

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

FEBRUARY
2021
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BUDGET 2021



SHRI AMIT SHAH, HONBLE UNION MINISTER OF
HOME AFFAIRS, GOVT. OF INDIA

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PRESIDENT, ICSI



CS DEVENDRA V. DESHPANDE
VICE PRESIDENT, ICSI



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)



STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

February 2021

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महो अर्णः सरस्वती प्र चेतयति केतुना ।
धियो विश्वा वि राजति ॥

*(Oh Devi Saraswati, you have been imparting knowledge to us from your vast ocean.
Please adorn this universe with your immense intellect.)*

Dear Students,

Greetings from the ICSI !!!

The month of February while on one hand marks the change of season, the celebration of wisdom by seeking blessings of Maa Sharde on Vasant Panchami, it is one of the months which decides the fate of the students of the Institute who have attempted the December session of Examinations. As I fully understand your eagerness to be able to lay your hands on the results, I am confident that your sheer determination and dedication will definitely lead you to success.

This being my first address with you, while I feel extremely privileged to share my thoughts with you through the pages of this Newsletter, I would like to share my mantra with you not just for acing any examinations but for life. To me, any academic journey goes beyond the boundation of examinations and marks, for acquiring education is an eternal process. Frankly, it can be said without an iota of doubt that there is no alternative to education; the more we learn, the more we grow and attain excellence in our academic and professional endeavours. The power of knowledge is such that it assists in triggering positive changes in the

organization, motivating embracing of new approaches, ensuring holistic development of the organization.

Being students of Executive and Professional Programme, by now you would have grasped a basic understanding of the expansive roles played by a Company Secretary and their dynamic natures entailing. Needless to say, as a Governance Professional, one must be thoroughly conversant with various crucial facets of the legal, economic, technological and business environment. The Institute itself places great focus upon pursuing knowledge upgradation initiatives not just for our students but capacity building initiatives for our members as well even after they have become full-fledged Company Secretaries and embarked on their journey of serving the India Inc.

Understanding the placing and pedestal of Company Secretaries on the global forum in the world of corporate governance, it is imperative that future legion of Governance Professionals possesses robust knowledge. For as Nelson Mandela says and I quote,

“Education is the most powerful weapon which you can use to
change the world.”

Looking forward to your continued participation and support in all future endeavours !!!

With warm regards,

(CS Nagendra D. Rao)

President

The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

1. The **Student Company Secretary e-journal** for Executive / Professional programme students of ICSI and **CS Foundation course e-bulletin** for Foundation programme students of ICSI have been released for the month of **January, 2021**. The same are available on the Academic Portal of the Institute's website at the link : <https://www.icsi.edu/e-journals/>
2. The **CSEET e-bulletin** for the month of January, 2021 containing the latest updates in respect of Papers of the CSEET has been placed on the ICSI Website. The same is also available at the CSEET Portal of the Institute's website at the link: <https://www.icsi.edu/student/cseet/cseet-e-bulletin/>
3. Dte. of Academics prepares **Info Capsule- A Daily update** for members and students, covering latest amendment on various laws for the benefits of our members and students. The same is available at ICSI website at the link <https://www.icsi.edu/infocapsule/>
4. Dte. of Academics prepared **e-Book on Union Budget 2021-22** for members, students and other stake-holders. The same is available at ICSI website at the link: https://www.icsi.edu/media/webmodules/eBook_on_Union_Budget_2021_22.pdf
5. Supplements for June 2021 Exam for Executive and Professional Programme (Old /New Syllabus) have been uploading at ICSI website at the link:
 Executive Programme (N/S): <https://www.icsi.edu/studymaterialnewsyllabusexe2017/>
 Professional Programme (N/S): <https://www.icsi.edu/study-material-professional-programme-new-syllabus-2017/>
 Executive and Professional Programme (O/S): <https://www.icsi.edu/guidance-june-2021-examination/>
6. MoU has been signed between ICSI and IIM Kolkata on 19th February 2021 at Kolkata under "Academic Connect" initiative of ICSI.
7. CSEET (May session) will be held on 8th May 2021. Last date to register is 15th April 2021.
 Click here to register: https://smash.icsi.in/Scripts/CSEET/Instructions_CSEET.aspx
8. Recording of video lectures for students of the Institute which are being made available at E-Learning platform at the website of the Institute www.icsi.edu
9. Commencement of online CSEET classes by Regional/Chapter Offices for the students appearing in CSEET to be held in May 2021.
 Click here to contact <https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>

10. Commencement of online classes of Foundation/Executive/Professional Programme for June 2021 session of examination by Regional /Chapter Offices.
Click here to contact <https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>
11. Declaration of result of Executive and Professional Programme on 25th February, 2021.
12. Study Circle meetings were conducted by Regional/Chapter Offices for Class Room Teaching students.



Articles

- **Key Direct Tax Proposals – Budget 2021**
- **Merger of Lakshmi Vilas Bank with DBIL – The Ultimate Panacea by RBI**

KEY DIRECT TAX PROPOSALS - BUDGET 2021*

Sr. No.	Sections	Proposed Amendment
Tax Incentives		
1.	10(5)	Exemption for Leave Travel Concession 'LTC' Cash Scheme A second proviso to Section 10(5) is proposed to be inserted to provide that the cash allowance in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt subject to fulfilment of specified conditions as mentioned below: • The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21 • The amount of exemption shall not exceed INR 36,000 per person or 1/3rd of specified expenditure, whichever is less. • The term 'specified expenditure' means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors / service providers • 'specified period' means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021; • the payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider; It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual. <i>This will be applicable for FY 2020-21 only.</i>

* CA Govind Agarwal, Assistant Director, The ICSI.

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

2.	80-IBA & 80EEA	Deduction in respect of profit and gains from housing project Section 80-IBA of the Income tax Act, 1961 provides deduction of 100% of the profits in case they are earned from the business of developing and building affordable housing projects, to provide impetus to the construction industry in respect of these affordable housing projects. The time limit for the approval of the project by the competent authority was until 31st March 2021, which has now been proposed to be extended to 31st March 2022. Further, sub-Section 80-IBA(1A) is proposed to be inserted as per which 100% deduction of the profits can also be availed for the profits and gains derived from the business of developing and building an <i>affordable rental housing project</i>. Consequential amendment is also made in sub-Section 80-IBA(6), defining the expression '<i>rental housing project</i>'. A corresponding amendment has also been proposed to Section 80EEA, which provides for deduction in respect of interest on loan taken for acquisition of the affordable residential house property mentioned above to the purchaser of the said residential property.
3.	9A	Tax incentives for units located in International Financial Services Centre (IFSC) A new sub-Section (8A) has been inserted under Section 9A to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in Section 9A(3) (a) to (m) or Section 9A(4) (a) to (d) of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an IFSC and has commenced operations on or before 31 March 2024. Section 10(4D) of the Act has been amended so as to provide that the exemption to specified funds shall also be available in a case of any income accrued or arisen to, or received to the investment division of an offshore banking unit to the extent attributable to it and computed in the prescribed manner. Section 10(4E) of the Act has been newly inserted to exempt in the hands of non-resident, any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC which commenced operations on or before the 31st March 2024 and fulfills prescribed conditions. Section 10(4F) of the Act has also been newly inserted to exempt any income of a non-resident by way of royalty, on account of lease of an aircraft in a previous year, paid by a unit of an IFSC referred to under Section 80LA(1A), if the unit is eligible for deduction under Section 80LA for that previous year and has commenced its operations on or before 31st March 2024.

4.	10 (23FF) & 47	Exemption from capital gain tax on account of transfer of shares of an India Company on account of relocation Any income of the nature of capital gains, arising or received by a non-resident, which is on account of relocation from the original fund to the resultant fund shall be exempt. Section 47 of the Act is also amended to insert new clauses in the said provision so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gains tax purpose. Any transfer by a shareholder or unit holder or interest holder, in relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains. Explanation to Sections 47(viiac) and 47 (viid) provide the definition of the terms 'Original Fund', 'Relocation' and 'Resultant Fund'.
5.	80LA	Income based deductions for units located in IFSC from payment of income-tax The deduction will now be available to a unit of an IFSC, if it is registered under the IFSC Authority Act, 2019 and thereby removes the earlier requirement of obtaining permission under any other relevant law. The income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit under Section 80LA (2)(c) to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction, subject to condition that the unit has commenced operations on or before 31st March 2024. Further, in case the unit is registered under the IFSC Authority Act, 2019, then the copy of permission shall mean a copy of the registration obtained under the IFSC Authority Act, 2019.
6.	115AD	Tax on income of Specified Fund or Foreign Institutional Investors from securities or capital gains arising from their transfer Section 115AD of the Act is proposed to be amended to make the provision of this Section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this Section shall apply to the extent of income that is attributable to the investment division of such banking

		unit as a Category-III portfolio investor under the SEBI (FPI) Regulations, 2019 calculated in the prescribed manner.
7.	194A	Withholding of tax on payment of interest The provisions of Section 194A are not applicable on interest paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued by them. It is now proposed to widen the scope of the above exemption to include interest paid or payable by an infrastructure debt fund in relation to a zero coupon bond issued by such fund.
8.	44DB & 47	Special provision for computing deduction in the case of business reorganization of co-operative banks Section 44DB of the Act provides for the method of computing deductions in the case of business reorganization of co-operative banks, so as to enable seamless reorganization of the banks. In order to provide a further impetus to these banks, an amendment to Section 44DB has been proposed to expand the scope of business reorganization by including within its ambit, the conversion of a primary co-operative bank into a banking company. This would allow the cooperative banks to avail the deduction even if the result of the reorganization is a banking company. Further it is also proposed that transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion shall not be treated as transfer under section 47 of the Act. Consequently, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall not be treated as transfer under the said section of the Act.
9.	2(19AA)& 72A	Definition of 'Demerger' and Carry forward and set off of accumulated loss and unabsorbed depreciation of public sector companies in case of amalgamation, etc. Explanation 6 is proposed to be inserted to Section 2(19AA) clarifying that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and the resultant company is a public sector company on the appointed date indicated in the scheme approved by the government or any other body authorized under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and fulfils such other conditions as may be notified by the Central government in the Official Gazette. Further, Section 72A(1) is also proposed to be amended to the below extent:

		• The provisions of Section 72A(1)(c) have been substituted and shall now apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies. • Section 72A(1)(d) has been inserted and provides that in case of amalgamation of an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and the amalgamation is carried out within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends. • A proviso has been inserted to Section 72A(1) to provide that in case of an amalgamation under Section 72A(1)(d), the accumulated loss and unabsorbed depreciation of amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company, as on the date on which the public sector company ceases to be one as a result of strategic divestment. • An explanation is inserted to Section 72A(1)(d) to define the expressions 'control', 'erstwhile public sector company' and 'strategic disinvestment'.
10.	80-IAC & 54GB	Special provision in respect of specified business. [Start-ups] Section 80-IAC of the Act provides for a deduction of 100% of the profits and gains derived from an eligible business by an eligible start-up having turnover not exceeding INR 100 crores, for 3 consecutive assessment years out of 10 years, at the option of the assessee, subject to certain conditions, for an eligible start-up incorporated on or after the 1 April 2016 but before the 1 April 2021. It is now proposed to extend the period of incorporation of such eligible start-ups till 1 April 2022. Capital gain on transfer of residential property not to be charged in certain cases The provisions of Section 54GB, inter alia, provide for roll over benefit in respect of capital gains arising from the transfer of a long-term capital asset, being a residential property owned by the eligible assessee. In order to get benefit of this provision, the assessee is required to utilise the net consideration for subscription in equity shares of an eligible company before the due date of filing return of income. The benefit is only available for investment in the equity shares of eligible start-ups up to 31st March 2021. It is proposed to amend the proviso to Section 54GB(5) so as to extend the outer date of investment in case of an eligible start-up, the capital

		gains arising from transfer of residential property made up to 31st March 2022 shall be eligible for the benefit.
Removing difficulties faced by Taxpayers		
11.	43CA & 56(2)(x)	Increase in safe harbour limit of 10% for home buyers and real estate developers selling such residential units To encourage the real estate developer, in case of residential units, the safe harbour limit is proposed to be increased from 10% to 20% subject to fulfilling the following conditions, i.e.: • The transfer of residential unit takes place during the period from 12 November, 2020 to 30 June, 2021. • The transfer is by way of first time allotment of the residential unit to any person. • The consideration received or accruing as a result of such transfer does not exceed INR 2 crore. An explanation has been inserted to define the term 'residential unit'. Consequential amendment is also proposed in Section 56(2)(x) to increase the safe harbour limit from 10% to 20% whereby, circle rate shall be deemed as sale/ purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.
12.	89A	Relief from taxation in income from retirement benefit account maintained in a notified country New Section 89A has been inserted to provide that in the case of a resident who was earlier a non-resident and had maintained an account in a notified country in respect of his retirement benefits and there was a mismatch with respect to taxability on withdrawal from the retirement fund i.e., in some cases, the income was charged on accrual basis in India, whereas the same was charged on receipt basis in the foreign country, In such case the income of a specified person from specified account shall be taxed in such manner and for such year as provided by the Rules.
13.	115JB	Rationalisation of provisions of Minimum Alternate Tax (MAT) The Finance Act, 2020, has scrapped the erstwhile dividend distribution tax and the burden of taxation of dividends has shifted from the issuer company to the shareholders receiving the dividends. As a result of the aforesaid amendment, the dividend income was under a dual computation mechanism, whereby the MAT provisions were applicable in case the tax payable as per the normal rates of tax was lower than the tax payable on the book profits. It is now proposed that the dividend income earned by the foreign company, like the income from royalty and fees for technical services, would now be excluded from the computation of the book profits under Section 115JB. In other words, <i>MAT provisions would not</i>

