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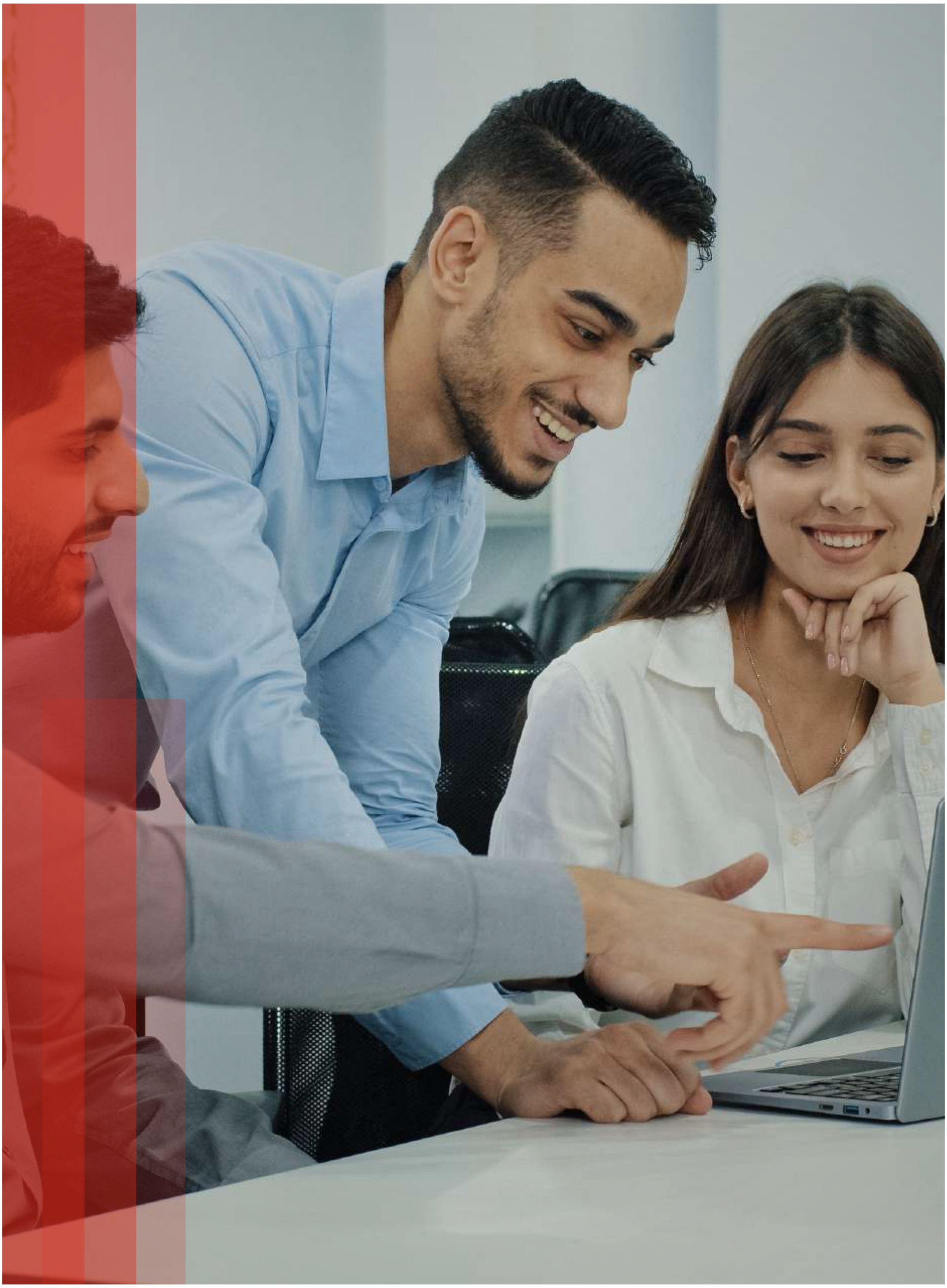

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Beyond Separate Entities: Understanding the Corporate Veil Doctrine

I. Introduction to concept of corporate veil

The foundational principle of company law revolves around the concept of a "separate legal entity". According to this principle, a company is distinct from its members and is recognized as a separate legal entity. This fundamental idea is rooted in the landmark case of Salomon v. Salomon Limited and is enshrined in the Companies Act ,2013 ["the Act"]. Section 9 of the Act explicitly states that, upon incorporation, the subscribers or members outlined in the memorandum of association form a distinct body corporate. This entity, identified by the name in the memorandum, possesses the capacity to perform all functions of an incorporated company as per the Act and enjoys perpetual succession with the authority to own, manage, and dispose of property. Section 9 underscores the independent existence of a company apart from its individual members.

While the principle of a separate legal entity is fundamental in company law, an exception exists—the doctrine of lifting the corporate veil, originating from the same Salomon v. Salomon Limited case. Corporate veil, as per blacks' law dictionary means, a legal assumption that the acts of the corporation are not the actions of its shareholders so that the shareholders are exempt from the liability for the corporation's actions. In other words, corporate veil represents the concept of a separate legal entity and lifting the corporate veil involves treating the company and its shareholders as one entity. This doctrine is typically applied to eliminate the distinction between the company and its controllers, aiming to hold the true wrongdoers accountable. This article explores instances where courts have lifted the corporate veil to address the actions of those hiding behind the concept.

II. Background/origin of concept of corporate veil

In order to better understand the doctrine of lifting of corporate veil, we must look at the point of its origin. As mentioned above, this concept finds its origin in the case of Salomon VS. Salomon ltd. In this case, Mr. Salomon had sold his business to a company called Salomon ltd which was incorporated by Salomon and his family members. The consideration for sale of business was paid by the company in the form of equity shares and debentures having floating charge on the assets of the company. As a result, the unsecured creditors could not recover its dues from the company at the time of its liquidation. It was argued by the liquidator and creditors before the court that, the company was sham, was essentially an agent of Salomon, and therefore, Salomon being the principal, was personally liable for its debt. In other words, the liquidator sought to overlook the separate personality of Salomon Ltd., distinct from its member Salomon.

