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Section 179(3) vs Section 186(5) of the Companies Act, 2013 Whether board can delegate power to committee for sanctioning investment in body corporate?

DELEGATION OF POWER BY BOARD UNDER COMPANIES ACT 2013:

The delegation of power under Companies Act, 2013 ["the Act"] is a crucial aspect of corporate governance. Delegation of power refers to the process of assigning and transferring the powers of the board of directors to one or more directors or committees within the company. This process is governed by section 179(3) of the Act. First proviso to section 179 (3) allows the board to delegate its powers with respect to borrowing of funds, making investments & granting loans or giving guaranty or securities, to any of its committees or manager etc.

However, this power of delegation of authority by board is not an ultimate power. Section 186(5) of the Act provides sanctioning giving of loans, guaranties, securities or making investments. It further states that resolution sanctioning loans, investment, guarantee or security will have to be passed at a meeting of board with consent of all directors present at the meeting.

Prima facie reading of sections 179(3) and section 186(5) brings out a view that these sections are contradictory to each other. In this article, we shall try to deliberate on the question that, whether these two provisions are contradictory to each other.

UNDERSTANDING THE PROVISION SPECIFIED IN SECTION 179(3) AND SECTION 186(5):

Analysis of Section 179(3) of the Act

Section 179 (3) of the Act provides an exhaustive list of powers that can be exercised by the Board of Directors of a company on behalf of the company by means of resolutions passed at meetings of the Board, namely:

(a) to make calls on shareholders in respect of money unpaid on their shares;

(b) to authorize buy-back of securities under section 68;

(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board's report;

(h) to diversify the business of the company;

(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed

The Board may delegate the powers specified in clauses (d) to (f), to any *committee of Directors*, the *managing director*, the *manager* or any other *principal officer* of the company or in the case of a branch office of the company, the *principal officer of the branch office*, on such conditions as it may specify. However, the ultimate responsibility for the exercise of such powers remains with the Board.

Analysis of Section 186 (5) of the Act

Section 186(5) of the Act deals specifically with the investment, loan, guarantee and security made or given by a company to anybody corporate or person. Section 186(5) of the Act states as follows,

"*No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the Directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained*"

The above provision requires unanimous consent ("nemine dissentiente" means "without dissent") of board at the meeting of board of directors.

Comparative analysis of the provisions under section 179(3) of the Act and section 186(5) of the Act

Prima facie it appears that, Proviso to Section 179(3) of the Act lays down powers of board that can be delegated to the committee of directors or, the managing director, the manager or any other principal officer or branch officer of the company in case of borrowing of funds, granting of loans and making investment but section 186(5) of the Act restricts the power given under 179(3) of the Act by making requirement with respect to unanimous consent in the board meeting for sanction of granting of loans, giving guarantee, giving security and making investment.

These fallacies highlight the importance of understanding the nuances of the two sections when delegating powers within a company. The nature and extent of the powers delegated under these sections, therefore, needs to be carefully considered and tailored to the specific requirements and circumstances of the company. Hence it is necessary to give effect to both the provisions of the Act.

Combine Interpretation of both the Sections by application of literal rule of Interpretation

Meaning of literal rule;

Literal rule is the most basic rule of interpretation and is also called as golden rule of interpretation. This rule says that, provisions of the statute must be interpreted in their plain grammatical meaning and if such interpretation results in to any absurdity or anomaly, only then other principles of interpretation have to be applied.

Hon'ble Supreme Court in the matter of Lloyd Insulations (India) Ltd. v/s Cement corporation of India ltd [2001] 105 Comp Cas 729, stated that "the primary and golden rule of interpretation is the literal construction. No doubt the object of interpretation is to discover the intention of Parliament, but the intention of Parliament must be deduced from the language used. Where the language is plain and admits of but one meaning, that meaning is to be given to the language in the statute. It is only when words are susceptible of more than one meaning, that other rules of interpretation come into play."

Application of literal rule to sections 179(3) & 186(5);

As discussed above, as per literal rule, the words of statute should be given their literal meaning. If we apply this rule to provisions of sections 179(3) & 186(5), we observe that, section 179(3) uses the word '**granting** of loan' whereas, section 186(5) uses the word 'resolution **sanctioning it'.**

As per the Black Law dictionary, word 'grant' means, *"To give or confer (something, with or without compensation*" whereas, as per Law Lexicon dictionary 'Sanction' means, *"In express authorization, permission or recognition*". The difference between the meaning of these two words is that, grant is the act of granting; bestowing or conferring; or giving permission while sanction is an approval, by an authority, generally one that makes something valid.

Now if we read the two sections by assigning these meanings to the words 'grant and sanction', it can be understood that, section 186(5) requires the board to give permission for granting loan or making investment in a board meeting only. Whereas, proviso to section 179(3) allows the board to delegate the power with respect to actual giving of loan or making investment which is already permitted by the board in a board meeting.

As a result, we observe that, the sections only appear to be contradictory but in reality, they are complimentary to each other. Section 186(5) talks about obtaining permission from board of directors for giving loans or making investments or give guarantee or security whereas section 179(3) allows delegation of power to give loans or make investments. Therefore, there is no difficulty in giving effect to both the sections at the same time.

How can companies ensure compliance with these provisions?

It is imperative to understand that despite the fact that under section 179(3), the board can delegate the power of giving of loans, and making investment in any body corporate under this section to a committee of directors or, the managing director, the manager or any other principal officer or branch officer of the company by way of passing of resolution. But Section 186(5) requires unanimous consent for sanctioning loan, making investment, giving guarantee or security.

Hence it can be seen that board of directors can delegate power with unanimous consent by mentioning specific limits for each transaction relating to loan, investment, guarantee and security.

The demonstration/examples of the manner in which delegation of powers for loan, investment, guarantee and security can be done by board of directors is as follows:

Sr. No.	Particulars	Maximum Amount
1.	Loans/Investments/Guarantee/security subsidiaries and associate companies	Rs. 40,00,000/-
2.	Contribution to LLP	Rs 10,00,000/-
2.	Investment in Fixed Deposit with Bank	Rs. 10,00,000/-
3.	Investment in Commercial papers	Rs 10,00,000/-
4.	Investment in Mutual fund schemes	Rs 10,00,000/-

The above table can be made part of board resolution while taking approval under section 186(5) and section 179(3) of the Act. This would give effect to provisions of Section 179(3) and Section 186(5) of the Act by delegating specific powers with unanimous consent. In summary, it can be understood that the board can delegate the power to committee or other director for making investments in any body corporate but the powers shall be subject to compliance of provision of section 186 (5).

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https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023221/section-1793-vs-section-1865-of-companies-act-2013-whether-board-can-delegate-power-to-committee-for-sanctioning-investment-in-body-corporate-experts-opinion

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LLP Amnesty scheme 2023 becomes effective!!!

Introduction:

Ministry of Corporate Affairs (MCA) vide its Circular dt: August 23, 2023, introduced LLP Amnesty Scheme which would benefit more than 2.5 Lakhs LLP registered in India. We shall walk through the brief aspect of the same in this article.

Background:

The Limited Liability Partnership Act, 2008 of India, which came into force on April 1, 2008, is the law that governs the registration of limited liability partnerships in India. Entrepreneurs who intend to run business in a partnership form but want to have limited liability, then the concept of LLP comes to their rescue. Due to this, more than 2.5 lakh LLPs have got registered on MCA in the last 15 years.

However, with the protection of limited liability, comes the responsibility on LLPs for filing various disclosures on a timely basis with MCA. Section 69 of the LLP Act, 2008 refers to payment of additional fees on the document or return filed after the prescribed period. Such document or return could be filed on payment of **additional fee which is one hundred rupees per day**. These additional fees of Rs. 100 per day on each form was felt as a burden on LLPs right from inception. Hence there were persistent efforts and representations made to MCA to reduce the additional filing fees, in case of delayed filing and provide amnesty schemes for filing the already delayed documents.

Previous Amnesty Schemes:

To encourage LLP formations in the country and reduce the burden of small entrepreneurs carrying business in LLP format, the Ministry of Corporate Affairs initiated LLP Settlement Scheme, 2020 which was effective from March 16, 2020, up to June 13, 2020. This allowed LLPs to voluntarily file certain pending documents which were due for filing till October 31, 2019. in the past. This was the Covid period and hence the Scheme was modified to cover the filing period from April 01, 2020, up to December 31, 2020, and it was extended for all the forms which LLPs were required to file and which were due for filing till November 30, 2020.

Thereafter MCA migrated from V2 version to V3 version which brought about lot of difficulties in filing of LLP forms. Due to this, a relaxation was given last year for filing of Annual Returns whose due date was May 30, 2022, and they could be filed without additional fees till June 30, 2022.

