MMJC

# MMJCINSIGHTS
## March 15, 2024

# Index



# Aligning Sustainable Development Goals and Corporate Social Responsibility in India

**Introduction:**

The 21st century has seen a growing recognition of the need to address global challenges, including poverty, inequality, climate change, and environmental degradation. In 2015, the United Nations introduced the Sustainable Development Goals (SDGs)[i], a universal call to action to end poverty, protect the planet, and ensure prosperity for all by 2030. In parallel, the concept of Corporate Social Responsibility (CSR) has gained prominence, emphasizing a corporation's commitment to ethical behaviour, and contributing to the well-being of society. In India, where economic growth and social development often intersect, the alignment of SDGs and CSR has become a vital paradigm for progress. This article explores the synergy between SDG and CSR in the Indian context.

**Understanding the SDGs:**

The Sustainable Development Goals consist of 17 interconnected objectives designed to tackle various global challenges. They range from ending poverty and hunger to ensuring clean water, affordable clean energy, quality education, gender equality, and climate action. While these goals were established by the United Nations, they have a universal applicability and are as relevant in India as they are elsewhere in the world.

**Corporate Social Responsibility in India:**

In India, the notion of corporate social responsibility has evolved significantly in recent years. The Companies Act of 2013 mandated that certain categories of companies should spend 2% of their net profits on CSR activities[ii]. This legal framework has led to increased awareness and focus on CSR initiatives among Indian corporations. However, CSR in India has gone beyond compliance with regulations. It has become an integral part of corporate culture and a means to address societal issues, contributing to economic and social development.

**Aligning CSR with SDGs**

The alignment of CSR initiatives with the SDGs in India is a powerful concept. It offers a strategic approach to ensure that corporate contributions to society are consistent with global development priorities. Here are some keyways in which this alignment can be achieved:

1. **Focus and Impact**: Aligning CSR with the SDGs allows companies to concentrate their resources and efforts on areas where they can make a substantial impact. This ensures that CSR activities are not just a philanthropic gesture but a strategic intervention in areas that truly need attention.
2. **Relevance to Business**: Many SDGs align with the core business activities of corporations. For instance, a renewable energy company can directly contribute to SDG 7 (Affordable and Clean Energy) and SDG 13 (Climate Action). This alignment not only makes sense ethically but also from a business perspective, as it can create new markets and opportunities.

3. **Global Citizenship**: The SDGs are a global agenda, and by aligning with them, Indian companies can position themselves as global citizens, contributing to the worldwide effort to address pressing challenges. This can enhance a company's reputation on the global stage.
4. **Collaboration and Partnerships**: The SDGs emphasize the importance of multi-stakeholder partnerships. Aligning CSR initiatives with the SDGs encourages collaboration between businesses, governments, non-governmental organizations, and communities. This collaborative approach can lead to more effective solutions and wider reach.

**Challenges in Aligning CSR with SDGs in India**

While the concept of aligning CSR with the SDGs is promising, it is not without its challenges:

1. **Awareness and Education**: Many Indian companies, especially smaller enterprises, may not be fully aware of the SDGs and their significance. A lack of awareness can hinder the alignment process.
2. **Resource Allocation**: Shifting resources to align with the SDGs might require companies to reprioritize their existing CSR initiatives. Striking a balance between ongoing projects and new SDG-aligned initiatives can be challenging.
3. **Measurement and Reporting**: Measuring the impact of CSR activities is already a complex task, and aligning with the SDGs requires developing new key performance indicators (KPIs) and robust reporting mechanisms.

**As we see the challenges in aligning CSR with SDG, we now see some examples of alignment in Indian parlance.**

**Examples of Alignment in India:**

**Education for All (SDG 4)**: A company focusing on education as part of its CSR initiative can align it with SDG 4, aiming to ensure inclusive and equitable quality education. By supporting initiatives such as scholarships, infrastructure development, and teacher training, companies contribute to both their CSR goals and SDG 4.

**Clean Energy and Climate Action (SDG 7 and 13):** Companies investing in renewable energy, energy efficiency, and emission reduction initiatives align their CSR efforts with SDGs 7 (affordable and clean energy) and 13 (climate action). These initiatives contribute to mitigating climate change, reducing environmental impact, and fostering sustainable energy practices.

**Women Empowerment and Gender Equality (SDG 5):** CSR initiatives focused on promoting women's empowerment, gender equality, and workplace diversity align with SDG 5. Companies can implement policies that ensure equal opportunities, provide skill development for women, and support initiatives that empower women economically and socially.

**Case Studies: Exemplary SDG-Aligned CSR Initiatives in India**

1. **Tata Group**[iii]: The Tata Group, a conglomerate with a long history of CSR activities, aligns its initiatives with several SDGs, including SDG 1 (No Poverty), SDG 4 (Quality Education), and SDG 6 (Clean Water and Sanitation). The Tata Trusts have launched various programs, such as the Tata Water Mission, which focuses on water resource management.

2. **Mahindra Group**[iv]: The Mahindra Group is known for its commitment to SDG 7 (Affordable and Clean Energy) and SDG 9 (Industry, Innovation, and Infrastructure). They are actively engaged in the renewable energy sector and have made significant contributions to expanding access to clean energy in rural areas.

3. **Wipro**[v]: Wipro, a global IT services company, has embraced SDG 4 (Quality Education) and SDG 8 (Decent Work and Economic Growth). Through its education initiatives, such as the Wipro Applying Thought in Schools program, the company aims to enhance the quality of education in India.

**Conclusion**

The alignment of Sustainable Development Goals with Corporate Social Responsibility in India represents an incredible opportunity to drive meaningful change and contribute to global development. Indian companies, regardless of their size, must recognize the importance of this alignment. They should take steps to raise awareness, foster strategic partnerships, and implement robust measurement and reporting mechanisms. By doing so, they can fulfill their CSR obligations while also making a substantial positive impact on society and the environment, creating a more sustainable and equitable future for all. As India continues to grow and develop, the alignment of CSR with the SDGs is a critical step towards achieving a brighter, more sustainable future for the nation and the world.

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

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023442/aligning-sustainable-development-goals-and-corporate-social-responsibility-in-india-experts-opinion

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

[i] https://sdgs.un.org/goals
[ii] Section 135 – Companies Act, 2013
[iii] https://www.tatasustainability.com/SocialAndHumanCapital/CSR
[iv] https://www.mahindra.com/resources/investor-reports/FY20/Sustainability-Policies/Mahindra-SDG-Report.pdf
[v] https://www.wipro.com/content/dam/nexus/en/sustainability/sustainability_reports/sustainability-report.pdf

# The Double-Edged Sword of Excessive Innovation: The Rise of ESG

In the ever-evolving landscape of corporate innovation, the role of excessive corporatization in terms of development, innovation and marketing cannot be understated. While it has undoubtedly fuelled remarkable advances in technology, infrastructure, and global connectivity, it has also brought forth significant challenges and consequences. The extraction of valuable resources like cobalt in Africa often involves social exploitation, over exploitation of non-renewable resources, bush fires in Australia and Europe are some contemporary examples which are seen as a threat to mother nature.

This era being defined by technological advancement and unprecedented corporate growth, the world faces numerous challenges that demand a closer look at the ethical implications of our actions. From the overmarketing of products to the excessive use of plastic and the seemingly relentless drive for innovation, businesses find themselves at a crossroads where profit and ethics intersect. Let's explore the multifaceted landscape of ethical concerns in the corporate world, delving into issues such as resource exploitation, social responsibility, and environmental stewardship and how the scenario now seems to bring in a change.

In recent years, the growing recognition of these issues has given rise to the prominence of Environmental, Social, and Governance (ESG) criteria in corporate decision-making. ESG has evolved into a guiding principle that balances the scales of progress and responsibility.

**The Engine of Innovation:**

Excessive corporatization has been the driving force behind a slew of groundbreaking innovations. It has spurred rapid technological advancements, transforming how we live and work. Companies have expanded their global reach, and consumers have reaped the benefits of cutting-edge products and services. The relentless pursuit of profits has created an atmosphere of competition and innovation, leading to remarkable achievements in various industries.

Innovation is essential, but when pursued for the sole purpose of market dominance, it can lead to overconsumption and the premature disposal of goods. Innovations should enhance people's lives without exploiting their desires.