The Court of Appeal, declaring the company to be a myth, reasoned that Salomon had incorporated the company contrary to the true intent of the then Companies Act, 1862, and that the latter had conducted the business as an agent of Salomon, who should, therefore, be responsible for the debt incurred in the course of such agency.

Even though, this decision of court of appeal was overturned by the House of Lords of UK, it introduced to the world, the concept of lifting of corporate veil in case of misuse of protection given to shareholders by the principle of separate legal entity of the company.

III. Situations under which corporate veil can be lifted

As discussed herein above, the corporate veil was lifted for the first time in a situation where the shareholder of the company had used the separate legal entity of the company to gain undue advantage over the unsecured creditors and taking the money out of the company. Further there were no clear provisions in the then company law to provide for situations wherein the corporate veil could be lifted and where it could not be lifted. The judgments of the courts were the only guiding principles to determine the situations where the lifting of corporate veil was permissible. Hence considering the case of Salomon vs Salomon limited as precedent, courts for a long time held that corporate veil could be lifted only in case of misuse of corporate structure for fraud. However, over the period of years the Indian courts have observed that fraud is not the only circumstance wherein the corporate veil can be lifted. Courts through various judgments have enumerated a number of situations wherein corporate veil can be lifted. We shall see some of such situations herein below.

(a) Fraud

As discussed above, the perpetration of fraud is the basic and most common reason for which courts lift the corporate veil. Nevertheless, it is worth noting that each case of fraud does not warrant lifting of corporate veil. It is done only when the courts observe that the corporate structure is misused to commit a fraud. Hon'ble Delhi high court in its judgment dated 12th April 2021 in the matter of SANUJ BATHLA & ANR versus MANU MAHESHWARI & ANR. Has held that, "*However, it has to be borne in mind that the doctrine is not available in every case of alleged liability against a Company. It is only available in restricted cases and limited circumstances, where it is permissible to so do under a Statute or where the corporate structure has been instituted to perpetuate a fraud ir us a camouflage facade, or sham to avoid liability". In this case, there was an allegation against the non-promoter directors of the company that they have syphoned off the funds given to the company as loan. Since the petitioners could not prove that the company was used as medium to perpetuate a fraud, the court did not lift the corporate veil. This shows that, in order to lift the corporate veil in case of fraud, it is necessary to prove that corporate structure is used to avoid liability or syphon off funds."*

(b) Public interest or assurance of justice

One more reason for which corporate veil may be lifted is, public interest. That means, if any action of the company is injurious to public interest, then in such case court may lift corporate veil and punish the actual natural persons who are responsible for harming the public interest. This aspect of lifting the corporate veil was discussed by the Hon'ble Delhi high court in its order dated 24th March 1987 in the matter of Jyoti Limited vs Kanwaljit Kaur Bhasin and Anr. In this case, the company had committed contempt of court by disobeying its orders. The court took a view that contempt of court is injurious to the public interest and punished the promoter directors of the company by lifting the corporate veil. The Hon'ble Delhi high court in its final order held that, *"Thus, it is clear that the law of contempt is conceived in the public interest. In the present case, I have no doubt, the corporate veil is being blatantly used as a cloak to wilfully disobey the orders of the court-an improper purpose. Lifting the corporate veil, in these circumstances, is imperative to punish improper conduct. Public interest requires the corporate veil must be lifted to find out the person who disobeyed the order of the court.".*

(c) Avoidance of legal obligations by misusing the corporate structure

Other than fraud and public interest there is one more reason for which courts have lifted the corporate veil. That reason is avoidance of legal obligations by misusing the corporate structure of holding and subsidiary companies. courts have observed that companies use the structure of holding and subsidiary relationship of companies to circumvent the legal obligations. In such cases courts lift the corporate veil and hold the subsidiaries to be alter ego of holding company.

Similar situation was observed in the case of State of U.P. And Ors vs Renusagar Power Co. And Others. In this case wholly owned subsidiary of Hindalco Ltd was used by the holding company to avoid liability under UP Electricity Duty Act, 1952. In this case, the Hon'ble Supreme Court of India held the holding company liable for paying the duty under said Act by lifting the corporate veil. The court in its judgment said,

"Horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take-over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order of the profits of Renusagar have been treated as the profits of Hindalco.

In the aforesaid view of the matter, we are of the opinion that the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar's power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis.

Hon'ble Supreme court's judgment sets a precedent by confirming that wherever it is observed that the corporate structure is being misused for avoiding liability or making improper gains, the courts can lift the corporate veil and punish the holding company even if there is no element of fraud.

IV. Care to be taken by group entities.

Hon'ble Supreme court judgment has posed a question before large conglomerates who have number of holding and subsidiary companies amongst the group, that in what circumstances will the holding company being the shareholder of the subsidiary, be made liable for the liabilities of the subsidiary by lifting the corporate veil. The answer to this question can be found in the above stated case itself. In the said case, court has held that corporate structure was misused for the reason that, the wholly owned subsidiary of holding company was totally controlled by holding company. even the day-to-day affairs were looked in to by the holding company and therefore the separate legal existence of the subsidiary was questioned. In order to avoid such a situation, the group companies may take following care,

(a) Financial independence

The subsidiary should be financially independent, that is it should have its own sources of funds. It should not be dependent on holding company for funding. Its profits and losses should be accounted and shown separately and should not be considered as that of holding company.

(b) Independent management and decision making

the management of the subsidiary should be separate and independent from the management of the holding company and it should take its decisions on its own, in the best interest of the subsidiary and without getting influenced by the board of the holding company. in other words, the directors of the subsidiary should not be accustomed to act as per the instructions of the directors of the holding company.