Change in Additional filing fees structure for LLPs:

The Ministry of Corporate Affairs has undertaken a significant update by revising the Limited Liability Partnership Rules of 2009, through the Limited Liability Partnership (Amendment) Rules of 2022 which is effective from April 01, 2022. The primary aim behind these amendments is to enhance the overall working dynamics and foster an improved landscape for ease of doing business. One of the key changes done through this amendment was substantial reduction in additional filing fees which were Rs. 100 per day per form (before this amendment).
As per LLP (Amendment) Rules, 2022, MCA has bifurcated LLPs into **Small LLPs and Other than small LLPs** and revised the additional fees which will be applicable for delay in filing the forms. The table below depicts the same: -

Sr No.	Period of delays	Small LLPs	Other than small LLPs
a.	Upto 15 days	One Time	One time
b.	More than 15 days and upto 30 days	2 times of normal filing fees	4 times of normal filing fees
c.	More than 30 days and upto 60 days	4 times of normal filing fees	8 times of normal filing fees
d.	More than 60 days and upto 90 days	6 times of normal filing fees	12 times of normal filing fees
e.	More than 90 days and upto 180 days	10 times of normal filing fees	20 times of normal filing fees
f.	More than 180 days and upto 360 days	15 times of normal filing fees	30 times of normal filing fees
g.	Beyond 360 days	25 times of normal filing fees for forms other than Form 8 and Form 11. For Form 8 and Form 11 – 15 times normal filing fees plus Rs. 10 per day for every day delay beyond 360 days	50 times of normal filing fees for forms other than Form 8 and Form 11. For Form 8 and Form 11 – 30 times normal filing fees plus Rs. 20 per day for every day delay beyond 360 days.

LLP Amnesty Scheme 2023:

On March 08, 2022, all LLP forms migrated from V2 to V3 portal. However, due to technical difficulties and glitches, some LLPs were not able to file various forms on V3 Portal within the said timeline mentioned in the Act. Since then, there have been various representations for again introducing the LLP Amnesty Scheme, so that the forms which could not be filed due to MCA V3 portal could be filed without additional filing fees. Ministry of Corporate Affairs has announced complete relaxation of additional fees for belated filings related to Form 3 & 4 from January 01, 2021 onwards and Annual Return (Form 11) for FY 21-22 and FY 22-23.

Features of the LLP Amnesty Scheme, 2023 are as follows: -

1. Form 3 (**Filing information regarding initial LLP agreement/ For information regarding changes in LLP Agreement**) & Form 4 (**Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and Consent to become Designated Partner/ Partner**)
    a. Filing of Form 3 and Form 4 without additional fees shall be applicable for the event dates January 01, 2021, and onwards.
    b. For events dated prior to January 01, 2021, filing fees will be 4 times for LLP (Other than small LLP) and 2 times for Small LLP. *[A point to be noted here is that although before April 01, 2022, the additional filing fees were Rs. 100/- per day per form, but as per this Scheme, for Form 3 and Form 4 relating to any previous period can now be filed with only 4 times or 2 times additional filing fees]*

2. Form 3 & Form 4 will be processed in straight through processed mode on permanent basis except if Change in Business activity option is selected in the form.

3. Form 3 LLP can be filed with same event date again during this relaxation period. However, after the expiry of relaxation period, this facility shall not be available to the stakeholders.

4. Form 11 (**Annual return of LLP**)
   a. Filing of Form 11 without additional fees shall be applicable for the event date on or after March 31, 2022 (i.e., for FY 21-22)
   b. For events dated prior to March 31, 2022 (i.e., for FY 20-21 and previous years), filing fees will be 4 times for LLP (Other than small LLP) and 2 times for Small LLP. *[Here also, a point to be noted here is that although Form 11 for FY 20-21 and previous years, before April 01, 2022, the additional filing fees were Rs. 100/- per day per form, but as per this Scheme, form 11 for FY 20-21 and any previous year can now be filed with only 4 times or 2 times additional filing fees]*

      [It may be noted that Form 11 and Form 8 are two forms which are to be filed annually by any LLP. In this scheme, although relaxation is provided for Form 11, but no relaxation has been provided for delayed filing of Form 8, which is for filing of annual financial statements]

Period of LLP Amnesty Scheme 2023

1. Forms will be available for filing from September 01, 2023 onwards till November 30, 2023.
2. The LLPs who will avail this scheme shall not be liable for any action for delayed filing.

Conclusion

Furthermore, this scheme offers a respite to LLPs that opt to utilize its benefits, shielding them from any potential repercussions stemming from delayed filings. This assurance of protection is poised to instill a renewed sense of confidence among all entrepreneurs.

Likewise, the forms to be filed by companies on MCA have also been migrated to the newly introduced V3 portal of the Ministry of Corporate Affairs for companies. Similar to LLPs, various companies have also encountered analogous challenges with ROC filings persisting for the past year. The proactive steps taken by the MCA through this initiative not only address the concerns of LLPs but also kindle optimism within the corporate sector, raising expectations for a similar amnesty scheme to be extended to companies as well.

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Indirect Acquisition of Listed Entity - Whether automatic exemption under Regulation 10 of SAST Regulations can be availed or open offer required?

I. Introduction

1. Post globalization, the corporate sector saw tremendous expansion. One of the effective weapons available in the armory of corporates for undertaking such massive expansion, is takeover or acquisition of one business by another.
2. Soon after the corporates started extensive use of takeovers for expansion, the regulators realized the need to govern and regulate this process of takeovers and acquisitions, specially in listed entities where interest of public shareholders is involved. That is why, in the year 1997, Securities and Exchange Board of India ('SEBI') introduced SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997.
3. Further SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 were repealed in accordance with changing industry practices and replaced with Securities Exchange and Board of India (Substantial Acquisition of Shares and Takeover) Regulations 2011 ('SAST Regulations')

II. Concept of Indirect Acquisition

Conceptually, indirect acquisition refers to acquiring control (linked to shares or otherwise) of target company by acquiring control (linked to shares or otherwise) of any other entity which has control (linked to shares or otherwise) over the target company. As per Regulation 5(1) of SAST Regulations indirect acquisition means, "*acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.*"

III. Analysis of Regulation 5(1) of SAST Regulations

As per Regulation 5(1), indirect acquisition does not involve acquisition of shares or voting rights of target company directly. Instead, it involves acquisition of shares or voting rights of a company or any other entity, which gives the acquirer and/or the person acting in concert alongwith acquirer, such percentage of holding of shares or voting rights, which if the acquirer would have acquired directly in target company, it would have triggered open offer. Therefore, for any acquisition to be considered as indirect acquisition, it should comply with two conditions:

- Acquisition of shares or voting rights or control should be made of such company or other entity who in turn holds shares or voting rights or control over target company. AND
- The acquisition should be of such percentage of shares or voting rights or control, which if the acquirer would have acquired in target company, then such acquisition would have triggered open offer.

In the context of indirect acquisition various market participants have sought guidance on whether open offer exemptions under Regulation 10 of SAST Regulations would be available for indirect acquisition of shares of target company? In this write up we would be analyzing two informal guidance given by SEBI relating to this subject.

IV. Analysis of Informal Guidance given by SEBI

1. SEBI's informal guidance to Navkar Builders Limited dated 6th March 2018

(a) **Facts of the case:** Navkar builders ['Target Company'] had three promoter shareholders, viz.

(i) Dakshesh Shah holding 6.65%,

(ii) Samir Patel holding 4.46% and

(iii) Navkar Fiscal Services Pvt. Ltd. ("NFSPL") holding 28.82%.

The promoters of Target Company had proposed two transactions of inter-se transfer of shares:

i. First transaction: Samir Patel to sell his entire 7,78,867 shares amounting to 4.46% of Target Company to NFSPL

ii. Second transaction: Samir Patel was to sell his 7,65,020 shares amounting to 49.95% in NFSPL to Dakshesh Shah & Shital Dakshesh Shah, his wife. Samir Patel and Dakshesh Shah are the only shareholders of NFSPL.

(b) **Question:** The company wanted to know whether both these transactions are exempt from requirement of giving open offer?

(c) **Informal Guidance by SEBI:**

i. **First Transaction exempted from open offer:** This transfer of 7,78,867 shares (i.e., 4.46% shares) and consequent transfer of control between two promoter group entities of Target Company is exempted from open offer obligations pursuant to Regulation 10 (1)(a)(ii) of SAST Regulations, subject to compliance mentioned in Regulation 10 of SAST Regulations.

ii. **Second Transaction would trigger open offer:** In this regard SEBI stated that currently Dakshesh Shah, Samir Patel and NFSPL are promoters of Target Company. The two promoters of NFSPL (viz. Dakshesh Shah and Samir Patel) are in joint control of NFSPL. SEBI further highlighted that on execution of second transaction, Dakshesh Shah (along with his wife with miniscule holding of 0.50% in NFSPL) will have the entire shareholding/control in NFSPL. This would result in the indirect acquisition of shares/voting rights of Target Company by Dakshesh Shah through NFSPL.

SEBI further stated that Regulation 10(1)(a)(ii) of SAST Regulations provides exemption from open offer for acquisition pursuant to inter-se transfer of shares amongst qualifying persons, being named as promoters in shareholding pattern filed by the Target Company for not less than three years prior to the acquisition. This is an inter-se transfer amongst promoters of NFSPL. However, in the instant case, shareholding of Dakshesh Shah and Samir Patel in NFSPL are not disclosed to stock exchange. Their names are only disclosed as Promoters of Target Company. Hence SEBI concluded that such indirect acquisition of shares through inter-se transfer of shares of a promoter entity does not squarely fall under of Regulation 10(1)(a)(ii) of SAST Regulations.

2. **Informal guidance to Vidli Restaurants Limited**

a. **Facts of the case:** Vidli Restaurants Limited is a listed company on Bombay Stock Exchange ('Target Company'). As per the shareholding pattern, Target Company has three promoters viz,

(i) Dr. Vidhi V. Kamat holding 13.30%,
(ii) Kamats Worldwide Food Services Limited holding 34.96% &
(iii) VITS Hotels Worldwide Private Limited holding 19.02%.

