of realizing some part of the creditors' dues from personal guarantors.

Validity of the Notification

The impugned notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of the Code. There is no compulsion in the Code that it should, at the same time, be made applicable to all individuals, (including personal guarantors) or not at all.

There is sufficient indication in the Code- by Section 2(e), Section 5(22), Section 60 and Section 179 indicating that personal guarantors, though forming part of the larger grouping of individuals, were to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through the same adjudicatory process and by the same forum (though not insolvency provisions) as such corporate debtors.

The notifications under Section 1(3), (issued before the impugned notification was issued) disclose that the Code was brought into force in stages, regard being had to the categories of persons to whom its provisions were to be applied.

The impugned notification, similarly inter alia makes the provisions of the Code applicable in respect of personal guarantors to corporate debtors, as another such category of persons to whom the Code has been extended.

It is held that the impugned notification was issued within the power granted by Parliament, and in valid exercise of it. The exercise of power in issuing the impugned notification under Section 1(3) is therefore, **not ultra vires; the notification is valid.**

Approved Plan is Binding on the Guarantor

The Hon'ble Supreme Court in *Lalit Kumar Jain Vs. Union of India & Ors. [Transferred Case (Civil) No. 245/2020 and other writ petitions]* observed that the rationale for allowing directors to participate in meetings of the CoC is that the directors' liability as personal guarantors persists against the creditors and an approved resolution plan can only lead to a revision of amount or exposure for the entire amount. Any recourse under Section 133 of the Contract Act to discharge the liability of the surety on account of variance in terms of the contract, without her or his consent, stands negated by this court, in *V. Ramakrishnan* where it was observed that the language of Section 31 makes it clear that the approved plan is binding on the guarantor, to avoid any attempt to escape liability under the provisions of the Contract Act. It was observed that:

"25. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor...."

And further that:

"26.1 Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."

Liability of a PG to CD in case Resolution Plan is Approved

The sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In *Maharashtra State Electricity Board Bombay v. Official Liquidator the liability of the guarantor (in a case where liability of the principal debtor was discharged under the insolvency law or the company law)*, was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realize the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act. This court observed as follows:

“7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs 50,000 and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Indian Contract Act, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability (see *Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath* [AIR 1940 Bom 247; see also *In re Fitzgeorge Ex parte Robson* [(1905) 1 KB 462]).”

Conclusion

In view of the above discussion, it is held that approval of a **resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee**. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.

While dismissing the petitions, the Supreme Court held:

- i. the notification dated 15th November, 2019 is legal and valid; and
- ii. approval of a resolution plan relating to a Corporate Debtor not operate as a discharge of the liabilities of Personal Guarantors the Corporate Debtor.

Source:

1. <https://www.ibbi.gov.in/uploads/legalframework/982f0ad78155daecf90a1dcd70d0db3f.pdf>
2. <https://www.ibbi.gov.in/uploads/order/8cff46ae7049df781ad8ce6c4694dcfd.pdf>
3. Judgment dated 21st May, 2021 of the Hon'ble Supreme Court of India in the matter of *Lalit Kumar Jain Vs. Union of India & Ors.* [Transferred Case (Civil) No. 245/2020 and other writ petitions]



Practice Mentor

- **ALL ABOUT PERMANENT ACCOUNT NUMBER “PAN”**

ALL ABOUT PERMANENT ACCOUNT NUMBER “PAN”*

Permanent Account Number ‘PAN’ is basically a method of identifying a taxpayer on the computer system through a unique ten digit alphanumeric number so that all information relating to that taxpayer, e.g. taxes paid, refunds issued, outstanding arrears, income disclosed, transactions entered etc. can be linked to him through the computer system. Processing of return of an assessee or other actions on AST software is not possible unless PAN has been allotted to him and is linked to the AO code of the Assessing Officer who is trying to process that return.

Objectives of PAN

PAN was introduced keeping in view the following objectives:-

- i. to facilitate linking of various documents and information, including payment of taxes, assessment, tax demand, arrears etc. relating to an assessee.
- ii. to facilitate easy retrieval of information.
- iii. to facilitate matching of information relating to investment, raising of loans and other business activities of taxpayers collected through various sources, both internal as well as external, for widening of tax base and detecting and combating tax evasion through non-intrusive means.

Permanent Account Number (PAN) is a ten-digit alphanumeric identifier, issued by Income Tax Department. Each assessee (e.g. Individual, Firm, Company etc.) is issued a unique PAN. PAN enables the department to link all transactions of the assessee with the department. These transactions include tax payments, TDS/TCS credits, returns of income, specified transactions, correspondence and so on. It facilitates easy retrieval of information of assessee and matching of various investments, borrowings and other business activities of assessee.

Structure of PAN

| | |
|-------------------|--|
| First Three Digit | Alphabetic series running from AAA to ZZZ |
| Fourth Digit | Status (i.e. P For Personal, C for Corporate, F for Firm, H for Hindu Undivided Family Etc.) |
| Fifth Digit | First character of assessee’s Last Name/ Surname |
| Next 4 Digit | Sequential Number running from 0001 to 9999 |
| Last Digit | Alphabetic Check digit |

The combination of all the above items gives the PAN its unique identity.

* Prepared by CA Govind Agarwal, Assistant Director, The ICSI and reviewed by CS Saurabh Jain, Joint Director, ICSI.

Views expressed in the Article are the sole expression of the Author(s) and may not express the views of the Institute.

Who can apply for PAN?

All existing assesseees or taxpayers or persons who are required to file a return of income, even on behalf of others, must have a PAN. Any person, who intends to enter into economic or financial transactions where quoting PAN is mandatory, must also have a PAN. Even a person who is not mandatorily required to obtain PAN, can voluntarily apply for PAN.

Application for PAN

An application for allotment of PAN can be made by filling up Application form. The forms are -

1. Form 49A (for Indian Citizens)
2. Form 49AA (for Foreign Citizens)

PAN application can be made either online through NSDL web-site www.tin-nsdl.com (Click here to apply for PAN online) or through any of the NSDL TIN-Facilitation Centres/ PAN Centres (Click here to select the nearest TIN – Facilitation Centers/ PAN centres where PAN application may be submitted).

The duly filled and signed PAN application form may be submitted along-with the supporting documents to any of the TIN-FCs or PAN Centres managed by NSDL e-Gov. However, if applied online, duly signed and photo affixed acknowledgement receipt alongwith supporting documents should be sent to below address:

INCOME TAX PAN SERVICES UNIT
(Managed by NSDL e-Governance Infrastructure Limited)
5th Floor, Mantri Sterling, Plot No. 341,
Survey No. 997/8, Model Colony,
Near Deep Bungalow Chowk,
Pune - 411 016

Quoting of PAN (Permanent Account Number) [Rule 114B]

In order to achieve a two-pronged target of curbing the circulation of black money and widening tax base, the government has recently notified changes in the monetary limits that will require mandatory quoting of PAN. The finance ministry has also rationalized the monetary limits for certain transactions requiring mandatory quoting of PAN.

Every person shall quote his **permanent account number (PAN)** in all documents pertaining to the transactions specified in the Table below, namely:-

| <i>S. No.</i> | <i>Nature of transactions</i> | <i>Value of transaction</i> |
|---------------|--|-----------------------------|
| 1 | Sale or purchase of a motor vehicle or vehicle other than two wheeled vehicles | All Such Transactions |
| 2 | Opening an account with a Bank (Other than savings account) | |
| 3 | Application for Debit and Credit Card | |

| | | |
|----|--|--|
| 4 | Opening a Demat Account | |
| 5 | Payment to a hotel or restaurant against a bill | Payment of more than Rs. 50,000 (if in cash) |
| 6 | Payment in connection with foreign travel or payment for purchasing foreign currency | |
| 7 | Payment to a company for purchasing debentures or bonds issued by it | Payment exceeding Rs. 50,000 |
| 8 | Payment to a Mutual Fund for purchase of its units | |
| 9 | Payment to RBI for acquiring bonds | |
| 10 | Deposit with a Bank | Deposit of more than Rs. 50,000 (if in cash) per day |
| 11 | Purchase of DD(Demand Drafts or banker's cheques) from a Bank | Payment in cash for an amount more than Rs. 50,000 per day |
| 12 | Time deposit with a Bank, Post Office, Nidhi companies, NBFCs | Amount of more than Rs. 50,000 per day or more than Rs. 5,00,000 during a financial year |
| 13 | Payment for prepaid instruments, issued by RBI to a banking company | Payment of more than Rs. 50,000 in a financial year |
| 14 | Payment for Life insurance premium | Payment exceeding Rs. 50,000 in a financial year |
| 15 | Sale or purchase of securities(other than shares) | Amount exceeding Rs. 1,00,000 per transaction |
| 16 | Sale or purchase of unlisted shares | |

| | | |
|----|---|--|
| 17 | Sale or purchase of any Immovable property | Amount of more than Rs. 10,00,000 or if valued by stamp valuation authority, amount of more than Rs. 10,00,000 |
| 18 | Sale or purchase of goods or services, other than those specified above, if any | Amount of more than Rs. 2,00,000 per transaction |

Important Points to Note:

- Where a person, entering into any transaction referred above, is a minor and who does not have any income chargeable to income-tax, he shall quote the **permanent account number (PAN)** of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.
- Any person, who does not have PAN and enters into any of above transaction, can make a declaration in Form No. 60.
- Quoting of PAN is not required by a non-resident in a transaction referred at point No. 3 or 5 or 6 or 9 or 11 or 13 or 18.
- **Penalty for non-quoting of PAN [Section 272B]** – If a person fails to comply with the requirement of quoting the PAN or furnish incorrect PAN then Assessing Officer may levy the penalty of Rs. 10,000.

Verification of PAN [Rule 114C]

Any person who sells an immovable property exceeding Rs. 10 lakhs or motor vehicle of any value shall either obtain and verify the PAN of the buyer at the time of sale or shall obtain Form 60 in case buyer does not have PAN.

Any person, being a person raising bills referred to at S. No. 5 (hotel or restaurant) or 6 (foreign travel) or 18 (sale of goods or services exceeding Rs. 2,00,000) of rule 114B, who, in relation to a transaction specified in the said S. No., has issued any document shall ensure after verification that permanent account number has been correctly furnished and the same shall be mentioned in such document, or as the case may be, a declaration in Form 60 has been duly furnished with complete particulars.

Therefore a person who is raising invoices in the above said transactions S. No. 5 (hotel or restaurant) or 6 (foreign travel) or 18 (sale of goods or services exceeding Rs. 2,00,000) shall mention the PAN of buyer/service receiver on the invoice or document issued.

Form 60 [Declaration]

It is a Form for declaration to be filed by an individual or a person (not being a company or firm) who does not have a **permanent account number (PAN)** and who enters into any transaction specified in rule 114B(mentioned in above table). The person accepting the declaration shall not accept the declaration where the amount of income of the nature [estimated total income (other than agricultural income)] exceeds the maximum amount which is not chargeable to tax, unless PAN is applied for and its acknowledgement number is duly filled.

Before signing the declaration, the declarant should satisfy himself that the information furnished in this form is true, correct and complete in all respects. Any person making a false statement in the declaration shall be liable to prosecution under section 277 of the Income tax Act, 1961 and on conviction be punishable.

In a case where tax sought to be evaded exceeds twenty five lakh rupees, with rigorous imprisonment which shall not be less than six months but which may extend to seven years and with fine. In any other case, with rigorous imprisonment which shall not be less than three months but which may extend to two years and with fine.

Reporting requirements of Form 60 [Rule 114D]

Every person who has received Form 60 in relation to transactions specified in the above table, shall be required to file Form 61 to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose and obtain an acknowledgement number and retain Form No. 60 for a period of six years from the end of the financial year in which the transaction was undertaken.

Due date for filing of Form 61:

30th April for declarations received till 31st March

31st October for declarations received till 30th September

Furnishing of statement of financial transaction [Rule 114E]

Every person who has undertaken the specified transaction will file the statement for detail of such transaction in Form 61 annually.

Form 61A shall be furnished to department on or before 31st May, immediately following the financial year in which the transaction is registered or recorded.

Further, we have identified some transactions given under Rule 114E, which generally impacts the Company and person other than company who are subject to audit under section 44AB of the Act. The following class of persons is required to furnish a statement of financial transactions under Form 61A for the transactions given below:

| S. No. | Nature and value of transactions | Class of person |
|--------|---|--|
| 1 | Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company) | A company or institution issuing bonds or debentures |

| | | |
|---|---|---|
| 2 | Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company | A company issuing shares |
| 3 | Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ten lakh rupees or more in a financial year | A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013 |
| 4 | Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. No. 1 to 10 of this rule, if any | Any person who is liable for audit under section 44AB of the Act |

The statement shall be furnished electronically by the Company/person other than Company, using digital signature of the designated director/managing partner/proprietor/principal officer.

As per the notification, “Designated Director” means a person designated by the reporting person to ensure overall compliance with the obligations imposed under section 285BA of the Act and the rules 114B to 114D and this rule and includes—

- i. the Managing Director or a whole-time Director, ***duly authorized by the Board of Directors if the reporting person is a company;***
- ii. the managing partner if the reporting person is a partnership firm;
- iii. the proprietor if the reporting person is a proprietorship concern;
- iv. the managing trustee if the reporting person is a trust;
- v. a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting person is, an unincorporated association or, a body of individuals or, any other person.

It is advised that the Company should designate a director as designated director through board resolution for filing Form 61A with the department. Similarly the partnership firms should also designate a partner for complying with the same.

Penalty for non-furnishing of statement will be of Rs. 100 per day of default. However, if the assessee receives any notice from the department for filing the statement then it shall be filed within the limit of 30 days from the date of service of notice. In case of such default, the penalty of Rs. 500 per day of default shall be levied.

Information which will be shared by the respective reporting authorities under form 61A and needs special attention of the assessee:

| S. No. | Nature and value of transaction | Implication |
|--------|---|--|
| 1. | Cash deposit or withdrawal aggregating to Rs. 50 Lakh or more in a financial year from one or more current account of a person | The banking company will share the information of the assessee with the department. |
| 2. | Cash deposits aggregating to Rs. 10 Lakh or more in a financial year in one or more saving account of a person | The banking company will share the information of the assessee with the department. |
| 3. | One or more fixed deposit/time deposit of a person aggregating to Rs. 10 Lakhs or more in a financial year (other than renewal of another time deposit) | The banking company or post office or Nidhi or NBFC will share the information of the assessee with the department. |
| 4. | Payment by any person of Rs. 1 Lakh in cash or Rs. 10 Lakhs or more by any other mode against bills raised in respect of one or more credit cards issued to that person | The Credit card issuing agency will furnish the information with the department. |
| 5. | Payment of Rs. 10 lakhs or more for following transactions: <ul style="list-style-type: none"> • acquiring bonds or debentures or • acquiring shares including share application money or • buyback of shares (other than shares in open market) • acquiring units of one or more schemes of mutual funds, • purchase of foreign currency, | The issuing company or trustee of the mutual fund or the authorized person as referred in FEMA, as the case may be, shall furnish the information with the department. |
| 6. | Purchase of immovable property for an amount of Rs. 30 Lakhs or more | The registrar or sub registrar shall furnish the information with the department about such transaction. |
| 7. | Cash payment exceeding Rs. 2 Lakh during a financial year for purchase of goods or services | The assesseees who are subject to audit under section 44AB of the Act shall furnish the information with the department. |

The Income tax department may use such information for any further enquiries/ investigation; hence it is advisable that correct information is obtained/furnished within the prescribed time.

Frequently Asked Questions [FAQs] related to PAN

1. ***Who can apply on behalf of minor, lunatic, idiot, mentally retarded, deceased and wards of court?***

Section 160 of Income Tax Act, 1961 provides that a minor, lunatic, idiot, mentally retarded, deceased, wards of court and such other persons may be represented through a Representative Assessee. In such cases,

- In the application for PAN, details of the minor, lunatic, idiot, mentally retarded, deceased, wards of court, etc. should be provided.
- Details of representative assessee have to be provided in the application for PAN.

2. ***Is it compulsory to quote PAN on 'Return of Income'?***

Yes, it is compulsory to quote PAN on return of income.

3. ***Do I need to apply for a new PAN when I move from one city to another?***

No, Permanent Account Number (PAN), as the name suggests, is a permanent number and does not change.

Changing the address though, may change the Assessing Officer. Such changes must, therefore, be intimated to Income Tax Department so that the PAN database of the department can be updated. One can intimate change in address by filling up the form for Request for Changes or Correction in PAN data. This form can be submitted online at NSDL e-Gov - TIN website.

4. ***Can I have more than one PAN?***

No, obtaining/possessing more than one PAN is against the law and may attract a penalty up to Rs. 10,000.