V. Role of concept of POEM

As per section 6(3) of Income Tax Act 1961, the companies whose place of effective management (POEM) is in India, they are considered to be resident in India and hence their income is taxable in India. POEM refers to that place from where all the decisions relating to conduct of business are taken. The determination of POEM is very important for determining control specifically in case of foreign subsidiaries. If in case of a foreign subsidiary, all the policy decisions are being taken by the Indian holding company, then the POEM of the foreign subsidiary will be in India. Then in such a case, the separate legal entity of the foreign subsidiary can be questioned.

VI. Conclusion

In essence, the principle of a separate legal entity forms the bedrock of company law, offering protection and autonomy to corporations and their shareholders. However, the doctrine of lifting the corporate veil, born out of the Salomon v. Salomon Limited case, serves as a necessary counterbalance. It becomes applicable not only in cases of fraud but also when public interest is at stake or when there's an attempt to evade legal responsibilities through corporate structures. Recent legal precedents highlight the evolving nature of this doctrine, making it clear that the misuse of corporate structures can lead to the piercing of the corporate veil. Group entities are thus reminded to maintain financial independence and distinct management to safeguard against the lifting of the corporate veil. In navigating the intricate landscape of corporate law, a nuanced understanding of these principles is indispensable for fostering transparency, accountability, and legal compliance within the corporate realm.

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Ms Rutuja Umadikar – Research Associate – rutujaumadikar@mmjc.in

SEBI Compliance Unveiled: Non- Standard disclosures of KMP Resignation amid SEBI's Regulatory Framework

Introduction

Securities and Exchange Board of India ['SEBI'] had released a consultation paper dt: November 12, 2022, inter-alia proposing to mandate disclosures pertaining to senior management. The objective behind mandating disclosures pertaining to senior management was that since the details of senior management were required to be disclosed at the time of filing of public offer documents, change in such senior management or any other event pertaining to the senior management is also a material information for investors. This consultation paper came up for discussion at SEBI Board Meeting dt: March 29, 2023. On discussion and addressing public comments SEBI vide its amendment notification dt: June 14, 2023, amended Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (second amendment) 2023 ['LODR Regulations']. Amendment was effective from July 14, 2023. In this article we would deal with varied practices in disclosure pertaining to change in senior management and key managerial personnel in the context of resignation or change in profile or designation etc.

Understanding the Regulatory Landscape

I. Disclosure of change in senior management and key managerial personnel

As per Schedule III Part A, Para A point 7 of LODR Regulations listed entities were mandated to disclose change in senior management. While disclosure with respect to change in key managerial personnel has been part of LODR Regulation, change in of senior management within a listed company was considered important because it provided crucial insights into the internal dynamics of the organization. Point 7 reads as follows, "*Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, Auditor and Compliance officer*" The words used here are, "*change in…….*". Word 'Change' would mean any change in the key managerial personnel, senior management, director etc. 'Change' here would not necessarily mean resignation or appointment only. It can mean 'promotion, demotion, giving of additional responsibilities, change in designation etc.

II. What to disclose and when to disclose?

SEBI vide Circular dated July 13, 2023 ('July circular'), provides minimum information that is required to be provided while disclosing events given in Part A of Schedule III of LODR Regulations. Annexure I of July Circular provides for specified disclosure that needs to be adhered to while disclosing '*Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, auditor and compliance officer*' to stock exchange. July Circular at Point 7 states that following minimum details needs to be given while providing disclosure of change in key managerial personnel / senior management:

a. Reasons for change:
b. Date of appointment, re-appointment, cessation & term of appointment/re-appointment.
c. Brief profile (in case of appointment)
d. Disclosure of relationships between directors (in case of appointment of directors):
e. Letter of resignation along with detailed reasons for resignation as given by key managerial personnel, senior management, compliance officer or director.

Point 7C of Schedule III, Part A, Para A of LODR Regulations also talks about disclosures pertaining to 'senior management'. Point 7C read as follows:
"In case of resignation of key managerial personnel, senior management, Compliance Officer or director other than an independent director; the letter of resignation along with detailed reasons for the resignation as given by the key managerial personnel, senior management, Compliance Officer or director shall be disclosed to the stock exchanges by the listed entities within seven days from the date that such resignation comes into effect."

It states that disclosures shall be given *'from the date when resignation comes into effect'.* The terminology that *'resignation comes into effect'* would mean the date when resignation becomes effective. Further Annexure II of July Circular states that '*Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, Auditor and Compliance Officer*' shall be disclosed within 24 *hours in case of resignation and 12 hours in other cases.*

It becomes pertinent here to note the background behind bringing the provisions relating to the provisions of change in senior management. SEBI board meeting dated March 29, 2023, while discussing the proposal for change in senior management mentioned that "*the date of resignation and the last working day may vary as per the mutual understanding between the employee and the company. It is also possible that the concerned employee may decide to withdraw the resignation. Also, in the case of key managerial personnel, senior management, and directors other than independent directors, the date of resignation may be different from the date of cessation (last working day). Hence, it may be specified that the disclosure is required within 7 days from the date such resignation comes into effect."*

Due to this there are two ways of interpreting disclosures pertinent to changes in senior management which can be given within 24 hours from the date of resignation and resignation letter can be given within 7 days from the date when resignation becomes effective or there is another way of disclosure of change in senior management and that is by way of disclosure of change within 7 days from the date when the resignation becomes effective.

However, it is observed that market participants have interpreted this provision of LODR Regulations in a varied manner. This article specifically highlights on such Non-standard disclosures and their implications.