Further, Kamats Worldwide Food Services Limited is the wholly owned subsidiary of VITS Hotels Worldwide Private Limited and shareholders of VITS Hotels Worldwide Private Limited are Dr. Vidhi V. Kamat and her husband Dr. Vikram V. Kamat.

Now it is proposed that Dr. Vidhi V Kamat shall transfer her entire shareholding i.e., 9,999 shares amounting to 99.99%in VITS Hotels Worldwide Private Limited to her husband Dr. Vikram V Kamat. Dr. Vidhi is promoter of Target Company and Dr. Vikram Kamat being the immediate relative of Vidhi, is the part of promoter group of Target Company.

b. **Question:** Target Company has sought Informal Guidance pertaining to whether the transaction is an indirect acquisition and whether it is exempt from open offer under Regulation 10 of SAST Regulations?

c. **Informal guidance by SEBI:** SEBI stated that on acquiring 9,999 shares of VITS Hotels Worldwide Pvt Ltd, Dr Vikram Kamat would be able to indirectly exercise 53.98% voting rights and control over Target Company through its promoter company (i.e., VITS Hotels Worldwide Private Limited and its wholly owned subsidiary) thereby triggering open offer requirement under Regulation 3 and Regulation 4 of SAST Regulations read with Regulation 5(1) of SAST Regulations.

SEBI explained that this is an acquisition inter-se among relatives. However, to avail the exemption from Open Offer under Regulation 10(1)(a)(i), i.e., inter-se transfer of shares among qualifying persons being immediate relatives, two criteria are relevant:-

(i) Inter-se transfer should be among immediate relatives – this criteria is getting fulfilled in this case as per definition of 'immediate relative' as per Regulation 2(1)(l) of SAST Regulations
AND
(ii) Inter-se transfer should be of 'shares'. The term 'shares' has been defined in Regulation 2(1)(v) of SAST Regulations as *"**'shares' means shares in the equity share capital of a target company** carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights;"* – In this case, the proposed transfer is not of shares of the target company, but the shares/ voting rights of the target company are indirectly acquired through the transfer of shares in the promoter entity of the target company.

Hence, SEBI clarified that although this is an inter-se acquisition among relatives, the automatic exemption under Regulation 10(1)(a) from requirement of giving open offer is not available in this case. SEBI further hinted that considering that the acquirer is presently part of the 'promoter group' of the target company, under Regulation

11(1) of SAST Regulations, SEBI is empowered to grant exemption from obligation to make an open offer if application is filed for seeking such exemption under Regulation 11 of SAST Regulations.

V. **Conclusion:**

As discussed above, in its informal guidance given to Vidli Restaurants Limited and Navkar Builders Ltd, SEBI has held that after acquiring shares of an entity that controls the Target Company would amount to gaining indirect control over the target company. Therefore, since there is change in control, there is a requirement of giving open offer.

This informal guidance from SEBI highlight some of the following learnings:

a. **Any change** in the shareholding of an entity that controls majority shareholding of a listed entity needs to be perused from the compliance of SAST Regulations. Any change here would mean change in shareholding due to gift, succession, transfer for consideration etc.

b. **Change of shareholding between immediate relatives in promoter entity:** Any change in majority shareholding in promoter non-individual entity between immediate relatives would trigger Open Offer under SAST Regulations (i.e., due to indirect acquisition) and automatic exemption under Regulation 10(1)(a) would also be not available if disclosure of the members of the promoter group company have not been done for a period of 3 years (which is actually not prescribed as such under Regulation 31 of SEBI LODR Regulations).

c. **Exemption under Regulation 10 of Takeover Regulations applicable only in case of acquisition of shares of the target company itself and not that of holding/promoter company of the target company:** The exemption from open offer is not applicable in case of indirect acquisition. As discussed in both the above-mentioned guidance notes issued by SEBI, the exemption from open offer is denied by SEBI for only reason that the acquisitions were not getting covered under the literal sense of Regulation 10(1)(a), as they were of indirect acquisition. Therefore, it is advisable for the persons undertaking inter-se transfer of shares to be mindful of the fact that share transfer undertaken by them in one entity (listed or unlisted) should not result in to indirect acquisition of shares / voting rights of listed target entity, as seen in both the informal guidance discussed above. If such transaction does result in to any indirect acquisition of shares / voting rights of target company, then the exemption from open offer shall not be available and the acquirer will have to give open offer.

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https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023222/indirect-acquisition-of-listed-entity-whether-automatic-exemption-under-regulation-10-of-sast-regulations-can-be-availed-or-open-offer-required-experts-opinion

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Review of framework for borrowings by Large Corporates Remove Disparity but Share the Responsibility

Introduction

Concerns have been raised about the ability of banks to finance increasing borrowing needs of the corporates, especially as the investment cycle has shown an upward tick. With a view to address concentration risk in banking system, RBI has come out with a policy framework on banks' large exposure. The framework involves mandating enhanced provisioning norms for banks' exposure to large borrowers. These enhanced provisioning norms have come into effect from the FY 2018-19 and shall be applicable on incremental lending made to borrowers with Aggregate Sanctioned Credit Limit (ASCL) of INR 25,000 crores in FY 2017-18. Further, the ASCL limit for application of the extant norms will be gradually reduced and it will be INR 10,000 crores beginning FY 2019-20. These measures are expected to result in corporates further accessing the bond market, but the impact of these measures is yet to be assessed.[i]

To address this concerns series of steps have been taken, over time, by Government of India in consultation with various regulatory bodies, to develop and deepen the bond market in India. On July 20, 2018, SEBI introduced Consultation Paper on Designing a Framework for Enhanced Market Borrowings by large Corporates ['Consultation Paper 2018']. This was seen as a step in the direction of the larger goal of not only reducing reliance on banks to finance corporates but also to develop a liquid and vibrant corporate bond market. Vide this Consultation Paper 2018 SEBI had proposed a compliance framework for raising of funds through debt market. It was made applicable to entities identified as 'Large Corporates' fulfilling certain conditions.

Now with an intent to review the compliance framework of raising funds through debt market by large corporates Securities and Exchange Board of India ('SEBI') has published a Consultation Paper dated 10th August 2023 titled Review of framework for borrowings by Large Corporates ['Consultation Paper 2023']. The current framework requires that large corporates raise a minimum of 25% of their incremental borrowings through the issuance of debt securities. This framework aims to encourage participation in the corporate bond market and provide alternative funding sources for large corporations.

Debt Borrowings: Proposed changes to bring parity and responsibility.

Funding of projects by corporates through borrowed money from banks/financial institutions is traditional and most frequently used means of funding. But it needs to be noted here that there are less checks and monitoring mechanisms for utilization of the funds raised through banks and financial institutions.

As compared to this if corporate funds are raised through debt market there are several monitoring and reporting mechanisms. Debt listed entities are mandated to give disclosures pertaining to various events and information having bearing on the performance of the company. Companies are required to disclose to the stock exchange various milestones of the repayments time to time as well statement of deviation if the money is utilized for the purpose other than it was actually raised for. So, raising funds through debt market would bring in more parity. SEBI vide its Consultation Paper 2023 has proposed certain changes in the compliance framework for raising funds by large corporates through debt market.

Increase in threshold for raising funds through debt market.

From the proposal of changes in the framework for borrowings by large corporates few changes have grabbed the attention. Currently, large corporates are identified as entities having outstanding long-term borrowings Rs. 100 crore or above. It has now been proposed to increase this threshold of outstanding long-term borrowings to Rs.500 crore and above which will be in alignment with the definition of "High Value Debt" listed entities as per Regulation 15 (1A) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. This will breather for the Companies having long term borrowings less than 500 crores to prepare themselves for complying with these provisions. Further this will also bring parity among thresholds for high value debt listed entities and entities identified as large corporates for raising funds through debt market.

Removal of criteria of credit rating

Currently, the framework is applicable for all listed entities having a credit rating of "AA and above", where credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in; and in case, where an issuer has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered for the purpose of applicability of LC framework[ii]. Consultation Paper 2023 has proposed that the requirement of rating as a criterion for identifying any entity as LC may be removed.

With these proposals it seems SEBI is trying to achieve uniformity in the applicability of the provisions of raising funds through debt market. Many entities which are having borrowings more than 500 crores would fall under the bracket of credit rating of "AA and above". There are chances there may be companies which are having outstanding long-term borrowings more than Rs 500 crore but may not have credit ratings of AA and above but with this proposal for removal of requirement of credit rating, such companies will also get covered in ambit of Large Corporates. This will remove the disparity between the corporates.