For instance, tech giants like Apple, Amazon, and Google have revolutionized the way we communicate, shop, and access information. The automotive industry is witnessing a major transformation with electric vehicles and autonomous driving technologies, thanks to corporations like Tesla. Additionally, pharmaceutical companies have made substantial strides in healthcare, developing vaccines and life-saving drugs at an unprecedented pace.

**The Cost of Corporatization:**

However, the relentless pursuit of profits has not been without its downsides. Excessive corporatization has raised concerns about ethical and moral principles. Environmental degradation, exploitative labour practices, and income inequality are some of the dark undercurrents of this corporate juggernaut.

The world has witnessed the negative effects of unchecked corporate power, such as the 2008 financial crisis and the ongoing climate crisis. The race for profits often results in shortcuts and externalizing costs, leading to ecological devastation and social injustices. Sweatshops, deforestation, and the exploitation of vulnerable populations have become distressingly common in the pursuit of cheap labour and resources.

As a result, public opinion has shifted towards a demand for corporate accountability. Consumers, investors, and activists are pushing for greater transparency and ethical practices. This growing sentiment has given birth to ESG as a framework for evaluating and prioritizing corporate responsibility.

**The Emergence of ESG:**

ESG represents a paradigm shift in the corporate world. It is no longer sufficient for companies to focus solely on financial performance; they are increasingly judged by their environmental impact, their treatment of employees, and their ethical conduct.

The journey of Environmental, Social, and Governance (ESG) considerations within corporate practices is a reflection of society's growing awareness of the consequences of excessive resource exploitation and the realization that sustainability is the key to long-term business viability. This journey, rooted in addressing these concerns, has seen several significant milestones:

**1. Voluntary Guidelines by MCA (2009):** The Ministry of Corporate Affairs (MCA) in India introduced voluntary guidelines in 2009, signalling the initial steps towards ESG integration into corporate strategies. This move was driven by the recognition of the adverse impact of unchecked corporate practices on the environment, society, and governance. It aimed to encourage companies to adopt responsible and sustainable practices voluntarily.

**2. SEBI's Business Responsibility Reporting (BRR) for Top 100 (2012):** In 2012, the Securities and Exchange Board of India (SEBI) introduced Business Responsibility Reporting (BRR) for the top 100 listed entities. This step was in response to the realization that ESG factors were integral to evaluating a company's long-term performance and resilience. By making ESG reporting mandatory for these entities, SEBI sought to promote transparency and accountability, addressing concerns related to resource exploitation, social welfare, and governance.

**3. Transition to Business Responsibility and Sustainability Reporting (BRSR) in 2021:** Recognizing the need for a more comprehensive reporting framework, SEBI evolved the BRR to Business Responsibility and Sustainability Reporting (BRSR) in 2021. The shift from BRR to BRSR underscores the ever-growing importance of sustainable practices. It reflects the understanding that ESG factors are no longer a matter of choice but a critical component of corporate strategies that ensure long-term success.

**4. Introduction of BRSR Core Assurance:** The latest development in this journey is the introduction of BRSR assurance. This marks a significant milestone as it signifies the growing acknowledgment that, to truly uphold ESG values, companies need independent validation of

their ESG disclosures. It highlights the imperative for accountability and demonstrates that industries have come to realize that sustainability is not just a buzzword but a fundamental requirement for staying in business.

The underlying point throughout this journey is the realization that excessive resource exploitation has led to environmental degradation and social disparities. Corporations have increasingly understood that unless they adapt to more sustainable and responsible business practices, they risk their own longevity. ESG considerations are no longer just a regulatory requirement but a reflection of the changing expectations of investors, consumers, and society at large. The journey of ESG reflects the evolving consciousness of the impact of corporate actions on our world and the urgency to transform these actions for a better, more sustainable future.

The ESG framework has not only attracted socially responsible investors but has also become a powerful tool for risk assessment. Companies with strong ESG practices tend to be more resilient in the face of unforeseen challenges, from regulatory changes to public relations crises.

One such classic example is the latest apple's advertisement - with their unwavering focus on the beauty and vitality of the natural world, stand as a testament to the company's commitment to Mother Nature[i]. Through their stunning visuals and emotive storytelling, Apple showcased not only their technological prowess but also their dedication to preserving and celebrating the planet's wonders. Whether it's the lush landscapes, awe-inspiring seascapes, or the intricate web of life in a forest, the advertising portrays nature not just as a backdrop but as the true star of the show. In the ad, Apple communicates a message that transcends their products – it's a call to reconnect, appreciate, and protect the environment that sustains us all. Their reverence for the Earth resonates deeply, reminding us of the vital importance of cherishing and safeguarding the natural world for future generations.

**ESG as a Priority:**

**'E' -** Environmental criteria consider a company's efforts to reduce its carbon footprint, conserve resources, and minimize pollution.

**'S' -** Social criteria encompass fair labour practices, diversity, and community engagement.

**'G' -** Governance criteria examine the company's leadership structure, board diversity, and adherence to ethical standards.

In response to growing scrutiny, numerous corporations are prioritizing ESG as a core component of their strategy. Some are even going beyond compliance to lead in sustainability and social responsibility, aiming to make a positive impact on society and the environment.

For example, companies like Unilever have set ambitious targets to reduce their environmental footprint, while also launching initiatives to improve living standards for their employees and communities. Microsoft is committed to becoming carbon-negative by 2030, and pharmaceutical giants like Reckitt Benckiser are making access to healthcare a global priority.

The excessive corporatization that has fuelled innovation comes at a cost, which is increasingly recognized through the lens of ESG. The rise of ESG criteria signals a shift towards a more balanced and responsible form of capitalism. Corporations are learning that they can innovate, generate profits, and contribute positively to society and the environment.

**Conclusion**

While ESG is not a panacea, it provides a roadmap for corporations to navigate the complex challenges of our time. Ultimately, striking the right balance between innovation and responsibility will be the key to ensuring that the benefits of corporatization are shared by all, without compromising the well-being of our planet and its people.

[i] https://www.youtube.com/watch?v=QNv9PRDIhes – Apple Ad for Mother Nature

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

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023435/the-double-edged-sword-of-excessive-innovation-the-rise-of-esg-experts-opinion

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

**Mr. Pradnesh Kamat – Partner – *pradneshkamat@mmjc.in***

# Warning letter or caution letter issued by SEBI – An Analysis

**Introduction:**

Securities and Exchange Board of India ('SEBI') vide its amendment notification dt: June 14, 2023, effective from July 15, 2023, introduced regulation 30(13) in SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ['SEBI LODR']. Regulation 30(13) reads as follows, "*In case an event or information is required to be disclosed by the listed entity in terms of the provisions of this regulation, pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority, the listed entity shall disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority*." Regulation 30(13) directs listed entities making disclosure under these regulations pursuant to any communication received from any regulatory, statutory, enforcement or judicial authority shall also disclose such communication while making disclosure. Pursuant to regulation 30(13) listed entities have been disclosing caution letters / warning letters received from SEBI to stock exchanges. In this write up we shall analyse these warning letters / caution letters to understand its relevance and implications it may have on listed entities.

**Analysis of warnings and caution notices by regulator:**

Warning letters are disclosed to stock exchange under point 20, para-A, Part A of schedule III. Warnings letters are issued by SEBI mainly for cautioning against the violation done by listed entities pertaining to any SEBI regulations, inadequate disclosures under various SEBI regulations, delayed disclosures under various SEBI regulations or circulars thereof. Warnings are also issued by SEBI to listed entities for violation of laws that are applicable to the business of the company. Viz. Violation of depositories and participants regulations, stock brokers regulation, merchant bankers regulations, etc. SEBI issues warnings with directions to the company and its board of directors. Warnings issued by SEBI are of various nature:

**a. Requiring disclosure to stock exchange:** SEBI asks listed entities to disclose the warning letter to the stock exchange. This is to ensure that the market and board of directors are aware of such a warning.

**b. Requiring a warning letter along with corrective action to be placed before the board of directors:** SEBI asking to place warning letters before the board of directors. Further SEBI asks the management to chalk down measures to rectify this and place it before the board of directors so that this is not repeated in future. SEBI directs companies to place these corrective measures taken to rectify non-compliance before the board of directors and further asking companies to reply to SEBI highlighting whether board of directors of listed companies are satisfied with the corrective steps taken by listed company. This is crucial as the company will have to keep in mind placing the warning letter before the board of directors.