5. ***What should I do if I have more than one PAN?***

You may fill and submit PAN Change Request application form by mentioning the PAN which you are using currently on top of the form. All other PAN/s inadvertently allotted to you should be mentioned at item no. 11 of the form and the corresponding PAN card copy/s should be submitted for cancellation along with the form.

6. ***Is there any third party verification conducted to verify identity and address of PAN applicants along with genuineness of documents submitted by them?***

Yes, as per procedure prescribed by Income Tax Department, third party verification may be conducted to verify identity and address of PAN applicants along with genuineness of documents submitted by them during PAN application. If found fake, the Income Tax Department may take suitable action.

7. **What is e-PAN? Is e-PAN a valid proof of allotment of PAN?**

e-PAN is a digitally signed PAN card issued in electronic form and it is a valid proof of allotment of PAN.

8. **Is e-mail ID mandatory for receiving e-PAN?**

Yes, it is mandatory to mention valid e-mail ID in PAN application form to receive e-PAN.

9. **Is it compulsory to link Aadhaar with PAN?**

Section 139AA of the Income Tax Act states that every person who has PAN as on July 1, 2017 is required to link his/her PAN with his/her Aadhaar number. Section 139AA also requires mandatory quoting of Aadhaar while applying for new PAN and also while filing return.

10. **What is the deadline to link Aadhaar with PAN?**

Aadhaar-PAN linking deadline has been extended till June 30, 2021.

11. **How do I link my Aadhaar with PAN?**

You may visit e-filing website of Income Tax Dept www.incometaxindiaefiling.gov.in or NSDL e-Gov TIN website www.tin-nsdl.com and link your Aadhaar with PAN.

Alternatively, you can link your Aadhaar with PAN by sending SMS in the following format to 567678-

The format is: UIDPAN<SPACE><12 digit Aadhaar><SPACE><10 digit PAN>

For example, if your Aadhaar number is 111122223333 and PAN is AAAPA9999Q, then you are required to send SMS to 567678 as UIDPAN 111122223333 AAAPA9999Q

This is a free service provided by NSDL e-Gov. However, SMS charges as levied by the mobile operator will be applicable.

12. **What should I do if I am unable to link my Aadhaar with PAN either online or through SMS facility as mentioned above?**

You can link your Aadhaar with PAN using Biometric Aadhaar Authentication services. Click [here](#) to download Aadhaar Seeding Request Form and visit designated PAN centre for Biometric Aadhaar Authentication along with supporting documents, i.e., copy of PAN card and Aadhaar card. Unlike abovementioned online services, linking of Aadhaar with PAN using Biometric Aadhaar Authentication is chargeable.

13. **What are the charges to be paid while submitting Form 49A/ 49AA?**

If Physical PAN Card is required: While submitting PAN application form, applicant will have to indicate whether physical PAN card is required. If the applicant opts for physical PAN Card, then physical PAN card will be printed & dispatched at communication address. The e-PAN card in PDF format will be dispatched at e-mail ID mentioned in PAN application form, if the same is provided. Fees applicable are as follows:-

| <i>Sr. No.</i> | <i>Particulars</i> | <i>Fees (exclusive of applicable taxes)(₹)</i> | <i>Fees (inclusive of applicable taxes)(₹)</i> |
|--|--|--|--|
| PAN applications submitted at TIN Facilitation Centres / PAN Centres | | | |
| 1. | Dispatch of physical PAN Card in India (Communication address is Indian address) | 91 | 107 |
| 2. | Dispatch of physical PAN Card outside India (where foreign address is provided as address for communication) | 862 | 1,017 |
| PAN applications submitted Online using physical mode (i.e., Physical documents forwarded to NSDL e-Gov.) | | | |
| 1. | Dispatch of physical PAN Card in India (Communication address is Indian address) | 91 | 107 |
| 2. | Dispatch of physical PAN Card outside India (where foreign address is provided as address for communication) | 862 | 1,017 |
| PAN applications submitted Online through paperless modes (e-KYC & e-Sign / e-Sign scanned based / DSC scanned based): | | | |
| 1. | Dispatch of physical PAN Card in India (Communication address is Indian address) | 86 | 101 |
| 2. | Dispatch of physical PAN Card outside India (where foreign address is provided as address for communication) | 857 | 1,011 |

If Physical PAN Card is not required: PAN applicant will have to indicate at the time of submission of PAN application, if the physical PAN Card is not required. In such cases, email ID will be mandatory & e-PAN Card will be sent to the PAN applicant at the email ID. Physical PAN Card will not be dispatched in such cases. Fees applicable are as follows:

| <i>Sr. No.</i> | <i>Particulars</i> | <i>Fees (exclusive of applicable taxes)(₹)</i> | <i>Fees (inclusive of applicable taxes)(₹)</i> |
|--|---|--|--|
| PAN applications submitted at TIN Facilitation Centres / PAN Centres | | | |
| 1. | e-PAN Card will be dispatched at the email ID mentioned in the PAN application form | 61 | 72 |
| PAN applications submitted Online using physical mode (i.e. Physical documents forwarded to NSDL e-Gov.) | | | |
| 1. | e-PAN Card will be dispatched at the email ID mentioned in the PAN application form | 61 | 72 |
| PAN applications submitted Online through paperless modes (e-KYC & e-Sign / e-Sign scanned based / DSC scanned based): | | | |
| 1. | e-PAN Card will be dispatched at the email ID mentioned in the PAN application form | 56 | 66 |

14. How can I enquire about the status of my application?

You can inquire the status of your application by accessing NSDL-TIN website at the "Status track" option and quoting your unique 15-digit acknowledgement number after three days of your application.

You can also obtain status of your application through SMS (Short messaging service) using mobile phones. For this, you have to type the word "NSDLPAN" followed by your 15-digit acknowledgement number and send it to 57575. For example: SMS NSDLPAN 012345678901234 to 57575.

You can also check the status of your application through Interactive Voice Response (IVR) by calling the call center on 020-27218080.

15. Are two photographs compulsory for making an application for PAN?

Yes. 'Individual' applicants should affix two recent colour photographs with white background (size 3.5 cm x 2.5 cm) in the space provided on the form. The photographs should not be stapled or clipped to the form. The applicant should sign across the photograph affixed on the left side of the form in such a manner that portion of signature is on photo as well as on form. The clarity of image on PAN card will depend on the quality and clarity of photograph affixed on the form.

16. ***What documents should I submit along with the application form?***

You have to submit the following documents with the application form:

- A. Proof of identity (POI)
- B. Proof of address (POA)
- C. Proof of date of birth (PODB) (applicable only for Individual & HUF status of applicant.) (POA)

The documents for POI and POA depend on the citizenship and the status of the applicant.

17. ***What is the procedure for applicants who cannot sign?***

In such cases, Left Hand Thumb Impression (preferably in black ink) of the applicant should be taken on PAN application form at the place meant for signature. This should be attested by a Magistrate or a Notary Public or a Gazetted Officer, under official seal and stamp.

18. ***When should I submit the application in the form "Request for New PAN Card or/and Changes or Correction in PAN data"?***

You can submit the application in the form "Request for New PAN Card or/and Changes or Correction in PAN data" in the following cases:

- A. When you already have PAN but want a new PAN card,
- B. When you want to make some changes or corrections in your existing PAN details.

19. ***What should I do if there are any changes or correction in PAN data?***

The applicant is required to fill all the columns of the form and tick the box (es) on the left margin of the appropriate item where change/correction is to be done.

20. ***What documents can be submitted as proof of PAN surrendered?***

Any one of the following documents can be submitted as proof of PAN surrendered:

- a. Copy of PAN card
- b. Copy of PAN allotment letter

No other documents are acceptable as valid proof of PAN surrendered. If any proof of PAN surrendered is not available, then application will not be accepted.

21. ***Is it required to submit documentary proof in support of any change in "Gender" field in the PAN Change Request application?***

No, It is not necessary to submit documentary proof in support of any change in "Gender" field in the PAN Change Request application.

22. ***What is Aadhaar based Instant PAN?***

Aadhaar-based instant PAN allotment service is to allot PAN in near-real time. You are required to quote a valid Aadhaar number issued by Unique Identification Authority of India (UIDAI) and is not linked with any PAN. The e-KYC data of that

Aadhaar number is exchanged with the Unique Identification Authority of India (UIDAI). After due process of e KYC data in Income-tax database, you get a PAN

23. ***If I apply for Instant PAN, how will I get the allotted PAN?***

You can download your PAN by submitting the Aadhaar number at Check Status of PAN. You will also get the PAN in PDF format by your email, if your email-id is registered with Aadhaar.

24. ***Do I have to pay for using this facility of Aadhaar based Instant PAN?***

No, this facility is free of cost.

25. ***Who can apply for allotment of Instant PAN through Aadhaar e-KYC?***

PAN applicants who have an Aadhaar number from UIDAI and have registered their mobile number with Aadhaar, can apply.

26. ***Can foreign citizens apply for PAN through e-KYC mode?***

No.

27. ***Is there any mandatory requirement to apply through e-KYC?***

Yes, mobile number of PAN applicant should be registered with UIDAI in Aadhaar database.

28. ***If my Aadhaar authentication gets rejected during e-KYC, what should I do?***

Aadhaar authentication may get rejected due to wrong OTP. The problem can be resolved by entering the correct OTP. If it still gets rejected, you have to contact the UIDAI.

29. ***Do I need to submit the physical copy of KYC application or proof of Aadhaar card?***

No. This is an online process. No paperwork is required.

30. ***Do I need to upload a scanned photo, signature etc. for e-KYC?***

No.

31. ***Do I have to send acknowledgement or any document if an instant PAN is applied through e-KYC Aadhaar mode?***

No. PAN applicant can use Aadhaar number to know the status of Instant PAN application and generate PAN in PDF.

Source:

<https://www.incometaxindia.gov.in/Pages/faqs.aspx?k=FAQs%20on%20Permanent%20Account%20Number&c=5>

<https://taxguru.in/income-tax/permanent-account-number-pan.html>

REGULATORY UPDATE

COMPANY LAW

1. Clarification on offsetting the excess CSR spent for FY 2019-20 (Circular, dated May 20, 2021)

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 unspent CSR amount, if any, and an amount over and above the minimum prescribed CSR amount for FY 2019-20, 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 company has 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 Section 135(5) for FY 2020- 21, in terms of the above mentioned appeal, then the same shall not be viewed as 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 certify that the contribution to “PM CARES 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
- the details 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.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=yh5ok6xXPSdmLMFFFZ9bdQ%253D%253D&type=open>

2. Minister of State for Finance and Corporate Affairs Shri Anurag Singh Thakur launches 1st Phase of MCA21 Version 3.0 (Revamped website, e.Book, e.Consultation module and new email services deployed for better stakeholders’ experience introduced) (Dated May 24, 2021)

Minister of State for Finance and Corporate Affairs Shri Anurag Singh Thakur launched the first phase of Ministry of Corporate Affairs’: MCA21 Version 3.0 (V3.0) comprising of revamped website, new email services for MCA Officers and two new modules, namely, e. Book and e. Consultation during a virtual event on May 24, 2021.

The MCA V3.0 is going to be implemented in two phases. The second and final phase shall be launched from October 2021 onwards. The entire project is proposed to be launched within this Financial Year and will be data analytics and machine learning driven. The MCA21 V3.0 in its entirety will not only improve the existing services and modules, but will also create new functionalities like e-adjudication, compliance

management system, advanced helpdesk, feedback services, user dashboards, self-reporting tools and revamped master data services.

For details: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1721263>

3. **FAQs issued by the MCA (Dated May 24, 2021)**

The MCA has issued various FAQs related to New MCA website, E-Book and EConsultation facilities for benefit of the stakeholders.

For details:

<https://www.mca.gov.in/content/dam/mca/documents/WebsiteFAQ.pdf>

<https://www.mca.gov.in/bin/dms/getdocument?mds=mSnkNJBMIaj3qhkshCvlhA%253D%253D&type=open>

<https://www.mca.gov.in/content/dam/mca/documents/EBookFAQ.pdf>

<https://www.mca.gov.in/content/dam/mca/documents/EConsultationFAQ.pdf>

4. **List of forms providing waiver of additional fee as per Circular No. 06/2021 and 07/2021 (Dated June 03, 2021)**

The MCA has issued General Circular Number 06/2021 and Number 07/2021 on May 03, 2021 allowing stakeholders to file various forms due for filing during April 01, 2021 to May 31, 2021 under the Companies Act, 2013/LLP Act, 2008 by July 31, 2021 without payment of additional fees due to resurgence of COVID-19 Pandemic.

The MCA has issued the revised list of forms and included total 53 forms for which additional fee waiver is made available as per the above mentioned Circular.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=N2pxvsmVDKIDdx0TtXM30w%253D%253D&type=open>

5. **Union Minister of State for Finance and Corporate Affairs Shri Anurag Singh Thakur launches IEPFA's 6 modules of short films titled "Hisab Ki Kitaab" (Dated June 03, 2021)**

Union Minister of State for Finance and Corporate Affairs Shri Anurag Singh Thakur launched the six modules of short films of Investor Education & Protection Fund Authority (IEPFA) titled "Hisab Ki Kitaab" on June 03, 2021.

"Hisab ki kitab" is a series of 6 short films, developed by CSC eGov as a part of their training tool. There are 6 short films/ modules of 5 minutes duration each. The various modules highlight the importance of budget, saving, importance of Insurance schemes, various social security schemes of the government etc. The modules also interestingly portray the consequences of a common man falling prey to the schemes and how they should protect themselves from Ponzi schemes. These short films will be used by IEPFA and its partnering organisation for Investor Awareness Programs across the country. During the launch a trivia of all the 6 modules was showcased.

For details: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1724103>

6. The Companies (Incorporation) Fourth Amendment Rules, 2021 (Notification No: G.S.R. 392(E), dated June 07, 2021)

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the Companies (Incorporation) Fourth Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014.

1. In Rule 38 A of the Companies (Incorporation) Rules, 2014,

(i) in the marginal heading, for the words,

“and Opening of Bank Account”,

The following the words shall be substituted,

“Opening of Bank Account and Shops and Establishment Registration”

(ii) in the opening portion, for the letters “AGILE-PRO”, the letters “AGILE-PRO-S” has been substituted;

(iii) for clauses “(c) and (d)” relating to “Profession Tax Registration and Opening of Bank Account”, the following clauses shall be substituted, namely:-

“(d) Profession Tax Registration with effect from the 23rd February, 2020;

(e) Opening Bank Account with effect from the 23rd February, 2020;

(f) Shops and Establishment Registration.”

2. In the Annexure to the Companies (Incorporation) Rules, 2014, for the e-Form No.INC-35 (AGILE-PRO), the eform INC-35 (AGILE-PRO-S) has been substituted

Impact

| <i>Rules</i> | <i>Amendment Highlights</i> | <i>Effect</i> |
|--|--|---|
| Rule 38A of the Companies (Incorporation) Rules, 2014 | Change in the Heading Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration, Employees’ Provident Fund organisation (EPFO) Registration and Profession Tax Registration, Opening of Bank Account and Shops and Establishment Registration | the facility of obtaining Shops and Establishment Registration has been included. |
| | In the opening portion of the Rule, for the letters “AGILE- | The application for incorporation of a |

| | | |
|--|--|---|
| | PRO”, the letters “ AGILE-PRO-S ” has been substituted; | company in SPICe+ under Rule 38 of the Companies (Incorporation) Rules, 2014 shall be accompanied by the form AGILE-PRO-S (INC-35). |
| | (d) Profession Tax Registration with effect from the 23 rd February, 2020. (e) Opening of Bank Account with effect from 23 rd February, 2020. (f) Shop and Establishment Registration. | Sequence revised and clause (f) w.r.t. Shop and Establishment Registration has been added. |
| Annexure to Rule 38A of the Companies (Incorporation) Rules, 2014 | INC-35 “AGILE-PRO-S” | Form Name Revised to “INC-35 AGILE-PRO-S” and respective changes to the form has been notified. |

For details: <https://egazette.nic.in/WriteReadData/2021/227408.pdf>

7. The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021 (Notification No: G.S.R. 396 (E), dated June 09, 2021)

In exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125, sub-section (6) of section 124 and sub-sections (9) and (9A) of section 90 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021 to further amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

(i) In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, in rule 3, in sub-rule (2), after clause (f), the following shall be inserted, namely:-

“(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Companies Act, 2013 and all the resultant benefits arising out of such shares, without any restrictions;”

- (ii) **After rule 6 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, following rule shall be inserted, namely:-**

“6A. Manner of transfer of shares under sub-section (9) of section 90 of the Companies Act, 2013 to the Fund.-

- (1) The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of thirty days of such shares becoming due to be transferred to the Fund:

Provided that transfer of shares by the companies to the Fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the fund:

Provided further that such shares shall be transferred to the Authority without any restrictions and no application shall be filed for claiming back such shares from the Authority.