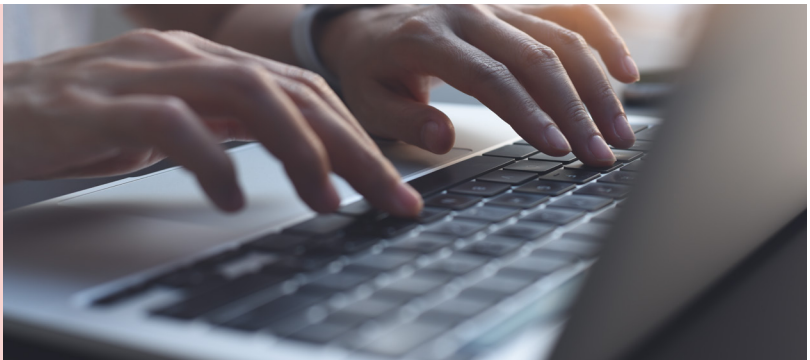
Incentivizing of compliance

Further, in order to encourage entities to raise funds through debt market and incentivize LCs who exceed the requirement of specified level of borrowings (25%), the following proposals are floated by SEBI:

a. **To reduce the annual listing fees payable to the Stock Exchanges by LCs as per the table given below:**

Table I: Computation of quantum of % of reduction in annual listing fees payable to the Stock Exchanges by LCs

Sr No	% of surplus borrowing in FY "T"	% of reduction in annual listing fees payable to the Stock Exchanges by the LC for FY "T" for the new debt securities issued and listed in FY "T"
1	0-15	2% of annual listing fees
2	16-30	4% of annual listing fees
3	31-50	6% of annual listing fees
4	51-75	8% of annual listing fees
5	Above 75	10% of annual listing fees



SEBI has proposed to incentivize the compliance of raising funds through debt market. So, if an entity has raised funds through debt market in addition to prescribed threshold, then it is proposed that certain incentives would be provided to those entities. For Example- If Company has borrowing of Rs.1000 Crore and needs to pay the listing fees of Rs.30,000/- every year and even if they are falling under bracket of surplus borrowing of Above 75 as tabled above, they will get mere concession of Rs.3,000/- in their annual listing fees. And which may not contribute 0.003% to the overall borrowing cost of the Corporate.

b. **Credit in the form of reduction in contribution to the Core Settlement Guarantee Fund (SGF) by the Large Corporate (LC)**.

Calculation is provided as follows:

Sr No	% of surplus borrowing in FY "T"	Quantum of credit
1	0-15	0.01%
2	16-30	0.02%
3	31-50	0.03%
4	51-75	0.04%
5	Above 75	0.05%

Settlement Guarantee Fund (SGF) means a fund maintained by the Exchange used for settlement of defaults of its members and may comprise of security deposit of Members or any sources of funds as may be determined by the Exchange from time to time.

We can again consider aforesaid example here as well, the cost of incentives to be provided to the large corporates will be very negligible against their borrowings and cost of borrowings.

Incentivizing corporates having borrowing of Rs 500 Crore or more needs to be in tandem with ability to raise funds. These corporates may be incentivized in the form of various subsidies like subsidies on indirect taxes, electricity subsidies, some concessions in direct tax, concessions in other regulatory payables etc. It is seen that only specific industries have industry specific subsidies. With these subsidies every industry raising borrowing might get some kind of support from regulators & the government, which will save on their costs and will help them to meet their repayment obligations. An increase in the capacity of repayment obligations would help reduce defaults in repayment of borrowed monies that would in turn bring fair governance among the corporates. When regulators' intention is to monitor the borrowings of these corporates to save the national and public interest then the burden of these corporates by way of subsidies may also be shared by all stakeholders as well. Then only the purpose of national interest will be served. Saving Public money is always a national priority. The intention of removing disparity between corporates is very genuine along with the same thought of sharing their burden shall also be considered.

Conclusion:

Regulators intention is to strengthen the governance of large corporates irrespective whether they are publicly listed companies or not. If they are raising money either in equity or debt form and if they are working on public monies, then rather than private bank monitoring public monitoring is always in the interest of the nation. However, the loads of such entities shall be borne equally by all stakeholders then only it will be proved to be in national interest. Putting interest on corporates alone will not be justified as the national priority. This monitoring will help to lessen the scams by corporates witnessed in the past in respect of repayment of debts. Hence it is felt that removal of disparity shall be supported by sharing of responsibility.

[i] https://www.sebi.gov.in/reports/reports/jul-2018/consultation-paper-for-designing-a-framework-for-enhanced-market-borrowings-by-large-corporates_39641.html

[ii] https://www.sebi.gov.in/legal/circulars/apr-2022/updated-operational-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-paper-modifications-in-cha-_58060.html

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Does Confidentiality help in absence of Intellectual Property Clause in an Agreement

INTRODUCTION -

There are various unspoken and subtle yet powerful pillars of a business enterprise that are the very foundation of its success. One such aspect is the confidentiality and secrecy of sensitive information that allows the entity to have its competitive edge in the industry.

Such sensitive information includes the recipe of a successful business venture such as its **formulae, client and supplier data, operating procedures, research and development projects, policies and practices**, etc., This information often gets revealed at multiple instances such as while discussing the plans with prospective investors or making it available to existing employees, contractors or consultants or during joint venture transactions. Revelation of such information carries enormous amounts of risks concerning the confidentiality and use of such information, the breach of which can have impactful consequences to the commercial value of the organization.

Hence, it becomes important to carve out in clear expressed terms, the data that needs to be constituted as confidential which may include **trade secrets and other intellectual property** of the entity, in order to **bind the parties involved** and **to protect the innovative and commercial essence** of the organization. This is where Non-Disclosure Agreements act as a protective shield for the organization, enforcing which allows the organization to mandate the parties **to maintain the secrecy of the information** shared and provides for consequences of its breach.

BREACH BY FORMER EMPLOYEES

We have come across various occasions where former employees have misused confidential information and trade secrets belonging to the employer after joining a competitor or starting a competing business.

In the case of ***Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber and Anr***.[i], the defendant i.e., the former employee used the client data of the plaintiff for persuading their clients into the newly formed company by the defendant. In this case, the Delhi High Court held that, trade secrets may not only include information concerning the manufacturing of the product but also a compilation of data such as customer data may be considered a copyrightable work by virtue of the fact that there was devotion of time, labour and skill in creating the said compilation.

When a matter is taken up for litigation, justice may be given to the protection of confidential information and intellectual properties. In ***Diljeet Titus v. Mr. Alfred A. Adebare & Ors***[ii]**,** the Delhi high court held that "The customer database is protected by copyright as an original literary work, assuming a modicum of skill and judgment is involved in compiling the database."

Therefore, such unspoken and undisclosed information, the secrecy of which is of vital importance is not governed specifically by the intellectual property laws of India. These trade secrets have no concrete legal framework designed for its protection in India. It merely relies on common law judgements and the doctrine of equitable justice.

TRADE SECRETS

The definition of the term, "**trade secrets**". In **Black's Laws Dictionary**, which was relied upon by the Calcutta High Court in ***Tata Motors Limited v. State of West Bengal*** [iii]states that "trade secret" is a "formula, process, device or other business information that is kept confidential to maintain ana advantage over competitors, information including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and; that is the subject of reasonable efforts, under the circumstances, to maintain its secrecy."

However, the **Trade Related Aspects of Intellectual Property Rights** (TRIPS Agreement), to which India is a signatory requires undisclosed information, trade secrets or know-how to benefit from protection. As per **Article 39(2) of the TRIPS Agreement**, the protection must apply to **information that is secret**, which **has commercial value** because it is secret and that has been subject to **reasonable steps to keep it secret**. This means that the information is not revealed or known to the public and has commercial value.

In the case of ***Gopal Paper Mills Ltd v. Surendra K Ganeshdas Malhotra***[iv]**,** the Calcutta High Court had upheld the clause in an employment contract, that restricted the employee preventing him from the misuse of confidential information and trade secrets acquired by him during the term of employment.

However, upon considering section 27 of Indian Contract Act, 1872 providing protection against agreements in restraint of trade and profession, employment agreements where clauses relating to competition and solicitation survive the term of employment need to be carefully drafted to maintain a balance between the protecting public interest and the commercial essence of the employer.

INTELLECTUAL PROPERTY CREATED IN EMPLOYMENT

Certain terms of employment in India are primarily governed by the Indian Contract Act, 1872. Thus, every reasonable restriction, may be imposed including non-compete, confidentiality and assignment of intellectual property. Any intellectual property created during the course of employment, in the absence of an assignment clause, as per section 6 of the Patents Act, 1970, the rights of such invention lie with the the true and first inventor. However, copyright laws may provide for provisions favouring the employer. It is important to lay to express terms under the relevant agreement to secure the ownership and secrecy of such property by the employer.

PROTECTION BY NON-DISLOSURE TERMS IN ABSENCE OF INTELLECTUAL PROPERTY

Concerns regarding protection of intellectual property and confidential information is not constricted only to employer-employee relationships. In ***Zee Telefilms Ltd. v. Sundial Communications (P) Ltd***.[v], the defendant had not accepted the plaintiff's concept of a television show, following which the plaintiff approached other broadcasting agencies. Meanwhile, the defendant started a show based on the same concept. The plaintiff claimed a breach of confidentiality and infringement of copyright. The court held that, since the concept was not reduced to any permanent form, it **does not fall within the scope of copyright law**. However, it **ruled** in favour of the plaintiff **on the grounds of breach of confidentiality**.

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENTS

Confidentiality is a subjective matter. Intellectual property and confidentiality are not the same concept but it can be said that all intellectual property is confidential whereas all confidential information may not be intellectual property. Therefore, incorporating terms of confidentiality for confining the secrecy of od intellectual property can be a convenient technique adopted by business entities.

However, maintaining standard and general terms with each contracting party receiving confidential information, without paying any regard to the purpose of the transaction or contract may result into vagueness and ambiguity and not be in the best interest of the disclosing party. Distinct understanding of each party such as the employees, business partners, joint venture partners, related parties, supplier, distributors, investors etc., allows one to comprehend the clause in a specific manner, consequently eliminating ambiguity and minimising the scope of disputes or differences.

At the stage of drafting, it is important that the clause conveys all such information which, when challenged, would be characterised as non-disclosure or confidential information. This can significantly avoid litigation and prevent unauthorised use and disclosures.