		<i>apply to foreign companies having only specified incomes like dividend income, royalty income and income from fees for technical services.</i> The provisions of Section 115JB state that 15% of the book profits of the company are payable as income-tax, in case the amount arrived at, is higher than the income-tax computed as per the normal provisions of the Act. Sections 92CC and 92CE of the Act, deal with the provisions of Advance Pricing Agreements and Secondary Adjustments respectively. Both the Sections result in changes to income which gets reflected in the current year book profits of the company, even though the additions to the income as per the Act is of that particular year in which the adjustment is made. This resulted in inflation of the book profits of the current year, as the adjustments to the books of accounts are made in the current year, even though the additions are pertaining to the income of the earlier years. Therefore, It has now been proposed that the AO, on the receipt of an application from the assessee, may re-compute the book profits for all the past years and then determine the tax liability for the previous year under consideration. Further, the said process would be considered as a proceeding akin to proceedings under the ambit of Section 154, as also the time limit of 4 years from the end of the financial year in which the application was received from the assessee similar to Section 154(7) of the Act, would be applicable. Thus, since the income additions under Sections 92CC and Section 92CE are considered as part of past year book profits, the tax computation of the current year remains insulated from these additions and results in the correct computation of income under Section 115JB of the Act.
14.	194	Withholding of tax on payment of dividends Section 194 of the Act is proposed to be amended to provide for exemption with respect to withholding tax on dividend paid by a SPV [as referred to in Explanation to Section 10(23FC) of the Act] to a business trust [as defined under Section 2(13A) of the Act] or any other person as may be notified by the Central Government in Official Gazette.
15.	194D	TDS on payment made to Foreign Institutional Investors (FIIs) Section 196D prescribes a withholding of tax at the rate of 20% on dividend paid to FIIs from securities under Section 115AD(1)(a). A new proviso is inserted to Section 196D which provides that in case of a payee to whom an agreement under Section 90(1) or Section 90A(1) applies and such payee has furnished the tax residency

		certificate (TRC) referred to in Section 90(4) or Section 90A(4) of the Act, then the tax shall be deducted at the rate of 20% or the rate or rates of income-tax provided in such agreement for such income, whichever is lower.
16.	44AB	Rationalisation of provisions relating to tax audit in certain cases Section 44AB provides for audit of accounts for every person carrying on business, if his total sales, turnover or gross receipts in business exceed or exceeds INR 1 crore in any previous year. The threshold limit for a person carrying on business is increased from INR 1 crore to INR 5 crore, where: - the aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt and - the aggregate of all payments in cash during the previous year does not exceed 5% of such payment. The threshold limit of tax audit in specified cases is now proposed to be increased to INR 10 crore, however the conditions mentioned above would still be applicable.
17.	234C	Advance Tax Installment for dividend income Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax installments as per section 208 of the Act. Sub section (1) of Section 208 of the Act provides for the relaxation that if the shortfall in the advance tax installment or the failure to pay the same on time is on account of the income listed therein, no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax installments. It is proposed to extend the above relaxation even in case of dividend income (other than deemed dividend as per Section 2(22)(e) of the Act) earned during the fiscal year.
18.	10(23C)	Raising of prescribed limit for exemption under sub-clause (iiia) and (iiib) of clause (23C) of section 10 of the Act For claiming exemption by universities, educational institutions and hospitals or other institutions under Section 10(23C) (iiia) and (iiib) respectively, the annual receipt threshold has been increased from INR 1 crore to INR 5 crore.
19.	139	Return of Income 1. Individual and spouse governed by Portuguese Civil Code of 1860 and Tax Audit applicability: It is proposed to amend Section 139 so as to align the due dates of filing of return of income for the assessee with his / her spouse, in case the provisions of tax audit are applicable, and they are governed by the Portuguese Civil Code of 1860 and Section 5A is applicable.

		In the erstwhile provisions there was a mismatch whereby the spouse had to file his / her return earlier by 31 July and the assessee was required to do so by 31 October, if the provisions of Section 44AB were applicable. Thus, the due date of 31st October would now be applicable to both the said assessee as well as his / her spouse, if either one of them is required to get his / her books audited. 2. Firm (cases where 92E applicable) & Partner: The earlier provisions for filing of return of income had a mismatch in case the provisions of Section 92E were applicable to the firm as the due date of filing return of income was 31st October for the partners but 30th November for the firm. It is proposed to align the due date of filing Return of income under Section 139 to 30th November, for the partners of the firm to whom the provisions of Section 92E are applicable 3. Belated Return: It is further proposed to pre-pone the due date of filing belated return of income under Section 139(4) to 31st December from the earlier time of 31st March of the next year, effectively reducing the window for filing the belated return of income by 3 months. 4. Revised Return: Similarly, it is also proposed to pre-pone the due date of filing revised return of income under Section 139(5) to 31st December from the earlier time of 31st March of the next year, effectively reducing the window for filing the revised return of income by 3 months. 5. Defective Return: It is further proposed to amend Section 139(9) which relates to cases where the Return of income would be considered as defective, so as to grant the Central Board of Direct Taxes (CBDT), the powers to declare such classes of assessee as excluded or excluded with modifications as the case may be, from the said conditions under which a return of income may be considered as a defective return.
Rationalisation of various Provisions		
20.	36(1)(va) & 43B	Other Deductions and Certain deductions to be only on actual payment Section 36(1)(va) provides for deduction by way of expenditure to any sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Section 43B of the Act allowed for the deduction of expenditure incurred by the employer on account of employers' contribution to the specified funds like provident fund etc. on actual payment basis.

		As a result of the similar nature of payments, there was a controversy regarding the term 'due date' mentioned in the Section 36(1)(va) wherein, some High Courts had held that the due date mentioned, is the date of filing the return of income and not the mandatory date of payment under that specific Act. Hence, the contribution made even after the due date under the specified Act but before the due date of filing the return of income was allowed as expenditure. There were conflicting decisions on both sides. In order to clarify the issue, an amendment has been proposed under Explanation 2 to Section 36(1)(va) to provide specifically that the provisions of Section 43B are not applicable and further are deemed to never have been applicable for the purpose of determining the 'due date' under the Section 36(1)(va). A corresponding clarification is also proposed to be inserted under Section 43B of the Act that the provision of the Section shall not apply to a sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) applies, as the same is covered in Section 36(1)(va) of the Act.
21.	245MA	Constitution of Dispute Resolution Committee for small and medium taxpayers In order to provide early tax certainty to small and medium taxpayers, it is proposed to introduce a new scheme for preventing new disputes and settling the issue at the initial stage. In this regard, The Central Government shall constitute one or more Dispute Resolution Committee (DRC) which shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC. Only those disputes where the returned income is 50 lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less shall be eligible to be considered by the DRC. If the specified order is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A, of the Act, such specified order shall not be eligible for being considered by the DRC. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction.
22.	245-OB & from	Board for Advance Rulings A new Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings. The erstwhile AAR shall cease to

	245N to 245W	exist on and from such date notified by the Central Government. Unlike the AAR, the rulings of the Board shall not be binding on the Applicant or the Department. Consequential amendments in various provisions of this Chapter are made as the work of AAR shall be carried out by the Board for Advance Rulings on and after the notified date. Section 245N is amended to incorporate various definitions including the changes in the definition of Authority to now include Board of Advance Rulings. References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in Section 245N and in Section 245Q relating to application for advance ruling is to be omitted. Section 245O is amended to provide that the Authority will cease to operate on or after the Notified date. Sections 245P, 245R, 245T and 245U are amended to provide that for the words 'Authority', the words 'Board for Advance Rulings' shall be substituted and the provisions of this shall mutatis mutandis apply to the Board for Advance Rulings as they apply to the Authority. Section 245Q is amended to provide that all pending applications with the Authority before the notified date shall be transferred to the Board for Advance Rulings. Section 245S and 245V shall no longer be applicable. A new Section 245W is inserted which provides that an appeal can be made to the High Court in case of an applicant or the Assessing Officer is aggrieved by the ruling or order passed by the Board. The appeal is to be made within sixty days from the date of the communication of that ruling or order. The High Court may grant further period of thirty days for filing such appeal if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in sub-Section (1).
23.	147	Income escaping assessment It is proposed that the scheme of reassessment as well as search assessment be substituted with a new procedure for the reassessment of income from 1 April 2021 onwards, which subsumes within its ambit both the assessment pursuant to search under Section 153A / 153C as well as reassessment under Section 147, under the erstwhile law. It is proposed to substitute the existing Section 147 and introduce a new Section 147, wherein the AO may assess or reassess such income and also any other income chargeable to tax which has escaped assessment, subject to the provisions of Section 148 to 153.

		It is further proposed to be clarified by way of an Explanation that the AO has the power to assess or reassess any issue subsequently during the assessment proceedings irrespective of the fact that the provisions of Section 148A have not been complied with. It is proposed to substitute the erstwhile Section 148 of the Act and introduce a new Section 148, which stipulates that the assessee is to be served a notice under Section 148 along with the order under Section 148A, asking him to furnish his return of income. It has been provided that the issue of the notice would not be made <i>unless there is information with the AO which suggests escapement of income</i>, as also the necessary approvals have been taken from the specified authority under Section 151. The said return of income would be considered as a return of income filed under Section 139 and the provisions, so far as applicable may apply. It has been clarified that information with the AO which suggests escapement of income to mean : • Any information flagged in accordance with the risk management strategy formulated by the CBDT • Any final objection raised by the C & AG of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act. • It is also proposed to clarify by way of Explanation that any action under Section 132, 132A or 133A against the assessee or any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person belonging to the assessee after 01 April 2021 would be <i>deemed</i> to be considered as information with the AO which suggests income chargeable to tax has escaped assessment. Further, it has been clarified that the provisions of Section 148A would not be applicable to the assessee in these cases. It is proposed to insert new Section 148A of the Act which requires that the AO, can if he requires conduct any inquiry with respect to the information which suggests that the income chargeable to tax has escaped assessment before the issue of notice under Section 148 of the Act, after prior approval of the authority prescribed under Section 151 of the Act. Section 148A would require the AO to provide the assessee opportunity of being heard by serving him a show cause notice and asking him to reply within a specified time limit not exceeding 30 days from the date of the notice. The AO shall consider the reply of the assessee in response to the show cause notice under Section 148A of the Act as well as the material before him and then pass an order under Section 148A of the Act, whether or not it is a fit case to issue notice under Section 148. The said order should be passed within 1 month from the end of the
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		month in which the reply is received, and in cases where no reply is received within 1 month from the end of the month in which the time limit allowed has expired. Section 149 of the Act has been substituted to provide that the reassessment provisions would not be applicable if 3 years have elapsed from the end of the relevant assessment year. However, in case the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to INR 50 lakh or more for that year, then the limitation period would get extended to 10 years from the end of the relevant assessment year. It is further provided that the limitation period would be extended by the time limit allowed to the assessee to comply with the show cause notice under Section 148A, or the period during which the proceedings under Section 148A are stayed by an order or injunction of a court. Corresponding amendments have also been made in Section 151 and Section 151A of the Act to reflect the said assessment procedure. It is proposed to amend Section 153(1) by way of a proviso whereby the time limit of completion of assessments under Section 143 and Section 144 for AY 2021-22 onwards would be reduced to 9 months from the end of the assessment year in which the income is assessable. Consequential amendments have been also proposed in Section 153A and Section 153C, whereby the Sections would cease to apply to actions initiated after 1 April 2021.
24.	142 (1) (i)	Inquiry before assessment The provisions of Section 133C of the Act give powers to the prescribed income-tax authority to ask for information and documents which may be useful or relevant to any inquiry or proceeding under the Act. However, the prescribed income-tax authority was not permitted to ask the assessee to file its return of income in case it had not been filed. It is now proposed to amend Section 142(1)(i) so as to include within the ambit of the assessing officer, the 'prescribed income-tax authority'. Consequently, the prescribed income-tax authority can also mandate the assessee to file his return of income, in case the same is not filed. This is apart from and in addition to the powers of inquiry under Section 133C wherein information and documents relevant to proceedings can be asked for.
25.	255	Procedure of Income-tax Appellate Tribunal (ITAT)