- (2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.
- (3) The company shall follow the following procedure while transferring the shares, namely:-
- (A) for the purposes of effecting the transfer, where the shares are dealt with in a depository-
- (i) the company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority,
- (ii) on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority;
- (B) for the purposes of effecting the transfer of shares held in physical form-
- (i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;
- (ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that “Issued in lieu of share certificate No..... for the purpose of transfer to IEPF under subsection (9) of section 90 of the Act” and the same be recorded in the register maintained for the purpose;
- (iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

- (iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.
- (4) The company shall make such transfers through corporate action and shall preserve copies for its records.
- (5) While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action taken under sub-rule (4) of rule 6A containing details of such transfer and the company shall also attach a copy of order of the Tribunal under sub-section (8) of section 90 of the Act along with a declaration that no application under sub-section (9) of section 90 of the Act has been made or is pending before the Tribunal.
- (6) The voting rights on shares transferred to the Fund shall remain frozen:
Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.
- (7) The company shall maintain all such statements filed under sub – rule (3) in the same format along with all supporting documents and the Authority shall have the powers to inspect such records.
- (8) All benefits accruing on such shares like bonus shares, split, consolidation, fraction shares and the like except right issue shall also be credited to such DEMAT account [by the company which shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action containing details of such transfer.]
- (9) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
- (10) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.
- (11) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
- (12) Any amount required to be credited by the companies to the Fund as provided under sub-rules (9), (10) and sub-rule (11) shall be remitted into the specified account of the IEPF Authority maintained in the

Punjab National Bank [and the details thereof shall be furnished to the Authority in Form No. IEPF-7 within thirty days from the date of remittance].

Provided further that all such amounts shall be transferred to the Authority without any restrictions and no application shall be filed for claiming back such amounts from the Authority.

(13) Authority shall furnish its report to the Central Government as and when noncompliance of the rules by companies came to its knowledge.”

Impact:

- **Insertion of a new clause (fa) in Rule 3 sub-rule 2 of IEPF ((Accounting, Audit, Transfer and Refund) Rules, 2016.**

In addition to the existing list of amounts which shall be credited to the Investor Education Protection Fund, a new clause (fa) is inserted in Rule 3 sub-rule 2 of IEPF ((Accounting, Audit, Transfer and Refund) Rules, 2016, which states that all shares held by the Authority in accordance with proviso of Section 90(9) of the Act and all the resultant benefits arising out of such shares, without any restrictions shall also be credited to the fund.

Section 90: Register of significant beneficial owners in a company

(9) *'The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order.*

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed'.

- **Insertion of new, Rule 6A in IEPF ((Accounting, Audit, Transfer and Refund) Rules, 2016 prescribing-Manner of transfer of shares under sub-section (9) of section 90 of the Companies Act, 2013 to the Investor Education Protection Fund.**
- **Revision of Forms IEPF-4 & IEPF-7.**

For details: <https://egazette.nic.in/WriteReadData/2021/227437.pdf>

SECURITIES LAWS AND CAPITAL MARKETS

1. **Format of compliance report on Corporate Governance by Listed Entities** (Circular No. SEBI/HO/CFD/CMD-2/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, directly or indirectly to promoter/ promoter group entities or any other entity controlled by them, the SEBI has decided to mandate such disclosures on a half yearly basis, in the Compliance Report on Corporate Governance as per the format of disclosure annexed to this circular and shall be effective from financial year 2021-22.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/circular-on-relaxation-in-compliance-with-requirements-pertaining-to-aifs-and-vcfs_50361.html

2. **Circular on Relaxation in compliance with requirements pertaining to AIFs and VCFs**

(Circular No. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/568 dated May 31, 2021)

Based on the representation received from AIF Industry, SEBI has decided to extend the due dates for regulatory filings by AIFs and VCFs, during the period ending March 2021 to July 2021 as prescribed under SEBI (Alternative Investment Funds) Regulations, 2012 and circulars issued there under. AIFs and VCFs may submit regulatory filings for the aforesaid periods, as applicable, on or before September 30, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/circular-on-relaxation-in-compliance-with-requirements-pertaining-to-aifs-and-vcfs_50361.html

3. **Disclosure of the following only w.r.t schemes which are subscribed by the investor:**

- a. **risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme vis-à-vis benchmark and**
- b. **Details of the portfolio**

(Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/566 dated May 31, 2021)

SEBI, vide its circular dated April 29, 2021, specified disclosures with regard to disclosure of (a) risk-ometer of the scheme and the benchmark along with the performance disclosure of the scheme vis-à-vis benchmark and (b) details of portfolio, which were applicable from June 01, 2021.

Based on the representation received from AMFI, it has been decided to extend the implementation date of the provisions of the aforesaid circular to September 1, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/disclosure-of-the-following-only-w-r-t-schemes-which-are-subscribed-by-the-investor-a-risk-o-meter-of-the-scheme-and-the-benchmark-along-with-the-performance-disclosure-of-the-scheme-vis-a-vis-bench_50344.html

4. Enhancement of overall limit for overseas investment by Alternative Investment Funds (AIFs)/Venture Capital Funds (VCFs)

(Circular No. SEBI/HO/IMD/DF6/CIR/P/2021/565 dated May 21, 2021)

In consultation with the Reserve Bank of India, the SEBI has revised the overseas investment limit for Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) from USD 750 million to USD 1,500 million. Further, all other regulations governing such overseas investment by eligible AIFs/VCFs shall remain unchanged.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/enhancement-of-overall-limit-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs_50219.html

5. Consultation Paper on Review and Merger of SEBI (Issue and listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 into SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (May 19, 2021)

The SEBI has placed a consultation paper for public comments on the merger of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“ILDS Regulations”) and SEBI (Issue and Listing of NonConvertible Redeemable Preference Shares) Regulations, 2013 (“NCRPS Regulations”) into a single regulation - SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”). The comments to be submitted to SEBI within 21 days from the date of this consultation paper in the prescribed format.

The new NCS Regulations would ease compliance burden on listed entities, harmonize with the Companies Act, 2013 and maintain consistency with the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, SEBI (Debenture Trustees) Regulations, 1993 and circulars issued thereunder. Further NCS Regulations would also include certain provisions issued via circulars under ILDS Regulations and NCRPS Regulations.

For details:

https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/consultation-paper-review-and-merger-of-sebi-issue-and-listing-of-debt-securities-regulations-2008-and-sebi-issue-and-listing-of-non-convertible-redeemable-preference-shares-regulations-2013-i_50192.html

6. SEBI seeks public comments on the Consultation Paper on the proposed framework for Gold Exchange in India and draft SEBI (Vault Managers) Regulations, 2021 (May 17, 2021)

To implement the announcement related to Gold Exchange in budget speech 2021-22, SEBI constituted two working groups involving the stakeholders in the proposed gold exchange framework. Taking into consideration the recommendations of the two working groups, the SEBI has placed a consultation paper to solicit comments / views from the stakeholders on the following:

1. “proposed framework for operationalizing the regulated Gold Exchange in India”;
2. registering the Vault Managers as a SEBI intermediary by way of issuance of “Regulations for the Vault Managers”.

Comments are invited on the proposed framework in the prescribed format and may be sent by email to goldex@sebi.gov.in on or before June 18, 2021.

For details:

https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/consultation-paper-on-proposed-framework-for-gold-exchange-in-india-and-draft-sebi-vault-managers-regulations-2021_50154.html

7. Relaxation from compliance to REITs and InvITs due to the CoVID -19 virus pandemic

(Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/563 dated May 14, 2021)

SEBI has extended the due date for regulatory filings and compliances for InvITs and REITs for the period ending March 31, 2021 by one month over and above the timelines, prescribed under SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) and circulars issued thereunder.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/relaxation-from-compliance-to-reits-and-invits-due-to-the-covid-19-virus-pandemic_50127.html

8. Procedure for seeking prior approval for change in control of SEBI registered Portfolio Managers

(Circular No. SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/564 dated May 12, 2021)

SEBI vide its circular dated April 26, 2021 inserted Regulation 11(aa) in SEBI (Portfolio Managers) Regulations, 2020 which provides that a Portfolio Manager shall obtain prior approval of SEBI in case of change in control in such manner as may be specified by SEBI.

Accordingly, it has been decided vide this circular that all SEBI registered Portfolio Managers shall comply with the procedure in case they propose a change in control. Portfolio managers have to take prior approval from SEBI by applying through the SEBI Intermediary Portal which shall be valid for a period of six months from the date of such approval. Applications for fresh registration pursuant to change in control

shall be made to SEBI within six months from the date of prior approval. Pursuant to grant of prior approval by SEBI, all the existing investors/ clients shall be informed about the proposed change prior to effecting the same, in order to enable them to take well informed decision regarding their continuance or otherwise with the changed management.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/procedure-for-seeking-prior-approval-for-change-in-control-of-sebi-registered-portfolio-managers_50116.html

9. Notification under the Bilateral Netting of Qualified Financial Contract Act, 2020 (No. SEBI/LAD-NRO/GN/2021/24 dated May 12, 2021)

In exercise of the powers conferred by clause (b) of Section 4 read with sub-clause (vi) of clause (o) of sub-section (1) of section 2 of the Bilateral Netting of Qualified Financial Contract Act, 2020 (30 of 2020), the SEBI has specified the Mutual Funds and Alternative Investment Fund registered with SEBI as qualified financial market participants. These entities may enter into qualified financial contracts notified by any regulatory authority as specified in the First Schedule.

For details:

https://www.sebi.gov.in/legal/gazette-notification/may-2021/notification-under-the-bilateral-netting-of-qualified-financial-contract-act-2020_50180.html

10. Consultation Paper on “Review of the regulatory framework of promoter, promoter group and group companies as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018” (May 11, 2021)

The SEBI has issued a consultation paper on Review of the regulatory framework of promoter, promoter group and group companies as per SEBI (ICDR) Regulations, 2018 with an objective of seeking the public comments on the following latest by June 10, 2021:

- a) Reduction in lock-in period for minimum promoter’s contribution and other shareholders for public issuance on the Main Board.
- b) Rationalization of the definition of ‘Promoter Group’
- c) Streamlining the disclosures of group companies
- d) Shifting from concept of ‘promoter’ to concept of ‘person in control’

For details:

https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/consultation-paper-on-review-of-the-regulatory-framework-of-promoter-promoter-group-and-group-companies-as-per-securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-re-_50099.html

11. Business responsibility and sustainability reporting by listed entities (Circular No. SEBI/HO/CFD/CMD-2/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 of leadership indicators is on a voluntary basis. Listed entities should endeavour to report the leadership indicators 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.

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

12. Consultation Paper on Segregation and Monitoring of Collateral at Client level (May 10, 2021)

The SEBI has placed a consultation paper for public comments on proposed framework for segregation and monitoring of collateral at client level, with the objective to ensure protection of client collateral, latest by June 24, 2021 in the prescribed format.

Segregation of client collateral refers to the procedures that enable identification and protection of client collateral from- (i) misappropriation/ misuse by Trading Member (TM)/ Clearing Member (CM) and (ii) default of TM/CM and/or other clients. In the past, there have been instances of misuse of client collateral by TM/CM. This becomes even more accentuated at the time of default of a TM/CM. In such a scenario, not only confidence of investors in market integrity is shaken, but it also brings disrepute to the entire ecosystem of trading.

For details:

https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/consultation-paper-on-segregation-and-monitoring-of-collateral-at-client-level_50090.html

13. SEBI seeks public comments on the Report Submitted by the Technical Group on Social Stock Exchange (May 6, 2021)

The SEBI had constituted a Technical Group (TG) on September 21, 2020 under the chairmanship of Dr. Harsh Kumar Bhanwala (Ex-Chairman, NABARD) to have clarity on certain critical operational issues. The Terms of Reference for the TG included - developing framework for on boarding Non-Profit Organisations (NPOs) and For Profit Social Enterprises (FPEs) on the SSE including defining for profit social investing / enterprises, prescribing disclosure requirements relating to financials, governance, operational performance and social impact.

The Technical Group has submitted its report to SEBI with its recommendations which is available at https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/technical-group-report-on-social-stock-exchange_50071.html.

The SEBI has sought public comments on the recommendations of TG in the prescribed format by June 20, 2021.

For details:

https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/technical-group-report-on-social-stock-exchange_50071.html

14. 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 (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date 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:-

| Regulation No. | New Provision |
|---------------------------------------|---|
| 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, <i>within thirty days from the end of the financial year</i> , earlier the same was to be submitted within one month of end of each half of the financial year. |
| 21 - Risk Management Committee | 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 two thirds of the Risk |

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|---|---|
| | <p>Management Committee shall comprise independent directors.</p> <p>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.</p> <p>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.</p> <p>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.</p> |
| 24 - Corporate governance requirements with respect to subsidiary of listed entity | 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 other subsidiaries) to less than <i>or equal to</i> fifty percent without passing a special resolution in its General Meeting |
| 24A - Secretarial Audit and Secretarial Compliance Report | <p>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.</p> <p>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.</p> |
| 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). |
| 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. |
| 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 <i>business responsibility and</i> |

| | |
|--|--|
| | <i>sustainability report</i> describing quantitative and standardized disclosures on ESG parameters to enable comparability across companies, sectors and time, shall form part of the Annual Report. |
| 40(9) - Transfer or transmission or transposition of securities | Certificate from a practicing company secretary within thirty days of end of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies certificate from a practising company secretary, earlier the same was required to be submitted within one month of the end of each half of the financial year |
| 43A - Dividend Distribution Policy | <p>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.</p> <p>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.</p> |
| 44(3) - Voting Results | The listed entity shall submit to the stock exchange, within <i>two working days</i> 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 |
| 46 - Website Compliance | <p>In addition to the existing website compliance, following new disclosures have been prescribed:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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. <p>The requirement for disclosure(s) of audio/video recordings and transcript shall be voluntary with effect</p> |

| | |
|---|---|
| | <p>from April 01, 2021 and mandatory with effect from April 01, 2022.</p> <ol style="list-style-type: none"> 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. |
| 47 - Advertisements in Newspapers | <p>Now the listed entity will not be required to publish the following:</p> <ol style="list-style-type: none"> 1. Notice of meeting of the board of directors where financial results shall be discussed 2. statements of deviation(s) or variation(s) as specified in regulation 32 (1) |
| Schedule III, Part A, Paragraph A, Clause 4 | <p>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.</p> |
| Schedule III, Part A, Paragraph A, Clause 15 | <p>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.</p> <p>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</p> |

For details:

https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2021_50100.html

15. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021 (May 5, 2021)

SEBI vide its Gazetted notification dated May 5, 2021, amended the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which shall come into force on the date of their publication in the Official Gazette.

The brief of the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021 is given hereunder as: -

I. General

- 'Institutional Trading Platform' rechristened as 'Innovators Growth Platform'(IPG)

II. Disclosure of voting pattern of Committee of Independent Directors (IDs)[reg. 26(6)]

- Committee of IDs formed by the target company to not only provided and publish reasoned recommendation on the open offer but also
- Disclose the voting pattern of the meeting in which the proposal was discussed

III. Enhanced limits for entities having listed their specified securities on IGP

- Limit of acquiring shares or voting rights requiring public announcement of an open offer enhanced to 49% (reg. 3)
- Limit of holding shares or voting rights requiring voluntarily public announcement of an open offer enhanced to 49% (reg. 6)
- Requirement of disclosure of aggregate shareholding or voting rights by the acquirer will be triggered on holding of 10% or more shares.
- Requirement of disclosing change in shareholding or voting rights of the acquirer will be triggered only if such change exceed 5% of total shareholding or voting rights in the target company.

For details:

https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2021_50077.html

16. SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021 (May 5, 2021)

SEBI vide its Gazetted notification dated May 5, 2021, amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette.

The brief of the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021 is given hereunder as: -

I. General

- 'Institutional Trading Platform' rechristened as 'Innovators Growth platform (IGP)

- ‘Accredited Investors’ rechristened as ‘Innovators Growth Platform Investors’
- II. Listing of Securities on IGP [Reg. 282 (4)]**
- Issuer issued SR equity shares to its promoters/founders are allowed to make an IPO of only ordinary shares for listing on the IGP
 - Subject to compliance with Chapter X and provisions for SR equity shares in accordance with Reg. 6 (3) of ICDR regulations
- III. Allocation of the issue size [Reg. 287(4)]**
- Issuers can allocate 60% of the issue size on a discretionary basis, to eligible investors under Reg. 283(1) prior to the issue opening.
 - At price not lower than offer price to other applicants
 - Minimum application value of Rs. 50 lakhs
- IV. Lock in for SR equity shares [reg. 288(5)]**
- SR equity shares shall be locked-in:
 - Till conversion into equity shares with voting rights similar to that of ordinary shares, or
 - For a period of 6 months from the date of allotment, whichever is later
- V. Exit from Innovators Growth Platform (reg. 290A)**
- Issuer whose specified securities are traded on the IGP pursuant to an IPO may exit from IGP subject to the following conditions if-
 - Approved by the BODs and shareholders (SR passed through postal ballot or e-voting by the majority of public shareholders)
 - Delisting price-based on a floor price determined in terms of reg. 8 of SAST regulations and additional delisting premium justified by acquirer/promoter
 - The post offer acquirer/promoter together with the shares tendered reaches 75% of the total issued shares of that class
 - At least 50% shares of the public shareholders are tendered and accepted
 - Stock Exchanges where shares are listed approves of such an exit
 - Exit shall be pursuant to the SEBI (Delisting of Equity shares) Regulation, 2009.
 - Following provisions of the SEBI (Delisting of Equity Shares) Regulation, 2009 shall not apply:
 - Reg 8(1)(a) and (b) relating to conditions and procedure for delisting where exit opportunity is required;

- Reg 15 relating to offer price, and
- Reg 17 relating to minimum number of equity shares to be acquired.