**c. Warning letters and performance evaluation:** SEBI has been directing the board of directors of listed companies to consider this warning letter while doing performance evaluation of concerned individuals who are responsible for lapses or non-compliance.

**Disclosure of min. information alongwith warning notices**

Disclosure of warning letters or caution notices are made pursuant to point 20 of Para A, Part A, Schedule III of SEBI LODR. Point 20 provides for certain information required to be disclosed viz.

name of authority, nature and details of action taken, initiated or order(s) passed, date of receipt of communication, date of violation and financial impact, if any. While disclosing details of warning letters or caution notices minimum details as are stated above shall be disclosed.

**Whether it would be necessary to disclose warning letters or caution notices issued to subsidiary companies as well?**

As per regulation 30(9) of SEBI LODR listed entity shall disclose all events or information with respect to subsidiaries which are material for listed company. So, regulation 30(9) read with Point 20, Para A, Part A of Schedule III of SEBI LODR listed entity will have to disclose to stock exchange warnings or caution notices issued to subsidiary companies by any regulatory authority alongwith minimum details as stated above.

**Whether SEBI initiates adjudication proceedings on same issue for which warning letter is already issued?**

There have been cases where SEBI has initiated adjudication proceedings in spite of issuance of warning letters. SEBI on issuance of warning letters or caution notices had directed listed companies to take corrective action. Where listed companies have failed to take corrective action, SEBI has initiated adjudication proceedings against the listed companies.

**Recalling of warning letter or caution letter by SEBI:** In a recent case subsidiary of a big private sector bank was issued warning by SEBI highlighting non-compliance with certain SEBI regulations. Subsidiary company submitted response to SEBI highlighting compliances done by them with respect to SEBI regulations in respect of which warning letter was issued. SEBI taking note of responses recalled the warning letter. This highlights that appropriate response to warnings issued by SEBI would help them rectified timely. Also, it is important that once warning or caution letters are cancelled adequate and timely disclosure in this regard is sent to the stock exchange.

**Conclusion:**

In conclusion, it is pertinent to note that, receipt of warning letter from SEBI highlights an existence of a considerable non-compliance. Therefore, the companies are expected to take the issue of warning letter by SEBI very seriously and should take adequate precautions to avoid receipt of such letters. Companies should most prominently be mindful of procedural non-compliances which often result in to receipt of warning letters.

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

https://taxguru.in/sebi/warning-letter-caution-letter-issued-sebi-analysis.html

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

# The SEBI Verdict: Redefining 'Persons Acting in Concert' in Corporate Takeovers

**Introduction:**

Securities and Exchange Board of India Substantial Acquisition Shares and Takeover regulations ('SAST Regulations') were introduced by the Securities and Exchange Board of India ('SEBI') to safeguard companies and investors from hostile takeovers. SAST Regulations are built upon several fundamental concepts, including acquisition, takeover, and inter-se transfer. One such pivotal concept, which serves as a cornerstone of SAST Regulations, is the concept of 'Persons Acting in Concert.' SEBI has thoughtfully provided a well-defined description of this term within the SAST Regulations. However, despite the clear definition and numerous legal pronouncements, it remains apparent that the term is still susceptible to varying interpretations by the various courts. This ambiguity was recently underscored in a SEBI in its adjudication order dt: May 31, 2023, concerning the case of Abhishek Infraventures ltd[i].

**Brief Facts of the case:**

**SEBI** upon receipt of a complaint, conducted an investigation into the trading activities of certain entities in the scrip of Abhishek Infraventures Limited ('**AIL**'/ '**Company**') for the time period January 01, 2017, to March 31, 2017 (hereinafter referred to as the "**Investigation Period**"). On investigation SEBI noted that the *Company* was listed on Ahmedabad Stock Exchange ('ASE') on January 27, 2015, with paid up share capital of INR 24,90,000, comprised of 2,49,000 equity shares of face value of INR 10 each. Immediately after its listing on ASE, the *Company* made a preferential allotment of 30,00,000 shares to 11 allottees [viz. Omprakash Kovuri (hereinafter referred to as '**Noticee no. 1**') and Mr. Ramachandra Murthy Adiraju (hereinafter referred to as '**Noticee no. 2**', Shiva Kumar Komaravelli (hereinafter referred to as '**Noticee no. 3**'), Srikanth Burugu (hereinafter referred to as '**Noticee no. 4**'),
Lata Bejgam (hereinafter referred to as '**Noticee no. 5**'), Perraju Pericharla (hereinafter referred to as '**Noticee no. 6**'), Joseph Polisetty (hereinafter referred to as '**Noticee no. 7**'), Balram Aerrolla (hereinafter referred to as '**Noticee no. 8**') and Swaroopa Pasupula (hereinafter referred to as '**Noticee no. 9**')] on January 29, 2015, at the price of INR 10 per share. During its investigation, SEBI uncovered a crucial revelation that, the funds used for subscribing to this preferential allotment had originated from and circulated through AIL itself, via another entity known as Vishwanath Projects Limited ['VPL']. SEBI further observed that funds utilized by *Noticee no. 9* to subscribe to the shares of AIL in preferential issue was originated from Vertex Venture Healthcare, an entity alleged to be connected with *Noticee no. 1.* In view of this, it has been alleged that all these are connected with *Noticees no. 1* and *2* and have actually acted in concert with these two promoter entities to acquire shares of AIL in its preferential issue.

SEBI vide its adjudication order dated May 31, 2023, stated that, "*It is interesting to observe that even the promoters of the Company had used an amount of INR 14.10 lakh received by them from Vertex Ventures Healthcare for paying consideration against the allotment of shares made to Noticees no. 1 and 9 by the Company. In this regard, Noticee no. 9 had used INR 9.20 lakh to pay for consideration of allotment of shares and an amount of INR 5 lakh was used by Noticee no. 1 to partly pay the consideration for allotment of shares of AIL through layered transactions. Subsequent to allotment of shares and receipt of consideration for such shares by the Company, an amount of INR 23 lakh was withdrawn as cash from the bank account of AIL. Around the same time, an amount of INR 17.42 lakhs was deposited in the bank account of Vertex Ventures Healthcare by way of cash*

*deposit for which no explanation has been submitted by any of the involved parties. In the light of the aforesaid factual revelations in the present matter, it leads to an unassailable inference that the said funds were withdrawn in cash from the account of AIL and deposited in the account of Vertex Ventures Healthcare to avoid detection of such transfer of funds.* ***All these facts and inferences as deliberated above, lead to a compelling conclusion that the Noticees no. 3 to 9 have acted in concert with Noticees no. 1 & 2, the promoters of AIL, while subscribing to the shares of AIL in preferential allotment done on by AIL January 29, 2015****. For the said purpose, these Noticees were funded with money arranged by Noticees no. 1 & 2 through their associates and connected entities and the said money was returned back to these associates and connected entities from the account of the Company through one way or the other, soon after the preferential issue was completed. As Noticees no. 1 & 2 had also invested in the preferential allotment of shares, the aforementioned fund transfers from VPL to Noticees no. 2 to 8 and return of the said funds by AIL to* ***VPL within one and a half months of completion of preferential allotment, without proper justification, strengthened the allegation of concert****, pertaining to these fund transferred to Noticees no 2 to 8 to enable them to subscribe to the shares of AIL. Similarly, the funds were arranged by Noticee no. 1 and 2, through their friend Yadaiah Pasupula, to enable the wife of Yadaiah Pasupula i.e., Noticee no. 9, to enable her to subscribe to the shares of AIL in the preferential allotment. Considering the above, I reiterate my above discussed findings that all these persons/allottees/Noticees were acting with same common objective and were apparently falling within the definition of PACs, as defined under Regulation 2(1)(q) of SAST Regulations*".

Based on the observed connection between the Company and the allottees, SEBI determined that the allottees had indeed acted in concert to gain control of the company. SEBI vide its order dt: May 31, 2023, also debarred Noticee no. 1 to 9 for five years and further penalised them for not failure to make necessary discourse as a group, as required under the provision of Regulation 29(2) read with 29(3) of the SAST Regulations.