The nature of non-disclosure agreements may be unilateral, bi-lateral or multi-lateral, depending on the circumstances of each transaction.

CONCLUSION

Any ideas, customer or supplier data, patterns or systems of an entity that does not meet all the essential criteria of being protected as a licensed innovation under the intellectual property laws of India, **can be safeguarded by incorporating them as trade secrets in Non-Disclosure or Confidentiality Agreements**.

References: -

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[i] Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber and Anr.; 1995 PTC (15) 278

[ii] Diljeet Titus v. Mr. Alfred A. Adebare., 2006 (32) PTC 609 (Del)

[iii] Tata Motors Limited v State of West Bengal by Calcutta High Court on September 28, 2011

[iv] Gopal Paper Mills Ltd v. Surendra K Ganeshdas Malhotra.; AIR 1962 Cal 61

[v] Zee Telefilms Ltd. v. Sundial Communications (P) Ltd.; 2003 (27) PTC 457 (Bom) (DB)

[vi] Indian Contract Act, 1872
[vii] Patents Act, 1970
[viii] Black's Law Dictionary
[ix] TRIPS Agreement

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Acting on unstamped or insufficiently stamped Agreements – Beware of the law

Introduction -

While commercial negotiations in a contract are deliberated for days, months and in some cases years, stamp duty aspect are invariably the last thing the Parties think upon. And though the stamp duty aspect is seen as a cost, very few realise that in the event of dispute between the Parties this very aspect impose hindrances to the aggrieved party to seek relief in the court of law.

In this Article, we have look into the provisions of Indian Stamp Act, 1899, the Maharashtra Stamp Act, 1958 in case of non-stamped / inadequately stamped instruments and judicial precedents in this regard.

Few are the points that are often considered while payment of stamp duty -

1. Consideration and Place of execution –

Though Stamp duty is paid on instruments but computation of the amount of stamp duty is paid on the consideration involved in the transaction. Only 5 states in India viz. Rajasthan, Gujarat, Maharashtra, Karnataka and Kerala have their own stamp act. Other states have adopted Indian Stamp Acts with respective amendment to the Schedule of amount of stamp duty.

Neither the Indian Stamp Act, 1899, any other state stamp laws or even the Indian Contract Act, 1872 provide for place of execution of an agreement or a contract. People intending to economise on stamp duty take advantage of this provision and tend to execute their commercial agreements in states where the stamp duty is lowest except in respect of agreements which require registration under the Registration Act, 1908.

As regards the consideration, most of the agreements or contracts executed in Maharashtra having consideration attract stamp duty under the following Article of Schedule I to the Maharashtra Stamp Act, 1958 –

Art. 5 – AGREEMENT OR ITS RECORDS OR MEMORANDUM OF AN AGREEMENT –

(h) (A) If relating to, -	
(iv) creation of any obligation, right or interest and having monetary value, but not covered under any other article, —	
(a) if the amount agreed does not exceed rupees ten lakhs;	0.1 per cent of the amount agreed in the contract subject to minimum of rupees 100
(b) in any other case	0.2 per cent of the amount agreed in the contract.

The above article is also commonly known as residuary provision which is not found in Indian Stamp Act, 1899 or any other state stamp laws.

In the event of any dispute between the Parties to the Contract, that snowballs into an arbitration or civil litigation, the payment of stamp duty on the said agreement is the first and foremost thing that is considered by the Hon'ble Judge or the Arbitral Tribunal, as the case may be, more so in

the wake of the recent Hon'ble Supreme Court judgement in *N N Global Mercantile*[4] matter. Similarly, payment of stamp duty on loan agreements and deed of guarantees also come under

the purview of this residuary provision since these agreements create an obligation on the borrower or the guarantor, as the case may be, to repay the loan amount.

2. **Types of Agreements or contracts that we enter into but do not comprehend it as an agreement**:

Firstly, it is important to understand that stamp duty is payable on instruments. Such an instrument can be an agreement, a contract, purchase order or even a General Terms and Conditions (GTC) and Special Terms and Conditions (STC) of a commercial transaction. These GTC and STC when executed by the parties to it make an agreement. In *Kothuri Venkata Subba Rao Vs. District Registrar of Assurances*, 1985 (3) APLJ 50, it was observed by the Hon'ble High Court that the actual nature and character of the transaction that the Parties kept in mind at the time of entering into the agreement is important to determine the amount of stamp duty payable and not the jargons used in the agreement.

However, to make such instruments enforceable in the court of law, they need to be duly stamped in accordance with the place of execution. The amount of stamp duty will vary depending upon the nature of the contract and whether such agreements or contracts involve monetary consideration or not. For instance, non-disclosure agreements do not have any consideration clause and thus can be executed on a nominal stamp duty as applicable in the state where such non-disclosure agreements are executed.

According to the Indian Contract Act, 1872 an agreement can be enforceable if it fulfils all the essential conditions like offer, acceptance, lawful object, consideration, competent parties, and free consent.

Similarly, some commercial transactions are acted upon a purchase order which have all the essentials of Indian Contract Act, 1872 as mentioned above. Such purchase orders are generally not stamped but to make it enforceable in the court of law it is advisable to be stamped. In such cases, one view is to have a Master Agreement for the commercial transaction which can be stamped at a minimal stamp duty and then issue the purchase orders with reference to this Master Agreement.

Another example in this case can be General Terms and Conditions [GTC] and Special Terms and Conditions [STC] of a domestic commercial transaction that contain all the essentials of Indian Contract Act, 1872. Such GTC and STC when executed becomes a binding contract and needs to be duly stamped to make it enforceable in the court of law.

3. Unstamped or Insufficiently Stamped Agreements:

We need to understand here that the Stamp duty Statues do not use the term 'unstamped' or 'insufficiently stamped' instruments. They only use words 'duly stamped' or 'not duly stamped' which means that the stamp duty on the instruments need to be paid in accordance with the respective state stamp law or as per the Indian Stamp Act, 1899 depending upon the place of execution.

Section 2(11) of the Indian Stamp Act, 1899 defines 'duly stamped' as that an instrument has to bear an adhesive or impressed stamp of not less than the proper amount and such stamp has been affixed or used in accordance with the law for the time being in force in India.

Any unstamped or insufficiently stamped agreement is not enforceable in the court of law i.e., it is not accepted as evidence in the court of law. Such Agreements or contracts then need to be first impounded to make it admissible in the court of law. Section 33(1) of the Indian Stamp Act, 1899 casts a duty on every authority except an officer of police to impound the document if the document appears to him as not duly stamped. The authority here would include courts as well. The word 'impound' is not defined in the Indian Stamp Act, 1899 or the Maharashtra Stamp Act, 1958. The Oxford dictionary defines 'impound' means to take legal or formal possession of.

Where a party to any legal proceeding submits with the court or any other judicial officer or quasi-judicial officer or public officer an agreement as evidence, such court or any other judicial officer or quasi-judicial officer or public officer is duty bound to send the agreement to the Collector of Stamps for adjudication of the agreement irrespective of whether any party raises any objection as to stamp duty or not.

4. No dispute resolution:

Similarly, in commercial transactions alternate dispute resolution is one of the major clauses that party look upon to resolve their contractual disputes without resorting to judiciary. One example of this can be the Arbitration Clause in a contract. These arbitration clauses are considered as a separate agreement within an agreement or contract. Recently, the 5-member Constitution Bench of the Hon'ble Supreme Court in *N.N. Global Mercantile*[4] held that in an arbitration clause in an unstamped agreement cannot be enforced on the basis of such unstamped and inadequately stamped agreement. A valid arbitration agreement should satisfy the requirements of Arbitration and Conciliation Act, 1996 and Stamp Act.

However, very recently, the Hon'ble Delhi High Court has provided a breather in such type of cases. In ARG Outlier Media Pvt Ltd vs. HT Media Ltd[5], the Delhi High Court ruled that once an agreement is admitted in evidence by the Arbitrator, who has passed an award by relying on the said Agreement, the award cannot be set aside on the ground that the Agreement was insufficiently/improperly stamped. It further held that it can only impound the document and refer it to the Collector of Stamps for payment for stamp duty and penalty, though this shall not in any manner effect the enforcement or validity of the Arbitral Tribunal. This means that any question as to the payment of inadequate or insufficient stamp duty shall be raised only prior to admission of the Agreement as evidence in the proceeding and not when the decision of the judiciary or the statutory authority is passed basis such agreement.

Conclusion:

Thus, in wake of the above, acting on any unstamped or inadequately stamped agreement has only increased the business risks for the corporates, business community and the public at large.

The Parties to the contract need to understand that to have an enforceable agreement payment of adequate stamp duty should not be considered as cost to the transaction but to avoid any technical hindrance at the time of producing the same as evidence in the court of law.

Reference –

1. The Indian Stamp Act, 1899

2. The Maharashtra Stamp Act, 1958

3. The Indian Contract Act, 1872

4. M/s N.N. Global Mercantile Private Limited vs M/s Indo Unique Flame Ltd. & Ors., 2023 SCC OnLine SC 495

5. ARG Outlier Media Private Limited vs HT Media Limited 2023 LiveLaw (Del) 638

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ESG: From Challenges to Opportunities – A journey or roadmap towards ESG transformation!