VI. Migration to main board [292(3)]

- An entity applying to migrate to the main board and
- Not satisfying the condition laid down in reg.292(2)
- Must have 50% of its capital held by Qualified Institutional Buyers (Earlier requirement- 75%)
- As on date of application for migration under the regular category

For details:

https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2021_50078.html

17. SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2021 (May 5, 2021)

SEBI vide its Gazetted notification dated May 5, 2021, amended the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the date of their publication in the Official Gazette.

The following amendments have been made:

- The following new definitions introduced-
 - “**Startup**” means a private limited company or a limited liability partnership which fulfills the criteria for startup as specified by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, vide notification no. G.S.R. 127(E) dated February 19, 2019 or such other policy of the Central Government issued in this regard from time to time.
 - “**Venture Capital Undertaking**” means a domestic company which is not listed on a recognised stock exchange at the time of making investments.
- **Regulation 15 (1) (c), which specifies the investments done by Category I and II of AIF, has been substituted, namely:**
 - “Category I and II of Alternative Investment Funds shall invest not more than twenty five per cent of the investable funds in an Investee Company directly or through investment in the units of other Alternative Investment Funds.”
- **Regulation 15 (1) (d), which specifies the investments done by the Category III of AIF, has been substituted, namely:**
 - “Category III of Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company directly or through investment in units of other Alternative Investment Funds.”

- Regulation 15 (1) (da), which specifies the investment in other units of AIF, has been inserted, namely:**

“Alternative Investment Funds which are authorised under the fund documents to invest in units of Alternative Investment Funds shall not offer their units for subscription to other Alternative Investment Funds.”
- Regulation 15 (1) (e), which specifies the approval of authorities for investment, has been substituted, namely:**

“Alternative Investment Fund shall not invest except with the approval of seventy five percent of investors by value of their investment in the Alternative Investment Fund in –

 - (a) associates; or
 - (b) units of Alternative Investment Funds managed or sponsored by its Manager, Sponsor or associates of its Manager or Sponsor”
- Regulation 16 (1) (a), which specifies the investment scope of the category I, has been substituted, namely:**

“Category I Alternative Investment Fund shall invest in investee companies, venture capital undertakings, special purpose vehicles, limited liability partnerships or in units of other Category I Alternative Investment Funds of the same sub category”
- Regulation 17 (a), which specifies the investment conditions for category II, has been substituted, namely:**

“Category II Alternative Investment Funds shall invest in investee companies or in the units of Category I or other Category II Alternative Investment Funds as may be disclosed in the placement memorandum.

Explanation.– Category II Alternative Investment Fund shall invest primarily in unlisted companies directly or through investment in units of other Alternative Investment Funds.
- Regulation 18 (a), which specifies the investment conditions for category III, has been substituted, namely:**

“Category III Alternative Investment Funds may invest in securities of listed or unlisted investee companies, derivatives, units of other Alternative Investment Funds or complex or structured products.”
- Regulation 18 (aa), which specifies the investment conditions for category III, has been inserted, namely:**

“Category III Alternative Investment Funds may deal in goods received in delivery against physical settlement of commodity derivatives.”

Substituted with -

 - General Obligations given under Chapter IV of SEBI (Alternative Investment Funds) Regulations, 2012 have been substituted.

- **Fourth schedule has been inserted, which specifies the code of conduct for AIF.**

For details:

https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2021_50089.html

18. SEBI (Intermediaries) (Second Amendment) Regulations, 2021 (May 5, 2021)

SEBI vide its Gazetted notification dated May 5, 2021, amended the provisions of SEBI (Intermediaries) Regulations, 2008, which shall come into force on the date of their publication in the Official Gazette.

Vide this amendment a regulation 30A has been inserted which provides the provisions for the Special procedure for action on expulsion from membership of the stock exchange(s) or clearing corporation(s) or termination of all the depository participant agreements with depository (ies).

For details:

https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-intermediaries-second-amendment-regulations-2021_50079.html

19. Relaxation in timelines for compliance with regulatory requirements by Debenture Trustees due to the CoVID-19 pandemic

(Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2021/561 dated May 03, 2021)

As per SEBI (Debenture Trustees) Regulations, 1993 as amended from time to time and circulars issued thereunder, debenture trustees are required to perform periodical monitoring and disclose various reports/documents/certificates on Stock Exchanges and on their websites within prescribed timelines.

After taking into consideration the representations received from debenture trustees and the challenges arising out of the local restrictions placed by various state governments in wake of CoVID-19 pandemic, it has been decided to extend the timelines for the following regulatory requirements of the SEBI circular dated November 12, 2020 ("Circular") for the quarter/half year/ year ending March 31, 2021:

| S. No. | Regulatory requirements of SEBI circular dated November 12, 2020 | Extended timeline |
|---------------|--|--------------------------|
| 1. | Submission of reports/certifications to Stock Exchanges as per clause 2.1 of circular | July 15th, 2021 |
| 2. | Following disclosures on website as per clause 4 of circular: <ol style="list-style-type: none"> i. Monitoring of asset cover certificate and quarterly compliance report of the listed entity. ii. Monitoring of utilization certificate iii. Status of information regarding breach of covenants/terms of the issue, if any action taken by debenture trustee iv. Status regarding maintenance of accounts maintained under supervision of debenture trustee | July 15th, 2021 |

| | | |
|----|--|----------------|
| 3. | Reporting of regulatory compliance as per clause 5 of circular | May 31st, 2021 |
|----|--|----------------|

For details:

https://www.sebi.gov.in/legal/circulars/may-2021/relaxation-in-timelines-for-compliance-with-regulatory-requirements-by-debenture-trustees-due-to-the-covid-19-pandemic_50042.html

20. Compilation of Informal Guidance - SEBI (Prohibition of Insider Trading) Regulations, 2015 (Period October 2015 - March 2021) (May 3, 2021)

Securities and Exchange Board of India (SEBI) gives guidance under SEBI (Informal Guidance) Scheme 2003, in which a Department of SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation. The informal guidance may be sought for and given in two forms: No-action letters and Interpretive letters.

In order to enable the users to have an access to all the Informal Guidance sought/given relating to SEBI (Prohibition of Insider Trading) (PIT) Regulations, 2015 at one place, this document has been prepared, which consolidates all the informal guidance issued relating to SEBI (PIT) Regulations, 2015 during the period October 14, 2015 to February 08, 2021 at a single place. The weblink to each of the informal guidance has also been appended. In case of any inconsistency between this document and the respective informal guidance, the content of the respective informal guidance shall prevail.

For details:

https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/may-2021/compilation-of-informal-guidance-relating-to-sebi-pit-regulations-2015-for-the-period-oct-2015-mar-2021_50036.html

INDIRECT TAX LAWS

Goods and Services Tax

1. Notification to make fourth amendment (2021) to CGST Rules, 2017 (Notification No. 15/2021 – Central Tax, dated May 18, 2021)

The Board has notified the Central Goods and Services Tax (Fourth Amendment) Rules, 2021 which seeks to further amend the CGST Rules, 2017. The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD-01, withdraw the said application for refund by filing an application in FORM GST RFD-01W.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-15-central-tax-english-2021.pdf>

2. SOP for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration (Circular No. 148/04/2021 – GST, dated May 18, 2021)

This Circular seeks to prescribe Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017. The Joint/Additional Commissioner, on examination of the request filed for extension of time limit for revocation of cancellation of registration and on sufficient cause being shown and for reasons to be recorded in writing, may extend the time limit to apply for revocation of cancellation of registration.

For details:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_148.pdf

3. Amendment of Section 50 of CGST Act related to Interest on delayed payment of Tax (Notification No. 16/2021 – Central Tax dated June 01, 2021)

This notification seeks to appoint June 01, 2021 as the day from which the provisions of section 112 of Finance Act, 2021, relating to amendment of section 50 of the CGST Act, 2017 shall come into force.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-16-central-tax-english-2021.pdf>

4. Extension in the due date for filing FORM GSTR-1 (Notification No. 17/2021 – Central Tax dated June 01, 2021)

This notification seeks to extend the due date for FORM GSTR-1 for May, 2021 by 15 days.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-17-central-tax-english-2021.pdf>

5. Lowering of Interest rate for a specified time (Notification No. 18/2021 – Central Tax dated June 01, 2021)

This notification seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-18-central-tax-english-2021.pdf>

6. Rationalization of late fees (Notification No. 19/2021 – Central Tax dated June 01, 2021)

This notification seeks to rationalize late fee for delay in filing of return in FORM GSTR-3B; and to provide conditional waiver of late fee for delay in filing FORM GSTR-3B from July, 2017 to April, 2021; and to provide waiver of late fees for late filing of return in FORM GSTR-3B for specified taxpayers and specified tax periods.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-19-central-tax-english-2021.pdf>

7. Rationalization of late fees for delay in filing of Form GSTR-1 (Notification No. 20/2021 – Central Tax dated June 01, 2021)

This notification seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-1.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-20-central-tax-english-2021.pdf>

8. Rationalization of late fees for delay in filing Form GSTR-4 (Notification No. 21/2021 – Central Tax dated June 01, 2021)

This notification seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-4.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-21-central-tax-english-2021.pdf>

9. Rationalization of late fees for delay in filing Form GSTR-7 (Notification No. 22/2021 – Central Tax dated June 01, 2021)

This notification seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-7.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-22-central-tax-english-2021.pdf>

10. Exclusion of government departments and local authorities from the requirement of issuance of e-invoice (Notification No. 23/2021 – Central Tax dated June 01, 2021)

This notification seeks to amend earlier Notification to exclude government departments and local authorities from the requirement of issuance of e-invoice.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-23-central-tax-english-2021.pdf>

11. Extension of due date of compliances till June 30, 2021 (Notification No. 24/2021 – Central Tax dated June 01, 2021)

This notification seeks to amend notification no. 14/2021-Central Tax in order to extend due date of compliances which fall during the period from April 15, 2021 to June 29, 2021 till June 30, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-24-central-tax-english-2021.pdf>

12. Extension of due date for filing Form GSTR-4 for financial year 2020-21 till July 31, 2021 (Notification No. 25/2021 – Central Tax dated June 01, 2021)

This notification seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to July 31, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-central-tax-english-2021.pdf>

13. Extension of due date for filing Form ITC-04 (Notification No. 26/2021 – Central Tax dated June 01, 2021)

This notification seeks to extend the due date for furnishing of FORM ITC-04 for Quarter ending March, 2021 to June 30, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-26-central-tax-english-2021.pdf>

14. Fifth Amendment, 2021 to the CGST Rules, 2017 (Notification No. 27/2021 – Central Tax dated June 01, 2021)

This notification seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017. Rule 36(4) shall apply cumulatively for the period April, May & June 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months. The details using IFF for the month of May 2021 can be furnished from June 1, 2021 till June 28, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-27-central-tax-english-2021.pdf>

15. Change of place of supply for B2B MRO services (Notification No. 03/2021 – Integrated Tax dated June 02, 2021)

This notification seeks to amend earlier Notification of Integrated Tax dated September 30, 2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-3-2021-igst-english.pdf;jsessionid=B2D877EC2CEDE4B15FFDE49181DC4E05>

Customs

1. Restoration of facility of acceptance of an undertaking in lieu of bond by Customs (Circular No. 9/2021 – Customs dated May 08, 2021)

CBIC has restored the facility of acceptance of an undertaking in lieu of bond by Customs formation from May 08, 2021 till June 30, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-09-2021.pdf>

2. Changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021 (Circular No. 10/2021 – Customs dated May 17, 2021)

The scope of the job work facility has been extended to an importer who is a manufacturer but without complete manufacturing facility. Also, 100% outsourcing for manufacture of goods on job-work basis has been permitted for importers who do not have any manufacturing facility at all. However, sensitive sectors such as gold, articles of jewellery and other precious metals or stones have been excluded from the facility of job work.

An option has been given to the importers to import capital goods for a specified purpose at a concessional rate of duty and after having put such capital goods to use for the said purpose, clear the same after payment of the differential duty and interest, at a depreciated value, with permission from the jurisdictional Customs Officer.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-10-2021.pdf>

DIRECT TAX LAWS

1. **Thresholds for the purposes of Significant Economic Presence - Rule 11UD [Notification No. 41 Dated May 3, 2021]**

The Central Board of Direct Taxes has notified the Income-tax (13th Amendment) Rules, 2021 which shall come into force from 1st April 2022. Through this amendment a new rule 11UD has been inserted which notifies the threshold for significant economic presence.

As per the new rule, for the thresholds “the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, shall be two crore rupees.”

Further, the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be three lakhs.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_41_2021.pdf

2. **CBDT notifies Amendment in Rule 114AAB and Form No. 49BA [Notification No. 42 Dated May 4, 2021]**

CBDT relaxes PAN requirement for a non-resident eligible foreign investor making transaction only in a capital asset listed on a recognised stock exchange located in any IFSC and consideration paid in Foreign Currency.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226833.pdf>

3. **Government notifies "Caisse de dépôt et placement du Québec" as Pension Fund Section 10(23EE) [Notification No. 43 Dated May 4, 2021]**

CBDT notifies pension fund, namely, the Caisse de dépôt et placement du Québec under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 4th May 2021 but on or before the 31st day of March, 2024 subject to the fulfillment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_43_2021.pdf

4. **Government notifies "CDPQ Infrastructures Asia III Inc." as Pension Fund Section 10(23EE) [Notification No. 44 Dated May 4, 2021]**

CBDT notifies pension fund, namely, 'CDPQ Infrastructures Asia III Inc'. under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 4th May 2021 but on or before the 31st day of March, 2024 subject to the fulfillment of the certain conditions.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226839.pdf>

5. Government notifies "Ivanhoe Logistics India Inc." as Pension Fund Section 10(23EE) [Notification No. 45 Dated May 4, 2021]

CBDT notifies pension fund, namely, 'Ivanhoe Logistics India Inc.' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 4th May 2021 but on or before the 31st day of March, 2024 subject to the fulfillment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_45_2021.pdf

6. Government notifies 'CDPQ Fixed Income XI Inc.' as pension fund Section 10(23EE) [Notification No. 46 Dated May 4, 2021]

CBDT notifies pension fund, namely, 'Ivanhoe Logistics India Inc.' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 4th May 2021 but on or before the 31st day of March, 2024 subject to the fulfillment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_46_2021.pdf

7. CBDT notifies rules for LTC Cash Voucher Scheme [Notification No. 50 Dated May 5, 2021]

CBDT notifies rules for LTC (Leave Travel Concession) Cash Voucher Scheme [Section 10(5)] vide which LTC Exemption of Rs. 36000 per family member For FY 2020-21 available to Employees of Both Private & Government Sector. Rules are notified by inserting Sub-Rule 1A & IB in Rule 2B of Income Tax Rules as follows:

Sub-Rule 1A: For the assessment year beginning on the 1st day of April, 2021, where the individual avails any cash allowance from his employer in lieu of any travel concession or assistance, the amount exempted shall be the amount, not exceeding thirty-six thousand rupees per person, for the individual and the member of his family, or one-third of the specified expenditure, whichever is less, subject to fulfilment of the certain conditions.

Sub-Rule 1B: Where an exemption is claimed and allowed, shall have effect as if for the words "two journeys", the words "one journey" has been substituted."