**Interpretation of term Persons Acting in Concert:**

Looking at this SEBI Adjudication order, it becomes critical to understand, how SEBI has interpreted the definition of 'Persons Acting in Concert' under SAST Regulations, as there is no direct contact or any written agreement other than the movement of funds amongst the allottees or for that matter, between the company and the allottees. The definition of persons acting in concert as provided under SAST regulations reads as,

*"(q) "persons acting in concert" means, —*

*(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly, or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company…."*

The analysis of this clause of definition of persons acting in concert reveals that, for two or more persons to be considered as acting in concert, it is necessary to prove that they were co-operating with each other pursuant to any formal or informal agreement or understanding. In the given case, there was no existence of any such formal or informal agreement or understanding between the noticees, even then SEBI has considered them as persons acting in concert.

**SEBI's interpretation**

While interpreting the definition of Person Acting in Concert, SEBI has established that all the Noticee no. 1 to 9 have acted in co-operation for subscribing the preferential issue of the Company even though there was no express agreement or understanding amongst them in this regard. SEBI

while adjudicating this issue has referred a Supreme Court judgment which has set a precedent stating that even if there is no direct evidence to prove the existence of agreement for determining Persons Acting in Concert, the same can be inferred from the conduct of the parties as well. The said Supreme Court judgment in the matter of Technip SA vs. SMS Holding (Pvt.) Ltd. & Ors. (2005) 5 SCC 465, read as follows,

> *"54. The standard of proof required to establish such concert is one of probability and may be established. "If having regard to their relation etc., their conduct, and their common interest, that it may be inferred that they must be acting together: evidence of actual concerted acting is normally difficult to obtain and is not insisted upon". [CIT v. East Coast Commercial Co. Ltd., (1967) 1 SCR 821]. (SCR p. 829 H)*
>
> *55. While deciding whether a company was one in which the public were substantially interested within the meaning of Section 23A of the Income Tax Act, 1922 this Court said: -*
>
> *"The test is not whether they have acted in concert but whether the circumstances are such that human experience tells us that it can safely be taken that they must be acting together. It is not necessary to state the kind of evidence that will prove such concerted actions. Each case must necessarily be decided on its own facts" [Commissioner of Income Tax v. Jubilee Mills Ltd., (1963) 48 ITR 9 (SC), p. 20]*
>
> *56. In Guinness PLC and Distillers Company PLC [Guinness PLC and Distillers Company PLC (Panel hearing on 25-8-1987 and 2-9-1987 at p. 10052 — Reasons for decisions of the Panel.)] the question before the Takeover Panel was whether Guinness had acted in concert with Pipetec when Pipetec purchased shares in Distillers Company PLC. Various factors were taken into consideration to conclude that Guinness had acted in concert with Pipetec to get control over Distillers Company. The Panel said: -*
> *"The nature of acting in concert requires that the definition be drawn in deliberately wide terms. It covers an understanding as well as an agreement, and an informal as well as a formal arrangement, which leads to co-operation to purchase shares to acquire control of a company. This is necessary, as such arrangements are often informal, and the understanding may arise from a hint. The understanding may be tacit, and the definition covers situations where the parties act based on a "nod or a wink".... Unless persons declare this agreement or understanding, there is rarely direct evidence of action in concert, and the Panel must draw on its experience and common sense to determine whether those involved in any dealings have some form of understanding and are acting in co-operation with each other""*

It is based on this Supreme Court decision that SEBI has held the allottees to be Persons Acting in Concert based on movement of funds amongst them without existence of any agreement or evidence thereof.

This is for the first time that SEBI has penalised any company under SAST Regulation for making a fraudulent preferential issue. By levying penalty under SAST Regulations SEBI has SEBI not only able to debar the fraudulent allottees from the securities market to protect the investors and their hard-earned money from any such fraud transaction in future but also could penalise these allottees.

**Conclusion:**

The application of SAST regulations in this context not only empowers SEBI to penalize wrongdoers but also aligns with its investor protection mandate. SEBI's decision to debar the fraudulent allottees from the securities market demonstrates its commitment to ensuring

transparency and safeguarding investor interests. This case sets an important precedent in addressing complex scenarios where formal agreements may be absent, yet concerted actions are evident, strengthening regulatory oversight in takeover situations.

---

[i] https://www.sebi.gov.in/enforcement/orders/may-2023/final-order-in-the-matter-of-abhishek-infraventures-limited_72095.html

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

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023448/the-sebi-verdict-redefining-persons-acting-in-concert-in-corporate-takeovers-experts-opinion

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

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

# Implications of Re-defining unpublished price sensitive information under the Prohibition of Insider Trading Regulations.

**Background:**

Prior to April 1, 2019, "*Material events in accordance with the listing agreement" was considered as* Unpublished Price Sensitive Information ['UPSI']. Regulation 2 (1) (n)(vi) of the Securities and Exchange Board of India [Prohibition of Insider Trading] Regulations, 2015 ["PIT Regulations"] provided for the same. Regulation 2(1)(n) (vi) was omitted pursuant to the amendment dt: December 31st , 2018 to the PIT Regulations. This was understood as 'Material events in accordance with the listing agreement" would not be considered as UPSI. This deletion of clause (vi) was pursuant to the recommendations of Committee on Fair Market Conduct (referred as FMC Committee) formed by Securities and Exchange Board of India ["SEBI"] in August 2017 ['Vishwanathan Committee']. Vishwanathan Committee recommended deletion of 'clause (vi) of Regulation 2(1)(n) as it observed that definition of UPSI is an inclusive definition and hence it is not necessary to include list of material events that would be included in the definition of UPSI.

Now SEBI has vided a Consultation Paper dt: May 18, 2023, titled "Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring greater clarity and uniformity of compliance in the ecosystem" ['Consultation Paper 2023'] it is being proposed to amend the definition of UPSI under PIT Regulations and add *"(vi) material event in accordance with Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015"* in the definition of UPSI. So, it is proposed that material event in accordance with Regulation 30 would be considered as UPSI. Giving rationale behind this move SEBI highlighted that, "*It was observed from the analysis that, by and large companies categorised only the items explicitly mentioned in Regulation 2(1)(n) of PIT Regulations as UPSI. The market feedback also suggested that most companies consider this to be a 'uniform practice' since this is explicitly articulated in PIT Regulations."*[i]

This highlights that companies were not exercising proper care and diligence in the matter, which has led to SEBI issuing a consultation paper proposing to amend the definition of UPSI under the PIT Regulations by linking it to the material events as defined under Regulation 30 of SEBI [Listing Obligations and Disclosures] Regulations, 2015 ["LODR Regulations"].

Now going forward if this gets approved then what would be the scenario? Let us try to understand the same in this article.

**Introduction:**

Para A and Para B, Part A Schedule III read with Regulation 30 of LODR Regulations, specifies disclosures of events or information to be made to the stock exchanges by listed entities which have specified securities listed on the stock exchange whereas Part B specifies disclosure requirements applicable to listed entities having non-convertible securities listed on the stock exchange.

On analyzing Para A and Para B of Part A of the Schedule III it is seen that there are forty-one sets of events or information which require disclosures to the stock exchanges. So, can it be said that all such forty-one sets of information be considered as UPSI? Amongst these forty-one instances of events or information there would be certain events or information which would be recurring nature viz. change in senior management, change in RTA, disclosure of events or information that are sent to shareholders etc.

Material information or events as stated above falling under the ambit of Part A Schedule III, if are considered as UPSI under PIT Regulations then listed entities would need to keep its trading window closed for the entire year and it would be difficult for designated persons to trade in the securities of the company except if he has a trading plan. Thus, there is a possibility that the requirement of trading plan might become a mandate for all the designated persons if the proposals under Consultation Paper dt: May 18, 2023, gets approved.

But as we have seen there are certain material events or material information under Part A that are recurring in nature and occurrence of such events might not materially impact the price of the securities of the company. But, if proposals under the Consultation Paper 2023 sails through then all the forty-one instances of material events or information would be considered as UPSI.

**Navigating the nuances of materiality and price sensitivity:**

All events listed under Schedule III are deemed material or are material subject to certain conditions, but can it be said that all of them carry inherent price sensitive implications. Distinguishing between materiality and price sensitivity is crucial to effectively identify UPSI.