Introduction

Environmental, Social, and Governance (ESG) principles have gained significant traction in the corporate world, representing a fundamental shift towards more sustainable and socially responsible business practices. ESG factors evaluate a company's impact on the environment, its commitment to social responsibility, and its governance practices. While ESG offers numerous benefits, it is not without its challenges. For many companies this is going to be difficult journey towards ESG compliance. While some companies view it as an additional burden, there is a growing recognition that ESG compliance is essential for long-term sustainability and to secure fruitful results.

Companies across various industries often find themselves grappling with the complexities of ESG compliance. Meeting the standards necessitates significant financial investments, resource allocation, and a shift in traditional business practices. This transition can create a temporary strain, causing companies to perceive ESG compliance as a pain point. However, it is important to recognize that embracing ESG compliance isn't just about ticking boxes; it's a transformative process that, when approached strategically, can yield substantial long-term benefits for businesses.

ESG has transcended from being a niche concept to a mainstream business imperative, with investors, customers, and regulators alike demanding greater transparency and accountability from corporations. While the intent behind ESG is undoubtedly noble, the pain to compliance presents numerous challenges for corporates such as:

- **Lack of Standardization**: One of the major hurdles in the ESG landscape is the lack of standardization in reporting and assessment methodologies. Different organizations and rating agencies often use varied criteria, making it difficult for investors and stakeholders to compare and measure ESG performance accurately.

- **Data Quality and Availability**: Accurate ESG compliance requires comprehensive and reliable data. Many companies struggle with collective reliable and relevant data especially when their operations are spread across various locations. Collecting, verifying, and reporting ESG metrics can be resource-intensive, particularly for smaller businesses without the necessary infrastructure.

- **Transparency in reporting**: Transparency is a vital aspect of ESG compliance, but sometimes it is challenging for corporates to communicate their ESG efforts effectively. Companies need to establish clear reporting frameworks and disclose relevant information to stakeholders in a transparent and accessible manner. This includes providing accurate and reliable data, utilizing standardized reporting frameworks, and engaging with stakeholders to address their concerns.

- **Implementation of sustainable practices:** Adopting sustainable practices can be challenging for corporates, especially when transitioning from traditional models. This may require significant changes in operations, supply chains, and product/service offerings.

- **Greenwashing and Misleading Claims**: The rising popularity of ESG has led to concerns about "greenwashing" – the practice of exaggerating or falsely advertising a company's commitment to sustainability. This can erode trust in ESG initiatives and make it difficult for stakeholders to identify genuinely responsible companies.

- **Complexity**: Implementing ESG strategies can be overwhelming for businesses, particularly those new to the concept. The multifaceted nature of ESG requires a deep understanding of various issues, and smaller companies might find it challenging to allocate resources to address them effectively.

- **Value Chain:** ESG compliance by the value chain partners is crucial for the overall ESG strategy of the Company. Aligning entire value chain to the ESG Goal of one Company can be challenging and time-consuming process.

The lack of standardization, data collection and verification hurdles, materiality assessment complexities, balancing short-term and long-term objectives, managing third-party risks, and avoiding greenwashing creates a high possibility for ESG non – compliance. Failure to adhere to ESG compliance standards can lead to severe consequences, including a reduction in foreign funding. Global investors, financiers, and institutions are increasingly prioritizing investments that align with ESG criteria. They recognize that companies that neglect ESG principles pose financial, reputational, and operational risks. By integrating sustainable practices, businesses can proactively address environmental and social challenges.

Further, ESG compliance fosters positive relationships with stakeholders, including employees, customers, communities, and regulators. Companies that prioritize environmental stewardship, social responsibility, and ethical governance practices are more likely to attract and retain top talent, build customer loyalty, and maintain strong community support.

Non-compliance can result in limited access to capital, reduced market value, and decreased opportunities for international partnerships. Several examples highlight the potential impact of non-compliance:

- **The exclusion from ESG-focused investment portfolios:** Investment firms and funds that specialize in ESG-conscious investments may exclude companies that fail to meet their criteria. This exclusion limits access to potential investors and funding.

- **Reputation damage and consumer backlash:** Non-compliance with ESG standards can result in negative publicity and damage a company's reputation. Consumers are increasingly conscious of environmental and social issues and may boycott companies that do not align with their values.

- **Regulatory hurdles and legal consequences:** Governments worldwide are implementing stricter regulations regarding ESG compliance. Failure to comply can lead

to fines, litigation, and regulatory scrutiny, causing further financial strain and reputational damage.

- **Competitive disadvantage:** ESG non-compliance can prove crucial in highly competitive market. Globally ESG is becoming important criteria in vendor selection process.

The regulator has come out with different frameworks for overall ESG compliances. From BRSR Core Assurance to Value Chain and from ESG mutual fund to ESG rating, companies will need to deeply understand its impact and start their ESG journey early. Companies may make mistake in considering ESG compliance as a burden. However, by shifting their mindset and approach, companies can transform ESG compliance into a strategic advantage that benefits their business in the long run. By integrating sustainable and responsible practices into their core operations, businesses can improve their reputations, build customer loyalty, and enhance stakeholder trust. Moreover, companies that demonstrate a commitment to ESG compliance are better positioned to adapt to evolving market demands and mitigate risks associated with environmental and social challenges. Some common ways to achieve the same are as follows: -

- **Embracing a Proactive Approach:** Instead of viewing ESG compliance as a mere obligation, corporates should adopt a proactive approach. By recognizing the potential benefits and aligning their business strategies with ESG goals, companies can identify new opportunities for growth, innovation, and operational efficiency. Proactively addressing ESG challenges can also help companies stay ahead of regulatory changes and evolving market expectations.

- **Establish Global ESG Standards**: - Regulators and industry bodies should collaborate to create globally accepted ESG reporting standards. Standardization would enhance comparability and transparency, making it easier for investors to evaluate companies' ESG performance accurately.

- **Enhance Data Collection and Verification**: - Investing in technology and data analytics can improve the quality and accessibility of ESG data. Companies could leverage blockchain and artificial intelligence to streamline data collection, verification, and reporting processes.

- **Align Incentives with ESG Goals**: - Companies can link executive compensation and bonuses to long-term ESG performance targets. By doing so, decision-makers would be more motivated to prioritize sustainable practices and align their interests with those of stakeholders.

- **Strengthen ESG Oversight and Regulation**: -Regulators should monitor and scrutinize ESG reporting to curb greenwashing and misleading claims. Implementing fines or penalties for false representations would deter companies from misrepresenting their ESG efforts.

- **Provide Education and Support**: - Support networks and educational resources can help companies, particularly small and medium-sized enterprises, navigate ESG complexities. Governments, NGOs, and industry associations can offer guidance and assistance tailored to different sectors.

Conclusion:

In the realm of ESG compliance, it's true that some corporates may initially view it as a pain point. Though a challenging and rigorous process by shifting their perspective and embracing it as an opportunity, businesses can unlock long-term benefits. ESG compliance not only helps companies meet their social and environmental responsibilities but also fosters sustainable growth and enhances reputation. By proactively addressing ESG challenges, corporates can tap into new markets, attract socially conscious investors, and strengthen their brand image. This will help to align business strategies with societal needs, driving innovation and operational efficiency. Embracing ESG can also enhance stakeholder trust, leading to stronger relationships with customers, employees, and communities.

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In the matter of SVA Family Welfare Trust and others –Appellant v/s Ujaas Energy Limited and Others - Respondent at National Company Law Appellate Tribunal (NCLAT) in the order dated 21 August, 2023.

Can a Resolution Plan propose to eliminate the security interest of a Financial Creditor that was secured through a personal guarantee from the Directors of the Corporate Debtor?

Facts of the Case

- The Corporate Insolvency Resolution Process (CIRP) was initiated against Corporate Debtor (CD) - M/s. Ujaas Energy Limited vide order dated 17 September 2020. And accordingly, SVA Family Welfare Trust the Appellant submitted its Resolution Plan.
- There were multiple rounds of discussions and deliberations regarding final Resolution Plan submitted by the Appellant which was placed before the Committee of Creditors (CoC). Resolution Plan of the Appellant was approved by the CoC by 78.04% vote shares on 30 August 2021.
- The Letter of Intent was issued to the Appellant on 31 August 2021 and thereafter on 16 September 2021, Resolution Professional filed an I.A No. 190 of 2021 before the National Company Law Tribunal (NCLT) for approval of the Resolution Plan.
- Bank of Baroda - Financial Creditor, one of the members of the CoC holding 5.83% voting share, filed an Affidavit objecting to the Resolution Plan on the basis that it provided for extinguishment of rights under personal guarantees.
- The NCLT vide impugned order dated 6 January 2023 rejected I.A No.190 of 2021. NCLT took the view that CoC cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the CD hence, the plan contravenes the provision of Section 30(2)(e) of the Insolvency and Bankruptcy Code, 2016 (Code).
- It was also noticed that the Bank of Baroda had already filed application u/s 95 of the Code against the personal guarantor before the NCLT.
- NCLT in the impugned order had also noticed the fact that out of the amount proposed in the Resolution Plan Rs.45,00,00,000/- (Rupees Forty- five Crore) was towards the value of the CD and Rs.23,81,75,744/- (Rupees Twenty - three Crore Eighty- One Lakh approx) was towards the release of personal guarantees.
- NCLT accepted the objection of the Bank of Baroda that CoC cannot extinguish the right of the particular secured creditor to proceed against the personal guarantor of the Corporate Debtor.
- Aggrieved by the said order, this Appeal was filed by the Appellant ie., by the Successful Resolution Applicant.