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226843.pdf>

8. CBDT notifies "the Bricklayers Investment Pte. Ltd" as Sovereign Wealth Fund [Notification No. 51 Dated May 5, 2021]

The Central Government hereby specifies the Sovereign Wealth Fund, namely, the Bricklayers Investment Pte. Ltd., (hereinafter referred to as "the assessee") as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as "said investments") subject to the fulfilment of the certain conditions.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226850.pdf>

9. CBDT notifies "the Anahera Investment Pte. Ltd." as Sovereign Wealth Fund [Notification No. 52 Dated May 5, 2021]

The Central Government hereby specifies the Sovereign Wealth Fund, namely, the Anahera Investment Pte. Ltd., (hereinafter referred to as "the assessee") as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as "said investments") subject to the fulfilment of the certain conditions.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226851.pdf>

10. CBDT notifies "the Dagenham Investment Pte. Ltd." as Sovereign Wealth Fund [Notification No. 53 Dated May 5, 2021]

The Central Government hereby specifies the Sovereign Wealth Fund, namely, the Dagenham Investment Pte. Ltd., (hereinafter referred to as "the assessee") as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as "said investments") subject to the fulfilment of the certain conditions.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226852.pdf>

11. CBDT notifies "the Stretford Investment Pte. Ltd" as Sovereign Wealth Fund [Notification No. 54 Dated May 5, 2021]

The Central Government hereby specifies the Sovereign Wealth Fund, namely, the Stretford Investment Pte. Ltd, (hereinafter referred to as "the assessee") as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this

notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfilment of the certain conditions.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226853.pdf>

12. CBDT notifies "Chiswick Investment Pte. Ltd." as Sovereign Wealth Fund [Notification No. 55 Dated May 5, 2021]

The Central Government hereby specifies the Sovereign Wealth Fund, namely, the Chiswick Investment Pte. Ltd., (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfilment of the certain conditions.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/226854.pdf>

13. Notification No. 56 [Dated May 7, 2021]

The Central Government, in exercise of powers conferred by clause (iii) of Proviso to Section 269ST of the Income-tax Act, 1961, hereby specifies Hospitals, Dispensaries, Nursing Homes, Covid Care Centres or similar other medical facilities providing Covid treatment to patients for the purpose of Section 269ST of the Income-tax Act, 1961 for payment received in cash during 01.04.2021 to 31.05.2021, on obtaining the PAN or AADHAAR of the patient and the payee and the relationship between the patient and the payee by such Hospitals, Dispensaries, Nursing Homes, Covid Care Centres or similar other medical facilities.

For details:

<https://egazette.nic.in/WriteReadData/2021/226922.pdf>

14. Notification No. 62 [Dated May 13, 2021]

The Central Government hereby specifies the sovereign wealth fund, namely, the CDC Group Plc., (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfilment of the certain conditions.

For details:

https://incometaxindia.gov.in/communications/notification/notification_62_2021.pdf

15. Notification No. 63 [Dated May 13, 2021]

The Central Government hereby specifies the sovereign wealth fund, namely, the Ministry of Economy and Finance (of the Republic of Korea), (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfilment of the certain conditions.

For details:

https://incometaxindia.gov.in/communications/notification/notification_63_2021.pdf

16. Notification No. 64 [Dated May 13, 2021]

The Central Government hereby specifies the pension fund, namely, the Public Sector Pension Investment Board, (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfillment of the certain conditions.

For details:

https://incometaxindia.gov.in/communications/notification/notification_64_2021.pdf

17. Notification No. 65 [Dated May 13, 2021]

The Central Government hereby specifies the pension fund, namely, the Government Employees Superannuation Board, (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfillment of the certain conditions

For details:

https://incometaxindia.gov.in/communications/notification/notification_65_2021.pdf

18. Notification No. 66 [Dated May 13, 2021]

The Central Government hereby specifies the pension fund, namely, the OMERS Administration Corporation, (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfillment of the certain conditions.

For details:

https://incometaxindia.gov.in/communications/notification/notification_66_2021.pdf

19. Notification No. 67 [Dated May 17, 2021]

The Central Government hereby specifies the pension fund, namely, the Indo-Infra Inc., (hereinafter referred to as “the assessee”) as the specified person for the purposes of the sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfillment of the certain conditions.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_67_2021.pdf

20. Extension of time limits of certain compliances to provide relief to taxpayers in view of the severe pandemic [Circular No. 9 Dated May 20, 2021]

| <i>Sr. No.</i> | <i>Particulars</i> | <i>Year</i> | <i>Earlier Due Date</i> | <i>Revised Due Dates</i> |
|----------------|--|--|--|--------------------------|
| 1. | Statement of Financial Transactions (SFT) | Financial Year 2020-21 | 31st May, 2021 under Rule 114E | 30th June 2021 |
| 2. | Statement of Reportable Account | Calendar Year 2020 | 31st May 2021 under Rule 114G | 30th June 2021 |
| 3. | Statement of Deduction of Tax | last quarter of the Financial Year 2020-21 | 31st May 2021 under Rule 31A | 30th June 2021 |
| 4. | Certificate of Tax Deducted at Source in Form No 16 | Financial Year 2020-21 | 15th June 2021 under Rule 31 | 15th July, 2021 |
| 5. | TDSITCS Book Adjustment Statement in Form No 24G | For the month of May 2021 | 15th June 2021 under Rule 30 and Rule 37CA | 30th June 2021 |
| 6. | Statement of Deduction of Tax from contributions paid by the trustees of an approved superannuation fund | Financial Year 2020-21 | 31st May 2021 under Rule 33 | 30th June 2021 |
| 7. | Statement of Income paid or credited by an | Previous Year 2020- | 15th June, 2021 | 30th June |

| | | | | |
|-----|---|-------------------------|--|---------------------|
| | investment fund to its unit holder in Form No 64D | 21 | | 2021 |
| 8. | Statement of Income paid or credited by an investment fund to its unit holder in Form No 64C | Previous Year 2020-21 | 30th June, 2021 under Rule 12CB | 15th July, 2021 |
| 9. | Due date of furnishing of Return of Income | Assessment Year 2021-22 | 31st July 2021 under sub-section (1) of section 139 | 30th September 2021 |
| 10. | Due date of furnishing of Report of Audit under any provision of the Income Tax Act | Previous Year 2020-21 | 30th September 2021 | 31st October, 2021 |
| 11. | Due date of furnishing Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Income Tax Act | Previous Year 2020-21 | 31st October, 2021 | 30th November, 2021 |
| 12. | Due date of furnishing of Return of Income | Assessment Year 2021-22 | 31st October 2021 under Sub-section (1) of section 139 | 30th November, 2021 |
| 13. | Due date of furnishing of Return of Income | Assessment Year 2021-22 | 30th November 2021 under Sub-section (1) of section 139 | 31st December, 2021 |
| 14. | Due date of furnishing of belated/revised Return of Income | Assessment Year 2021-22 | 31st December, 2021 under sub-section (4)/sub-section (5) of section 139 | 31st January, 2022 |

Clarification 1: It is clarified that the extension of the dates as referred to in clauses (9), (12) and (13) above shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as

specified in clauses (i) to (vi) of sub-section (1) of that section exceeds one lakh rupees.

Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under this Circular) provided in that Act, shall be deemed to be the advance tax.

For details:

https://www.incometaxindia.gov.in/communications/circular/circular_9_2021.pdf

21. Income-tax (16th Amendment) Rules, 2021 [Notification No. 68 Dated May 24, 2021]

The Central Board of Direct Taxes on 24th May 2021 has published the Income- tax (16th Amendment) Rules, 2021 which has notified a new rule for computation of fair value of capital assets in slump sale. As per the Amendment a new rule 11UAE has been inserted which provides two formulae for calculation of fair market value of the capital asset. The FMV1 shall be the fair market value of the capital assets transferred by way of slump sale determined and FMV2 shall be the fair market value of the consideration received or accruing as a result of transfer by way of slump sale.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_68_2021.pdf

BANKING LAWS

1. Amendment to the Master Direction (MD) on KYC (Notification no. RBI/2021-22/35 DOR.AML.REC.No.15/14.01.001/2021-22 dated May 10, 2021)

It has been decided by the Reserve Bank of India to amend the MD on KYC to further leverage the Video based Customer Identification Process (V-CIP) and to simplify and rationalise the process of periodic updation of KYC.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12089&Mode=0>

2. Government Agency Business Arrangement – Appointment of Scheduled Private Sector Banks as Agency Banks of Reserve Bank of India (RBI) (Notification no. RBI/2021-22/36CO.DGBA.GBD.No.S77/42.01.033/2021-22 dated May 10, 2021)

An embargo put in place from September 2012 by Department of Financial Services (DFS), Ministry of Finance (MoF) on further allocation of Government business to private sector banks has since been lifted by them vide their communication dated February 24, 2021.

Based on the above developments, the existing guidelines on appointment of Scheduled Private Sector Banks as Agency Banks of RBI have been reviewed and the revised guidelines/framework for authorising Scheduled Private Sector Banks as agency banks of RBI for conduct of government business attracting agency commission.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12090&Mode=0>

3. Banking Regulation Act, 1949 – Section 26A Depositor Education and Awareness Fund Scheme, 2014 – Interest rates payable on unclaimed interest-bearing deposit (Notification no. RBI/2021-22/37 DoR.DEA.REC.No.16/30.01.002/2021-22 dated May 11, 2021)

The rate of interest has been reviewed and it has been decided that the rate of interest payable by banks to the depositors/claimants on the unclaimed interest-bearing deposit amount transferred to the Fund shall be 3 per cent simple interest per annum with effect from the date of this circular. Accordingly, all the banks are advised to calculate the interest payable on interest bearing deposits transferred to RBI at the rate of 4 per cent p.a. up to June 30, 2018, 3.5 per cent w.e.f. July 1, 2018 up to May 10, 2021 and at 3 per cent with effect from May 11, 2021 till the time of payment to the depositor / claimant.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12091&Mode=0>

4. Sponsor Contribution to an AIF set up in Overseas Jurisdiction, including IFSCs (Notification no. RBI/2021-22/39 IDMD.CDD.No.45187/14.04.050/2021-22 dated May 12, 2021)

It has been decided by the RBI that any sponsor contribution from a sponsor Indian Party (IP) to an Alternative Investment Fund (AIF) set up in an overseas jurisdiction, including International Financial Services Centres (IFSCs) in India, as per the laws of the host jurisdiction, will be treated as Overseas Direct Investment (ODI). Accordingly, IP, as defined in regulation 2(k) of the Notification *ibid.* can set up AIF in overseas jurisdictions, including IFSCs, under the automatic route provided it complies with Regulation 7 of the Notification FEMA 120/2004-RB.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12092&Mode=0>

5. **Relaxation in timeline for compliance with various payment system requirements (Notification no. RBI/2021-22/41CO.DPSS.POLC.No.S-106/02-14-003/2021-2022 dated May 21, 2021)**

Keeping in view the resurgence of the COVID-19 pandemic and the representations received from various bank and non-bank entities, it has been decided to extend the timeline prescribed for compliance in respect of a few areas.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12095&Mode=0>

6. **Amalgamation of District Central Co-operative Banks (DCCBs) with the State Co-operative Bank (StCB) - Guidelines (Notification no. RBI/2021-22/42 DOR.RUR.REC.No.17/19.51.007/2021-22 dated May 24, 2021)**

In recent past, a few State Governments approached RBI for amalgamation of DCCBs with the StCB as a two-tier Short-term Co-operative Credit Structure (STCCS). In order to help the States contemplating delayering their STCCS, captioned guidelines are being issued to bring the requirements and indicative benchmarks for the amalgamation of DCCBs with the StCB to the notice of all stakeholders. These guidelines will also apply for amalgamation of one or more DCCBs in a State with the StCB or amalgamation of one DCCB with another.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12096&Mode=0>

7. **Customer Due Diligence for transactions in Virtual Currencies (VC) (Notification no. RBI/2021-22/45 DOR. AML.REC 18 /14.01.001/2021-22 dated May 31, 2021)**

The Reserve Bank of India said that banks and other regulated entities cannot cite its April 2018 order on virtual currencies (VCs) as it was set aside by the Supreme Court last year. RBI Also said that all the Banks, as well as other regulated entities to continue to carry out customer due diligence processes in line with regulations governing standards for Know Your Customer (KYC), Anti-Money Laundering (AML), Combating of Financing of Terrorism (CFT) and obligations of regulated entities under Prevention of Money Laundering Act, (PMLA), 2002 in addition to ensuring compliance with relevant provisions under Foreign Exchange Management Act (FEMA) for overseas remittances.

For details: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12103&Mode=0>

8. **Monetary Policy Statement, 2021-22 Resolution of the Monetary Policy Committee (MPC) June 2-4, 2021 (June 04, 2021)**

On the basis of an assessment of the current and evolving macroeconomic situation, the Monetary Policy Committee (MPC) at its meeting held on June 4, 2021 decided to:

- Keep the policy Repo Rate under the Liquidity Adjustment Facility (LAF) unchanged at 4.0 per cent.

Consequently, the Reverse Repo Rate under the LAF remains unchanged at 3.35 per cent and the Marginal Standing Facility (MSF) rate and the Bank Rate at 4.25 per cent.

- The MPC also decided to continue with the accommodative stance as long as necessary to revive and sustain growth on a durable basis and continue to mitigate the impact of COVID-19 on the economy, while ensuring that inflation remains within the target going forward.

These decisions are in consonance with the objective of achieving the medium-term target for consumer price index (CPI) inflation of 4 per cent within a band of +/- 2 per cent, while supporting growth.

For details: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51683

9. Resolution Framework - 2.0: Resolution of Covid-19 related stress of Individuals and Small Businesses and Micro, Small and Medium Enterprises (MSMEs) – Revision in the threshold for aggregate exposure (Notifications no. RBI/2021-22/46 DOR.STR.REC.20 / 21.04.048/2021-22 & RBI/2021-22/47DOR. STR. REC. 21/21.04.048/2021-22 dated June 4, 2021)

The Reserve Bank of India has enhanced the limits of below mentioned eligible borrowers who may be considered for resolution under the framework from ₹25 crore to ₹50 crore:

- Individuals who have availed of loans and advances for business purposes and to whom the lending institutions have aggregate exposure of not more than ₹25 crore as on March 31, 2021.
- Small businesses, including those engaged in retail and wholesale trade, other than those classified as MSME as on March 31, 2021, and to whom the lending institutions have aggregate exposure of not more than ₹25 crore as on March 31, 2021.
- MSME accounts- the aggregate exposure, including non-fund based facilities, of all lending institutions to the MSME borrower should not exceed ₹25 crore as on March 31, 2021.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12104&Mode=0> &
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12105&Mode=0>

10. Submission of returns under Section 31 of the Banking Regulation Act, 1949 (AACS) – Extension of time (Notification no. RBI/2021-22/49DoR.RET. REC.19/12.05.009/2021-22 dated June 4, 2021)

Reserve Bank hereby extends the period of three months for the furnishing of the returns under Section 31 of the Act for the financial year ended on March 31, 2021, by a further period of three months. Accordingly, all UCBs, State Co-operative Banks and Central Co-operative Banks shall ensure submission of the aforesaid returns to Reserve Bank on or before September 30, 2021. The State Co-operative Banks and Central Co-operative Banks shall also ensure submission of the aforesaid returns to NABARD on or before September 30, 2021.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12107&Mode=0>

11. Master Direction – Reserve Bank of India (Certificate of Deposit) Directions, 2021 (Notification no. RBI/2021-22/79FMRD.DIRD.03/14.01.003/2021-22 dated June 4, 2021)

The draft Directions were released by the Reserve Bank of India for public comments on December 04, 2020. Based on the feedback received from the market participants, the Reserve Bank of India (Certificate of Deposit) Directions, 2021 were reviewed, finalised and issued.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12108&Mode=0>

INSURANCE LAWS

1. **Exercise of Employee Stock Options (ESOPs) – Applicability of provision of Section 6A (4) (b) of the Insurance Act, 1938**

(Ref. No: IRDA/F&I/MISC/CIR/ 134/05/2021 dated May 11, 2021)

The Authority, while approving the remuneration of Whole-time Director, Chief Executive Director and Managing Director, is also considering the granting and / or vesting of ESOPs. However, in a few cases, it has been observed that the exercise of ESOP by one or more KMPs whether singly or jointly is beyond the threshold limits specified in Section 6A (4) (b) of Insurance Act, 1938. Accordingly, the exercise of such ESOPs results in invocation of the provisions of the said section.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4482&flag=1

2. **Insurance Regulatory and Development Authority of India (Preparation of Financial Statements and Auditor's Report of Insurance Companies) (First Amendment) Regulations, 2021**

(Ref. No: F. No. IRDAI / Reg / 5 / 177 / 2021 dated May 12, 2021)

Insurance Regulatory and Development Authority of India has issued above regulations to provide the manner in which the premium and unearned premium reserve should be recognized by insurers carrying on general insurance business.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4486&flag=1

3. **Indian Insurance Companies (Foreign Investment) Amendment Rules, 2021**

(Notification no. G.S.R. 337(E) dated May 20, 2021)

The Finance Ministry on May 20, 2021 had notified the amendment to the Indian Insurance Companies (Foreign Investment) Rules, 2015 and clarified on the final rules for increasing the foreign direct investment limit in the insurance sector to 74% from the existing 49%. Every Indian insurance company having foreign investment, existing on or before the date of commencement of the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2021, shall within one year from such commencement, comply with the requirements of the provisions.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4493&flag=1