The Standard Format Dilemma and Practical challenges: On a study of around more than 100 disclosures made by listed entities to stock exchanges in a period of five months from July 2023 to December 2023 it is seen that varied practices are seen in the context of change in senior management and key managerial personnel. Following are the observations based on the study of disclosure:

a) **Absence of minimum information as required by July Circular:** July Circular provides for minimum items that are required to be disclosed when there is a change. It was observed that certain companies provided all the minimum items as is required by July Circular while there were some companies who failed to provide requisite details viz. from when resignation or in senior management the change is effective, what is the date of resignation.

b) **Date of disclosure of resignation:** Further a different trend was also noticed with respect to date of disclosure of change in senior management. While some listed entities disclosed resignation when the KMP or senior management had served the notice period and certain listed entities disclosed resignation as soon as the senior management or key managerial personnel resigned additionally also stating what would be the notice period, last day of serving the listed entity etc. It needs to be highlighted here that as per Point 7C of Schedule III, Part A, Para A of LODR Regulations disclosure of resignation in senior management or key managerial personnel shall be disclosed within 24 hours and 12 hours in other cases. Further it is mentioned that resignation letter along with detailed reasons for resignation shall be disclosed within seven days of resignation becoming effective. But it is seen that resignation letter or email is not attached in case of disclosure of resignation in certain circumstances.

c) **Resignation of senior management or key managerial personnel as UPSI:** Question arises as to whether key managerial personnel or senior management personnel resigning amid fraud or due to some allegations against him/her will be considered as UPSI? Whether resignation by key managerial personnel or senior management or director (other than independent director) for better opportunity would be a price sensitive information? Determination of a particular event or information as price sensitive information or not would depend on that particular situation. But if it is a price sensitive information then it becomes crucial to deal with its disclosure judiciously.

d) **Name of individual replacing KMP or senior management:** Some companies had given the name of resigning key managerial personnel / senior management as well as name of new key managerial personnel / senior management replacing coming in place of the resigning individual. This was observed in very listed entities. Many listed entities only mentioned details of resigning KMP, and no further disclosures are given as to appointment of new KMP.

e) **Disclosures of change in designation or providing of additional charge to a KMP or senior management:** Certain listed entities made disclosure even with respect to senior management personnel who have been given further additional responsibilities in the organization. It was also seen that certain listed entities have made disclosure of change in the designation of senior management. It was also observed that a few listed entities have made disclosure of change in role / designation / providing additional responsibility to senior management personnel of subsidiary company.

f) Disclosures on approval of audit committee or nomination and remuneration committee: It was observed that certain listed entities had disclosed resignation of chief financial officer only on approval of same by audit committee.

Conclusion

LODR Regulations provides a structured format for disclosing material events, including resignations. The intention was to ensure uniformity, completeness, and clarity in the information shared with stakeholders and the broader market. Securities Appellate Tribunal has vide its order dt: 24.03.2021 in the matter of Mr. B Ranganathan vs SEBI has mentioned that "*A disclosure-based regulatory regime is founded on timely and adequate disclosure of all events material to a company or to its securities in any manner. Further hair-splitting will result in confusion; so, the best way to deal with the event is to disclose without doing further analysis.*"

Shareholders, regulators, and the broader market rely on timely and accurate information to make informed decisions. A non-standard format of material event disclosure erodes trust and may lead to adverse consequences for the company's market standing. As instances of non-standard disclosures multiply, there is a growing urgency for companies to revisit their practices and align with SEBI's guidelines. Adopting standardized formats not only ensures compliance but also reflects a commitment to transparency and openness. Aligning with SEBI's guidelines is not merely a regulatory obligation; it is a strategic move toward building robust corporate governance practices that stand the test of scrutiny and contribute to the long-term success of the business.

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Mr. Vallabh M Joshi – Senior Manager – vallabhjoshi@mmjc.in

Upholding Compliance: The Compliance Officer's Role in Adhering to the Code of Conduct while addressing Family Disputes within the ambit of Insider Trading Regulations

Introduction

In the intricate landscape of financial regulations, the role of a compliance officer stands as a crucial linchpin in ensuring adherence to the law. Amidst family disputes, particularly in contexts involving insider trading regulations, the responsibilities and challenges faced by compliance officers take on a multifaceted and delicate nature.

- **A bird eye's view on arena of Family Dispute**

Family disputes in the context of control within a company refer to conflicts, disagreements, or tensions that arise among family members who have stakes or influence in the governance, management, or ownership of the company. These disputes often revolve around the control, decision-making authority, succession planning, or strategic direction of the business and can significantly impact the company's operations, stability, and long-term viability.

- **Connect to Insider Trading Regulations**

Insider trading regulations often become intertwined with family disputes, presenting a complex scenario where personal conflicts intersect with legal obligations. In family-led businesses or enterprises multiple family members hold key positions, whereby they get access to or they have unpublished price sensitive information bringing them under the purview of code of conduct under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 [PIT 2015']. The stringent requirements outlined in PIT 2015 serve as a crucial framework, compelling involved family members to navigate conflicts while strictly adhering to legal boundaries.

- **Responsibility of Compliance Officer under PIT 2015**

As per schedule B Clause 6 of PIT 2015, "*When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate*". Clause 6 casts responsibility on compliance officer under PIT 2015 to give pre-clearance. Compliance officer also must ensure that he/she is not biased and does not act on behest of any one promoter and should function as an independent person. PIT 2015 provides for certain checks and balances to be ensured by compliance officer before giving pre-clearance. Compliance officer will have to conduct a proper due diligence as to whether the person seeking pre-clearance has access to UPSI or has UPSI, before giving pre-clearance. If the compliance officer is reasonably assured that giving pre-clearance would be in violation of any other regulations (viz. SAST as it might be crossing threshold limit) then he can deny giving pre-clearance. But challenges arise when there are no legal hurdles in giving pre-clearance.

- **Balancing Personal Relationships and Professional Obligations**

One of the most daunting tasks for compliance officers is striking a balance between personal relationships within the organization and the professional obligation to enforce regulations impartially. This requires a nuanced approach, emphasizing the importance of transparency, open communication, and strict adherence to the prescribed code of conduct.