Question for consideration:

Can a Resolution Plan propose to eliminate the security interest of a Financial Creditor that was secured through a personal guarantee from the Directors of the Corporate Debtor, which was provided to obtain financial assistance from the Financial Creditor?

Arguments of the Appellant - Successful Resolution Applicant:

- It was submitted Resolution Plan proposed the payment of Rs 74,81,75,744/- (Rupees Seventy- four Crores Eighty-one Lakh approx.) against the liquidation value of Rs.43,08,09,000/- (Rupees Forty-Three Crore Eighty Lakh approx.).

- Further, it was submitted that as per the plan, the Appellant proposed Rs.45,00,00,000/- (Rupees Forty-five Crores) towards the value of CD and Rs. 23,81,75,744/- (Rupees Twenty-Three Crore Eighty-One Lakh approx.) towards release of personal guarantees.
- The personal guarantees were to be extinguished after paying due compensation to the Financial Creditors.
- The CoC with its vote share of 78.04% approved the plan and the NCLT committed error in rejecting the Resolution Plan on objection of dissenting Financial Creditor- Bank of Baroda having merely 5.83% voting share.
- The personal guarantees are security interest under IBC and all security interest can be dealt with in a Resolution Plan.
- The commercial wisdom of the CoC have to be given paramount importance and the NCLT ought not to have been interfered with commercial wisdom of the CoC at the instance of a dissenting Financial Creditor.
- With regard to proceedings u/s 95 of IBC initiated by Bank of Baroda, it is submitted that the said proceedings were initiated after approval of the plan and letter of intent was issued in favour of the Appellant on 31 August 2021. Section 95 proceedings were initiated on or after 2 September 2021 which was an afterthought.
- Reliance was placed on the judgment of the Hon'ble Supreme Court in "**Vijay Kumar Jain vs. Standard Chartered Bank and Ors.-**" *While considering the provisions of the IBC and the Regulations 2016, the Hon'ble Supreme Court noticed that the members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a Resolution Plan as such Resolution Plan then binds them. It was further observed that such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well.*CoC has also supported the submissions of the Appellant and submitted that when CoC has approved the Resolution Plan with majority vote of 78.04%, the plan could not have been interfered with by the NCLT. It was submitted that there is no bar in the IBC to release personal guarantees.
- Also, it was highlighted again in the case of Hon'ble Supreme Court in ***Lalit Kumar Jain v. Union of India****- the Hon'ble Supreme Court held that sanction of a resolution plan does not per se operate as a discharge of the guarantor's liability. It was held that approval of a resolution plan does not ipso facto discharge a personal guarantor. The judgment of the Hon'ble Supreme Court in Lalit Kumar's case cannot be read to mean as laying down law that personal guarantee never can be discharged in a Resolution Plan.*

Arguments of the Financial Creditor:

- It was argued that the plan couldn't have contained any provision by which personal guarantees given in favour of the Bank of Baroda could have been extinguished. The FC was fully entitled to proceed to realise its dues from the personal guarantors since the payment under the plan did not liquidate the dues.
- Reliance was placed on the ***Nitin Chandrakant Naik and Anr. vs. Sanidhya Industries LLP and Ors.- 2021 and on the case of "M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder and Anr.- 2023.***

Held:

- The NCLAT observed that present case was a case where CoC consciously considered the clauses in the plan for relinquishing the personal guarantees of the FC and as noticed above for a consideration offered by the Successful Resolution Applicant for release of the personal guarantee passed the Resolution Plan accepting the clause in the plan for release of the personal guarantee.
- Also highlighted that issues pertaining to the release of the personal guarantee were also deliberated before the CoC. As noticed above, there was a specific clause in the Resolution

Plan pertaining to release of the personal guarantee which clause was deliberated. Even the objection raised by the Union Bank of India that personal guarantee cannot be released was noticed.

- NCLAT refereed the "Edelweiss Asset Reconstruction Company Ltd. vs. Mr. Anuj Jain, Resolution Professional of Ballarpur 26 Company Appeal (AT) (Ins.) No.266 of 2023 Industries Ltd. & Ors." Wherein *the Financial Creditor of the Corporate Debtor aggrieved by the approval of the Resolution Plan has filed the Appeal. The grievance of the Appellant was that Appellant has security interest in land of the Corporate Debtor which was proposed to be sold in the Resolution Plan. The submission of the Appellant was negated by this Tribunal, and it was held that such security interest by the Corporate Debtor could have been very well dealt in the Resolution Plan*.
- Supporting the above referred judgement – NCLAT stated that submissions of the Appellant that security interest of dissenting Financial Creditor by virtue of personal guarantee of the ex-director of the Corporate Debtor could have been very well dealt in the Resolution Plan. It is further relevant to notice that each Financial Creditor has personal guarantee in their favour to secure the loan extended by them. All Financial Creditors has assented for relinquishment of such security except Bank of Baroda which had only 5.83% vote share. The decision of the CoC to accept the value for relinquishment of personal guarantee was a commercial decision of the CoC which cannot be allowed to be impugned at the instance of dissenting Financial Creditor.
- NCLAT stated that there was no error in the consideration of the CoC of the Resolution Plan and the commercial wisdom of the CoC by approving the Resolution Plan must be given due weightage.
- NCLAT held that NCLT committed an error in rejecting the application for approval of the Resolution Plan on the ground that plan could not have contained a provision for extinguishment of personal guarantee of the personal guarantors. Plan allocates a plan value for extinguishment of personal guarantee which has been accepted by the FC by a vote share of 78.04%. Therefore, the order of the NCLT dated 6 January 2023 was unsustainable. And the Appeal was set aside.

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NEWS UPDATES/AMENDMENTS FOR THE MONTH OF AUGUST:

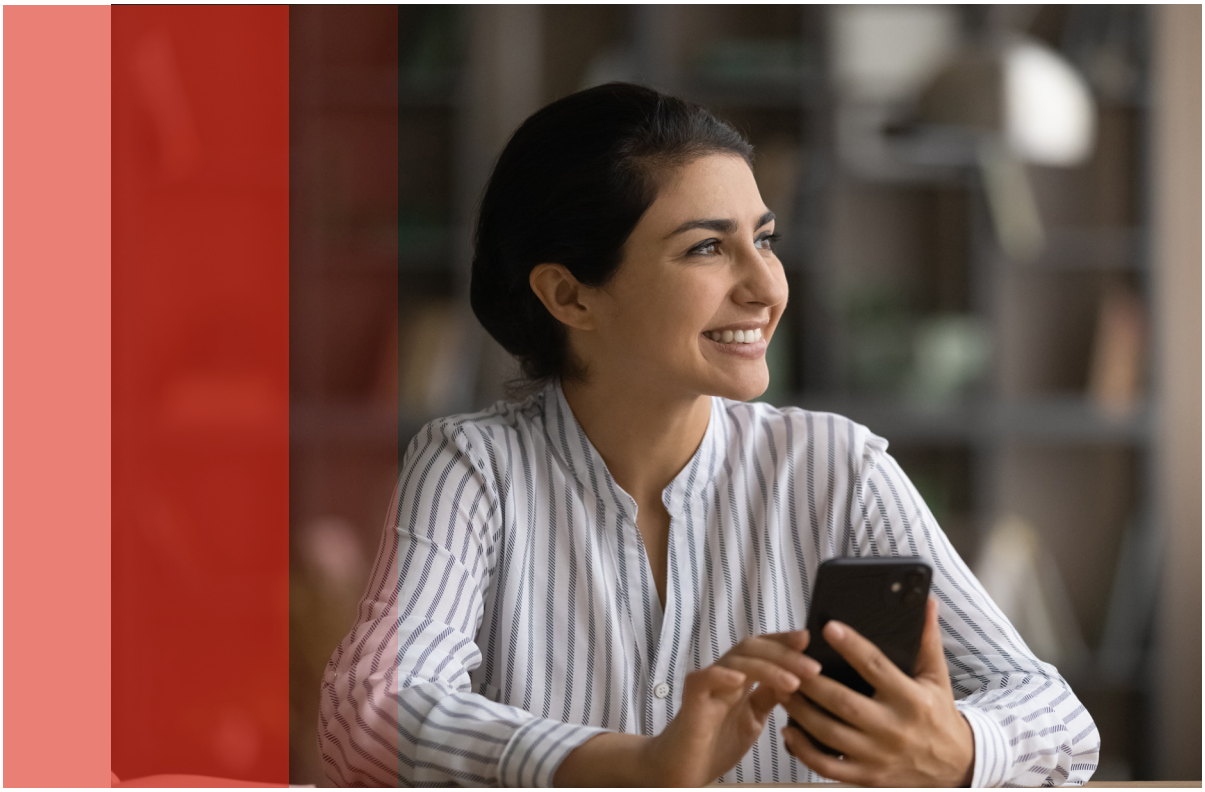
Sr. No.	News Updates/Amendments	Link & Brief Summary
	NEWS	
1	SEBI to enhance reporting of group level transactions	https://economictimes.indiatimes.com/markets/stocks/news/sebi-to-enhance-reporting-of-group-level-transactions/articleshow/102515234.cms Details on cross holdings and material financial transactions within a conglomerate will be subject to disclosures on an annual basis.
2	SEBI notifies new 'fit and proper' criteria for exchanges, clearing corps	https://legal.economictimes.indiatimes.com/news/regulators/sebi-notifies-new-fit-and-proper-criteria-for-exchanges-clearing-corps/103147348?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2023-08-29&dt=2023-08-29&em=aGFzdGl2b3JhQG1tamMuaW4= SEBI's new rules aim to separate the role of an individual from that of an institution.
3	SEBI puts in place guidelines to boost cyber security framework for exchanges	https://legal.economictimes.indiatimes.com/news/regulators/sebi-puts-in-place-guidelines-to-boost-cyber-security-framework-for-exchanges/103185938?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2023-08-30&dt=2023-08-30&em=aGFzdGl2b3JhQG1tamMuaW4= SEBI came out with guidelines to strengthen the existing framework for stock exchanges, clearing corporations, and repositories.
4	IFSCA looks to clear decks for startups direct listing at GIFT city.	https://www.business-standard.com/industry/news/ifsca-panel-looks-to-clear-decks-for-direct-listing-at-the-gift-city-123082800939_1.html The International Financial Services Centres Authority (IFSCA) has proposed key exemptions to the current listing framework and measures for setting up holding companies (hold cos) and special purpose acquisition companies (SPACs) to encourage domestic startups list at GIFT City, the