Company Law Corner

ALL ABOUT DEBENTURES UNDER THE COMPANIES ACT, 2013

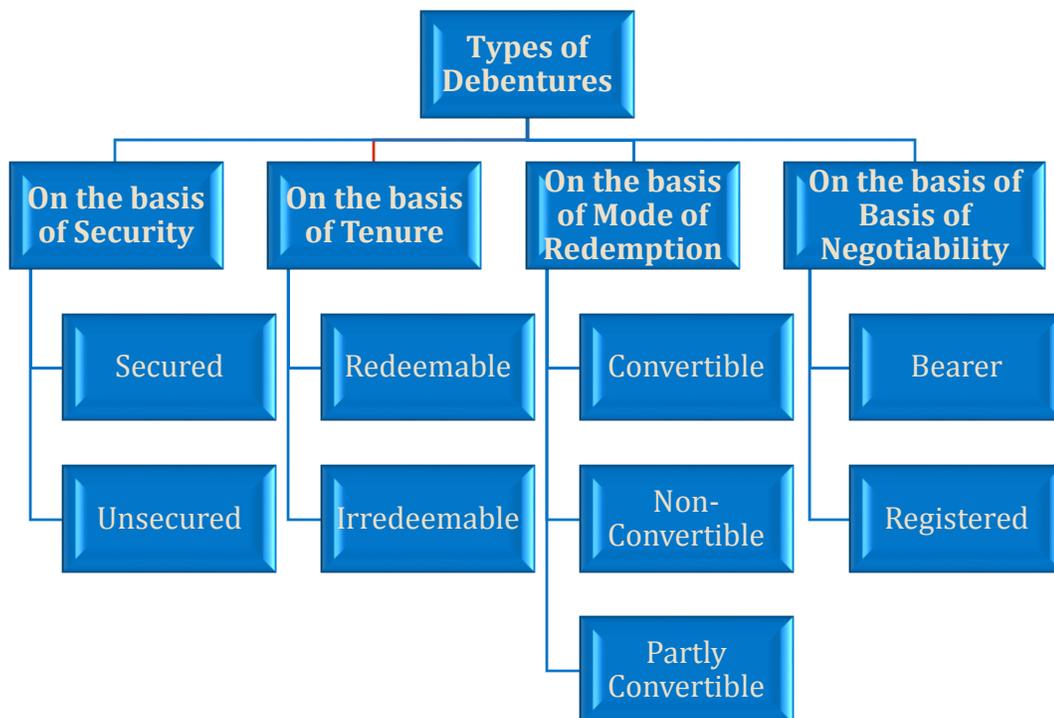
The word 'debenture' has been derived from a Latin word 'debere' which means to borrow.

Section 2(30) of the Companies Act, 2013 define "debenture" which includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

However, the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 and such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture.

Thus, Debenture is a written instrument acknowledging a debt to the Company. It contains a contract for repayment of principal after a specified period or at intervals or at the option of the company and for payment of interest at a fixed rate payable usually either half-yearly or yearly on fixed dates.

Types of Debentures



Security

- (a) **Secured Debentures** refer to those debentures where a charge is created on the assets of the company for the purpose of payment in case of default. A charge ranking *Pari Passu* with the first charge on any assets referred to in Schedule III of the Companies Act, 2013 excluding intangible assets of the company. The secured debenture holders have greater protection. Holders of secured debentures remain convinced about the payment of interest and payment of principal in the event of redemption.

Condition for Issue of Secured Debenture:

- **Redemption Period** : An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue.

However, the following classes of companies may issue secured debentures for a period exceeding ten years but not exceeding thirty years,

- (i) Companies engaged in setting up of infrastructure projects;
- (ii) 'Infrastructure Finance Companies' as defined in clause (viiia) of sub direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
- (iii) Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;
- (iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.

- **Creation of Charge:** Debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.

- (b) **Unsecured Debentures** These debentures are also known as naked debentures. These debentures are not secured by way of charge on the company's assets. Interest rate payable on unsecured debentures is generally higher than that which is payable on secured debentures.

Tenure

- (c) **Redeemable Debentures** are those which are payable on the expiry of the specific period (Maximum period 10 years from the date of issue) either in lump sum or in instalments during the life time of the company. Debentures can be redeemed either at par or at premium.
- (d) **Irredeemable Debentures** are also known as Perpetual Debentures because the company does not give any undertaking for the repayment of money borrowed by issuing such debentures. These debentures are repayable on the winding-up of a company or on the expiry of a long period. They can legally be framed as payable to bearer.

Under the Companies Act, 2013, it is reiterated that in case of Redeemable Debentures the maximum period of redemption is 10 years from the date of issue, except certain specified companies infrastructure companies where the maximum redemption period can be exceeding ten years but not exceeding thirty years.

Mode of Redemption

These debentures are issued by a company on the basis of option provided to them for conversion of debenture in the equity shares of the company after a certain period. It may be classified in the following categories: —

- (e) **Convertible Debenture** These debentures are converted into equity shares of the company on the expiry of a specified period.
- (f) **Non-Convertible Debenture** debentures do not have any option to convert the same into equity shares and are redeemed at the expiry of specified period(s).

A Company can only issue Secured Non-Convertible Debentures (NCD's). In case of issue of NCD's by a Company not constituting a charge on the assets of the Company, it shall be mandatory for listing of the securities on the recognized stock exchange so that same does not come under the purview of deposits. (Rule 2 (1) (c) of Companies (Acceptance of Deposits), Rules, 2014.

- (g) **Partly Convertible Debenture** are divided into two portions, viz., convertible and non-convertible portion. The convertible portion is converted into equity shares of the company at the expiry of specified period. The non-convertible portion is redeemed at the expiry of the specified period in terms of the issue.

Basis of negotiability

Debentures issued by a company may be negotiable or non-negotiable. There are following two types of debentures: —

- (h) **Bearer Debentures** These debentures are payable to bearer of the debentures and transferable by mere delivery. These debentures are also known as unregistered debentures.
- (i) **Registered Debentures** These debentures are not transferable by mere delivery of debenture certificates and shall be transferred as per the provisions of the Companies Act 2013, by executing transfer deeds and the transfer registered by the company. Registered debentures are not negotiable instruments. A registered holder of a debenture means a person whose name appears both in the debenture certificate and in the register of debenture holders. Principal and interest amount, when due in respect of these debentures are payable to the registered holders thereof only.

Mandatory Requirements

- Debentures cannot be issued with voting rights.
- On issue of debenture, a Company shall create a Debenture Redemption Reserve (DRR) out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
- A company is required to pay interest and redeem the debentures in accordance with the terms and conditions of their issue.
- If there is any default in repayment of amount in the event of maturity or default in payment of the interest thereon then the Tribunal will be approached by the Debenture-holders or Debenture Trustee to take appropriate measures.

Governing Framework for Issue of Debentures

The power to issue debentures can be exercised on behalf of the Company at a meeting of the Board under the provisions of Section 179 (3) of the Companies Act, 2013. Further Section 71 read with Rule 18 of the Companies (Share Capital and Debentures) Rules, deals with the provisions relating to the issuance of debentures.

Debentures are Securities within the meaning of Section 2(81) of the Companies Act, 2013. Hence, for issue of Debentures, all procedures for issue of securities as mentioned in Section 23 will be applicable, which states the ways available for a Public Company and Private Company for issue of Securities.

Non-Convertible Debenture

For issue of Non-Convertible Debentures on a private Placement basis by a private company, the provisions of Section 42 along with rules made thereunder will be applicable. A Public company can either make public issue of debentures or can make a Private Placement.

Convertible Debentures

In case of debentures which are convertible either fully or partly into equity shares (whether compulsorily or optionally), Section 62 will be attracted by virtue of Explanation (ii) of Rule 13(1) of the Companies (Share Capital and Debentures) Rules, 2014, which explains the meaning of the word "shares or other securities" to include "fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date".

Where the preferential offer of convertible debentures is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Companies Act, 2013 and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of Section 62 read with Rule 13 of the Companies(Share Capital & Debentures) Rules, 2014 along with the conditions laid down in Section 42 and Rule 14 of the Companies (Prospectus & Allotment of Securities) Rules, 2014.

Conditions for issue of Debentures under the Companies Act, 2013

Debenture Redemption Reserve

Section 71(4) read with Rule 18(7) of the Companies (Share Capital and Debentures) Rules, 2014 provides that the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures. The company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:-

Quantum of Debenture Redemption Reserve

| S. No. | Classes of Company | Condition |
|--------|---|--|
| 1 | All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies | No DRR for debentures issued by for both public as well as privately placed debentures |
| 2 | Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013 | DRR shall be as applicable to NBFCs registered with RBI. |
| 3 | For NBFCs registered with the RBI under Section 45-IA of the RBI Act, 1934 and Housing finance companies registered with the National Housing Bank: | |
| 3A | Listed NBFCs and Housing Finance Companies | No DRR required for debentures issued for both public as well as privately placed debentures |
| 3B | Unlisted NBFCs and Housing Finance Companies | No DRR is required in case of privately placed Debentures |
| 4A | Listed Companies | No DRR required for debentures issued for both public as well as privately placed debentures |
| 4B | Unlisted companies | Adequacy of DRR shall be 10% of the value of outstanding debentures. |

Method of investment in Debenture Redemption Reserve:

Every listed company (including listed NBFCs and Housing Finance Companies) in case of public issue of debentures and other unlisted company (other than unlisted NBFCs and Housing Finance Companies) shall on or before the 30th day of April in each year, in respect of debentures issued by the above mentioned companies is required to invest or deposit at least 15 % of the amount of its debentures maturing during the year ending on 31st day of March of next year. The company may choose any of the below given methods:

- (i) in deposits with any scheduled bank, free ;
- (ii) in unencumbered securities of the Central methods of deposits or from any charge or lien; Government or any State Government;
- (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
- (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;

Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year.

The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non- convertible portion of debenture issue in accordance with Rule 18(7) of the Companies (Share Capital and Debentures) Rules, 2014.

A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. However, the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Appointment of Debentures Trustee

- A Company cannot issue debentures to more than 500 people without appointing a debenture trustee, whose duty would be to protect the interest of Debenture Holders and redress their grievances.
- The company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

Charge/Mortgage in favour of Debenture Trustee

- The security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on:-
 - (i) any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise.
 - (ii) any specific immovable property wherever situate, or any interest therein.

However, in case of a non-banking financial company, the charge or mortgage under sub-clause (i) may be created on any movable property.

Further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge shall not apply.

In case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage may also be created on the properties or assets of the holding company.

Conditions for Appointment of Debenture Trustee

- The company shall appoint debenture trustees under Section 71(5) of the Companies Act, 2013, after obeying with the following conditions, namely:-

- (a) The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;
- (b) Before the appointment of Debenture Trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;
- (c) A person shall not be appointed as a debenture trustee, if he:
- ✓ beneficially holds shares in the company;
 - ✓ is promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
 - ✓ is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
 - ✓ is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - ✓ has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
 - ✓ has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
 - ✓ is relative of any promoter or any person who is in the employment of the company as director or key managerial personnel.
- (d) The Board of directors may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act.
- However, where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.
- (e) Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

Duties of Debentures Trustee

- It shall be the duty of every debenture trustee to-
 - (a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
 - (b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
 - (c) call for periodical status or performance reports from the company;

- (d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;
- (e) appoint a nominee director on the Board of the company in the event of-
 - ✓ two consecutive defaults in payment of interest to the debenture holders; or
 - ✓ default in creation of security for debentures; or
 - ✓ default in redemption of debentures
- (f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;
- (g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;
- (h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;
- (i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
- (j) do such acts as are necessary in the event the security becomes enforceable;
- (k) call for reports on the utilization of funds raised by the issue of debentures;
- (l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
- (m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
- (n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

Liability of Debenture Trustee

Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion.

The liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than 3/4th in value of the total debentures at a meeting held for the purpose.

Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

Meetings of Debenture Holders by Debenture Trustee

The meeting of all the debenture holders shall be convened by the debenture trustee on-

- (a) requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding;
- (b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

Debenture Trust Deed

Debenture Trust deed is a written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders.

A trust deed in Form No. SH. 12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer.

A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and a copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

Non Applicability

Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 is not applicable

- ✓ on any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India. or
- ✓ in case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, the provisions of this rule shall not apply unless otherwise provided in such Scheme or regulations or directions.

Procedure for Issue of Debentures under the Companies Act, 2013

| S. No. | Particulars | Time frame |
|--------|--|--|
| 1. | <p>Obtain a valuation report from the registered valuer with respect to the Convertible Debentures to be issued.</p> <p><i>In case of Non-Convertible Debenture, there is no dilution of share-holding in the share capital of the company, valuation of securities and justification of price are not applicable.</i></p> | |
| 2. | <p>Hold a meeting of Board:</p> <p>(i) To consider and approve issue of Debentures including the terms and conditions of issue.</p> <p>(ii) To identify the group of persons to whom debentures are proposed to be offered.</p> <p>(iii) To approve the offer letter</p> <p>(iv) To fix day, date and time and agenda for General Meeting for passing Special Resolution</p> <p>(v) To approve draft notice of General Meeting</p> | |
| 3. | In case of a Public Company, a copy of Board Resolution for issue of debentures with ROC is required to be filed by the company | File E-Form MGT-14 within 30 days of passing of Board Resolution |
| 4. | <p>Convene and hold Extra-Ordinary General Meeting to consider and approve the following items: –</p> <p>(i) Increase in the Borrowing power of the Board of Directors by passing Special Resolution, in case it exceeds the limit, in terms of Section 180(1)(c)</p> <p>(ii) Issue of Debentures</p> | File E-Form MGT-14 along with explanatory statement within 30 days of passing of Special Resolution. |
| 5. | Open a separate Bank Account in a scheduled bank for keeping monies received on the application. | |
| 6. | Prepare the list of such persons to whom offer to subscribe debenture will be given in draft offer letter under PAS-4 . | |

| | | |
|-----|--|--|
| 7. | Offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made. | |
| 8. | Dispatch of Letter of Offer to identified persons. | |
| 9. | Maintain a complete record of persons to whom offer letter is sent in Form PAS-5 . | |
| 10. | Receiving of Application Money through cheque or demand draft or other banking channel and not by cash. Keep the record of the bank account from where such payments for subscriptions have been received. | |
| 11. | Convene Board meeting within a period of 60 days from the date of receipt of subscription money: <ol style="list-style-type: none"> to consider the allotment of Debentures Approval of draft agreement for Charge creation & authorizing the director for signing the same, if applicable. Approval of the draft of Debenture Trust Deed [SH-12], if applicable. Issue of Debentures Certificate and authorize two directors and a person to sign the same. | Filing of CHG-9 within 30 days from the date of creation of charge in case of Secured Debenture. Filing Return of Allotment in PAS-3 within 15 days of allotment. |
| 12. | Make necessary entries in the Register of Debenture holders in Form MGT-2 Make necessary entries in the Register of Charges in Form CHG-7; if applicable | <ul style="list-style-type: none"> • within 7 days of the Board Meeting in which allotment of debentures was approved • forthwith after the registration of creation of charge |

| | | |
|-----|---|--|
| 13. | Issue of Debenture Certificate | Within 6 months from date of allotment of debentures |
| 14. | Stamp Duty settlement as per provisions & rates of Stamp Act. | |

Note : Board resolution under clause (c) of subsection (3) of section 179 would be adequate, in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of Section 180(1).

Further, in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.



Legal Maxims

| S.No. | Legal Maxim | Meaning | Usage & Example |
|--------------|--|--|---|
| 1. | <i>de die in diem</i> | Day to day | The workers in constructions industries are paid <i>de die in diem</i> . |
| 2. | <i>ex delicto</i> | From a transgression | As the goods were adulterated, they were declared <i>ex delicto</i> . |
| 3. | <i>ex turpi causa non oritur actio</i> | From a dishonorable cause an action does not arise | This Case cannot be filed because it is <i>ex turpi causa non oritur</i> action. |
| 4. | <i>in omnibus</i> | In all | The fact is true <i>in omnibus</i> . |
| 5. | <i>inter alia</i> | Among others | Corporate Laws <i>inter alia</i> includes Companies Act, 2013, Securities Contracts (Regulation) Act, 1956 and SEBI Act, 1992 |



Legal World

CORPORATE LAWS

Landmark Judgement

COSMOSTEELS PRIVATE LTD v. JAIRAM DAS GUPTA & ORS [SC]

Civil Misc. Petition No. 7962 of 1977 in Civil Appeal No. 1347(N) of 1977

Desai, D.A. Beg, M. Hammedullah & P.N.Bhagwati, JJ. [Decided on 16/12/1977]

*Equivalent Citations : 1978 AIR 375; 1978 SCR (2) 422; 1978 SCC (1) 215; (1978) 48
Comp Cas 312.*

Companies Act,1956- sections 397,398 402 read with sections 101 to 104- buyback of shares and resultant capital reduction- court ordered buy back of shares by a company- whether procedure prescribed under sections 101-104 to be complied with?