There may be scenarios wherein all the Board of directors of the listed entity have resigned or majority of senior management employees in the listed entity have resigned or there are instances of frauds made by the directors or senior management personnel then in such events which are exceptional in nature it would be justified to treat such information as price sensitive not just because it is material event covered under Schedule III but also because such events may have potential impact on the stock prices of the listed entity.

This leads us to an understanding that not all material events or information may be considered as a UPSI just because it is covered under Schedule III the criteria for categorizing any material event as an UPSI would depend upon the situation or scenarios at that point in time. So, identification of UPSI would differ from company to company.

Every company thus would have to assess at and accordingly frame a policy or a Standard Operating Procedure ['SOP'] to categorize material events or information under Part A Schedule III as an UPSI rather than categorizing each material event or information as an UPSI. SOPs would help listed entities to identify and discriminate between materiality and UPSI. Also, while formulating such SOPs, it becomes important that listed entities bear in mind that SOP is not a parallel law, and it cannot be inclusive of all the possible situations and thus exercise of proper judgement in exceptional circumstances shall always be required on behalf of listed entities.

**Precedents and Regulatory bindings:**

Regulation 9A of the PIT Regulations mandates the establishment of adequate internal controls to prevent insider trading.

Regulation 9A (1) and 9A (2) of the PIT Regulations reads as follows:

*9A.* ***(1) 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.***

***(2) The internal controls shall include the following****:*
*(a). all employees who have access to unpublished price sensitive information are identified as designated person;*

***(b). all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;***

*(c). adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;*

*(d). lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;*

*(e). all other relevant requirements specified under these regulations shall be complied with;*

*(f). periodic process review to evaluate effectiveness of such internal controls.*

Regulation 9A casts responsibility on the Chief Executive Officer or Managing Director to have internal controls with respect to identification of UPSI. There are precedents set by SEBI wherein it was highlighted that due to non-existence of Internal Controls for identification of UPSI even press releases were considered as UPSI.

Mr. Punit Goenka, as the MD & CEO of Zee Entertainment Enterprise Ltd ['ZEEL'] recently settled violation of PIT Regulations with SEBI. In this case it was found that ZEEL had failed to recognize certain information as UPSI. The announcement of ZEEPLEX, a pay per view service, was considered as an 'expansion of business,' as per definition of UPSI under PIT Regulations. It was a new content consumption medium for consumers and a film distribution model which gave consumers flexibility and convenience to watch films from the comfort of their homes.

In this SEBI settlement order dt: April 13, 2023 it was held that ZEEL did not have sufficient internal controls for identification of UPSI. Mr. Punit Goenka, MD & CEO, was responsible for establishing and maintaining internal controls as per Reg. 9A of PIT Regulations. For settling this violation Mr. Punit Goenka paid a **settlement amount** of Rs 50,70,000/- to settle violation of Regulation 9A (1) and 9A (2) of PIT Regulations with SEBI.

**Conclusion:**
To understand the rationale of material events and information disclosure, it is evident that not every significant occurrence automatically translates into UPSI. The determination of UPSI relies heavily on the specific circumstances at hand. This implies that different companies might assess situations differently, leading to varied conclusions about what constitutes UPSI.
Consequently, it becomes necessary for each listed entity to meticulously evaluate the gravity of events and devise policies or Standard Operating Procedures [SOPs] to categorize information or events as UPSI. It is essential to bear in mind that these SOPs should not attempt to cover every conceivable scenario as they are not a parallel law. Instead, they should serve as guidelines providing a structured approach to ascertain price sensitive factors within material events.

By following consistent practices outlined in SOPs, listed entities can effectively justify their stance on disclosure or non-disclosures to regulatory bodies like SEBI. SOPs serve as crucial evidence, highlighting that decisions regarding disclosures are not arbitrary but are grounded with reasoned judgement and a consistent approach.

---

[i] https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/consultation-paper-on-proposed-review-of-the-definition-of-unpublished-price-sensitive-information-upsi-under-sebi-prohibition-of-insider-trading-regulations-2015-to-bring-greater-clarity-and-uni-_71337.html

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

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023512/implications-of-re-defining-unpublished-price-sensitive-information-under-the-prohibition-of-insider-trading-regulations-experts-opinion

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

# Navigating the Regulatory Landscape: Harmonizing provisions of SEBI (LODR) and Section 42A of Arbitration and Conciliation Act, 1996

**Introduction:**

Para B, Part A, of Scheule III of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') listed companies are required to disclose to the stock exchanges about the *'Pendency of any litigation (s) or dispute (s) or the outcome thereof which may have an impact on the listed entity"*. Further listed company is required to provide give minimum information about such pending litigations or disputes or outcome thereof which may have impact on listed entity. In this regard question arises is whether is it necessary to give minimum information as is prescribed by SEBI Circular "Disclosure of material events / information by listed entities under regulation 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015" dt: July 13, 2023 ['July 2023 Circular'] even when the minimum information to be provided is confidential in nature?

**Informal guidance given to GAIL India Ltd :**

GAIL India limited, through its letter dated 10th August 2023, sought informal guidance from SEBI inter-alia on question, "*Whether details of arbitral proceedings of pending arbitration matters or arbitral awards can be disclosed to SEBI as it may contravene Section 42A of Arbitration and Conciliation Act, 1996*?"

SEBI in its guidance stated that, "*Disclosure of details of arbitral proceedings or arbitral awards can be made to the extent it is permissible under the Arbitration and Conciliation Act, 1996 which would inter-alia include disclosure of fact of initiation of arbitration proceedings, amount of claim involved in such proceedings, fact of passing of arbitral award and its effect on the listed entity, fact of termination of the arbitration proceedings, court orders in relation to the arbitration proceedings etc."*

SEBI in its guidance has stated that disclosure of details of arbitration to stock exchange shall be in compliance with provision of Arbitration and Conciliation Act, 1996 ['ACA'].

July 2023 Circular provides for some minimum information that is required to be given to stock exchange with regard to pending disputes. The minimum information required to be given is as follows:

| | |
|---|---|
| **At the time of becoming party** | Brief details of litigation viz. name of the opposing party, court/tribunal/agency where litigation is filed, brief details of dispute / litigation<br><br>Expected financial implications, if any, due to compensation, penalty etc.<br><br>Quantum of claims, if any |
| **Regularly till the litigation continues** | The details of any change in the status and / or any development in relation to such proceedings<br><br>In case of litigation against the key managerial personnel or its promoters or ultimate person in control, regularly provide details of change in the status and / or any development in relation to such proceedings,<br><br>In the event of settlement of the proceedings, details of such settlement including – terms of settlement, compensation / penalty paid (if any) and impact of such settlement on the financial position of the listed entity. |

This leads us to a question as to whether minimum information relating to arbitration shall not be disclosed to the stock exchange if it is confidential in nature? In this regard, we would understand the provisions of disclosure as per LODR Regulations and ACA to understand as to what all information relating to arbitration proceedings can be disclosed to stock exchanges.

**Does LODR Regulation mandate disclosure of confidential information?**

As per regulation 4(1)(h)[i], 4(1)(e)[ii] and 4(1)(d)[iii] listed companies are required to disclose information taking into consideration interests of all stakeholders and information that is accurate, explicit, adequate, and timely. LODR Regulations also provides for non-disclosure of information to stock exchanges if its confidential or it is being expressly stated that the information shall not be disclosed.

As per regulation 30(13), "*In case of any event or information is required to be disclosed by the listed entity in terms of provisions of this regulation, pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority, the listed entity shall disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority".* Schedule III Part A, Para A, point 17 read with FAQ no. 4[iv] of SEBI FAQ provide for disclosure on forensic audit. As per Point 17(b), "*Final Forensic Audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity alongwith comments of the management, if any*". Further as per FAQ no. 4 SEBI has stated that in the disclosure of final forensic audit report any personally identifiable information including names of individuals and commercially sensitive information, if any may be expunged.

So, it is seen that even if LODR Regulation prescribe disclosure of accurate, explicit, and timely information it does not mandate disclosure of information that is expressly prohibited, commercially sensitive or any personally identifiable information. Disclosure of minimum information as per July 2023 Circular is allowed to the extent it is not expressly prohibited.