		In order to further strengthen the Faceless Appeals Scheme, a Faceless Scheme for ITAT proceedings is proposed to be launched. Therefore, in order to reduce human interface between the department and the assessee, Section 255 of the Act is proposed to be amended, to provide that the Central Government may notify a scheme for disposal of appeal by ITAT and to impart greater efficiency, transparency and accountability by: • eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible, • optimising utilisation of the resources through economies of scale and functional specialization, • introducing an appellate system with dynamic jurisdiction. The Central Government is empowered to give such directions that certain provisions of this Act shall not apply to this scheme or shall apply with such modifications, exceptions and adaptations on or before 31 March 2023.
26.	245A - 245M	Constitution of new Interim Board for Settlement replacing existing Income-tax Settlement commission It is proposed to discontinue the Income-tax Settlement Commission (ITSC) with effect from 1 February 2021 and constitute one or more Interim Board(s) for Settlement of pending applications. The applications which have not been declared as invalid under Section 245D(2C) and in respect of which no order has been issued under Section 254D(4) on or before 31 January 2021 are proposed to be treated as pending cases for Interim Boards. An order which was required to be passed by the ITSC under Section 245(2C) on or before 31 January 2021 to declare an application invalid but such order has not been passed before the aforesaid date, such application shall be deemed to be valid and treated as pending application. Following amendments are proposed: • For the words 'Settlement Commission', wherever they occur, the words 'Interim Board' shall be substituted • For the word 'Bench', the words 'Interim Board' shall be substituted • The date on which the application was made before ITSC shall be deemed to be date on which application received by the IBS • Powers and functions of the ITSC shall be exercised by the IBS and the provisions of ITSC shall mutatis mutandis apply to the IBS as they apply to the Settlement Commission • The assessee who had filed such application before ITSC may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance

		Act, 2021 and intimate the Assessing Officer (AO), in the prescribed manner, about such withdrawal • Where the assessee withdraws the application before ITSC, the proceedings with respect to the application shall abate on the date on which such application is withdrawn. • Also, the AO, or, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application before ITSC had been made. • All the records, documents or evidences, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes. The Central Government may by notification in the Official Gazette, make a scheme, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by : • eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible. • optimising utilisation of the resources through economies of scale and functional specialisation • Introducing a mechanism with dynamic jurisdiction Central Government by notification in the Official Gazette, direct that any of the provisions of ITSC shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification and the said notification will be placed before house of parliament.
27.	143	Assessment It is proposed to amend the time limit of processing of the said intimation under Section 143(1) and reduce the same to nine months instead of the current one year time limit. It is also proposed to amend the language of the provision so as to enable processing of intimation under Section 143(1) as regards the mismatches with the audit report to the income side as well and not just be restricted to the expenditure side. Further, it is also proposed to insert 'Chapter VI-A' instead of the Section numbers under Section 143(1)(a)(v) which provides the conditions for the processing of the return under Section 143(1). The said is consequential to amendment in Section 80AC, which provides for non-allowance of deduction in case the return of income is not filed within the due date specified in Section 139(1).

		Section 143(2) provides the time limit for the issue of notice for scrutiny assessment, as 6 months from the end of the assessment year, which is now proposed to be reduced to 3 months from the end of the assessment year .												
28.	2(42C)	Definition of the term ‘Slump Sale’ mentioned u/s 50B Section 2(42C) defines ‘slump sale’ to mean the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. The above definition of ‘slump sale’ is proposed to be amended to include all types of transfers within its scope to provide certainty. Hence, the definition of the term ‘slump sale’ under Section 2(42C) is expanded so as to mean the transfer of one or more undertakings, by any means, for lump sum consideration without value being assigned to individual assets and liabilities in such cases. An Explanation is also proposed to be added to Section 2(42C) which states that the meaning of the term ‘transfer’; shall have the same meaning as assigned under Section 2(47) and hence, all the types of transfer as defined in Section 2(47) are included within its scope.												
29.	45 (4) and 45(4A) and Section 48	Taxation on distribution of asset/ money on dissolution or reconstitution of firm/AOP/BOI Section 45(4) provides for tax on transfer of capital asset by way of distribution to partner/ member by a firm / AOP / BOI (specified entity) on its dissolution or otherwise. For computation of such capital gains, fair market value of the capital asset is considered as full value of consideration. It is now proposed to substitute Section 45(4) and insert new Sections 45(4) and (4A) to compute tax of the specified person on capital gains arising from dissolution or reconstitution. <table><tr><td><i>Section</i></td><td><i>Transfer of</i></td><td><i>Full Value of consideration for the purpose of Section 48</i></td><td><i>Cost of Acquisition</i></td></tr><tr><td>45(4)</td><td>Capital Asset</td><td>Fair Market value of capital asset on the date of such receipt</td><td>Cost of acquisition of such capital asset</td></tr><tr><td>45(4A)</td><td>Money and Other Assets</td><td>Value of money and fair market value of other</td><td>Balance in Capital Account of the specified person at the</td></tr></table>	<i>Section</i>	<i>Transfer of</i>	<i>Full Value of consideration for the purpose of Section 48</i>	<i>Cost of Acquisition</i>	45(4)	Capital Asset	Fair Market value of capital asset on the date of such receipt	Cost of acquisition of such capital asset	45(4A)	Money and Other Assets	Value of money and fair market value of other	Balance in Capital Account of the specified person at the
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				assets on the date of such receipt	time dissolution or reconstitution
		Balance in capital account of the specified person to be calculated without taking into account increase in the capital account due to revaluation of any asset, or due to self-generated goodwill or any other self-generated assets.			
30.	281B	Provisional attachment in Fake Invoice cases Section 281B of the Act contains provisions which provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue. Such provisional attachment is valid for a period of 6 months. Section 271AAD of the Act was inserted vide the Finance Act, 2020 to impose penalty on a person or a person who causes such person to make a false entry or omit an entry from his books of accounts. It is an anti-abuse provision. Upon initiation of such penalty proceedings, it is highly likely that the taxpayer may also evade the payment of such penalty, if imposed. Hence, in order to protect the interest of revenue, it is proposed to amend the provision of section 281B of the Act to enable the Assessing Officer to exercise the powers under this section during the pendency of proceedings for imposition of penalty under section 271AAD of the Act, if the amount or aggregate of amounts of penalty imposable is likely to exceed 2 crore rupees.			
31.	163,164 & 165A	Rationalisation of the provisions of Equalisation Levy The Finance Act, 2016 had introduced the Equalisation Levy (EQL) of 6% which was to be levied on a 'Specified service' which means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement would include any other service as may be notified by the Central Government. The Finance Act, 2020 widened the ambit of the EQL, to not just cover payments made for online advertising, but also to any online sale of goods or online provision of services or facilitation of the any of them by an E-Commerce operator. The Finance Act, 2021, has proposed that certain clarifications be inserted so as to provide certainty regarding the ambit of the EQL provisions. Section 163 provides the scope of the EQL. The said section is proposed to be amended by way of inserting a proviso which states that the EQL would not cover within its ambit, any consideration which is otherwise taxable as royalty or fees for technical services			

		under the provisions of the Income-tax Act, 1961 read with the applicable tax treaty. Consequential amendment has also been introduced under section 10(50) of the Act, to clarify regarding the said exclusion under the Act. It is further proposed to amend section 10(50) so as to provide that the said section would be applicable from 1 April 2020 and not 1 April 2021 as stated earlier, so as to align the exemption with the date of introduction of the expanded EQL provisions It is further proposed to clarify regarding the applicability of the EQL provisions to the “online sale of goods” and “online provision of services”, by defining the said terms to include one or more of the following online activities: • acceptance of offer for sale • placing of purchase order • acceptance of the purchase order • payment of consideration • supply of goods or provision of services, partly or wholly. Further, under section 165A(3), the meaning of the word “specified circumstances” has been clarified to include consideration received for the sale of goods or provision of services, irrespective of the fact whether the goods are owned or not and whether the service is provided or only facilitated by the Ecommerce operator respectively.
32.	2(11), 32, 50 & 55	Depreciation on Goodwill The term ‘block of assets’ as referred to in Section 2(11) of the Act shall not include the term ‘goodwill of a business or profession’. Section 32(1)(ii) of the Act is proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said Section and therefore not eligible for depreciation. Also, Explanation 3 to Section 32(1) is proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-Section. A proviso is proposed to be inserted in Section 50(2) and the same provides that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on 1 April 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed. Section 55(2)(a) is proposed to be substituted to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article

		or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours: in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and in the case falling under Section 49(1) (i) to (iv) and where such asset was acquired by the previous owner by purchase, means the amount of the purchase price for such previous owner; and in any other case, shall be taken to be NIL. Further, the cost of acquisition will be the purchase price as reduced by the amount of depreciation so obtained by the assessee under Section 32 on or before 1 April 2020 in a case where: the goodwill of a business or profession is acquired by the assessee by way of purchase from a previous owner [either directly or through the modes specified under Section 49 (1) (i) to (iv)].
33.	2(29A)	Meaning of the term 'liable to tax': The term 'liable to tax' has been defined by inserting a new clause 29A to Section 2 of the Income tax Act, 1961. The term 'liable to tax' in relation to a person means that there is a liability of tax on such person under the law for the time being in force of any country and shall include a case where subsequent to imposition of such tax liability, an exemption has been provided.
34.	79(2)	Carry forward and set off of losses in case of relocation between Original Fund and Resultant Fund Section 79(2)(e) is inserted, to specify the restriction pertaining to carry forward and set off of losses in case of change in shareholding pattern of company will not apply to a company wherein the change in shareholding pattern has taken place on account of relocation between original fund and resultant fund, as proposed to be defined vide amendments in Section 47.
35.	194IB	TDS on payment of rent by certain individuals or Hindu undivided family (HUF) According to Section 194-IB, it is mandatory for any person, i.e. individuals / HUF not liable to audit under Section 44AB, to deduct taxes for rent paid to a resident, exceeding INR 50,000 per month. Section 206AA of the Act provides that if Permanent Account Number (PAN) is not furnished by the payee, the withholding tax rate would be 20 per cent or the rate in force, whichever is higher. It is now proposed to amend Section 194IB to include the newly inserted Section 206AB, providing for higher rate for TDS for the non-filers of income-tax return.

36.	194P	Deduction of tax in case of specified senior citizen Section 194P of the Act is proposed to be inserted which provides for relaxation from furnishing / filing of return of income to a senior citizen in the year in which tax has been deducted by the specified bank after giving effect to the deduction allowable under Chapter VI-A of the Act and rebate under Section 87A of the Act. Senior citizens need to satisfy the below requirements for applicability of the said Section: • Resident in India • Aged 75 years or more during anytime during the previous year • No income other than pension and interest income from the same specified bank in which he is receiving his pension income • Furnishes a declaration to the specified bank containing particulars, in such form and verified in such manner, as may be prescribed
37.	194Q	TDS on payment of certain sum for purchase of goods Section 194Q of the Act is proposed to be newly inserted to provide for withholding tax at the rate of 0.1% on payment made by a buyer to a person resident in India for purchase of goods exceeding INR 50 lakh in a previous year. The buyer is required to withhold tax at the rate of 0.1% on the sum exceeding INR 50 lakh. The Explanation to the proposed Section 194Q(1) of the Act seeks to define the term 'buyer' to mean a person whose total sales, gross receipts or turnover from the business carried on by him exceeds INR 10 crore, during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The provisions of this Section shall not apply to a transaction on which: • tax is deductible under any of the provisions of the Act; and tax is collectible under the provisions of Section 206C [other than a transaction covered under Section 206C(1H) of the Act] It is also proposed to consequentially amend Section 206AA(1) and insert second proviso. The second proviso shall provide that where the tax is required to be deducted under Section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be at the rate of 5%.
38.	206AB / 206CCA	TDS /TCS for non-filers of income-tax return Section 206AB and Section 206CCA is proposed to be inserted to provide for a higher rate of withholding tax / collection of tax for taxpayers not furnishing / filing return of income. Section 206AB is proposed to apply on any sum paid or payable or credited by a deductee to a specified person (other than any sum where tax is required to be withheld under Section 192, Section 192A,

		Section 194B, Section 194BB, Section 194LBC or Section 194N of the Act). The proposed withholding tax rate shall be higher of the below: • at twice the rate specified in the relevant provision of the Act; or • at twice the rate or rates in force; or • at the rate of 5% Section 206CCA is proposed to apply on any sum or amount received by a collectee from a specified person. The proposed tax collection rate in the said Section shall be higher of the following: • twice the rate specified in the relevant provision of the Act or • the rate of 5% Further, if the provisions of Section 206AA [requirement to furnish Permanent Account Number (PAN)] or Section 206CC (requirement to furnish PAN by collectee) are applicable to a 'specified person' in addition to the proposed Sections, that is, Section 206AB and Section 206CCA, the tax shall be deducted / collected at higher of the two rates provided in the proposed Sections and in Section 206AA or Section 206CC of the Act. The term 'specified person' means a person: • who has not filed the returns of income for preceding two assessment years immediately prior to the previous year in which tax is required to be deducted and for which the time limit of filing return of income under Section 139(1) has expired; and. • the aggregate of tax deducted at source and tax collected at source is INR 50,000 or more in each of these two previous years. <i>*The term 'specified person' shall not include a non-resident who does not have a permanent establishment in India</i>
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Source:

1. <https://taxguru.in/income-tax/union-budget-2021-22-analysis-direct-tax-proposal.html>
2. <https://www.indiabudget.gov.in/doc/memo.pdf>

MERGER OF LAKSHMI VILAS BANK WITH DBIL – THE ULTIMATE PANACEA BY RBI*

Lakshmi Vilas Bank (LVB) is the fifth Indian financial firm to collapse over a span of 3 Years after Infrastructure Leasing and Financial Services (IL&FS), Dewan Housing Finance Limited (DHFL), Yes Bank and Punjab and Maharashtra Cooperative (PMC) Bank.