Brief facts: This miscellaneous petition by Interveners raises a short but interesting question in the field of Company Law. The appellant company was ordered to buy back the shares from one Gupta group, at the determined value, in a petition relating to oppression and suppression of minority under sections 397-98. The intervenor, claiming to be a creditor of the Company, raised a question that as the buyback of shares results in capital reduction, the procedure prescribed under sections 101-104 would have to be followed and notice thereof to be given to all creditors of the company.

The question of law was whether when on a direction given by the Court, while granting relief against oppression to the minority shareholders of the Company, to the Company to purchase the shares of some of its members which would ipso facto bring about reduction of the share capital because a Company cannot be its own member, is it obligatory to serve a notice upon all the creditors of the Company ?

Decision : Application dismissed.

Reason : It was conceded that the procedure prescribed in sections 100 to 104 is not required to be followed where reduction of share capital is necessitated by the direction given by the Court in a petition under- ss. 397 and 398. Section 77 leaves no room for doubt that reduction of a share capital may have to be brought about in two different situations by two different modes. Undoubtedly, where the Company has passed a resolution for reduction of its share capital and has submitted it to the Court for confirmation the procedure prescribed by ss. 100 to 104 will have to be followed, if they are attracted. On the other hand, where the Court, while disposing of a petition under ss. 397 and 398, gives a direction to the Company to purchase shares of its own members, a consequent reduction of the share capital is bound to ensue, but before granting such a direction it is not necessary to give notice of the consequent reduction of the share capital to the creditors of the company. No such requirement is laid down by the Act. Two procedures ultimately bringing about reduction of the share capital are distinct and separate and stand apart from each other and one, or the other may be resorted to according to the situation. That is the clearest effect of the disjunctive or in section 77. The scheme of sections 397 and 406 appears to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, inter alia,

lifting the ban on company purchasing its shares under Court's direction, is conferred on the Court. When the Court exercises this power by directing a purchase of its shares by the Company, it would necessarily involve reduction of the capital of the Company. Is such power of the Court subject to a resolution to be adopted by the members of the Company which, when passed with statutory majority, has to be submitted to Court for confirmation ? No canon of construction would permit such an interpretation in which the statutory power of the Court for its exercise depends upon the vote of the members of the Company. This would inevitably be the situation if reduction of share capital can only be brought about by resorting to the procedure prescribed in ss. 100 to 104. Additionally, it would cause inordinate delay and the very purpose of granting relief against oppression would stand self-defeated.

Viewed from a slightly different angle, it would be impossible to carry out the directions given under s. 402 for reduction of share capital if the procedure under ss. 100 to 104 is required to be followed. Under ss. 100 to 104 the Company has to first adopt a special resolution for reduction of share, capital if its articles so permit. After such a resolution is adopted winch, of necessity must be passed by majority, and it being a special resolution, by a statutory majority, it will have to be submitted for confirmation to the Court. Now, when minority shareholders complain of oppression by majority and seek relief against oppression from the Court under ss. 397 and 398 and the Court in a petition of this nature considers it fair and just to direct the Company to purchase the shares ,of the minority shareholders to relieve oppression, if the procedure prescribed by ss. 100 to 104 is required to be followed, the resolution will have to be first adopted by the members of the Company but that would be well-nigh impossible because the very majority against whom relief is sought would be able to veto a at the threshold and the power conferred on the Court would be frustrated. That could never have been the intention of the Legislature Therefore, it is not conceivable that when a direction for purchase of shares is given by the Court under s. 402 and consequent reduction in share capital is to be effected the procedure, prescribed for reduction of share capital in ss. 100 to 104 should be required to be followed in order to make the direction effective.

A very serious apprehension was voiced that if the Court directs the Company to purchase the shares of some of its. members while granting relief against oppression, the Company would part with its funds which would jeopardise the security of the creditors of the Company and that if such a direction for reduction of share capital can be, given by the Court behind the back of the creditors, the Creditors would be adversely affected and therefore, it was contended that, even though, while giving direction under s. 402 directing the Company to purchase the shares of its members, it is not obligatory upon the Court to give notice to the creditors, such notice ought to be given in the interests of the creditors. This apprehension is, in our opinion, unfounded. Even when the Court is moved to confirm the resolution for reduction of share capital under ss. 100 to 104, the Court may in its discretion dispense with the procedure prescribed in that group of sections.

Undoubtedly, the Court would use the discretion only upon proof of special circumstances as contemplated by s. 101(3), but when such discretion is used, the creditors would have no opportunity to object to the reduction. The opportunity to object would thus depend upon the Court exercising its discretion one way or the other. It may be noticed that until the Company submits its resolution for reduction of share capital to the Court, the creditors have no say in the matter and, therefore, the Court is empowered to ascertain the wishes of the creditors by following the procedure prescribed in sections 101 to 104. The object behind prescribed this procedure requiring save in special circumstances as contemplated in section 101 (3), the Court to give notice to the creditors is that the members of the

Company may not unilaterally act to the detriment of the creditors behind 'their back. If such a procedure were not prescribed, the Court might, unaware of all the facts, be persuaded by the members to confirm the resolution and that might cause serious prejudice to the creditors. But such a situation would not be likely to arise in a petition under ss. 397 and 398. In such a petition the Court would be better in a position to have all the relevant facts and circumstances before it and it would be the Court which would decide whether to direct purchase of shares of the members by the Company. Before giving such a direction the Court would certainly keep in view all the relevant facts and circumstances, including the interest of the creditors. Even if the petition is being disposed of on a compromise between the parties, yet the Court, before sanctioning the compromise, would certainly satisfy itself that the direction proposed to be given by it pursuant to the consent terms, would not adversely affect or jeopardise the interest of the creditors. Therefore, it cannot be said that merely because s. 402 does not envisage consent of the creditors before the Court gives direction for reduction of share capital consequent upon purchase of shares of some of the members by the Company, there is no safeguard for the creditors.

REGIONAL PROVIDENT FUND COMMISSIONER v. VANDANA GARG & ORS [NCLAT]

Company Appeal (AT) (CH) (Ins.) No. 50 of 2021

M. Venugopal & V. P. Singh. [Decided on 12/05/2021]

Insolvency and Bankruptcy Code,2016- resolution plan- creditor EPFO filing its claim before the RP- claim included in the resolution plan- later enhancing the quantum of the claim- whether maintainable-Held, No.

Brief facts : This Appeal emanates from the Order passed by the National Company Law Tribunal, Chennai Bench, whereby the Adjudicating Authority/NCLT approved the Resolution Plan, which waves off a major portion of the Provident Fund dues owed by the Corporate Debtor. Aggrieved by the order the Provident Fund commissioner is before the NCLAT.

Decision : Appeal dismissed.

Reason : We have heard the arguments of the Learned Counsel for the parties and perused the record. Admittedly the Corporate Debtor "GVR Infra Projects Limited" has defaulted in payment of dues/damages/interest, including the employees share of contribution, since 2014, which were deducted from employees' wages. The Appellant now claims overall dues towards the Provident Fund to the tune of ₹2,84,69,747/-. In contrast, Appellant's Provident Fund claim amounting to ₹ 1,95,01,301/- had already been admitted and dealt with in the Resolution Plan.

In the instant case, the Appellant, despite filing a claim of ₹1,95,01,301/- has raised a claim of ₹2,84,69,797/-, i.e. much higher than the amount claimed by the Appellant in its claim before the Resolution Professional. The Appellant's claim admitted by Respondent No. 1/RP had been considered while formulating the Resolution Plan of the Corporate Debtor. The said Resolution Plan was further approved by the Adjudicating Authority/NCLT vide its Order dated July 20, 2020, in conformity with Section 30 (2) of the I&B Code,2016 and the Rules and Regulations framed thereunder. The Appellant has not provided any reason or justification for raising the enhanced claim of ₹2,84,69,797/-, which is much higher than the amount claimed.

Based on the law laid down by Hon'ble Supreme Court in *Ghanashyam Mishra & Sons Pvt. Ltd v Edelweiss Asset Reconstruction Company Ltd, 2021 SCC OnLine SC 313*, it is clear that after approval of the Resolution Plan, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors including the Central Government, any State Government or any Local Authority, Guarantors and other Stakeholders. On the approval of the Resolution Plan by the Adjudicating Authority, all such claims that are not a part of the Resolution Plan shall stand extinguished. No person will be entitled to initiate continuing any proceedings regarding a claim that is not part of the Resolution Plan. The Appellants claim about Provident Fund dues amounting to ₹1,95,01,301/-, which was earlier raised at the time of initiation of CIRP and was later admitted, stood frozen and will be binding on all the Stakeholders, including the Central Government. After approval of the Resolution Plan by the Adjudicating Authority, all such claims that are not part of the Resolution Plan shall stand extinguished. No person is entitled to initiate or continue any proceeding regarding a claim that is not part of the Resolution Plan. In the circumstances as stated above, we believe that the Appeal sans merit and deserve to be dismissed.

GENERAL LAWS

UTTAR PRADESH POWER TRANSMISSION CORPORATION LTD & ORS v. CG POWER AND INDUSTRIAL SOLUTIONS & ORS [SC]

Special Leave Petition (C) NO. 8630 of 2020

U.U. Lalit & Indira Banerjee, JJ. [Decided on 12/05.2021]

Building and Other Construction Workers Cess Act- four contracts- only one contract pertain to civil construction- appellant recovered labour cess from the contract for design, engineering and supply of equipments- whether permissible-Held, No.

Brief facts: The Respondent entered into four contracts, though interlinked, with the Petitioner. The first contract was for the design, engineering, and supply of equipments, the second one was for installation and commencement and the third for the civil works construction and the fourth one for maintenance. The petitioner deducted Labour cess @ 1% from the first contract based on the report of CAG. Respondent objected to this and contented that labour cess is deductible only on the third contract i.e. civil works construction contract and not on the design and supply contract. The respondent approached the High court and got the stay order from deduction of cess. The petitioner appealed to the Supreme Court.

Decision: Petition dismissed.

Reason : In this Case, there is apparently no dispute, difference or controversy between UPPTCL and the Respondent No.1 as to the true construction, meaning or intent of any part of the conditions of contract or to the manner of execution or the quality or description or payment for the same. Nor is there any dispute as to the true meaning, intent, interpretation, construction, or effect of the clauses of contract, specifications or drawings or any of them. UPPTCL has changed its stand only after the CAG report. Cess in respect of the First Contract has been deducted only in view of the audit objection raised by the Office of Comptroller and Auditor General (CAG).

In this case, the action of UPPTCL in forcibly extracting building cess from the Respondent No.1 in respect of the first contract, solely on the basis of the CAG report, is in excess of

power conferred on UPPTCL by law or in terms of the contract. In other words, UPPTCL has no power and authority and or jurisdiction to realize labour cess under the Cess Act in respect of the first contract by withholding dues in respect of other contracts and/or invoking a performance guarantee. There is no legal infirmity in the finding of the High Court that UPPTCL acted in excess of power by its acts impugned when there was admittedly no assessment or levy of cess under the Cess Act.

Even otherwise, the Cess Act and/or statutory rules framed thereunder prescribe the mode and manner of recovery of outstanding cess under the Cess Act. It is well settled that when statute requires a thing to be done in a particular manner, it is to be done in that manner alone. UPPTCL could not have taken recourse to the methods adopted by it. The impugned communications have rightly been set aside.

In our considered opinion, the judgment and order of the High Court impugned does not call for inference under Article 136 of the Constitution of India. The Special Leave Petition is, therefore, dismissed.

TAX LAWS

COMMISSIONER OF INCOME TAX-I v. M/S RELIANCE ENERGY LTD [SC]

Civil Appeal No. 1327 of 2021 with batch of appeals

L. Nageswara Rao & Vineet Saran, JJ. [Decided on 28/04/2021]

Brief facts : By an order of assessment dated 31.01.2005, the Assessing Officer restricted the eligible deduction under Section 80-IA of the Income Tax Act, 1961 (hereinafter “the Act”) to the extent of ‘business income’ only. On 23.03.2006, the Commissioner of Income-Tax (Appeal)-I (hereinafter “the Appellate Authority”) partly allowed the Appeal filed by the Assessee and reversed the order of the Assessing Officer on the issue of the extent of deduction under Section 80-IA of the Act. The Income Tax Appellate Tribunal (hereinafter “the Tribunal”), upheld the decision of the Appellate Authority on the issue of deduction under Section 80-IA. The High Court refused to interfere with the Tribunal’s order as far as the issue on deduction under Section 80-IA is concerned. Therefore, this Appeal by the Revenue.

Decision : Appeal dismissed.

Reason : The controversy in this case pertains to the deduction under Section 80-IA of the Act being allowed to the extent of ‘business income’ only. The claim of the Assessee that deduction under Section 80-IA should be allowed to the extent of ‘gross total income’ was rejected by the Assessing Officer.

The import of Section 80-IA is that the ‘total income’ of an assessee is computed by taking into account the allowable deduction of the profits and gains derived from the ‘eligible business’. With respect to the facts of this Appeal, there is no dispute that the deduction quantified under Section 80-IA is Rs. 492,78,60,973/-. To make it clear, the said amount represents the net profit made by the Assessee from the ‘eligible business’ covered under sub-section (4), i.e., from the Assessee’s business unit involved in generation of power. The claim of the Assessee is that in computing its ‘total income’, deductions available to it have

to be set-off against the 'gross total income', while the Revenue contends that it is only the 'business income' which has to be taken into account for the purpose of setting-off the deductions under Sections 80-IA and 80-IB of the Act. To illustrate, the 'gross total income' of the Assessee for the assessment year 2002-03 is less than the quantum of deduction determined under Section 80-IA of the Act. The Assessee contends that income from all other heads including 'income from other sources', in addition to 'business income', have to be taken into account for the purpose of allowing the deductions available to the Assessee, subject to the ceiling of 'gross total income'. The Appellate Authority was of the view that there is no limitation on deduction admissible under Section 80-IA of the Act to income under the head 'business' only, with which we agree.

In the case before us, there is no discussion about Section 80-IA (5) by the Appellate Authority, nor the Tribunal and the High Court. However, we have considered the submissions on behalf of the Revenue as it has a bearing on the interpretation of sub-section (1) of Section 80-IA of the Act. We hold that the scope of sub-section (5) of Section 80-IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'.

Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'. An attempt was made by the learned Senior Counsel for the Revenue to rely on the phrase 'derived ... from' in Section 80-IA (1) of the Act in respect of his submission that the intention of the legislature was to give the narrowest possible construction to deduction admissible under this sub-section. It is not necessary for us to deal with this submission in view of the findings recorded above. For the aforementioned reasons, the Appeal is dismissed qua the issue of the extent of deduction under Section 80-IA of the Act.



Student Services



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Attention Students

Granting exemption to Graduates and Post Graduates from the recognized Universities from appearing in CSEET and enabling them to take direct admission in CS Executive Programme.

The Council of the Institute at its 277th meeting held on 19.06.2021 has decided to grant exemption to the following categories of students from appearing in Company Secretary Executive Entrance Test (CSEET) enabling them to take direct registration in CS Executive Programme:

Graduates (having minimum 50% marks) in any discipline of any recognised University or any other Institution in India or abroad recognized as equivalent thereto by the Council.

OR

Post Graduates in any discipline of any recognised University or any other Institution in India or abroad recognized as equivalent thereto by the Council.

To get exemption from CSEET on the basis of above qualification, such students shall be required to pay applicable exemption fees.

The above revised admission criteria for CSEET and CS Executive Programme shall be effective from June 20, 2021.

All concerned students may take a note of it.

A K Srivastava
Joint Secretary (Student Services)

Date: 23rd June, 2021

Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इच्छते तेन त्वात्तेः श्रेयते इत्यु तेन। इच्छ

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"To develop high calibre professionals facilitating good corporate governance"

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ICSI Noida Office C-36 & 37, Sector-62, NOIDA (U.P.)-201 309
tel 0120-4522 000 fax +91-120-4264 443, 4264 445 email info@icsi.edu website www.icsi.edu





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IN PURSUIT OF PROFESSIONAL EXCELLENCE
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Attention Students !

Concession in fees payable at the time of registration in CS Executive Program for the students who lost their parents/legal guardian/adoptive parents due to any reason, including Covid-19

The Covid-19 pandemic has affected many children in our country due to the untimely demise of their parents/or earning member of their family.