Recently it has been observed that compliance officers are alleged to have violated code of conduct by allowing or not allowing designated persons who are disputing family members to deal in shares of listed entity. Where a listed entity is jointly controlled by promoters who are now involved in dispute it becomes challenging for compliance officer to act in such scenarios. Such situations might create a dilemma for compliance officer. It is sometimes also alleged that compliance officer has acted in a biased manner.

There have been a series of cases where the promoters/co-promoters have alleged and accused the compliance officer of being biased by acting in favour of one promoter, not giving them the pre-clearance and depriving them of stake in the company. Such scenarios should be managed with utmost care considering involvement of various stakeholders. Also, in such cases there is a high probability that the compliance officer may fall to prey to penalties and be in the eyes of regulator.

- **Responsibility of Audit Committee and Board of Directors**

Regulation 9A(3) and (4) of PIT 2015 read with Schedule B Point 1 provides as follows, "9A(3): *The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub-regulations (1) and (2) of this regulation.*

9A(4): The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

Schedule B Point 1: The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors, but not less than once in a year"

On perusing the above provisions, it becomes clear that overall responsibility for compliance with PIT 2015 is with board of directors and audit committee. Compliance officer has to report to board of directors and in specific to chairman of audit committee atleast once in a year with respect to status on compliance with code of conduct. This makes it very clear that overall responsibility for compliance with code of conduct is with the board of directors.

Further regulation 9A(1) under PIT 2015 states as follow, *"The Chief Executive Officer, Managing Director, or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading."* This regulation emphasizes the pivotal responsibility placed upon the top-tier executives, such as the Chief Executive Officer (CEO), Managing Director, or their equivalents in listed companies, intermediaries, or fiduciaries in establishing internal controls to ensure compliance with requirements given under PIT 2015.

- **Role of compliance officers in case of disputing promoters**

Ensuring compliance with PIT 2015 is the responsibility of board of directors and audit committee. They have to ensure that all the internal controls in order to ensure compliance with PIT 2015 are adequate. So, in case of a scenario where the designated persons being part of disputing promoters' groups seeks pre-clearance from compliance officer it would be prudent for the compliance officer to take up the same with Chairman of Audit Committee and Board of directors. Board of directors in a duly convened meeting arrive at a consensus by recording proper rationale whether the application of pre-clearance should be permitted or not? Compliance officer should then act accordingly. This eventually would lead to the board being aware of such transactions and accordingly a call can be taken with their collective wisdom thereby significantly taking care of corporate governance.

Conclusion

In the realm of insider trading regulations, particularly under Regulation 9 and 9A, the role of compliance officers extends beyond mere enforcement; it encompasses the delicate task of maintaining ethical standards in the face of family disputes. Navigating family disputes concerning control within a company requires a delicate balance between familial relationships and the best interests of the business. In essence, their role in managing family-related conflicts while upholding insider trading regulations exemplifies the pivotal position, they hold in preserving both the ethical fabric and legal compliance within organizations.

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Ms. Hasti Vora – Research Associate – hastivora@mmjc.in

Mr. Vallabh M Joshi – Senior Manager – vallabhjoshi@mmjc.in

Inclusion of popular sports should not disrupt strategic CSR contributions for sports development

Introduction

Sports is one of the important indicators of a flourishing economy, a nation which prioritizes sports beyond a source of entertainment leads to generation of immense potential to transform societies which ensures holistic growth across diverse segments of the community.

Recognizing its significance, Schedule VII of the Companies Act, 2013 has incorporated sports within its purview, enabling Indian corporations to make substantial contributions towards sports development in the country.

Clause (vii) of the Schedule VII of the Act read as follows:

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

As we can infer from the above only the activity of training or building the necessary infrastructure which would enable training of athletes in the category of rural sports, nationally recognised sports, paralympic sports and Olympic sports is considered as an activity which can be considered as Corporate Social Responsibility [CSR]. Thus, any other act of sponsoring a sports tournament or providing additional recreational facilities to sports personnel which do not serve in training for the sport directly shall not be included.

Interestingly in a country like India where white/red ball cricket is the most popular sport the same was not falling in any of the categories of sports listed out under clause (vii) of the Schedule VII.

Cricket up until now was neither a Nationally Recognised Sport [NSF] nor it was recognised as an Olympic sport.

However, in the recently concluded 141st Session of the International Olympic Committee [IOC] a decision was taken wherein Baseball/softball, Cricket [T20], Flag Football, Lacrosse [Sixes] and Squash has been officially included as additional sports for the Olympic games Los Angeles 2028.

This means that cricket shall now be considered as an Olympic sport from the 2028 edition onwards.

So, will that mean spending on training to promote cricket would be counted as fulfilment of CSR obligations on the part of corporates? Let's try to understand the same in this article.

Is the need really there?

As of 2023 it can be said that cricket in India is the most developed sport in terms of infrastructure and opportunities available to athletes even at the level of domestic and local leagues. This is possible because it is supported by the richest cricket administrative body in the world. The net worth of the Board of Control for Cricket in India [BCCI] is over Rs 18,700 crores while the second placed administrative body is 28 times poorer standing at Rs 660 crores.

Also, further the number of stadiums in India which are equipped to host international cricket matches as on date are a record 52.

All this implies that a sport like cricket is already equipped with enough opportunities and infrastructure across the country and even in areas where grass root strengthening is required the administrative board of the country is well equipped to ensure the growth in such areas.

So even if cricket gets included in the 2028 Olympics and it is regarded as an Olympic sport it would be advisable for corporates to wisely consider all the options available and on the basis of a need assessment test explore the options where there is genuine requirement for spending.

Thus, depending upon such assessments a call must be taken by corporates to not consider already well-established sports for the purpose of CSR spending, instead proper research must be done to identify sports and talented athletes who are in actual need of support to fund their training expenses.