**Intention/background of the section 42A of ACA.**

Section 42A of ACA reads as follows, *"Notwithstanding anything contained by any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentially of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award"*.

Section 42A requires arbitrator and the parties to arbitration proceedings, to maintain confidentiality with respect to arbitration proceedings. Section 42A does not enumerate information or events during arbitration proceedings that are required to be kept confidential. The term 'arbitration proceedings' is not defined under ACA. The expression 'Proceedings' with reference to a case, would imply taking of steps in connection with further progress of the case where the case is listed for hearing and the case is taken up by the Court and an order is made in the case, it would be proceedings in the case. It is not possible to confine the word 'proceedings' to the recording of evidence only[v]. So, arbitration proceedings relating to a case would mean events right from commencement of arbitration proceedings till the final settlement award is passed. As per Section 42 of ACA all this information will have to be kept confidential.

Section 42A was inserted in ACA with effect from August 30, 2019. Insertion of Section 42A was on the recommendation of The High-Level Committee ['HLC'] constituted in the leadership of Justice B. N. Srikrishna Retired Judge, Supreme Court of India. HLC studied the confidentiality related provisions of arbitration laws of other countries and recommended insertion of new section to ACA[vi]. HLC while recommending the maintenance of confidentiality, also recommended insertion of some exceptions to the provisions. The exceptions included performance of legal duty, protection or enforcement of legal right and enforcement or challenge of award. The exceptions are not incorporated under the provisions of section 42 of ACA. Therefore, if we look at the intention of section 42A, we observe that, the section originally intended to maintain confidentiality but not at the cost of obstructing the performance of legal duties. So even if section 42A talks about maintaining confidentiality it does not expressly enumerate what all information can be considered confidential? For this reason, it is necessary to understand what all information can be considered confidential in connection with arbitration proceedings?

**Obligation of confidentiality**

Obligation relating to confidentiality in arbitration proceedings were discussed in few of foreign case laws. In the matter of John Forster Emmott vs Michael Wilson & Partners Ltd [2008] EWCA Civ 184[vii] Lord Justice Lawrence Collins held that, "*79. Three legal concepts or categories have been in play in these cases. **The first is privacy**, in the sense that because arbitration is private that privacy would be violated by the publication or dissemination of documents deployed in the arbitration. **The second is confidentiality** in the sense where it is used to refer to **inherent confidentiality in the information in documents, such as trade secrets** or other confidential information generated or deployed in an arbitration. The third is **confidentiality in the sense of an implied agreement** that documents disclosed or generated in arbitration can only be used for the purposes of the arbitration*. Further Lord Justice Lawrence Collins held that, "***The conduct of arbitrations is private. That is implicit in the agreement to arbitrate. That does not mean that the arbitration is private for all purposes."*** In *Ali Shipping Corporation v Shipyard Trogir* at 326, Potter LJ said that "*the obligation of confidentiality ... arises as an essential corollary of the privacy of arbitration proceedings.*"

Lord Justice Lawrence Collins further held that, "*It is plain that there are **limits to the obligation of confidentiality**. In my judgment the **content of the obligation** may **depend on the context** in which it arises and on the nature of the information or documents at issue. The limits of that obligation are still in the process of development on a case-by-case basis. On the authorities as they*

*now stand, the principal cases in which disclosure will be permissible are these: the first is where there is consent, express or implied; second, where there is an order, or leave of the court (but that does not mean that the court has a general discretion to lift the obligation of confidentiality); third, where it is reasonably necessary for the protection of the legitimate interests of an arbitrating party; fourth, where the interests of justice require disclosure, and also (perhaps) where the public interest requires disclosure. Further the existence and details of an arbitration claim may need to be disclosed to insurers, or to shareholders, or to regulatory authorities*."

Lord Justice Lawrence Collins while highlighting difference in 'privacy vs confidentiality' stated that disclosure of information relating to arbitration proceedings should not result in breach of very purpose of bringing matter to arbitration. Lord Justice Lawrence Collins also stated that hence what to keep confidentiality in the going arbitration proceedings shall be decided on case-to-case basis. Further Lord Justice Lawrence Collins also provided certain scenarios (viz. disclosure with consent of parties to arbitration and disclosure of information other than trade secrets or other similar data, if any) in which disclosures of information pertaining to arbitration proceedings can be given. Now let us have a look at legal frameworks in foreign jurisdictions for disclosure of information relating to arbitration proceedings.

In few of foreign jurisdiction rules have been framed for the purpose of foreign arbitration. These rules provide for disclosure of information relating to arbitration in exceptional cases. Article 30(1) of London Court of International Arbitration provides for disclosure of information relating to arbitration when **there is a legal duty**[viii]. Further as per Article 75 (a) of World Intellectual Property Organisation arbitration rules disclosure of existence of arbitration and **legal disclosures required** with respect to arbitration proceedings can be disclosed **to the extent it is legally required**[ix]. In a recent case it was held that multiple disclosures had already been made of considerable information relating to the arbitration in question, including the interim and final awards as well as names of identified parties. As such, the Singapore Court of Appeal held that the confidentiality of arbitration had already been lost, and there was therefore insufficient basis to override strong interest in open justice in curial proceeding". So, it can be inferred that disclosure of information relating to arbitration proceedings can be given provided it is a legal duty to do so and to the extent it is legally permissible.

**Conclusion:** Disclosure of information relating to pending disputes under arbitration shall be given to stock exchange as per LODR Regulation, as it is a legal duty to be performed by listed entity who is party to arbitration. Information relating to parties to arbitration, brief details of arbitration without disclosing the trade secrets or other private information, any material development in arbitration process (viz, passing of interim order or levying of penalty by Arbitrator if any, cancellation of arbitration and pursuing matter in court), date of passing of arbitration award, financial implications arising out of same and the fact that whether this award would be challenged, if applicable can be given so long as it does not violate the purpose of hearing the matter through arbitration process. Further certain information viz. relating to quantum of claims and counter claims made in dispute can be disclosed with the consent of parties to arbitration if disclosure of same would not result in inherent breach of confidentiality.

---

[i] *The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.*

[ii] *The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*

[iii] *The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.*

[iv] https://www.sebi.gov.in/sebiweb/other/OtherAction.do?doFaq=yes
[v] Jai Ram vs State, AIR 1937 All 1937, 139 [S.326, CrPC 1973 (2 of 1974]
[vi] https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf
[vii] https://www.trans-lex.org/301850/_/john-forster-emmott-v-michael-wilson-partners%C2%A0limited-%5B2008%5D-ewca-civ-184/
[viii] https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx#Article%2030
30.1 The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority. The parties shall seek the same undertaking of confidentiality from all those that it involves in the arbitration, including but not limited to any authorised representative, witness of fact, expert or service provider

[ix] https://www.wipo.int/export/sites/www/amc/en/docs/arbitration_rules_and_fees_2021.pdf Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only: (i) by disclosing no more than what is legally required; and.

This article is written in Taxmann. The link to the same is as follows: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023772/navigating-the-regulatory-landscape-harmonizing-provisions-of-sebi-lodr-and-sec-42a-of-arbitration-and-conciliation-act-1996-experts-opinion

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

# Change Request Form (CRF) – An Analysis

**Introduction:**

Ministry of corporate affairs has always been trying to make it easier for companies as well as for the regulator (registrar of companies ROC) to comply with all legal requirements and ensure good governance at India Incorporated. In continuation of these efforts, MCA has come up with a new web-based e-form, called 'change request form, in order to facilitate the change of information available in MCA records or to give effect to such transactions for which no form is prescribed. In this article we shall deliberate upon the charactery sticks of this form.

- Ministry of Corporate Affairs ('MCA') has introduced 'Change Request Form ('CRF') via notification dated 19th February 2024. This form is notified by MCA with effect from 19th February 2024 onwards.

  MCA has notified this form citing difficulties faced by stakeholders in updating certain corporate information citing lack of processes or forms available for same. CRF has following features:

  a. It can be filed in exceptional circumstances only.
  b. It can be used to update data wherein no specific form is existing on the portal.
  c. It is not a substitute to any reporting, application, and registry requirements as per Companies Act, 2013, and LLP Act, 2008, and for such purposes the Form shall not be entertained and requests through this form are liable to be summarily rejected.
  d. It cannot be filed for the purposes which can be catered through any existing form or services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level (ROCs).
  e. It is a web-based form.