LVB was an Indian private sector bank founded in 1926 by a group of seven businessmen of Karur under the leadership of Shri V. S. N. Ramalinga Chettiar. Their objective was to cater to the financial needs of people in and around Karur who were occupied in trading businesses, industry and agriculture.

Cause of Failure of LVB

The financial position of The Lakshmi Vilas Bank Ltd. has undergone a steady decline with the bank incurring continuous losses over the last three years, eroding its net-worth. In absence of any viable strategic plan, declining advances and mounting non-performing assets (NPAs), the losses are expected to continue. The bank has not been able to raise adequate capital to address issues around its negative net-worth and continuing losses. Further, the bank is also experiencing continuous withdrawal of deposits and low levels of liquidity. It has also experienced serious governance issues and practices in the recent years which have led to deterioration in its performance. The bank was placed under the Prompt Corrective Action (PCA) framework in September 2019 considering the breach of PCA thresholds as on March 31, 2019.

The Reserve Bank had been continually engaging with the bank's management to find ways to augment the capital funds to comply with the capital adequacy norms. The bank management had indicated to the Reserve Bank that it was in talks with certain investors. However, it failed to submit any concrete proposal to Reserve Bank and the bank's efforts to enhance its capital through amalgamation of a Non-Banking Financial Company (NBFC) with itself appears to have reached a dead end. As such, the bank-led efforts through market mechanisms have not fructified. As bank-led and market-led revival efforts are a preferred option over a regulatory resolution, the Reserve Bank had made all possible efforts to facilitate such a process and gave enough opportunities to the bank's management to draw up a credible revival plan, or an amalgamation scheme, which did not materialize. In the meantime, the bank was facing regular outflow of liquidity.

* CA Sarika Verma, Assistant Director and CS Pankhuri Agrawal, GST Consultant, The ICSI

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

LVB placed under Moratorium

After taking into consideration these developments, the Reserve Bank has come to the conclusion that in the absence of a credible revival plan, with a view to protect depositors' interest and in the interest of financial and banking stability, there is no alternative but to apply to the Central Government for imposing a moratorium under section 45 of the Banking Regulation Act, 1949. Accordingly, after considering the Reserve Bank's request, the Central Government has imposed moratorium for thirty days effective from specified date.

The Reserve Bank assures the depositors of the bank that their interest will be fully protected and there is no need to panic. In terms of the provisions of the Banking Regulation Act, the Reserve Bank has drawn up a scheme for the bank's amalgamation with another banking company. With the approval of the Central Government, the Reserve Bank will endeavour to put the Scheme in place well before the expiry of the moratorium and thereby ensure that the depositors are not put to undue hardship or inconvenience for a period of time longer than what is absolutely necessary.

The Reserve Bank of India, in exercise of the powers vested under Section 35A of the Banking Regulation Act, 1949 directs that The Lakshmi Vilas Bank Ltd., as from 1800 hours on November 17, 2020, shall not make any investment, incur any liability or agree to disburse any payment, whether in discharge of its liabilities and obligations or otherwise, or enter into any compromise or agreement, or shall transfer or otherwise dispose of any of its properties or assets, Disbursement to depositors and creditors can be made to the extent permitted by the order of moratorium dated November 17, 2020, Expenditure may be incurred towards meeting the obligations in respect of the following items. a) salaries of employees, b) rent, rates and taxes, c) printing, stationery, etc. d) postage and telegrams. e) Legal expenses etc.

Supersession of the Board of Directors & Appointment of Administrator

In exercise of the powers conferred under Sub-section (1) of Section 36 A C A of the Banking Regulation Act 1949, the Reserve Bank has, in consultation with Central Government, superseded the Board of Directors of The Lakshmi Vilas Bank Ltd. for a period of 30 days owing to serious deterioration in the financial position of the bank. This has been done to protect the depositors' interest. Shri T. N. Manoharan, former Non-Executive Chairman of Canara Bank has been appointed as the Administrator under Sub-section (2) of Section 36 A C A of the Act.

RBI announces Draft Scheme of Amalgamation

The Reserve Bank of India has placed in public domain a draft scheme of amalgamation of The Lakshmi Vilas Bank Ltd. (LVB) with DBS Bank India Ltd. (DBIL), a banking company incorporated in India under Companies Act, 2013, and having its Registered Office at New Delhi.

DBIL is a wholly owned subsidiary of DBS Bank Ltd, Singapore ("DBS"), which in turn is a subsidiary of Asia's leading financial services group, DBS Group Holdings Limited and has the advantage of a strong parentage. It has been issued a banking license to operate as banking company under Section 22 (1) of the B R Act, on October 4, 2018. DBIL has a healthy balance sheet, with strong capital support. As on June 30, 2020, its total Regulatory Capital was ₹7,109 crore (against Capital of ₹7,023 crore as on March 31, 2020). As on June 30, 2020, its GNPA's and NNPA's were low at 2.7% and 0.5% respectively; Capital to Risk Weighted Assets Ratio (CRAR) was comfortable at 15.99% (against requirement of 9%); and Common Equity Tier-1 (CET-1) capital at 12.84% was well above the requirement of 5.5%. Although the DBIL is well capitalised,

it will bring in additional capital of ₹2500 crore upfront, to support credit growth of the merged entity. Owing to comfortable level of capital, the combined balance sheet of DBIL would remain healthy after the proposed amalgamation, with CRAR at 12.51% and CET-1 capital at 9.61%, without taking into account the infusion of additional capital.

Lakshmi Vilas Bank Limited (Amalgamation with DBS Bank India Limited) Scheme, 2020

The Government of India on 25th November, 2020 sanctioned the Scheme for the amalgamation of the Lakshmi Vilas Bank Ltd. with DBS Bank India Ltd, called the Lakshmi Vilas Bank Limited (Amalgamation with DBS Bank India Limited) Scheme, 2020. The amalgamation came into force on the appointed date i.e. November 27, 2020. All the branches of the Lakshmi Vilas Bank Ltd. started functioning as branches of DBS Bank India Ltd. with effect from that date.

Customers, including depositors of the Lakshmi Vilas Bank Ltd. were able to operate their accounts as customers of DBS Bank India Ltd. with effect from November 27, 2020. Consequently, the moratorium on the Lakshmi Vilas Bank Ltd. was ceased for operation from that date. DBS Bank India Ltd. made necessary arrangements to ensure that service, as usual, provided to the customers of the Lakshmi Vilas Bank Ltd.

Conclusion:

The unearthing of irregularities in advance and ability to prevent frauds are the priority one for the smooth functioning of bank. The issues relating to the adequate capital base, good corporate governance, sound business principle, prudent commercial practices, adoption of new technology and adequate system of checks and balances etc. are prime actions to prevent private bank crisis.

Source :

1. https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=50672
2. <https://www.informalnewz.com/two-more-banks-in-trouble-know-how-much-of-your-deposit-is-safe-with-the-bank/>
3. <https://companycontactinformation.com/lakshmi-vilas-bank-contact-information-head-office-email-id/>



COMPANY LAW

1. **Report of the Company Law Committee on Decriminalization of the Limited Liability Partnership Act, 2008 (January 04, 2021)**

The MCA has placed on its website, the Report of the Company Law Committee on Decriminalization of the Limited Liability Partnership Act, 2008. This report is in pursuance and continuation of the policy of the Government of the India to decriminalize non-compliances of minor, technical or procedural nature of violations and facilitate and promote ease of doing business and ease of living for law abiding corporates in the country. The Committee under took the detailed analysis and examined further scope of decriminalizing the compoundable offences through an In-house Adjudicating Mechanism or in any other appropriate manner within the broad framework of relevant laws.

The report proposes amendments in certain provisions with respect to decriminalization which will further incentivize the compliance by entrepreneurs or promote congenial business climate. In addition, it also addresses the need for certain other amendments so as to further improve ease of living for the corporates and other stakeholders of the Country.

- The main recommendations of the Committee as included in Chapter -1 of the Report are as follows:
 - (i) Twelve offences have been recommended to be decriminalized and to be shifted to In-house Adjudication Mechanism.
 - (ii) One offence has been recommended for omission.
- In addition to the above, Chapter -2 contains recommendations related to further ease of living and the main recommendations relate to:
 - (i) Introduction of new concepts into the LLP Act namely - Small LLP and provision for Issuance of Non-convertible Debentures (NCDs) by LLPs
 - (ii) Relaxing provisions relating to payment of additional fee under Section 69.
- Chapter -3 contains Miscellaneous Provisions related to:
 - (i) Reference to the Companies Act, 1956, proposed to be substituted with the Companies Act, 2013 in the LLP Act.
 - (ii) Concomitant and consequential amendments include the introduction of Section 68A for establishing registration offices with specified jurisdiction and Section 77 A for adjudication of penalties under In-house Adjudication Mechanism (IAM).
 - (iii) Other amendments *inter-alia* include Introduction of an enabling provision in the Act to prescribe Accounting Standards for class or classes of LLPs.

For details:

<http://www.mca.gov.in/Ministry/pdf/Report%20of%20the%20Company%20Law%20Committee%20on%20Decriminalization%20of%20The%20Limited%20Liability%20Partnership%20Act,%202008.pdf>

2. Clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme – reg. (General Circular No. 01/ 2021, Dated January 13, 2021)

In continuation to MCA General Circular No. 10/2020 dated March 23, 2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for carrying out awareness campaigns/programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by the MCA from time to time.

For details: http://www.mca.gov.in/Ministry/pdf/CSR2021_13012021.pdf

3. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 (Notification No. G.S.R. 40 (E), Dated January 22, 2021)

In exercise of the powers conferred by section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 to further amend the Companies (Corporate Social Responsibility Policy) Rules, 2014.

I) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, for rule 2, the following rule shall be substituted, namely: -

Rule 2: Definitions

- (a) "Act" means the Companies Act, 2013 (18 of 2013);
- (b) "Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme;
- (c) "Annexure" means the Annexure appended to these rules;
- (d) "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-
 - (i) Activities undertaken in pursuance of normal course of business of the company.

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
 - (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;
- (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
- (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- (iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
- (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;
- (e) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act;
- (f) "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;
- (g) "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;
- (h) "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -
 - (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

- (i) “Ongoing Project” means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;
- (j) “Public Authority” means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005);
- (k) “section” means a section of the Act.

II) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 3, in sub-rule (2), in clause (b), for the words, brackets and figure “sub-section (2) to (5)”, the words, brackets and figure “sub-section (2) to (6)” shall be substituted.

After Amendment

Every company which ceases to be a company covered under section 135(1) of the Companies Act, 2013 for three consecutive financial years shall not be required to -

- (a) *constitute a CSR Committee; and*
- (b) *comply with the provisions contained in sub-section (2) to (6) of Section 135 of the Companies Act, 2013.*

till such time it meets the criteria specified in sub-section (1) of section 135 of the Companies Act, 2013.

III) In Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule shall be substituted, namely:-

CSR Implementation. –

- (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through –
 - (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
 - (c) any entity established under an Act of Parliament or a State legislature; or
 - (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
- (2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the **01st day of April 2021**:
- Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021**.
- (b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.
 - (c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.
- (3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
- (4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.
- (5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.
- (6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

(IV) In Rule 5(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following sub-rule shall be substituted, namely:-

CSR Committee:

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-

- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company: Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

(V) Rule 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 pertaining to CSR Policy shall be omitted.

(VI) In Rule 7 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule shall be substituted, namely:-

CSR Expenditure.

- (1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.
- (2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.
- (3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –
 - (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
 - (ii) the Board of the company shall pass a resolution to that effect.

- (4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –
- (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
 - (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
 - (c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

(VII) In Rule 8 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule shall be substituted, namely:-

CSR Reporting

- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (3)
 - (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
 - (b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
 - (c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

(VIII) In Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule shall be substituted, namely:-

Rule 9 - Display of CSR activities on its website

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

(IX) Rule 10 - Transfer of unspent CSR amount.

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

For details: http://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf

4. The MCA notified the commencement date for Section 21 of the Companies (Amendment) Act, 2019 (Notification No: S.O. 324(E), Dated January 22, 2021)

The MCA has appointed **January 22, 2021** as the commencement date of section 21 of the Companies (Amendment) Act, 2019 which is related to the amendments brought in the Corporate Social Responsibility provisions w.r.t. transfer of the unspent CSR funds etc., under Section 135 of the Companies Act, 2013.