Examples of sports which are very capital intensive and athletes are required to spend consistently to get the basic training and infrastructure facilities are Tennis, Golf, Fencing and many more. So, any athlete who wants to represent India in these kinds of sports face a lot of hardships to reach beyond a certain level.

How to identify sports which shall fall within the ambit of Schedule VII?

As seen at the start of this article clause (vii) of Schedule VII of the Act only recognizes the activity of training to promote categories of sports such as rural sports, nationally recognized sports, paralympic sports and Olympic sports.

- **Rural Sports:** The Ministry of Youth Affairs and Sports is running a Central Sector Scheme namely the "Khelo India-National Programme for Development of Sports" Scheme [Khelo India Scheme] of which one of the components, namely 'Promotion of rural and indigenous tribal games in the country. Indigenous games of Mallakhamb, Kalaripayattu, Gatka, Thang-Ta, Yogasana and Silambam have been identified for promotion under this component.[1]

- **Nationally Recognized Sports:** Nationally recognized sports[2] are those whose sports federations are recognized by the Ministry of Youth Affairs and Sports based on certain criteria in accordance with the National Sports Development Code of India, 2011[3]. The purpose of this is to ensure that National Sports Federations [NSF] maintain certain basic standards, norms and procedures with regard to their internal functioning, which conform to the high principles and objectives laid down by the concerned international federation and which are also in complete consonance with the principles laid down in the Olympic charter or in the constitution of the Indian Olympic Association while being compliant with the government guidelines applicable to NSF.

- **Olympic and paralympic Sports:** The Indian Olympic Association [IOA] is the apex body responsible for representing India in the Olympic games. It selects and sends the Indian

[1] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1845122#:~:text=Further%2C%20this%20Ministry%20has%20also,Khel%2C%20Paika%20Akhada%20and%20Chhau

[2] https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577146

[3] https://yas.nic.in/sites/default/files/File918.compressed.pdf

contingent to participate in the Olympics. Similarly, the paralympic committee of India is responsible for promoting paralympic sports in India and selecting athletes to represent the country in the paralympic games. Corporates endeavoring to contribute to the training of such athletes can liaison with these apex bodies to help in enhancing the training facilities provided to these athletes via their CSR contribution.

Conclusion

The disparity between well-established sports and others in need of support calls for a strategic assessment of CSR contribution in sports. Understanding the criteria laid down under Schedule VII of the Act becomes crucial for corporates aiming to make impactful contributions.

Rural Sports, Nationally Recognized Sports, Olympic/Paralympic Sports each have distinct parameters for recognition, guiding corporates to identify the areas requiring support.

Therefore, the need to direct CSR contributions towards sports and athletes genuinely in need of support becomes essential. Prioritizing research driven decisions and focusing on nurturing talents in underserved sports areas align with the meaning of need driven CSR.

Hence, conducting thorough, need-driven research would enable corporates to expand their knowledge within the realm of sports. This approach would deter from merely associating with well-established sports through CSR contributions solely for the purpose of enhancing their brand image, targeting the vast audience linked with these popular sports.

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https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023595/inclusion-of-popular-sports-should-not-disrupt-strategic-csr-contributions-for-sports-development-experts-opinion

Mr. Shravan Pai – Management Trainee – shravanpai@mmjc.in

Ms. Rutuja Umadikar – Research Associate – rutujaumadikar@mmjc.in

Can the proposal submitted by a Successful Resolution Applicant in a Resolution Plan to pay certain amounts to the stakeholders of the Corporate Debtor in CIRP be equated with a financial debt?

In the matter of ICICI Prudential Real Estate AIF Acting through its Investment Manager M/s. ICICI Prudential Asset Management Company Limited - Petitioner Vs M/s. Nandi Vardhan Infrastructure Limited Respondent in the order passed by National Company Law Tribunal dated 19 December 2023.

Facts of the case

- ICICI Prudential Real Estate AIF I - Appellant/Financial Creditor (FC) disbursed Rs. 40,00,00,000/- (Rupees Forty Crores Only) to Sunshine Housing and Infrastructure Private Limited (SHIPL) through subscription of 4,000 unlisted, unrated, secured, redeemable non-convertible debentures of a face value of Rs. 1,00,000/- each (Rupees One Lakh Only) Debentures issued by SHIPL pursuant to a Debenture Subscription Agreement dated 6 September 2016 (DSA).
- SHIPL defaulted in meeting its payment obligations as it failed to make payment of the interest which was due and payable to FC on 31 December 2017.
- On 21 December 2018, FC filed an insolvency application against SHIPL which was admitted on 8 May 2019 by National Company Law Tribunal (NCLT).
- The resolution plan was submitted by Nandi Vardhan Infrastructure Limited (Successful Resolution Applicant/Corporate Debtor/CD) was approved by NCLT by way of order dated 11 February 2022.
- In terms of clauses of the resolution plan, the CD was required to pay AIF I, a sum of Rs. 5 Crores (Rupees Five Crores Only) in partial discharge of the financial debt owed to the AIF I within six months from the plan approval date.
- The CD failed to abide by the payment obligation under the resolution plan. The applicant filed an application u/s 7 of Insolvency Bankruptcy Code, 2016 (IBC) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Corporate Debtor on the grounds that that the CD committed default in making payment to the petitioner.

Arguments of the Applicant:

- It was argued that they disbursed Rs. 40 Crores (Rupees Forty Crores Only) to SHIPL through unlisted, unrated, secured, redeemable non-convertible debentures. SHIPL defaulted on interest payment, leading to Insolvency.
- The resolution plan obligated CD to pay Rs. 5 Crores to FC within six months which they failed to make the payment thereby prompting the CIRP initiation.

Arguments of the Respondent/ Corporate Debtor:

- Resolution plan`s approval involved majority of creditors consent.
- It was argued that no money disbursed by petitioner to them and asserted that the purported debt lacked financial characteristics, challenging maintainability.