  So, the question arises is that for what all other activities CRF can be used. CRF form particularly mentions two purposes for which it can be filed:

  a. For correction in master data of the company.
  b. In pursuance to court/ tribunals directions

  **Correction of Master data:**

  As has been stated by MCA, CRF can be used for updation of companies master data. Companies master data inter-alia comprises of following pointers:

  a. CIN
  b. Company name
  c. ROC name and its jurisdiction
  d. RD and its jurisdiction
  e. Date of incorporation
  f. Email ID
  g. Registered address
  h. Listed in stock exchange(s)
  i. Category, sub-category, and class of company
  j. Date of last AGM and date of balance sheet

  If any of the above pointers that are included in companies master data are incorrectly displayed or needs to be updated but there is no other form or facility available to correct or update the same, then CRF can be filed. While filing CRF reasoning as to why CRF is filed and relevant back ups for correcting the data also needs to be filed. E.g. incorrect mail id, spelling mistake in name of company, incorrect date format, incorrect date of AGM, change in CIN due to companies getting delisted or listed etc.

**In pursuance to court/ tribunals directions:** On amalgamation or merger of companies there results in change in authorised share capital. This change in share capital is pursuant to decision of tribunal. With CRF in place this challenge of non-availability of appropriate form for uploading the details would be addressed.

**Other purposes for which CRF can be used?**

Question further arises is can this form only be used for the above two purposes mentioned or it can be used for following purposes also where there are challenges in updating the data on MCA website:

a. In few instances it has been observed that there has been mismatch in the amount of share capital as per company records and MCA master data due to rounding off figures. So, it needs to be checked whether CRF can be used to rectify this data.
b. Mismatch in paid up share capital as on date of end of financial year and date of filing of annual returns or balance sheet.
c. It was challenging to update change in particulars of key managerial personnel other than directors due to change in marital status. So, it needs to be seen whether this can be resolved through CRF.
d. Updating directors E-mail Id and Mobile Number after filing of DIR-3 KYC is challenging. So, it needs to be seen whether this can be resolved through CRF.

**Processing of CRF:** The Form should be processed by ROCs within 03 days of its filing, after which it should be forwarded to Joint Director (e-governance cell), who shall process and decide the matter within a maximum time of 07 days.

Change request form shall only be used for changing the data existing on the MCA website and not to update new data.

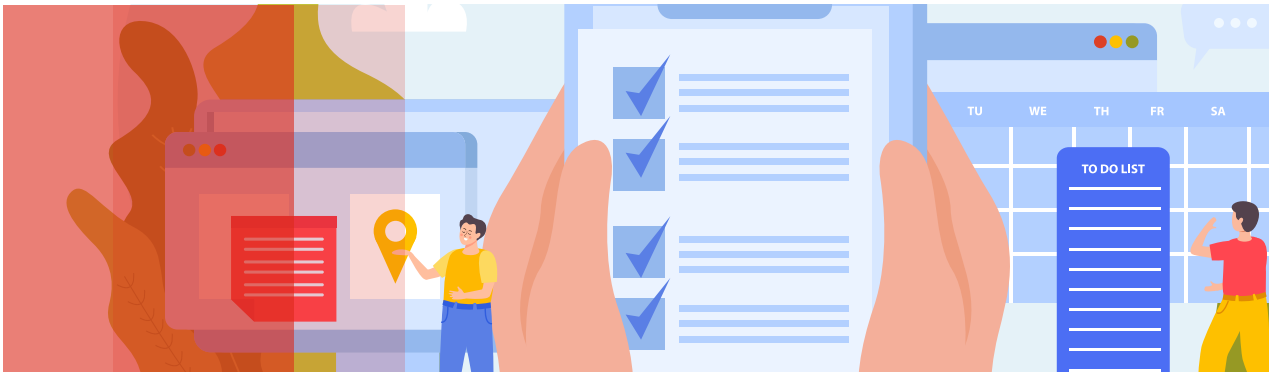
**Conclusio:**.

As discussed in the beginning of the article, this form aims at easing the processes of compliances where in there is no form already prescribed. Introduction of this form is expected to ease the life of both, companies as well as the registrar of companies, as it will help to correct the slipups in the MCA records.

This article is published in Taxguru. The link to the same is as follows: -
https://taxguru.in/corporate-law/mca-change-request-form-crf-analysis.html

***Ms. Isha Jain – Management Trainee –*****ishajain@mmjc.in**

***Ms. Vallabh M Joshi – Senior Manager –*** **vallabhjoshi@mmjc.in**



# Streamlining Corporate Compliance: Understanding the Companies (Registration Offices and Fees) Amendment Rules, 2024

**Introduction:**

Over the past many years, the Ministry of Corporate Affairs has taken several steps towards Ease of Doing Business[i]. The Central Government, exercising authority under sections 396(1) and (2) of the Companies Act, 2013, has recently vide notification dated February 2[ii], 2024 communicated establishment of a Central Processing Centre ('CPC') located at the Indian Institute of Corporate Affairs in IMT Manesar, Gurgaon, Haryana[iii]. In essence, this notification signified the establishment of a centralized processing hub to streamline e-form submissions under the Companies Act, 2013, while ensuring that other regulatory functions remain under the purview of respective jurisdictional Registrars. the Ministry of Corporate Affairs ('MCA') has now introduced the Companies (Registration Offices and Fees) Amendment Rules, 2024. The amendment rules, effective from February 16, 2024, introduce Rule 10A, which delineates the responsibilities and jurisdiction of the Registrar of the CPC. This pivotal role entails the examination and decision-making process concerning various applications, e-Forms, and documents mandated by the Companies Act, 2013.

**Purpose of forming CPC:**

The purpose of establishing CPC is to promote ease of doing business. As of now, 4,910 forms have been received by CPC after commencing operations. The forms shall be processing a timebound and faceless manner. Processing of applications at CRC and C-PACE also does not require any physical interaction with the stakeholders. The Central Registration Centre (CRC), Centralised Processing for Accelerated Corporate Exit (C-PACE), and CPC will ensure speedy processing of applications and forms filed for incorporation, closure and for meeting regulatory requirements so that the companies are incorporated, closed, can alter and raise capital, and are able to complete their various compliances under the corporate laws with ease[iv].

**Role of CPC**

CPC to process and handle e-forms along with the requisite fees, as prescribed in the Companies (Registration of Offices and Fees) Rules, 2014. However, it's important to note that the jurisdictional Registrar, apart from the CPC Registrar, will retain authority over companies for all other provisions of the Companies Act, 2013, and its associated regulations, if the registered office of the company falls within their jurisdiction. MCA has operationalised the CPC for centralised processing of corporate filings without requiring any physical interaction with the stakeholders to promote ease of doing business.

1. Tabular presentation giving detailed information is as mentioned below:

| Sr No | Form | Purpose | Moved to V3 portal | Shifted from ROC to CPC w.e.f Feb 16, 2024 | Non-STP/ STP |
|---|---|---|---|---|---|
| 1 | MGT-14 | Filing of Resolutions and agreements to the Registrar under section 117 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP/ STP |
| 2 | SH-7 | Notice to Registrar of any alteration of share capital under section 64 of the Act | w.e.f Jan 23,2023 | Yes | STP for Increase in authorised Capital and Non-STP for others |
| 3 | INC-24 | Application for approval of Central Government for change of name under section 13 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 4 | INC-6 | One Person Company- Application for Conversion under section 18 of the Act | w.e.f Jan 23,2023 | Yes | STP |
| 5 | INC 27 | Conversion of public company into private company or private company into public company under sections 14 and 18 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 6 | INC 20 | Intimation to Registrar of revocation/surrender of license issued under section 8 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 7 | DPT-3 | Return of deposit | w.e.f August 31,2022 | Yes | Non-STP mode - Return of Deposits or Return of deposit and particulars of transactions by a company not considered as deposit |

| | | | | | |
|---|---|---|---|---|---|
| 8 | MSC-1 | Application to ROC for obtaining the status of dormant company under sub-section (1) of section 455 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 9 | MSC-4 | Application for seeking status of active company under sub-section (5) of section 455 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 10 | SH-8 | Letter of Offer under section 68 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 11 | SH-9 | Declaration of Solvency under sub-section (6) section 68 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |
| 12 | SH-11 | Return in respect of buy-back of Securities under sub-section 10 of section 68 of the Act | w.e.f Jan 23,2023 | Yes | Non-STP |

**Key highlights of the Companies (Registration Offices and Fees) Amendment Rules, 2024, include:**

1. CPC Oversight: Rule 10A stipulates that the Registrar of the CPC is tasked with scrutinizing all applications, e-Forms, or documents filed for approval, registration, or record-keeping, within a thirty-day timeframe, excluding cases requiring higher authority approval.
2. Expanded Jurisdiction: The Registrar of the CPC now holds jurisdiction across India for specific applications, e-Forms, or documents outlined in the rule. This centralized approach aims to standardize processes and ensure uniformity in decision-making.
3. Designated Applications: The amendment rules enumerate a comprehensive list of applications, e-Forms, or documents falling under the purview of the Central Processing Center. Notable inclusions are filings related to share capital alterations, name change approvals, conversion applications, license revocations, and various statutory declarations.
4. Limitations on Authority: Rule 10A clarifies that the Registrar of the CPC does not possess authority under section 399 of the Companies Act, 2013, for applications falling within its ambit. Instead, territorial Registrars retain jurisdiction as per the Act.