For details:

http://www.mca.gov.in/Ministry/pdf/CommencementNotificationCAA_23012021.pdf

5. The MCA notified the commencement date for certain specified sections of the Companies (Amendment) Act, 2020 (Notification No: S.O. 325(E), Dated January 22, 2021)

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the **January 22, 2021** as the date on which the following provisions of the Companies (Amendment) Act, 2020 shall come into force, namely:-

S.No.	Sections
1.	Section 2
2.	Section 11
3.	Clause (c) of Section 18
4.	Clause (ii) of Section 22
5.	Section 25
6.	Section 27
7.	Section 53

8.	Section 55
9.	Section 58 to section 60 (both inclusive)
10.	Section 62; and
11.	Section 64 and section 65.

For details:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_23012021.pdf

6. The Companies (Incorporation) Amendment Rules, 2021 (Notification No: G.S.R. 44 (E), Dated January 25, 2021)

In exercise of the powers conferred by section 3, sub-section (1) of section 7 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the the Companies (Incorporation) Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014, namely:

In Rule 41 of the Companies (Incorporation) Rules, 2014 pertaining to Application under section 14 for conversion of public company into private company.

(a) in sub-rule (6),

- (i) in clause (c), for the words, brackets and figure "sub-rule (6)" the words, brackets and letter "clause (b)" shall be substituted;
- (ii) clause (d) shall be omitted;
- (iii) the existing sub-rules (9), (10), (11) shall be renumbered as sub-rules (7), (8) and (9) respectively;

(b) for sub-rule (7) as so renumbered, the following sub-rule shall be substituted with the following rule, namely:-

- "(7) (i) Where an objection has been received or Regional Director on examining the application has specific objection under the provisions of the Companies Act, 2013 the same shall be recorded in writing and the Regional Director shall hold a hearing or hearings within a period of thirty days as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with the reasons within thirty days from the date of hearing.
- (ii) In case where no consensus is received as referred in clause (i), the Regional Director may approve the conversion, if he is satisfied having regard to all the circumstances of the case, that the conversion would not be against the interests of the company or is not being made with a view to contravene or to avoid complying with the provisions of the Companies Act, 2013 with reasons to be recorded in writing:

Provided that the conversion shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Companies Act, 2013.

Impact

The notification amended Rule 41 of Companies (Incorporation) Rules, 2014 which relates to Application under section 14 Companies Act, 2013 for conversion of public company into private company.

For details:

http://www.mca.gov.in/Ministry/pdf/CompaniesAmndtRules_16022021.pdf

7. **New 'Extend' functionality has been introduced as part of SPICe+ Part A in line with Rule 9A 'Extension of reservation of name in certain cases' of the Companies (Incorporation) Third Amendment Rules, 2020 with effect from January 26, 2021.**

For details: <http://www.mca.gov.in/>

8. **The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 (Notification G.S.R. 93(E), dated February 01, 2021)**

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 230 to 233 and sections 235 to 240 of the Companies Act, 2013, the Central Government hereby makes the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 to further amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 namely :-

In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in rule 25, after sub-rule (1) the following sub-rule shall be inserted, namely:-

“(1A) A scheme of merger or amalgamation under section 233 of the Companies Act, 2013 may be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

Explanation.- For the purposes of this sub-rule, “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated February 19, 2019 issued by the Department for Promotion of Industry and Internal Trade.”

Impact:

The Notification has amended Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, allowing scheme of merger or amalgamation under section 233 of the Companies Act, 2013 (fast track mergers through relatively simpler procedure) between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

For details:

http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf

9. The Companies (Specification of Definitions Details) Amendment Rules, 2021 (Notification No: G.S.R. 92(E), dated February 01, 2021) (Effective from April 01, 2021)

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the Companies (Specification of Definitions Details) Amendment Rules, 2021 to further amend the Companies (Specification of Definitions Details) Rules, 2014, namely: -

In rule 2(1) after clause (s), the following clause shall be inserted, namely:-

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.”

Impact

The MCA has eased the Compliance requirement of Small companies by revising their definition under Companies Act, 2013 by increasing their thresholds for paid up capital from “not exceeding Rs. 50 Lakhs” to “not exceeding Rs. 2 Crore” and turnover from “not exceeding Rs. 2 Crore” to “not exceeding Rs. 20 Crore”.

Revised Definition

"small company" means a company, other than a public company,—

- (i) paid-up share capital of which does not exceed 2 Crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and*
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:*

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;*
- (B) a company registered under section 8; or*
- (C) a company or body corporate governed by any special Act;*

For details:

http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf

10. The Companies (Incorporation) Second Amendment Rules, 2021 (Notification No: G.S.R. 91(E), Dated February 01, 2021) (Effective from April 01, 2021)

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

I. In rule 3 (1) of the Companies (Incorporation) Rules, 2014:

- (i) for the words, "and resident in India" the words "whether resident in India or otherwise" shall be substituted;

- (ii) in *Explanation 1*, for the words "one hundred and eighty two days" the words "one hundred and twenty days" shall be substituted;

(b) Rule 3 (7) of the Companies (Incorporation) Rules, 2014 shall be omitted.

II. For Rule 6 of the Companies (Incorporation) Rules, 2014, the following rule shall be substituted, namely:-

"6. Conversion of One Person Company into a Public company or a Private company.-

- (1) The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Companies Act, 2013 to give effect to the conversion and to make necessary changes incidental thereto.
- (2) A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Companies Act, 2013 after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Companies Act, 2013 for such class of company and by making due compliance of section 18 of the Companies Act, 2013 for conversion.
- (3) The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Companies Act, 2013, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:-
 - (a) Altered MOA and AOA;
 - (b) copy of resolution;
 - (c) the list of proposed members and its directors along with consent;
 - (d) list of creditors; and
 - (e) the latest audited balance sheet and profit and loss account.
- (4) On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

III. In Rule 7 (1) of the Companies (Incorporation) Rules, 2014, the words" having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period is two crore rupees or less" shall be omitted.

(b) In Rule 7 (4) of the Companies (Incorporation) Rules, 2014, in clause (i), the words ",the paid up share capital company is fifty lakhs rupees or less

or average annual turnover is less than two crores rupees, as the case may be" shall be omitted.

IV. In the Annexure, (a) the e-Form No.INC-5 shall be omitted.

Impact

The MCA vide this notification has notified the Amendments as announced in the Union Budget 2021-22, for OPCs. Amendment has been introduced w.r.t. Allowing non-resident Indians to incorporate OPCs in India, Reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days, Thresholds limit of Paid-up share capital exceeding Rs. 50 lakhs and turnover exceeding Rs. 2 crores for compulsory conversion of OPC into Public/Private Company has been removed, Conversion of OPC into any other type of company at any time has been allowed etc.

For details:

http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf

11. The Producer Companies Rules, 2021, (Notification G.S.R. 112(E), Dated February 11, 2021)

In exercise of the powers conferred by sub-section (4) of section 378H and sub-section (1) of section 378ZL read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, and in supersession of the Producer Companies (General Reserve) Rules, 2003, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the Producer Companies Rules, 2021, namely:-

Applicability. - These rules shall apply to a Producer Company as referred in clause (I) of section 378A of the Companies Act, 2013.

Definitions.- (1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Companies Act, 2013;
- (b) "section" means the section of the Act;
- (c) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.

Words and expressions used in these rules but not defined and defined in the Companies Act, 2013 or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Companies Act, 2013 or in the said rules.

Change of place of registered office from one State to another. - The rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.

Investment of general reserves.- A Producer Company shall make investments from and out of its general reserves in anyone or in combination of the following, namely:--

- (a) in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or
- (b) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- (c) with any other scheduled bank; or
- (d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (20 of 1882); or
- (e) in the shares or securities of any other inter-State co-operative society or any co-operative society; or
- (f) in the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Companies Act, 2013.

Impact

The MCA has notified the Producer Companies Rules, 2021. The new rules define the term 'cooperative society' for the purpose of this rule. It also specifies the rules applicable for the purpose of change of place of registered office of a Producer Company from one State to another and Investment of general reserves by a Producer Company.

For details: <http://egazette.nic.in/WriteReadData/2021/225116.pdf>

12. **The MCA notified the commencement date for Section 52 and Section 66 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 644(E), Dated February 11, 2021)**

The MCA has appointed **February 11, 2021** as the commencement date of section 52 and Section 66 of the Companies (Amendment) Act, 2020 which is related to the insertion of new Chapter in the Companies Act, 2013 pertaining to Producer Companies and amendments under Section 465 of the Companies Act, 2013 related to Repealing of certain enactments and savings respectively.

For details: <http://egazette.nic.in/WriteReadData/2021/225115.pdf>

13. **The Companies (Share Capital and Debentures) Amendment Rules, 2021 (Notification No: G.S.R. 113 (E), Dated February 11, 2021) (Effective from April 01, 2021)**

In exercise of the powers conferred by sub clause (i) of clause (a) of sub-section (1) of section 62, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby the Companies (Share Capital and Debentures) Amendment Rules, 2021 to further the amend the Companies (Share Capital and Debentures) Rules, 2014, namely: -

In the Companies (Share Capital and Debentures) Rules 2014, after rule 12, the following rule shall inserted, namely:-

"12A. Period for notice under sub-clause (i) of clause (a) of sub-section (1) of section 62.- For the purposes of sub-clause (i) of clause (a) of sub-section (1) of section 62, the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer."

Impact

This amendment seeks to insert a new Rule 12A in the Companies (Share Capital and Debentures) Rules, 2014 pertaining to period for notice under sub-clause (i) of clause (a) of section 62(1) of the Companies Act, 2013. This Amendment prescribes that for the purposes of sub clause (i) of clause (a) of Section 62(1) of the Companies Act, 2013, the time period within which the offer related to further issue of shares to existing shareholders shall be made for acceptance shall be not less than seven days from the date of offer.

For details: http://www.mca.gov.in/Ministry/pdf/AmendmentRules_12022021.pdf

SECURITIES LAWS AND CAPITAL MARKETS

1. REFUND OF SECURITY DEPOSIT

(Circular No. SEBI/HO/MIRSD/FCR/CIR/P/2021/01 dated January 06, 2021)

All exchanges are advised the following regarding refund of security deposit on surrender of membership by Trading Members:

A. On approval of application for surrender of Trading Member's registration by SEBI, the Exchange shall release Security Deposit of the Trading Member (engaged in trading on behalf of clients) after the period mentioned at point a) or b), whichever is earlier:

- (a) Three years from the date of receipt of surrender application by Exchange from the Trading Member (in order to meet any investor claims), or
- (b) Five years from the date of disablement of Trading Member's trading terminals by the Exchange.

B. On approval of application for surrender of Trading Member's registration by SEBI, the Exchange shall release Security Deposit of the Trading Member (engaged only in proprietary trading in last three years prior to the date of application) after the period mentioned at point a) or b), whichever is earlier:

- (a) one year from the date of receipt of surrender application by exchange from the Trading Member, or
- (b) three years from the date of disablement of Trading Member's trading terminals by the Exchange.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/refund-of-security-deposit_48677.html

2. TRANSFER OF EXCESS CONTRIBUTION MADE BY STOCK EXCHANGES FROM CORE SGF OF ONE CLEARING CORPORATION TO THE CORE SGF OF ANOTHER CLEARING CORPORATION

(Circular No. SEBI/HO/MRD2/DCAP/CIR/P/2021/03 dated January 08, 2021)

Background

SEBI, vide its Circular dated August 27, 2014, prescribed norms for contribution by a Stock Exchange to Core SGF of a Clearing Corporation. Further, SEBI, vide its Circular dated November 27, 2018, prescribed broad guidelines for operationalizing the interoperable framework among Clearing Corporations.

It has been decided to allow transfer of excess contribution made by Stock Exchanges from Core SGF of one Clearing Corporation to the Core SGF of another Clearing Corporation, in inter-operable scenario.

Brief of the Circular

In this regard, the Stock Exchanges and Clearing Corporations are advised to ensure the following:

- a) Upon receipt of request from an Exchange in this regard, the Clearing Corporation which receives such request shall transfer directly such excess contribution of the Exchange, in its Core SGF to the core SGF of another Clearing Corporation, under intimation to that Exchange.

For Example, if Exchange 'A' requests to transfer its excess contribution from Core SGF of Clearing Corporation 'B' to Core SGF of Clearing Corporation 'C' then after receipt of such request from 'A', 'B' would transfer directly the excess contribution of 'A' from Core SGF of 'B' to Core SGF of 'C', under intimation to Exchange 'A'.

- b) The Clearing Corporations shall ensure compliance with requirements of Minimum Required Corpus (MRC) of Core SGF as prescribed by SEBI.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/transfer-of-excess-contribution-made-by-stock-exchanges-from-core-sgf-of-one-clearing-corporation-to-the-core-sgf-of-another-clearing-corporation_48698.html

3. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2021 (January 08, 2021)

SEBI vide its notification amends the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette i.e. 08-01-2021.