- It was further highlighted parallel proceedings against CD had been filed by Monitoring Committee of SHIPL bearing interlocutory application u/s 74(3) of the IBC on account of the purported contravention of the resolution plan submitted by the them and on the other hand, the petitioner has filed the captioned petition on account of purported failure to satisfy the debt obligation of the petitioner arising out of the resolution plan submitted by the respondent in the matter of SHIPL.
- It was further claimed that it is a settled law that two parallel remedies cannot be pursued at the same time in respect of the same matter.
- Further, it was stated that the purported debt does not qualify as a financial debt since the same was not disbursed against the consideration of the time value of money. Moreover, there was no privity of contract between the petitioner and the respondent and thus there does not exist any legal relationship between the petitioner and the respondent. Thus, in the absence of the petitioner being categorised as a FC, the petitioner was not entitled to initiate CIRP against the respondent as section 7 of IBC mandates that the petition can be filed only by a FC. Therefore, the captioned petition was not maintainable and was liable to be dismissed on this ground alone.
- In addition, for an amount to qualify as a debt under the provisions of IBC, there must have been a default on the part of the Respondent. In the present case, as there was no disbursement of funds to the Respondent, it cannot be argued that a default has occurred on their part. Therefore, the petition in question is liable to be dismissed.

HELD:

- CD`s commitment to pay stakeholders in the plan doesn't qualify as a financial debt. The judgement emphasis that the IBC`s provisions, including the definition of financial debt contemplate money flow from debtor to creditor a criterion not met in this scenario. A distinction between a commitment to pay under a resolution plan and a traditional financial debt was drawn.
- A promise or undertaking made by a resolution applicant, if not fulfilled, cannot be treated as a default of a financial debt nor the so-called obligation to pay such sums to the financial creditors of the CD in CIRP by such an applicant can be treated as a financial debt covered under the four corners of the definition provided u/s 5(8) of the IBC.
- When the SRA was not able to implement the plan, some consequences were bound to follow. The performance guarantee furnished by such SRA can be forfeited and the SRA can also be prosecuted u/s 74 of IBC but since the liability of the SRA either to pay the creditor or to infuse money in the CD in CIRP for its revival cannot be equated with a financial debt, proceedings u/s 7 of the IBC cannot be initiated.
- CD`s commitment to pay stakeholders in the resolution plan does not qualify as financial debt.
- NCLT held that it would be quite far-fetched to equate the obligation of the SRA to implement the plan with incurring a financial debt, vis-à-vis the Financial Creditors or Members of the CoC of the CD in CIRP.
- The obligations of an SRA cannot be equated to a Corporate Guarantee. As a result of above discussion, it is held that the petitioner failed to make out a case of existence of a financial debt and its default committed by the CD. Accordingly, the petition was dismissed with no order as to cost.

Ms. Esha Tandon – Assistant Manager – eshatandon@mmjc.in

Ms. Aarti Ahuja Jewani – Partner – artiahuja@mmjc.in

Voluntary Undertaking under the Digital Personal Data Protection Act, 2023

Introduction -

One of the significant provisions of the Digital Personal Data Protection Act, 2023 ("**Act**") is Voluntary Undertaking as provided under Section 32 of the Act that allows any person or institution to remedy their breach under the Act.

In this article, we analyse the provisions of voluntary undertaking under the Act.

Voluntary Undertaking

Sub-section (1) of Section 32 of the Act provides for submission of voluntary undertaking by a person committing any default under the Act, to the Data Protection Board ("**Board**") as established by the Central Government under Section 18 of the Act.

This provision provides that any person or institutions who are in default / breach of complying with the provisions of the Act, may at any stage of the proceeding, voluntarily accept before the Board that they are in breach of the provisions of the Act.

The Board, may then, *at its discretion*, accept, this voluntary undertaking from such person or institution. A voluntary undertaking is a written commitment by a person or institution who is alleged to have committed a breach under the Act to take specific corrective actions to rectify its default.

One can also compare this to compounding of offences where the party in default on its own accord admits to contravention of the provisions of the Act. This will also help in timely rectification of non-compliances and a step by the Government to decriminalize offence, encourage compliance and promote ease of doing business.

Such an undertaking may include an undertaking to take such action within such time as may be determined by the Board, or refrain from taking such action and or publicising such undertaking. It will be important to see the impact of such publication of undertaking in view of data privacy in general and how the investor fraternity in general will view these undertakings.

Upon acceptance of such undertaking by the Board, any proceedings against the concerned person or institution shall be barred unless such person or institution fail to fulfil their commitment or violate the specified terms of the undertaking. The person or institution, on such breach, shall be proceeded against in accordance with the provisions of Section 33 of the Act.

This is similar to undertakings accepted by Personal Data Protection Commission, Singapore (PDPC) that allow organisations to remedy their breach and identify and rectify any inherent systemic weaknesses to maintain ongoing adherence to Personal Data Protection Act, 2012 requirements. The PDPC publishes such undertaking submitted by organisations on its website.

However, the Act does not provide any further clarity on such voluntary undertaking like what are the maximum permissible timelines within which the alleged defaulters are supposed to take action or refrain from taking such action as prescribed by the Board. It also needs to clarify on how such undertakings will be publicised by the Board. It is quite possible, that the Government may clarify these issues in the proposed rules under the Act.

Conclusion –

This is a welcome step in ensuring compliance with data privacy laws in countries like India where data privacy is still at a very nascent stage and emphasising on the data fiduciaries in India the significance of data privacy law. More specifically, from foreign investors' perspective, who consider data privacy as one of the deciding factors in their investments. However, it needs to be seen, how the finer details of this provision are provided by the Government.