**Conclusion**:

These amendments signify a concerted effort by the MCA to modernize regulatory frameworks, reduce bureaucratic hurdles, and promote ease of doing business in India. By leveraging technology and centralizing processing functions, the Companies (Registration Offices and Fees) Amendment Rules, 2024, herald a new era of efficiency and transparency in corporate governance. With these reforms in place, stakeholders can anticipate smoother interactions with regulatory authorities, accelerated processing times, and ultimately, a conducive environment for business growth and innovation.

**Source:**

1. https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE3MjQ3OTA4&docCategory=Notifications&type=open
2. https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE5MTIyNDU3&docCategory=Notifications&type=open

---

[i] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2006537

[ii] https://www.mca.gov.in/bin/dms/getdocument?mds=TC5IiKr%252B0SpGVt5U%252BSzj%252Bw%253D%253D&type=open

[iii] https://www.mca.gov.in/bin/dms/getdocument?mds=TC5IiKr%252B0SpGVt5U%252BSzj%252Bw%253D%253D&type=open

[iv] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2006537

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

https://taxguru.in/company-law/understanding-companies-registration-of_ices-fees-amendment-rules-2024.html

***Mr. Ruchira Pawase – Research Associate - ruchirapawase@mmjc.in***

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

# NEWS UPDATES/AMENDMENTS FOR THE MONTH OF FEBRUARY & MARCH 2024:

| Sr. No. | News Updates/Amendments | Link & Brief Summary |
|---|---|---|
| | **NEWS** | |
| 1 | NFRA's first annual inspection of key audit firms to start by April. | https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/nfras-first-annual-inspection-of-key-audit-firms-to-start-by-april/107770053?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-02-17&dt=2024-02-17&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>The National Financial Reporting Authority (NFRA) will initiate the first annual inspection of key audit firms including the big five latest by April. |
| 2 | CCI proposes changes to confidential info sharing. | https://etcfo.com/s/9sa5chx<br><br>The Competition Commission of India (CCI) has proposed to amend the so-called 'confidentiality ring' regime that governs the treatment of confidential information in its proceedings, seeking to streamline the process and prevent delays in disposal of cases. |
| 3 | Corp affairs ministry probing Chinese cos linked to loan apps; investigations at advanced stage. | https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/corp-affairs-ministry-probing-chinese-cos-linked-to-loan-apps-investigations-at-advanced-stages/108059087?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-02-28&dt=2024-02-28&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Indian authorities have been cracking down on entities that are operating loan apps, illegally and the ministry has also been acting against companies and related individuals for hiding beneficial ownership. |

| | | |
|---|---|---|
| 4 | Annual inspection of listed firms will protect interest of investors: NFRA chief | https://m.economictimes.com/industry/services/consultancy-/-audit/annual-inspection-of-listed-firms-will-protect-interest-of-investors-nfra-chief/articleshow/108185741.cms<br><br>NFRA would have a dialogue with the CFO and Audit committee if lapses found in audit of listed firms. Further they would voluntarily indulge in annual inspection of auditors.<br><br>NFRA raised concerns with audit committee meetings getting over in 15 mins. |
| 5 | Banks to disclose climate change strategy by FY'26 | https://cfo.economictimes.indiatimes.com/news/banks-to-disclose-climate-change-strategy-by-fy26/108090490?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-02-29&dt=2024-02-29&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Starting from FY'28, regulated entities must disclose targets for mitigating and adapting to climate related financial risk along with metrics used to measure progress. |
| 6 | NFRA engages with cos' independent directors, audit committees to further improve audit quality. | https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/nfra-engages-with-cos-independent-directors-audit-committees-to-further-improve-audit-quality/108251791?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-03-06&dt=2024-03-06&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Amid instances of corporate misdoings and auditing lapses, regulators are taking measures to strengthen the framework for financial reporting. |
| 7 | CCI to hold conference on economics of competition law | https://legal.economictimes.indiatimes.com/news/law-policy/cci-to-hold-conference-on-economics-of-competition-law/108245084?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-03-06&dt=2024-03-06&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>The objectives of the conference are to stimulate research and debate on contemporary issues in the field of economics of competition law, delve better understanding of the competition issues and draw inferences for enforcement of competition law. |

| | | |
|---|---|---|
| 8 | MCA starts comprehensive review of auditing standards regulations | https://www.business-standard.com/amp/companies/news/mca-starts-comprehensive-review-of-auditing-standards-regulations-124030500829_1.html<br><br>MCA secretary Manoj Govil urged the corporate sector, including the CEOs and CFOs to improve upon the level of public trust within the business ecosystem as preparers of financial statements. |
| 9 | Penalty for unfair trade practices to be linked to global turnover. | https://cfo.economictimes.indiatimes.com/l.php?email=--email--&clid=573083<br><br>The CCI regulations followed a notification issued by the ministry of corporate stipulating March 6 as the date for implementing the relevant provisions of the Competition act 2023 that deal with new monetary penalty regime. |
| 10 | Financial reporting community needs to learn from India's start-up success story, says NFRA chairman | https://economictimes.indiatimes.com/industry/banking/finance/financial-reporting-industry-needs-to-learn-from-indias-start-up-success-story-says-nfra-chairman/articleshow/108273723.cms<br><br>India ranks third globally in terms of the number of start-ups that are becoming unicorns. Mr. Ajay Bhushan Pandey NFRA Chairman noted that NFRA would coordinate with the Ministry of Corporate Affairs to help create enabling frameworks for establishing home-grown audit firms like the Big Four |
| 11 | Top auditors stop offering non-audit work to clients | https://cfo.economictimes.indiatimes.com/l.php?email=--email--&clid=576694<br><br>Top audit firms in India, have stopped offering non audit services to audit clients to align with NFRA's strict stance on conflict-of-interest issues. |

# NEWS UPDATES/AMENDMENTS FOR THE MONTH OF FEBRUARY & MARCH 2024:

| Sr. No. | News Updates/Amendments | Link & Brief Summary |
|---|---|---|
| | **NEWS** | |
| 1 | NFRA's first annual inspection of key audit firms to start by April. | https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/nfras-first-annual-inspection-of-key-audit-firms-to-start-by-april/107770053?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-02-17&dt=2024-02-17&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>The National Financial Reporting Authority (NFRA) will initiate the first annual inspection of key audit firms including the big five latest by April. |
| 2 | CCI proposes changes to confidential info sharing. | https://etcfo.com/s/9sa5chx<br><br>The Competition Commission of India (CCI) has proposed to amend the so-called 'confidentiality ring' regime that governs the treatment of confidential information in its proceedings, seeking to streamline the process and prevent delays in disposal of cases. |
| 3 | Corp affairs ministry probing Chinese cos linked to loan apps; investigations at advanced stage. | https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/corp-affairs-ministry-probing-chinese-cos-linked-to-loan-apps-investigations-at-advanced-stages/108059087?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-02-28&dt=2024-02-28&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Indian authorities have been cracking down on entities that are operating loan apps, illegally and the ministry has also been acting against companies and related individuals for hiding beneficial ownership. |