The following amendments shall be made:

- 1) The Amendment is brought under regulation 112 which specifies, the requirements of minimum promoters' contribution shall not apply in the case where the equity shares of the issuer are frequently traded on a stock exchange for a period of at least 3 years immediately preceding the reference date, and the issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date. Further, it is provided that the issuer has been in compliance with the SEBI (LODR) Regulations, 2015, for a minimum period of 3 years immediately preceding the reference date.

However if the issuer has not complied with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, relating to composition of board of directors, for any quarter during the last three years immediately preceding the date of filing of draft offer document/offer document, but is compliant with such provisions at the time of filing of draft offer document/offer document, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the date of filing the draft offer document/offer document, it shall be deemed as compliance with the condition:

The SEBI further laid the condition that where the promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (a) of sub-regulation (1) of regulation 113, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 164 or the issue price, whichever is higher.

- 2) The existing proviso after Regulation 115 (c) has been omitted.
- 3) The Board further notified the new proviso in the Regulation 167 (4), which specifies the lock-in period, namely:

“Provided that the lock-in provision shall not be applicable to the specified securities to the extent to achieve 10% public shareholding.”

For more details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2021_48704.html

4. **MONTHLY REPORTING OF PORTFOLIO MANAGERS**

(Circular No. SEBI/HO/IMD/DF1/CIR/P/2021/02 dated January 08, 2021)

Background

SEBI had mandated certain changes to the regulatory framework for Portfolio Managers vide its circular dated February 13, 2020. Para no. D(11) of the said circular provides that the Portfolio Managers are required to submit a monthly report regarding their portfolio management activity, on SEBI Intermediaries Portal within 7 working days of the end of each month, as per a prescribed format.

Brief of the Circular

In order to broaden the information obtained under monthly reports, certain modifications has been specified in the format enclosed in Annexure A to this circular which shall be applicable for monthly reports submitted for January 2021 onwards.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/monthly-reporting-of-portfolio-managers_48705.html

5. **SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATIVE INVESTMENT FUNDS) (AMENDMENT) REGULATIONS, 2021 (January 08, 2021)**

SEBI vide its notification amends the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the date of their publication in the Official Gazette i.e. 08-01-2021. SEBI has amended regulation 20 (6) which states the general obligations where the Manager shall be responsible for investment decisions of the Alternative Investment Fund.

The amendment has provided the exemption from applicability of clause (i) and (ii) of the first proviso to Regulation 20(6) as –

“Provided further that clauses (i) and (ii) shall not apply to an Alternative Investment Fund in which each investor other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager, has committed to invest not less than seventy crore rupees (or an equivalent amount in

currency other than Indian rupee) and has furnished a waiver to the Alternative Investment Fund in respect of compliance with the said clauses, in the manner specified by the Board.”

Further, SEBI vide its circular no. SEBI/HO/IMD/DF6/CIR/P/2021/004 dated January 8, 2021 has provided the format for waiver to be furnished by the investors in this regard at Annexure I to this circular.

For more details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2021_48708.html

https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-amendment-to-regulation-20-6-of-sebi-aif-regulations-2012_48710.html

6. **SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2021 (January 08, 2021)**

SEBI vide its notification amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette i.e. 08-01-2021.

In Schedule III, under Part A, in clause 16, the amendment has added to the events, upon the occurrence of which a listed entity shall make the disclosure to the stock exchange in relation to the Corporate Insolvency Resolution Process (CIRP) of a listed Corporate Debtor under the Insolvency Code.

For more details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2021_48709.html

7. **REVIEW OF VOLATILITY SCAN RANGE (VSR) FOR OPTION CONTRACTS IN COMMODITY DERIVATIVES SEGMENT**

(Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2021/08 dated January 11, 2021)

SEBI has prescribed minimum VSR* values for underlying commodities based on their volatility viz, high, medium and low as categorised in SEBI circular No. SEBI/HO/CDMRD/ DRMP/CIR/P/2020/15 dated January 27, 2020.

The VSR in respect of various categories of commodities shall be subject to following minimum values:

Volatility Category	Minimum VSR % Non Agri commodities	Minimum VSR % Agri Commodities
Low	4	5
Medium	5	6
High	6	7

Clearing Corporations (providing clearing and settlement for options) shall review the value of VSR by back testing on a monthly basis using last 3 years' data by 15th of every month and any change in VSR shall be implemented from 1st trading day of the following month.

The back testing shall be done by using appropriate models to extract volatility (such as EWMA (Exponentially Weighted Moving Average) volatility of the underlying futures contract, implied volatility of options, etc.) over the relevant MPOR (Margin Period of Risk) period.

The circular shall be effective from the first trading day of the month of April 01, 2021.

*The **volatility scan range** is a **range** within which the implied **volatility** might reasonably be expected to move in one day. The implied **volatility** of an option is the expected price variability implied by an observed option price, given an option pricing model.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/review-of-volatility-scan-range-vsr-for-option-contracts-in-commodity-derivatives-segment_48717.html

8. REVISION IN DAILY PRICE LIMITS (DPL) FOR COMMODITY FUTURES CONTRACTS (Circular No. SEBI/HO/CDMRD/DNPMP/CIR/P/2021/9 dated 11th January, 2021)

Brief of the circular

The Daily Price Limits in commodity futures market serve an important function of defining the maximum range within which the price of a commodity futures contract can move in one trading session. The defined daily price limits protect investors from sudden and extreme price movements and provides cooling-off period to re-assess the information and fundamentals impacting the price of the commodity futures contract. Thus, DPLs can neither be too narrow nor too wide as it will restrict fair price discovery.

SEBI vide its circulars dated January 15, 2016 and September 07, 2016 had issued norms for DPL for agricultural and non-agricultural commodity derivatives. Continuing with SEBI's endeavor to develop the commodity derivatives market, the norms for DPL for commodity futures contracts (excluding Index Futures and options) have been revised which shall come into effect from April 1, 2021.

The revised norms inter alia provide for-

- 1) Base price for DPL
- 2) Order Acceptance
- 3) Breach of slab
- 4) DPL for Commodity futures contracts which are based on agricultural and agri-processed goods
- 5) DPL for Commodity futures contracts which are based on non-agricultural goods

- 6) DPL on First Trading Day of the Contract
- 7) Calculation of closing price or daily settlement price (DSP)

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/revision-in-daily-price-limits-dpl-for-commodity-futures-contracts_48720.html

9. SEBI (INVESTMENT ADVISERS) (AMENDMENT) REGULATIONS, 2021. (January 11, 2021)

SEBI vide its notification amends the provisions of SEBI (Investment Advisers) Regulations, 2013, which shall come into force on the date from April 01, 2021. *(Effective date vide Corrigendum No. SEBI/LAD-NRO/GN/2021/06 dated January 20, 2021)*

The following amendments shall be made:

- 1) The amendment has added a clause (n) to regulation 6 whereby it is given that for the purpose of the grant of certificate the Board shall consider whether the applicant is a member of a recognized body or body corporate as specified under regulation 14.

Provided that the existing investment advisers shall comply with the requirement under this clause in such manner as may be specified by the Board.

- 2) SEBI has further relaxed the application fees and registration fee to be paid by every applicant at the time of grant of certificate.

For more details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-investment-advisers-amendment-regulations-2021_48742.html

https://www.sebi.gov.in/legal/regulations/jan-2021/corrigendum-to-the-securities-and-exchange-board-of-india-investment-advisers-amendment-regulations-2021_48848.html

10. NOTIFICATION REPEALING THE SEBI (CENTRAL DATABASE OF MARKET PARTICIPANTS) REGULATIONS, 2003 (January 13, 2021)

SEBI has repealed with immediate effect the SEBI (Central Database of Market Participants) Regulations, 2003 published in Part-III, Section 4 of the Gazette of India, Extraordinary, under notification of the Securities and Exchange Board of India number F. No. SEBI/LE/26/2003 dated the 20th November, 2003.

The repealed Regulations shall not affect the previous operation of the said regulations and any right, privilege, obligation, liability, penalty, punishment, investigation, legal proceedings or remedy under the said regulations.

Any investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the said regulations had not been repealed.

For more details: https://www.sebi.gov.in/legal/regulations/jan-2021/notification-repealing-sebi-central-database-of-market-participants-regulations-2003_48760.html

11. **NORMS FOR INVESTMENT AND DISCLOSURE BY MUTUAL FUNDS IN EXCHANGE TRADED COMMODITY DERIVATIVES (“ETCDs”)**

(Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/10 dated January 15, 2021)

SEBI vide its Circulars dated May 21, 2019 and June 05, 2020 permitted mutual funds to participate in ETCDs. In this regards, it is clarified that the following exposures shall not be considered in the cumulative gross exposure as specified in paragraph 4 (v) of said SEBI Circular dated May 21, 2019:

- a. Short position in Exchange Traded Commodity Derivatives (ETCDs) not exceeding the holding of the underlying goods received in physical settlement of ETCD contracts.
- b. Short position in ETCDs not exceeding the long position in ETCDs on the same goods.

Further it is clarified that mutual funds shall not write options, or purchase instruments with embedded written options in goods or on commodity futures.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/norms-for-investment-and-disclosure-by-mutual-funds-in-exchange-traded-commodity-derivatives-etcds_48789.html

12. **RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 DUE TO THE COVID -19 PANDEMIC**

(Circular No. SEBI/HO/CFD/CMD2/CIR/P/2021/11 dated January 15, 2021)

The relaxations in respect of sending physical copies of annual report to shareholders and requirement of proxy for general meetings held through electronic mode as provided in Paras 3 to 6 of the SEBI Circular dated May 12, 2020, are extended for listed entities, till December 31, 2021.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic_48790.html

13. **RELAXATIONS RELATING TO PROCEDURAL MATTERS –ISSUES AND LISTING**

(Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/13 dated January 19, 2021)

SEBI vide its Circular dated May 6, 2020 granted one time relaxations from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening. The relaxation mentioned in point (iv) of the said Circular is further extended and shall be applicable for Rights Issues opening upto March 31, 2021 provided the issuer along with the Lead Manager(s) shall continue to comply with point (v).

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/relaxations-relating-to-procedural-matters-issues-and-listing_48812.html

14. SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) (AMENDMENT) REGULATIONS, 2021 (January 21, 2021)

SEBI vide its notification amends the provisions of SEBI (Intermediaries) Regulations, 2008, which shall come into force on the date of their publication in the Official Gazette i.e. 21-01-2021.

The following amendments shall be made:

The regulation 25 which provides the provisions for Holding of enquiry shall be substituted by the following, namely: –

“25 (1) The designated authority shall issue a notice to a person against whom an enquiry has been initiated, to show cause as to why the action, as contemplated against such person should not be recommended.

(2) The noticee shall be called upon to submit, within a period to be specified in the notice, not exceeding twenty-one days from the date of service thereof, a written reply to the notice, along with documentary evidence, if any, in support of such written reply:

Provided that the designated authority may extend the time specified in the notice for sufficient grounds shown by the noticee and after recording reasons in writing.

(3) Every notice issued under sub-regulation (1) shall specify the contravention alleged to have been committed by the noticee by indicating the provisions of the securities laws or the direction or the order of the Board alleged to have been contravened.

(4) There shall be annexed to the notice issued under sub- regulation (1), copies of documents relied upon by the Board along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any.

(5) If the noticee demands inspection of such documents within the period specified in sub-regulation (2) and the designated authority is of the opinion that the same may be granted, then the designated authority may issue or cause to issue a notice fixing a date for inspection of documents: Provided that the date for inspection of documents shall be within thirty days from the date of receipt of such request.

(6) The designated authority shall grant an opportunity of personal hearing and issue or cause to issue a notice scheduling a date for hearing the notice:

Provided that no opportunity of personal hearing may be granted in the cases where the noticee is alleged to have failed to pay the registration fee or any other applicable fees to the Board as per the provisions of the relevant regulations or the noticee has been declared a wilful defaulter or a fugitive economic offender.

(7) If the noticee does not reply to the notice issued under sub-regulation (1) or fails to appear on the scheduled date of hearing and the designated authority is satisfied that sufficient opportunity has been given to the noticee, the designated authority may conclude the proceedings after recording the reasons for doing so, on the basis of the material available on record.

The regulation 26 which provides the provisions for Recommendation of action shall be substituted by the following, namely:-

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,–

- (i) disposing of the proceedings without any adverse action;
- (ii) cancellation of the certificate of registration;
- (iii) suspension of the certificate of registration for a specified period;
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;
- (vii) issuance of a regulatory censure to the noticee:

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

- (2) The designated authority shall endeavour to submit the report within one hundred and twenty days from the date of receipt of reply to the notice or date of personal hearing, whichever is later.

The regulation 27 which provides the provisions for Order shall be substituted by the following, namely:-

27. (1) On receipt of the report containing the measures recommended by the designated authority, the designated member shall cause to forward a copy of the report submitted by the designated authority and call upon the noticee to make its submission, in writing, as to why the measures recommended by the designated authority or any other action as contemplated in these regulations, should not be taken.