		country's only international financial services centre (IFSC).
5	CCI's settlement and commitments provisions: A milestone in Indian Competition Law	https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/ccis-settlement-and-commitments-provisions-a-milestone-in-indian-competition-law/103356124 The Indian Competition Act of 2002 established the CCI as the regulatory authority responsible for enforcing competition law. Until recently the primary enforcement tools were investigation, adjudication and penalties. Now there is inclusion of "Settlement" and "Commitment".
AMENDMENTS / CIRCULARS /CONSULTATION PAPERS		
1	Consultation Paper on collating and defining use cases of Financial Information Users in the Account Aggregator Framework in Securities Markets	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-collating-and-defining-use-cases-of-financial-information-users-in-the-account-aggregator-framework-in-securities-markets_74811.html Last date for comments shall be August 31,2023.
2	SEBI circular on Offer for Sale framework for sale of units of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)	https://www.sebi.gov.in/legal/circulars/aug-2023/offer-for-sale-framework-for-sale-of-units-of-real-estate-investment-trusts-reits-and-infrastructure-investment-trusts-invits-_74938.html SEBI now decided to modify Paragraph B of Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/10 dated January 10, 2023, to allow OFS for units of private listed InvIT.
3	SEBI circular on Transactions in Corporate Bonds through Request for Quote (RFQ) platform by FPIs	https://www.sebi.gov.in/legal/circulars/aug-2023/transactions-in-corporate-bonds-through-request-for-quote-rfq-platform-by-fpis_75009.html FPIs shall undertake at least 10% of their total secondary market trades in Corporate Bonds by value by placing/seeking quotes on the RFQ platform of stock exchanges, on a quarterly basis
4	SEBI Circular on Facility to remedy erroneous transfers in demat accounts	https://www.sebi.gov.in/legal/circulars/aug-2023/facility-to-remedy-erroneous-transfers-in-demat-accounts_75035.html Depositories to constitute an internal and a joint committee for examining the intra-depository

		and inter-depository erroneous transfers respectively. Also, Depositories provide a facility for the investors and DPs to add and verify the beneficiaries before execution of off-market transfers including inter-depository transfers.
5	SEBI Circular on Reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days	https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days_75122.html Reduction of the time taken for listing of specified securities after the closure of public issue to 3 working days (T+3 days) as against the present requirement of 6working days (T+6 days); 'T' being issue closing date.
6	Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (as amended on August 09, 2023)	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-settlement-proceedings-regulations-2018-as-amended-on-august-09-2023-_75281.html
7	Master circular on online resolution of dispute in the Indian securities market	https://www.sebi.gov.in/legal/master-circulars/aug-2023/online-resolution-of-disputes-in-the-indian-securities-market_75220.html All the MIIs (Market Infrastructure Institution) shall provide access to the 'ODR Portal' for resolution of disputes between an investor/client and listed companies (including their registrar and share transfer agents) and the specified intermediaries / regulated entities in the securities market, through time bound online conciliation and/or online arbitration.
8	Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2023	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-foreign-portfolio-investors-second-amendment-regulations-2023_75198.html
9	Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [Last amended on August 10, 2023]	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019-last-amended-on-august-10-2023-_75747.html
10	Consultation Paper on Review of Voluntary Delisting norms	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-review-of-voluntary-delisting-norms-under-

	under SEBI (Delisting of Equity Shares) Regulations, 2021	sebi-delisting-of-equity-shares-regulations-2021_75335.html Last date for comments shall be September 4,2023
11	Securities And Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-real-estate-investment-trusts-second-amendment-regulations-2023_75791.html
12	Securities And Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-infrastructure-investment-trusts-second-amendment-regulations-2023_75789.html
13	Securities And Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2023	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-depositories-and-participants-second-amendment-regulations-2023_75828.html
14	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023	https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2023_75861.html
15	SEBI Circular on Mandating additional disclosures by Foreign Portfolio Investors (FPIs) that fulfil certain objective criteria	https://www.sebi.gov.in/legal/circulars/aug-2023/mandating-additional-disclosures-by-foreign-portfolio-investors-fpis-that-fulfil-certain-objective-criteria_75886.html Since need was felt to obtain granular information of persons having any ownership, economic interest, or control in some objectively identified FPIs. Hence SEBI came up with a circular mandating additional disclosure by FPIs.
16	Consultation Paper on permitting increased participation of Non – Resident Indians (NRIs) and Overseas Citizens of India (OCIs) into SEBI registered Foreign Portfolio Investors (FPIs) based out of International Financial Services Centers (IFSCs) in India and regulated by the International Financial Services Centers Authority (IFSCA)	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-permitting-increased-participation-of-non-resident-indians-nris-and-overseas-citizens-of-india-ocis-into-sebi-registered-foreign-portfolio-investors-fpis-based-out-of-int-_75915.html Last date for comments shall be September 10th, 2023

17	LLP Amnesty scheme introduced by MCA from 01.09.2023 to 30.11.2023	https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open MCA has issued General Circular Dtd. August 23, 2023, regarding Condonation of Delay in filing of Form-3, Form 4, Form 11 u/s 68 of LLP Act, 2008.



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UPCOMING COMPLIANCE DUE DATES:

SR. NO.	PROVISION UNDER APPLICABLE LAWS/REGULATIONS	APPLICABILITY	FORM/DISCLOSURE	DUE DATE
		MCA COMPLIANCES		
1	Section 153 of the Companies Act 2013 read with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014	Annual Director's KYC (Mandatory for every individual having DIN)	DIR-3 KYC	On or before September 30, 2023
2	Proviso to sub-section 5 of section 135.	Transfer of unspent CSR amount to schedule VII fund by such companies whose financial year ended on March 31, 2023.	NA	September 30, 2023.
3	First proviso to section 96 sub-section 1	Conducting annual general meeting by such companies whose financial year ends on March 31, every year.	NA	September 30, 2023.
4	MCA circular dated December 28, 2022 & SEBI circular dated January 05, 2023.	Conducting of AGM through video conferencing and relaxation from sending physical copies of annual reports by listed entities.	NA	September 30, 2023. (Companies shall not be able to conduct general meetings through VC after September 30, 2023, unless an extension is granted by MCA.)
5	MCA General Circular No.08/2023 dated August 23, 2023.	LLP Amnesty Scheme 2023 for delayed filing of forms by LLPs without late fees	NA	The scheme becomes applicable from September 01, 2023.

6	Rule 6 of Companies [cost records and audit] Rules 2014.	Companies to whom cost audit is applicable and whose financial year begins on April 01.	Form CRA-2	Appointment of cost auditor before September 30.
7	Rule 6 of Companies [cost records and audit] Rules 2014.	Companies to whom cost audit is applicable and whose financial year ends on March 31.	Form CRA-3	Submission of cost audit report before September 30.
SEBI COMPLIANCES /BSE/NSE CIRCULARS				
8	Master circular on Online Dispute Resolution SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145 dated. August 11, 2023	Registration of all Market participants on ODR portal	NA	On or before September 15, 2023.
9	BSE Circular 20230628-23 dated June 28, 2023 - SEBI (Prohibition of Insider Trading Regulations) ,2015- restricting trading by Designated Persons by freezing PAN at security level	Trading window closure for Quarter ending September 30,2023 for top 1,000 listed entities on BSE as on June 30, 2023.	Updation of list of designated persons & start and end date of trading window closure on designated depository portal	DP list and start & end date of trading window closure has to be updated before September 30, 2023. So that window can be closed after October 01.
10	Rumour Verification requirement in terms of provisos to Regulation 30 (11) inserted by (SEBI LODR Second Amendment - dated June 14, 2023)	Top 100 Listed Entities	N.A	W.E.F October 01, 2023
11	Relaxation with respect to sending annual report copies in physical form for Equity and Debt listed entities. Vide SEBI/HC/CFD/PoD-2/P/CIR/2023/4 dated 5th January, 2023 [for equity listed entities] & vide SEBI/HO/DDH S/DDHS - RACPOD1/P/CIR/2023/	All listed entities	N.A	September 30, End Date

	001 dated 5th January,2023 [for debt listed entities]			
12	Processing of Investor Service Request for KYC non-compliant physical folios vide SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 dated 16th March,2023.	All listed entities.	As prescribed in circular.	W.E.F October 01, 2023
FEMA COMPLIANCES				
13	Rule 4 sub-rule 3 of Companies Registration of Foreign Companies Rules 2014	Foreign companies having place of business in India	Form FC-3	Annual returns of foreign companies to be filed before September 30.