The Institute has decided to financially support such students who are facing financial constraints due to the pandemic by way of extending 100% concession in fee payable at the time of registration to the Executive Programme.

| | |
|--|---|
| Who are eligible? | Students of the Institute who have lost both or either of their parents or legal guardian/adoptive parents due to any reason, including Covid-19; and taken registration in CS Executive Programme between 1 st April 2021 to 31 st March 2022. |
| Details of fee concession. | 100% Concession in Fee payable at the time of registration to Executive Programme Stage (excluding the Fee payable for Pre-Examination Test and One Day Orientation Programme). All other fee shall be payable in full by such students. |
| Documents to be submitted at the time of submitting the registration application for Executive Programme while seeking concession. | (i) Death Certificate of father/mother/legal guardian/Adoptive parent (ii) Self-declaration by the student (as per format prescribed by ICSI) |

A K Srivastava
Joint Secretary (Student Services)

Date: 24th June 2021

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|  THE INSTITUTE OF Company Secretaries of India भारतीय कम्पनी सचिव संस्थान <small>IN PURSUIT OF PROFESSIONAL EXCELLENCE</small> <small>Statutory body under an Act of Parliament</small> <small>(Under the Jurisdiction of Ministry of Corporate Affairs)</small> | | | | |
|---|---|---|--|---|
| COMPANY SECRETARIES EXAMINATIONS, JUNE, 2021 | | | | |
| REVISED TIME-TABLE | | | | |
| EXAMINATION TIMING : 10:00 A.M. TO 1:00 PM | | | | |
| Day | Executive Programme (Old Syllabus) | Executive Programme (New Syllabus) | Professional Programme (Old Syllabus) | Professional Programme (New Syllabus) |
| 10.08.2021 Tuesday | Cost and Management Accounting (Module-I) (OMR Based) | Jurisprudence, Interpretation and General Laws (Module-I) | Advanced Company Law and Practice (Module - I) | Governance, Risk Management, Compliances and Ethics (Module - I) |
| 11.08.2021 Wednesday | Industrial, Labour and General Laws (Module-II) (OMR Based) | Securities Laws and Capital Markets (Module-II) | Information Technology and Systems Audit (Module - II) | Secretarial Audit, Compliance Management and Due Diligence (Module - II) |
| 12.08.2021 Thursday | Tax Laws and Practice (Module-I) (OMR Based) | Company Law (Module-I) | Advanced Tax Laws and Practice (Module - III) | Corporate Funding and Listings in Stock Exchanges (Module - III) |
| 13.08.2021 Friday | Company Accounts and Auditing Practices (Module-II) | Economic, Business and Commercial Laws (Module-II) | Secretarial Audit, Compliance Management and Due Diligence (Module - I) | Advanced Tax Laws (Module - I) |
| 14.08.2021 Saturday | Company Law (Module-I) | Setting up of Business Entities and Closure (Module-I) | Financial, Treasury and Forex Management (Module - II) | Corporate Restructuring, Insolvency, Liquidation and Winding - up (Module - II) |
| 15.08.2021 Sunday | NO EXAMINATION | NO EXAMINATION | NO EXAMINATION | NO EXAMINATION |
| 16.08.2021 Monday | Capital Markets and Securities Laws (Module-II) | Corporate and Management Accounting (Module-II) (OMR Based) | Drafting, Appearances and Pleadings (Module - III) | Multidisciplinary Case Studies (Module - III) [Open Book Exam.] |
| 17.08.2021 Tuesday | Economic and Commercial Laws (Module-I) | Tax Laws (Module-I) (OMR Based) | Corporate Restructuring, Valuation and Insolvency (Module - I) | Drafting, Pleadings and Appearances (Module - I) |
| 18.08.2021 Wednesday | NO EXAMINATION | Financial and Strategic Management (Module-II) (OMR Based) | Ethics, Governance and Sustainability (Module - II) | Resolution of Corporate Disputes, Non-Compliances and Remedies (Module - II) |
| 19.08.2021 Thursday | NO EXAMINATION | NO EXAMINATION | NO EXAMINATION | NO EXAMINATION |
| 20.08.2021 Friday | NO EXAMINATION | NO EXAMINATION | Elective 1 out of below 5 subjects (Module - III) [Open Book Exam.] | Elective 1 out of below 8 subjects (Module - III) [Open Book Exam.] |
| | | | (i) Banking Law and Practice | (i) Banking - Law and Practice |
| | | | (ii) Capital, Commodity and Money Market | (ii) Insurance - Law and Practice |
| | | | (iii) Insurance Law and Practice | (iii) Intellectual Property Rights - Laws and Practices |
| | | | (iv) Intellectual Property Rights - Law and Practice | (iv) Forensic Audit |
| | | | (v) International Business-Laws and Practices | (v) Direct Tax Law and Practice |
| | | | | (vi) Labour Laws and Practice |
| | | | | (vii) Valuations and Business Modelling |
| (viii) Insolvency - Law and Practice | | | | |

Note: The Institute reserves 21st, 22nd, 23rd and 24th August, 2021 to meet any exigency.





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The ICSI Secretarial Executive Certificate is a unique initiative of the Institute of Company Secretaries of India (ICSI) for the CS Students to create a pool of semi qualified professionals.

ELIGIBILITY

A student who has:-

- passed the Executive Programme;
- completed EDP or any other equivalent programme;
- completed Practical Training as prescribed or exempted therefrom; and
- made an application along with such fee as applicable.

VALIDITY OF CERTIFICATE

- One calendar year from the date of issue
- Renewable on completion of 4 PDP Hours and payment of annual renewal fee of Rs.1000/-.
- The certificate will be renewed for a maximum period of two years only.

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LAUNCHING OF ONLINE LICENTIATE ENROLLMENT



ELIGIBILITY

A student who has:-

- (i) A person who has completed the Final examination or Professional Programme examination of the Institute may, within six months from the date of declaration of results in which he has passed the Final examination or Professional Programme examination can apply for enrolment as a licentiate.
- (ii) An Online application for enrolment as a Licentiate is to be made along with annual subscription of Rs. 1180/- (Rs. 1000/- Licentiate subscription + Rs. 180/- towards GST @18% applicable w.e.f. 1st July, 2017)

VALIDITY OF CERTIFICATE

- (i) A licentiate shall not ordinarily be allowed to renew his enrolment for more than five years after passing the Final examination or Professional Programme examination.
- (ii) The annual subscription of a licentiate shall become due and payable on the first date of April every year
- (iii) Non-payment of annual subscription on or before the thirtieth of June of a year shall disentitle the person to use the descriptive letters Licentiate ICSI & from 1st July of that year, until his annual subscription for the year is received by the Institute. The name of the person so disentitled shall be published in the Journal

The Institute of Company Secretaries of India launches the online module of Licentiate enrollment as a Licentiate of The Institute of Company Secretaries of India in accordance with Regulation 29 of the Company Secretaries Regulations, 1982.

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or entitled to use the
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Chartered Secretary
Journal

Participate in the activities
of the Institute, its Regional
Council or Chapter as the
case may be, subject to such
conditions as may be imposed
by the Council, Regional Council
or Chapter, as the case may be

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Library facilities
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Regional Council
or Chapter

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NEWS FROM REGIONS



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FOR DECEMBER -2021 EXAMINATIONS

Last Date of Registration

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50 Lectures per Subject

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8. Video bytes of All India Rank holders of Class Room Teaching centre of Delhi-RO will be uploaded on portal.
9. Articles of All India Rank holders of Class Room Teaching centre of Delhi-RO will be published in the Newsletter and Special reward for meritorious students.

Dear Students

We are pleased to inform that the Northern India Regional Council of the Institute of Company Secretaries of India (NIRC-ICSI) is announcing its Online Oral Tuition Classes (OTC) for the students of CS Executive Programme for December, 2021 Examination.

The Tentative Schedule of OT Class of CS Executive Program is as under:

| Module 1 | Module 2 |
|--|--|
| Jurisprudence, Interpretation & General Laws 10:00AM to 12:00PM (Mon,Wed & Fri) | Corporate & Management Accounting 04:00 PM to 06:00 PM (Tue, Thu & Sat) |
| Setting Up of Business Entities & Closure 02:00PM to 04:00PM (Tue, Thu & Sat) | Financial & Strategic Management 06:00 PM to 08:00 PM (Tue, Thu & Sat) |
| Company Law 08:00AM TO 10:00AM (Mon,Wed & Fri) | Securities Laws & Capital Markets 06:00 PM to 08:00 PM (Mon,Wed & Fri) |
| Tax Laws 11:00AM TO 01:00PM (Tue, Thu & Sat) | Economic, Business and Commercial Laws 04:00 PM to 06:00 PM (Mon,Wed & Fri) |

:- FEE STRUCTURE :-

- Both Module : Rs. 15000/-
- Single Module : Rs. 8000/-
- Single Subject : Rs. 2500/-

Payment Link: - <https://m.p-y.tm/icsineww>

Application Process

In order to get web link of online Classes, students are advised to make payment & send payment confirmation email to vinay.baisoya@icsi.edu mentioning their contact details including mobile

:- For more details Contact :-

Mr. Vinay kr. Baisoya

NIRC of ICSI, NIRC Building, Plot 04,
Institutional Area Prasad Nagar, New Delhi
110005
(Nearest Metro Station is Rajendra Place)

Contact No. 08375055357

Email – vinay.baisoya@icsi.edu;

Website – <https://www.icsi.edu/niro/home/>

Best Regards

CS VIMAL GUPTA
Chairman
NIRC – ICSI

CS SURESH PANDEY
Chairman - OTC & Library Committee &
Immediate Past Chairman
NIRC - ICSI

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असतो मा सद्गमय। *Lead the truth: walk by the hour*

MISSION
"To develop high calibre professionals
facilitating good corporate governance"

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MANAGEMENT SKILLS ORIENTATION PROGRAMME

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24th June, 2021
 to
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Mode
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- ▶ Student need to apply for MSOP from stimulate portal and submit the required fee through online.
- ▶ The duration of the MSOP shall be 15 days.
- ▶ In order to maintain the quality of the programme maximum batch of 50 students are allowed.
- ▶ The Link and programme schedule will be provided to the registered students.
- ▶ The login link for session will be provided one day before starting the training according to Schedule.
- ▶ There shall be two Academic Sessions every day. First Session: 11am to 1pm & second session 3PM to 5PM.
- ▶ It is mandatory for the participants to attend all the sessions of MSOP to get the completion certificate.
- ▶ Students are also required to submit a project report.
- ▶ The attendance of the students in both the sessions is must.
- ▶ The dress code for the program is as follows: For Male participants: Full sleeve white shirt + dark colour trouser + matching tie. For Female participants: Formal decent Indian Attire of sober colour or as prescribed for male participants.
- ▶ For any assistance, guidance and clarification please mail to Regional Director, East Dr. Tapas Kumar Roy at tapas.roy@icsi.edu or call Ms. Rukmani Nag on Mobile No. 9674208303 or email at rukmani.nag@icsi.edu

Eligibility Criteria

Students, have completed Professional Programme and all training (except 15 days Specialized Training)

Best Wishes
 from
TEAM EIRC

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 speak the truth; abide by the law

ICSI Mission
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EXECUTIVE DEVELOPMENT PROGRAMME-ONLINE

3rd Batch

(15 Days Classroom Mode)

Monday, 21st June, 2021 to Wednesday, 7th July, 2021

Eastern India Regional Council of The Institute of Company Secretaries of India (ICSI-EIRC), is organizing 3rd batch of 15 Days Online Executive Development Programme (EDP), from Monday, 21st June, 2021 to Wednesday, 7th July, 2021 through videoconferencing.

As per Regulation 46BA and 46BB under The Company Secretaries (Amendment) Regulations, 2020, all students of the Institute who have passed Executive examination are compulsorily required to undergo Executive Development Programme for a period 30 days, out of which 15 days EDP needs to be completed in classroom mode to start their Practical Training in the industry / Practicing Company Secretary by developing their communication skills, personality, legal acumen and fundamentals of IT skills.

The duration of the programme may be altered / extended / changed depending upon current situation and other programme of ICSI-EIRC and the participants have to adhere with such modifications. Attendance on all the days is compulsory.

The Participation Fee is Rs. 5,000/- to be paid through stimulate portal.

For registration, please go through: <https://stimulate.icsi.edu/>

for further detail you can write to:

Ms. Rukmani Nag at rukmani.nag@icsi.edu; with copy to **Dr. Tapas Kumar Roy**,
Regional Director & Programme Coordinator ICSI-EIRO at tapas.roy@icsi.edu;

A maximum of 40 candidates will only be admitted on first come first served basis

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ICSI Motto
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speak the truth abide by the law

ICSI Mission
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P.S. Please adhere to the Guidelines and National Directives for COVID-19 management issued by the Government.



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Registered students will be provided the log in ID & password for online classes separately by email.

For further details, please contact:

Ms. Rukmani Nag / Mr. Sumanta Dutta

ICSI- EIRC HOUSE 3A, Ahiripukur 1st Lane, Kolkata- 700019

Ph: (033) 22902178 / 22901065 / 7631465769

Email Id: rukmani.nag@icsi.edu; sumanta.dutta@icsi.edu

ICSI Vision
"To be a global leader in
promoting good
corporate governance"

ICSI Motto
सत्यं वद। धर्मं चर। *Speak the truth; abide by the law*

ICSI Mission
"To develop high calibre
professionals facilitating
good corporate governance"



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

EASTERN
INDIA
REGIONAL
COUNCIL

15 DAYS ACADEMIC TRAINING PROGRAMME(ONLINE)

Eastern India Regional Council of The Institute of Company Secretaries of India (ICSI-EIRC), is organizing "15 Days Academic Training programme through videoconferencing mode from 25th June, 2021 to 13th July, 2021.

As per the Institute's guidelines, 15 Days Academic Training Program is to be completed within 3 months of passing Executive programme or within 2 months of commencement of their 15 months/1 year/2 years training, whichever is earlier, if any student is already undergoing training on the date of passing the Executive program, in such case 2 months criteria is not applicable to him/her.

| Training | 2 Days Induction | 3 Days e-Governance | 5 Days Skill Development | 5 Days Entrepreneurship Development |
|----------|---|---|---|--|
| Dates | 25 th to 26 th June, 2021 | 28 th to 30 th June, 2021 | 2 nd to 7 th July, 2021 | 8 th to 13 th July, 2021 |
| Fee | Rs. 1500/- | Rs. 3000/- | Rs. 4000/- | Rs. 4000/- |

TIMING: 10:00AM to 05:30PM

IMPORTANT INSTRUCTIONS:

- Eligible students who are desirous of undergoing Academic Training Programme need to apply through stimulate portal (<http://stimulate.icsi.edu/>) and submit requisite fee through online payment
- Programme link and schedule will only be provided to the registered students
- On every day of each programme there will be two sessions and participants have to present in all the sessions to get the completion certificate
- Participants must join in formal dress

Register online now on:

<http://stimulate.icsi.edu>

For further details and registration, please contact:
Students Services, EIRO of ICSI, Phone: 033-2290 1065 / 2290 2178.
E-mail at: rukmani.nag@icsi.edu

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SOUTHERN
INDIA
REGIONAL
COUNCIL

Announces



**Online Classes (1st Batch) for CS Executive Programme
December 2021 Examination. Students who have registered
for Executive Programme may join the Online Classes.**



**Batch starts from Wednesday, 23rd June, 2021 for Both Module
(Classes may end by 2nd Week of November, 2021)**

Experienced Faculties



**Online Classes
for
CS Executive Programme
for
December 2021 Examination**

Fees: Rs. 7,000/- (Per Module)

Module - II Timing:

7.30 AM to 9.30 AM

Module - I Timing:

6.00 PM to 8.00 PM

Mode of Payment (Online Transfer)

HDFC Bank: Poonamallee High Road Branch; Account Name: SIRC of the ICSI
SB Account No: 04921110000013 ; IFSC Code: HDFC0000492

Fees will not be refunded once classes commenced.

**Students attending Online Classes conducted by SIRC are exempted from pre examination test.
Students have to pass the online test to be conducted by SIRC.**

Registered students will be provided the log in ID & Password for online classes separately by email.
Students are required to enter the details in the link after making the payments.

Google Form Link: <https://forms.gle/prEsZEjTRpnujwuz6>

For further details contact :

Mr. C. Murugan, Executive (Admin), Southern India Regional Office, The Institute of Company Secretaries of India
ICSI-SIRC House, No.9, Wheat Crofts Road, Nungambakkam, Chennai-600034.

044-28268685/28222212 / siro@icsi.edu; chelliah.murugan@icsi.edu; Mobile: 9443796311

Vision
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Motto
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Mission
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Motto

सत्यं वद | धर्मं चर।

इष्टार्थे त्थे त्थार्थे. ब्रह्मैव तेन तेन त्थे।

Vision

"To be a global leader in promoting good corporate governance"

Mission

"To develop high calibre professionals facilitating good corporate governance"



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(Under the jurisdiction of Ministry of Corporate Affairs)

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