(2) The noticee shall submit, within a period as specified in the notice, but not exceeding twenty-one days from the date of service thereof, a written submission, along with documentary evidence, if any, in support of the written submission: Provided that upon the request of the noticee, the designated member, after recording reasons, in writing may cause to extend the time specified for submitting reply to the notice.

(3) After considering the submission of the noticee, the designated member may if deemed fit, for reasons to be recorded by it in writing, remit the matter to the designated authority to enquire afresh or to further enquire and resubmit the report.

(4) The designated member may grant an opportunity of personal hearing where the designated authority has recommended cancellation of certificate of registration or the designated member is of the prima facie view that it is a fit case for cancellation of certificate of registration.

Explanation: – It shall not be necessary for the designated member to give the noticee any opportunity of personal hearing if neither the designated authority has recommended cancellation of certificate of registration nor the designated member is of the prima facie view that it is a fit case for cancellation of certificate of registration.

(5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the designated member shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.”

The regulation 28 which provides the provisions for Procedure for action on receipt of the recommendation has been omitted.

For more details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-intermediaries-amendment-regulations-2021_48871.html

15. REVISION OF MONTHLY CUMULATIVE REPORT (MCR)

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2021/014 dated January 29, 2021)

SEBI has modified MCR format pursuant to introduction of a new scheme category and to bring transparency in reporting of segregated portfolios, from January 2021 onwards. Under the modified MCR, Asset Management Companies (AMCs) will have to disclose about the number of segregated portfolios created as well as net assets under management (AUM) in such segregated portfolios. The revised format of MCR is enclosed as Annexure A to this circular.

For more details: https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-revision-of-monthly-cumulative-report_48927.html

INDIRECT TAX LAWS

Customs

1. Notification to prescribe effective rate of AIDC for specified goods [Notification No. 11/2021 dated, February 01, 2021]

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description specified in column (3) of the Table below and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 as specified in column (2) of the said Table, from so much of the Agriculture Infrastructure and Development Cess (AIDC) leviable thereon under the said clause of the Finance Bill, 2021, as is in excess of the amount calculated at the rate specified in column (4) of the said Table.

Table

<i>Sl. No.</i>	<i>Chapter or heading or subheading or tariff item of the First Schedule</i>	<i>Description of goods</i>	<i>Rate</i>
(1)	(2)	(3)	(4)
1.	0713 10	All goods	40%
2.	0713 20 10	All goods	30%
3.	0713 20 20	All goods	50%
4.	0713 20 90	Chick Peas (Garbanzos)	50%
5.	0713 40 00	Lentil (Mosur)	20%
6.	0808 10 00	All goods	35%

For more details: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs11-2021.pdf>

2. Notification to exempt Social Welfare Surcharge leviable on AIDC on Gold and Silver [Notification No. 13/2021 dated, February 01, 2021]

The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under headings 7106 and 7108 of the First Schedule of the Customs Tariff Act, 1975 when imported into India, from the whole of the Social Welfare Surcharge leviable on the Agriculture Infrastructure and Development Cess leviable under clause 115 of the Finance Bill, 2021 which, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of

Taxes Act, 1931 has the force of law. This notification shall come into force on February 02, 2021.

For more details: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs13-2021.pdf>

3. Notification to exempt Social Welfare Surcharge leviable on Crude or roughly trimmed or Blocks Marble or travertine [Notification No. 14/2021 dated, February 01, 2021]

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 11/2018-Customs, dated the 2nd February, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 114(E), dated the 2nd February, 2018, namely:-

In the said notification, in the TABLE, against serial number 1, in column (2), after the figure “2510 20,” the figures “2515 11 00, 2515 12 10,” shall be inserted.

This notification shall come into force on the 2nd February, 2021.

For more details: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs14-2021.pdf>

DIRECT TAX LAW

1. **Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020 (Circular No. 21 Dated December 4, 2021)**

With the objective to reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process, the Direct Tax Vivad se Vishwas Act, 2020 was enacted on 17th March, 2020.

In order to facilitate the taxpayers, the Board had vide circular no. 9/2020 dated 22nd April, 2020 issued clarifications in form of answers to 55 frequently asked questions (FAQs) on issues related to eligibility, computation of amount payable, procedure and consequences under Vivad se Vishwas. Several representations have been received thereafter seeking further relaxation and clarifications with respect to such issues. Some of these representations have already been addressed through the aforesaid notification dated 27th October, 2020 and circular dated 28th October, 2020.

Section 10 and 11 of the Vivad se Vishwas empowers the Board / Central Government to issue directions or orders in public interest or to remove difficulties. This circular is being issued in continuation of circular dated 22nd April, 2020 clarifying on Scope / Eligibility; Questions related to Computation, Questions related to consequences, Questions related to procedure etc.

For details: <https://www.incometaxindia.gov.in/communications/circular/circular-21-of-2020.pdf>

2. **Amount of remuneration prescribed under section 9A(3)(m) of the Income-tax Act, 1961 (Circular No. 1/2021 Dated January 15, 2021)**

Finance (No 2) Act, 2019 amended clause (m) of sub-section (3) of section 9A of the Income-tax Act, 1961 w.e.f. 01.04.2019 to provide for payment of remuneration by an eligible investment fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf to be not less than the amount calculated in such manner as may be prescribed.

Accordingly, rule 10V of the Income-tax Rules, 1962 has been amended, w.e.f. 01.04.2019, vide Notification No 29/2020 dated 27.05.2020 by way of insertion of sub-rules (12) and (13) therein. Sub-rule (12) provides for the amount of remuneration to be paid by the fund to a fund manager. 2nd proviso of the said sub-rule provides that the fund may seek Board's approval in case where the amount of remuneration is lower than the amount so prescribed.

In this regard, representations have been received expressing inability to comply with the provisions of sub-rule 12 of rule 10V of the Rules regarding the amount of remuneration to be paid by the fund to a fund manager for the financial year 2019-20 as the said Notification No 29/2020 was notified after the financial year got over and the financial year 2020-21 had already commenced.

In order to avoid genuine hardship in such cases, the Board, in exercise of powers conferred under section 119 of the Act, has decided to provide that for the financial

years 2019-20 and 2020- 21 in cases where the remuneration paid to the fund manager is lower than the amount of remuneration prescribed under sub-rule (12) of rule 10V of the Rules, but is at arm's length, it shall be sufficient compliance to clause (m) of sub-section (3) of section 9A of the Act. It is stated that the remuneration to be paid to the fund manager, for the financial year 2021- 22, shall be in accordance with sub-rule (12) of rule 10V of the Rules and the application for lower remuneration in terms of 2nd proviso for this year, if any, may be filed not later than 1st February, 2021.

For details:

https://www.incometaxindia.gov.in/communications/circular/circular_1_2021.pdf

3. **Faceless Penalty Scheme, 2021 [Notification No. 02 /2021 Dated January 12, 2021]**

The Central Board of Direct Taxes (CBDT) has introduced a "Faceless Penalty Scheme, 2021" to handle recommendations for penalty issued under its faceless assessment programme. The scheme has laid down the procedure to issue penalty through electronic mode, including the procedures for admission of additional grounds and the admission of additional evidence during the appellate proceedings.

The penalty under this scheme shall be imposed in respect of such territorial area, or persons or class of persons, or income, as specified by the board. It aims to ensure that any penalty order issued by the authority is fool proof and has undergone multiple layers of review before it is confirmed or dropped.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_no_2_2021.pdf

4. **CBDT issues Directions for giving effect to Faceless Penalty Scheme, 2021 [Notification No. 03 /2021 Dated January 12, 2021]**

CBDT vide Notification No. 3/2021 dated 12.01.2021 issued directions issued u/s 274(2B) for the purpose of giving effect to the Faceless Penalty Scheme, 2021 notified vide Notification No. 2/2021 dated 12.01.2021 under the Income Tax Act, 1961 ("Act").

The provisions of section 2, section 120, section 127, section 129, section 131, section 133, section 133C, section 136 and Chapter XXI of the Act shall apply to the procedure for imposing penalty in accordance with the Faceless Penalty Scheme, 2021 subject to the certain exceptions as specified in the Scheme.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_no_3_2021.pdf

5. **CBDT launches e-portal for filing complaints regarding tax evasion/Benami Properties/Foreign Undisclosed Assets (PIB Dated January 12, 2021)**

Taking another step towards e-governance and encouraging participation of citizen as stakeholders in curbing tax evasion, the Central Board of Direct Taxes has launched an automated dedicated e-portal on the e-filing website of the Department to receive and process complaints of tax evasion, foreign undisclosed assets as well as complaints regarding benami properties.

The public can now file a Tax Evasion Petition through a link on the e-filing website of the Department <https://www.incometaxindiaefiling.gov.in/> under the head “File complaint of tax evasion/undisclosed foreign asset/ benami property”. The facility allows for filing of complaints by persons who are existing PAN/Aadhaar holders as well as for persons having no PAN /Aadhaar. After an OTP based validation process (mobile and/or email), the complainant can file complaints in respect of violations of the Income- tax Act, 1961, Black Money (Undisclosed Foreign Assets and Income) Imposition of Tax Act, 1961 and Prevention of Benami Transactions Act (as amended) in three separate forms designed for the purpose.

Upon successful filing of the complaint, the Department will allot a unique number to each complaint and the complainant would be able to view the status of the complaint on the Department’s website.

For details: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1688038>

6. CBDT extends due date for filing declaration under Vivad Se Vishwas scheme (Notification No. 4 Dated January 31, 2021)

The Central Board of Direct Taxes (CBDT) further extended the due date for filing declaration under the 'Vivad Se Vishwas' (VSV) scheme till February 28, 2021.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_04_2021.pdf

7. Notification No. 5 / 2021 under section 138 for sharing of information with "Chief Executive Officer, Center for e-Governance, Govt. of Karnataka [Dated Feb 11, 2021]

The Central Government hereby specifies “**Chief Executive Officer, Center for e-Governance, Government of Karnataka**” for the purpose of section 138(1)(a)(ii) in connection with sharing of information regarding Income tax assesses for identifying the eligible beneficiaries for implementing social security / public welfare schemes with the help of Entitlement Management System.

For details:

https://www.incometaxindia.gov.in/communications/notification/notification_5_2021.pdf

BANKING LAWS

1. **Operationalisation of Payments Infrastructure Development Fund (PIDF) Scheme (Notification No. RBI/2020-21/81 DPSS.CO.AD No.900/02.29.005/2020-21 dated January 05, 2021)**

The creation of Payments Infrastructure Development Fund (PIDF) was announced on June 05, 2020 with the intention to subsidise deployment of payment acceptance infrastructure in Tier-3 to Tier-6 centres with special focus on North-Eastern States of the country. It envisages creating 30 lakh new touch points every year for digital payments. An Advisory Council (AC), under the Chairmanship of the Deputy Governor, RBI, has been constituted for managing the PIDF will be operational for a period of three years from January 01, 2021 and may be extended for two more years depending upon the progress. PIDF presently has a corpus of ₹ 345 crore (₹ 250 crore contributed by RBI and ₹ 95 crore by the major authorised card networks in the country).

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12009&Mode=0>

2. **Introduction of Legal Entity Identifier for Large Value Transactions in Centralised Payment Systems (Notification No. RBI/2020-21/82DPSS.CO.OD No.901/06.24.001/2020-21 dated January 05, 2021)**

The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide. It was conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative and non-derivative markets as also for large corporate borrowers. It has now been decided to introduce the LEI system for all payment transactions of value ₹50 crore and above undertaken by entities (non-individuals) using Reserve Bank-run Centralised Payment Systems viz. Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT).

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12010&Mode=0>

3. **Risk Based Internal Audit (RBIA) Framework – Strengthening Governance arrangements (Notification No. RBI/2020-21/83Ref.No. DoS.CO.PPG./ SEC.04/ 11.01.005/2020-21 dated January 07, 2021)**

In terms of the Guidance Note on Risk-Based Internal Audit issued by RBI, banks, inter alia, are required to put in place a Risk Based Internal Audit (RBIA) system as part of their internal control framework that relies on a well-defined policy for internal audit, functional independence with sufficient standing and authority within the bank, effective channels of communication, adequate audit resources with sufficient professional competence, among others.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12011&Mode=0>

4. **Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 (Notification No. FEMA 23(R)/(4)/2021-RB dated January 08, 2021)**

The Reserve Bank of India has made amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 (the Principal Regulations) and the amended regulations are now called the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021.

The regulation 4, for sub-regulation (ea), of the Principal Regulations is substituted by “(ea) re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition re-possessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under ‘Cape Town Convention’ or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.”