This article is published in Taxguru. The link to the same is as follows: -

https://taxguru.in/corporate-law/voluntary-undertaking-digital-personal-data-protection-act-2023.html

Mr. Nilesh Javkar – Senior Manager – nileshjavkar@mmjc.in

NEWS UPDATES/AMENDMENTS FOR THE MONTH OF JANUARY 2024:

Sr. No.	News Updates/Amendments	Link & Brief Summary
NEWS		
1	MCA planning new portal to streamline IBC cases, boost transparency	https://www.business-standard.com/companies/news/mca-planning-new-portal-to-streamline-ibc-cases-boost-transparency-123122400392_1.html The portal would include features for SMS alerts and provide template-based judgments for NCLT to save time and use artificial intelligence learning for making the judgments.
2	7,000 Companies Waiting in Queue for NCLT to Admit Cases for Bankruptcy Resolution	https://thewire.in/law/nearly-7000-companies-waiting-in-queue-for-nclt-to-admit-cases-for-bankruptcy-resolution-report Creditors to nearly 7,000 companies are waiting for the National Company Law Tribunal (NCLT) to decide on whether to admit these companies for bankruptcy resolution.
AMENDMENTS / CIRCULARS /CONSULTATION PAPERS		
1	Consultation paper	https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-amendments-to-sebi-regulations-with-respect-to-verification-of-market-rumours_80237.html SEBI brings in CP for verification of market rumors.
2	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20231229-59 BSE circular on filing of quarterly reconciliation of share capital audit report under reg.76 of SEBI (Depositories and Participants) Regulations 2018
3	SEBI Circular	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI%20Circular_27122023.pdf SEBI circular on extension of timeline for providing choice of nomination in eligible demat accounts and mutual fund folios.

4	SEBI Circular	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI_Circular_29122023.pdf SEBI circular on revision to the framework on social stock exchange
5	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240101-18 BSE circular on procedure to apply for waiver of fines levied as per SEBI circular dtd Jan 22, 2020, through listing centre.
6	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240104-1 BSE circular on framework on social stock exchange
7	MCA	https://pib.gov.in/PressReleasePage.aspx?PRID=1991275 MCA Year ended 2023
8	SEBI CP	https://www.sebi.gov.in/reports-and-statistics/reports/jan-2024/consultation-paper-on-interim-recommendations-of-the-expert-committee-for-facilitating-ease-of-doing-business-and-harmonization-of-the-provisions-of-icdr-and-lodr-regulations_80585.html SEBI releases CP on proposed amendment to LODR.
9	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240116-42 BSE Circular on Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2023.
10	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240116-43 BSE Circular on Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2023.
11	MCA Circular	https://www.mca.gov.in/bin/dms/getdocument?mds=qcIDsiX0Le%252F2EMv7m1iyEw%253D%253D&type=open

		The Companies (Listing of equity shares in permissible jurisdiction) Rules, 2024. MCA comes out with a notification on listing of equity shares in permissible jurisdictions for Unlisted Indian Public Companies.

Due Dates	
Effective Date for Circular	Nature of Compliance
December 01, 2024	Regulation 30(11) – SEBI LODR Provisions **Rumour verification provisions to become applicable from June 01, 2024,** for top 100 listed entities and from December 1 2024 for top 250 listed entities as on March 31, 2023.
SEBI Circular dated July 13, 2024	Freezing of PAN at security level becomes applicable for all listed entities with effect from March 31, 2024. Large Entity (except top 2000) need to engage with CSDL or NSDL and put in place systems to implement this.
Large Corporate Revised Framework applicable from April 01, 2024.	SEBI Circular dated, October 19, 2023, revised framework for fund raising by issuance of debt securities by Large Corporates (LCs) is applicable from April 01, 2024, for companies having April to March as financial year. This framework would be applicable to all listed entities except scheduled commercial banks. Framework would be applicable to large entities which fulfil the following conditions: a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised Stock Exchange(s) AND b) have outstanding long term borrowings of Rs.1000 crore or above, AND c) have a credit rating of "AA"/ "AA+"/AAA ", where the credit rating relates to the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in. Stock exchanges would be seeking above referred data in XBRL along with financial results and then shall release the list of listed entities to whom this framework would apply.
Investor Grievance Redressal	SEBI Circular dated March 16, 2023, states Listed entities are required to intimate security holders holding securities in physical form about incomplete folios in terms of KYC, PAN, and nomination. This intimation has to be given within 6 months of end of financial year. This has to be given by both – Equity and Debt listed companies.

	Large entity needs to ensure that such letters are sent to physical security holders by September 30, 2024
Revamp of SCORES portal effective from April 01, 2024	SEBI Circular September 20, 2023, read with SEBI Circular December 01, 2023: Revamped SCORES process would now become applicable from April 01, 2024. SCORES Circular inter alia provides that Depository Participants (DPs), and stockbrokers shall get themselves registered by April 01, 2024, on SCORES portal. Further SCORES portal needs to be integrated with company's/intermediaries' own grievance redressal portal. Large Entities are requested to check whether SCORES Portal is updated with relevant details.
April 01, 2024	Applicability of BRSR Core - Framework for assurance and ESG Disclosures for Value Chain ESG disclosures for the value chain shall be applicable to the top 250 listed entities (by market capitalization), on a comply or explain basis from FY 2024-25.
April 01, 2024	Regulation 17(1D) – Directors of listed entities to obtain periodic shareholder approval to continue serving the board. The approval for shareholders in a general meeting is required for a director to continue serving on the board of directors of a listed entity. This approval must be obtained at least once in every five years from the date of director's appointment or reappointment. If a director has been serving as of March 31, 2024, without shareholder approval for the last five years or more, their continuation will be subject to shareholder approval in the first general meeting after March 31, 2024. Companies shall be watchful of this point while drafting their AGM Notices.
InVIT Compliances	
SEBI InvITs (Infrastructure Investment Trusts), 2014 Circular dated June 26, 2023	The InvITs are to file Annual Secretarial Compliance Report within 60 days from the end of Financial Year