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12014&Mode=0>

5. **Prudential Guidelines on Capital Adequacy and Market Discipline - New Capital Adequacy Framework (NCAF) - Eligible Credit Rating Agencies – CRISIL Ratings Limited (Notification No. RBI/2020-21/86 DOR.No.CRE.BC.33/21.06.007/2020-21 dated January 27, 2021)**

CRISIL Limited has been accredited for the purpose of risk weighting the banks' claims for capital adequacy purposes along with other credit rating agencies (CRAs) registered with Securities and Exchange Board of India (SEBI). The rating business of CRISIL Limited has since been transferred to CRISIL Ratings Limited, a wholly owned subsidiary of CRISIL Limited in compliance with SEBI's notification dated September 11, 2018 read with SEBI's circular dated September 19, 2018. Banks may therefore, use the ratings of the CRISIL Ratings Limited for the purpose of risk weighting their claims for capital adequacy purposes. The rating-risk weight mapping for the long term and short-term ratings assigned by CRISIL Ratings Limited will be the same as was in the case of CRISIL Limited and there is no change in the rating symbols earlier assigned by CRISIL Limited.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12016&Mode=0>

ECONOMIC BUSINESS AND COMMERCIAL LAWS

Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

Reserve Bank of India vide Notification No. FEMA 23(R)/(4)/2021-RB dated January 08, 2021 amended Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 .

According to the Amendment, Regulation 4(ea) reads as

“re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition re-possessioned by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under ‘Cape Town Convention’ or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.”

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12014&Mode=0>

INSOLVENCY AND BANKRUPTCY CODE

Retention of records relating to Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 (Code) read with various Regulations require an insolvency professional (IP) to maintain several records in relation to the assignments conducted by him under the Code. Keeping in view the importance of such records, clause (g) of sub-regulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) provides that the registration granted to an IP shall be subject to the condition that he maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment. Clause 19 of the Code of Conduct appended to the First Schedule to the IP (Regulations) mandates an IP must provide all records as may be required by the Board or the insolvency professional agency (IPA) with which he is enrolled.

Clause (a) of sub-regulation (4) of regulation 3 of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) provides that the Insolvency and Bankruptcy Board of India may conduct inspection, *inter alia*, to ensure that the records are being maintained by an IP in the manner required under the relevant regulations. Sub-regulation (2) of regulation 4 and sub-regulation (2) of regulation 8 of the Inspection Regulations empower the Inspecting Authority / Investigating Authority to direct the IP to submit records, as may be required, and it is his duty to produce such records in his custody or control before such Authority.

Regulation 39A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) mandates the interim resolution professional (IRP) and the resolution professional (RP) to preserve a physical as well as an electronic copy of the records relating to the corporate insolvency resolution process (CIRP) of the corporate debtor (CD), as per the record retention schedule as communicated by the Board in consultation with IPAs.

Keeping in view the above provisions and in consultation with the IPAs, the Insolvency and Bankruptcy Board of India directs retention of records under regulation 39A of the CIRP Regulations as under:

- (i) An IP shall preserve –
 - (a) an electronic copy of all records (physical and electronic) for a minimum period of eight years, and
 - (b) a physical copy of physical records for minimum period of three years, from the date of completion of the CIRP or the conclusion of any proceeding relating to the CIRP, before the Board, the Adjudicating Authority (AA), Appellate Authority or any Court, whichever is later.
- (ii) An IP shall preserve records relating to that period of a CIRP when he acted as IRP or RP, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion. For example, an IP served for three months as RP before he was replaced by another IP, who served till conclusion of the CIRP. The former shall preserve records relating to the first three

months, and the latter shall preserve records relating to the balance period of the CIRP.

- (iii) An IP shall preserve copies of records relating to or forming the basis of:
- a. his appointment as IRP or RP, including the terms of appointment;
 - b. handing over / taking over by him;
 - c. admission of CD into CIRP;
 - d. public announcement;
 - e. the constitution of CoC and CoC meetings;
 - f. claims, verification of claims, and list of creditors;
 - g. engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them;
 - h. information memorandum;
 - i. all filings with the AA, Appellate Authority and their orders;
 - j. invitation, consideration and approval of resolution plan;
 - k. statutory filings with IBBI and IPA;
 - l. correspondence during the CIRP;
 - m. insolvency resolution process cost;
 - n. applications for avoidance transactions or fraudulent trading; and
 - o. any other records, which is required to give a complete account of the CIRP.
- (iv) An IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same. For example, he may store copies of records in electronic form with an Information Utility. Notwithstanding the place and manner of storage, the IP shall be obliged to produce records as may be required under the Code and the Regulations.

This is issued in exercise of the powers under clauses (aa) and (g) of sub-section (1) of section 196 of the Code read with regulation 39A of the CIRP Regulations.

For details:

<https://www.ibbi.gov.in/uploads/legalframwork/5bb3be107809847f06cf2059f54ff3c8.pdf>

CORPORATE RESTRUCTURING

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021

Ministry of Corporate Affairs vide Notification G.S.R. 93(E) dated 1st February, 2021 amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

According to the Amendment Rules 202, Rule 25 (1A) reads as under:

25(1A) A scheme of merger or amalgamation under section 233 of the Act may be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

Explanation.- For the purposes of this sub-rule, “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.”

For details: http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf

INTELLECTUAL PROPERTY RIGHTS

Designs (Amendment) Rules, 2021

Department for Promotion of Industry and Internal Trade vide Notification G.S.R. 45(E) dated 25th January, 2021 amended the Designs Rules, 2001.

According to the Designs (Amendment) Rules, 2021:

(1) Rule 2(eb), read as under:-

“Startup” means-

- ‘(a) an entity in India recognised as a startup by the competent authority under Startup India initiative; and
- (b) in case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation or registration as per Startup India Initiative and submitting declaration to that effect.

Explanation: In calculating the turnover, reference rates of foreign currency of the Reserve Bank of India shall prevail.’

(2) In rule 4 of the principal rules, for the proviso, the following proviso shall be substituted, namely:-

“Provided that such address for service shall include e-mail address and mobile number registered in India, of the agent or applicant”.

(3) Rule 5 (2)(e) read as under:

“In case an application processed by a natural person and/ or startup and/ or small entity

is fully or partly transferred to a person other than a natural person, startup or small entity,

the difference, if any, in the scale of fees between the fees charged from the natural person, startup or small entity and the fees chargeable from the person other than a natural person, startup or small entity in the same matter, shall be paid by the new applicant with the request for transfer.”:

(4) Rule 5 (2) (f) shall be omitted.

(5) After sub-rule (e), the following explanation shall be inserted namely:-

“Explanation--Where a startup or small entity, having filed an application for a design, ceases to be a startup or small entity due to the lapse of the period during which it is recognised by the competent authority, or its turnover subsequently crosses the financial threshold limit as notified by the competent authority, no such difference in the scale of fees shall be payable”.

(6) Rule 10 (1) read as under:

For the purposes of the registration of designs and of these rules, articles shall be classified as per current edition of “International Classification for Industrial Designs (Locarno Classification)” published by World Intellectual Property Organization (WIPO):”

Provided that registration of any design would be subject to the fulfillment of provisions of the Act specifically 2(a) and 2(d).

- (7) First Schedule (Fees) of the Design Rules 2001 substituted by new First Schedule.

For details: <http://egazette.nic.in/WriteReadData/2021/224693.pdf>



Company Law Corner

A SNAPSHOT - CSR AMENDMENTS

Section 135 of Companies Act, 2013 requires companies to constitute a Corporate Social Responsibility Committee (CSR Committee) which is responsible for formulating a CSR policy for the company. This is mandatory for companies having net worth of ₹500 crore or more; turnover of ₹1000 crore or more or having net profit of ₹5 crore or more during the immediately preceding financial year.

It is the duty of Board to ensure that the company spends, in every financial year, at least 2% of average net profits made during three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Ministry of Corporate Affairs (MCA) on January 22, 2021 has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. With these Amendment Rules, significant changes have been made to the existing Companies (Corporate Social Responsibility Policy) Rules, 2014. Besides, amendments brought in by the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 has also been enforced on this date.

The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 majorly with respect to following facets:

Old Rule	Effect	New Rule
Rule 4 - CSR Activities	Fully Substituted	Rule 4-CSR Implementation
Rule 5(2) - CSR Committees	Sub-Rule 5 (2) Substituted	Rule 5(2)- CSR Committees
Rule 6 - CSR Policy	Omitted	-
Rule 7 - CSR Expenditure	Fully Substituted	Rule 7-CSR Expenditure
Rule 8 - CSR Reporting	Fully Substituted	Rule 8-CSR Reporting
Rule 9 - Display of CSR Activities	Fully Substituted	Rule 9-Display of CSR Activities
-	New Rule inserted	Rule 10- Transfer of unspent CSR Amount

Rule 2: Following amendments have been made w.r.t. definitions:

- The definition of “**Administrative overheads**” inserted which means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme.
- **Corporate Social Responsibility** definition has been amended to include the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Companies Act, 2013 in accordance with the provisions contained in these rules, but shall not include the following, namely: -

- (i) Activities undertaken in pursuance of normal course of business of the company.

However, any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Companies Act, 2013;
- (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board’s Report;

- (ii) Any activity undertaken by the company outside India (except for training of Indian sports personnel representing any State or Union territory at national level or India at international level);
 - (iii) Contribution of any amount directly or indirectly to any political party under section 182 of the Companies Act, 2013;
 - (iv) Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
 - (v) Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
 - (vi) Activities carried out for fulfilment of any other statutory obligations under any law in force in India.
- The definition of “**CSR Policy**” has been amended which means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;

- The definition of “**International Organisation**” has been inserted which means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply;
- The definition of “**Ongoing Project**” has been inserted which means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;
- “**Public Authority**” means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005.

Rule 4 : Following amendments have been made w.r.t. CSR Implementation.

So far, a section 8 company or any registered trust, or any registered society, established by the company, either singly or along with any other company or by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature having track record of three years in carrying out similar activity were qualified to be an implementing agency. Several amendments have been brought in the provisions relating to implementing agencies.

- Now, the Board shall ensure that the CSR activities are undertaken by the company itself or through –
 - (a) A company established under section 8 of the Companies Act, 2013 or a registered public trust (instead of any registered trust) or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (instead of any registered society), established by the company, either singly or along with any other company, or
 - (b) Section 8 company or a registered trust or a registered society established by the Central or State Government;
 - (c) any entity established under an Act of Parliament or a State legislature; or
 - (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
- **Mandatory Registration of CSR Entity:** Every eligible company who intends to undertake any CSR activity, is required to register itself with the Central Government by filing the form **CSR-1** electronically with the Registrar, with effect from the **01st day of April 2021**.

However, the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021**.

- Form CSR-1 shall be **signed and submitted** electronically by the entity and shall be verified digitally by **a Chartered Accountant in practice or a Company Secretary**

in practice or a Cost Accountant in practice. On the submission of the Form CSR-1 on the portal, a **unique CSR Registration Number** shall be generated by the system automatically.

- **International Organizations Engagement for CSR Designing:** A company may engage the international organizations for designing, monitoring and evaluation of the CSR projects or programs as per its CSR policy as well as for the capacity building of their own personnel for CSR. Only the Central Government notified organizations shall qualify as International Organization.
- **A collaboration of other Companies for CSR Expenditure:** A company may also collaborate with other companies for undertaking projects or CSR activities in such a way that the CSR committees of respective companies are in a position to separately report on these kinds of projects in accordance with these rules.
- **CFO Certification:** It is the responsibility of the Board of the Company to monitor the implementation of ongoing projects and to ensure that the funds are utilized for approved purpose and shall be certified by the Chief Financial Officer (CFO) or Person in charge of finance.
- **Ongoing Projects:** In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

Rule 5(2) : Following amendments have been made w.r.t. CSR Committees

- **Mapping of Annual Action for CSR:** The Company's CSR Committee will formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include following:
 - ✓ CSR projects or programme lists that are approved to be undertaken in areas mentioned in Schedule VII of the Companies Act, 2013;
 - ✓ The manner of execution of such projects or programs;
 - ✓ The modalities of funds utilisation and implementation schedules for the projects
 - ✓ Monitoring and reporting mechanism for the projects or programs;
 - ✓ Details of need and effect assessment, if any, for the projects undertaken by the company

However, the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

The Companies (Amendment) Act, 2020, has inserted the provision under Section 135(9) of the Companies Act, 2013 that where the CSR expenditure does not exceed ₹ 50 Lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee shall be discharged by the Board of Directors of such company.

Spending mandate and consequences of not spending (Change in CSR regime from Voluntary to Mandatory)

Second proviso to sec. 135 (5), read with section 135 (6), elaborates the mandatory spending requirement

- If the company fails to spend the CSR target, the Board in its report shall specify the reasons for not spending the amount.
- Analyse the “unspent” amount:
 - ✓ Unspent amount relating to an ongoing project to be transferred to Unspent CSR Account within a period of 30 days from the end of the financial year and used within a period of 3 Financial Years from the date of such transfer in pursuance to CSR policy.
 - ✓ failing which, the company shall transfer the same to a Fund specified in Schedule VII of the Companies Act, 2013, within a period of thirty days from the date of completion of the third financial year Or else,
- Unspent amount not relating to ongoing projects to be transferred to Funds notified in Schedule VII of the Companies Act, 2013 within a period of 6 months of the end of the financial year.

Rule 7: Following amendments have been made w.r.t. CSR Expenditure

New norms introduced for carry forward and set off excess CSR expenditure

- The board shall ensure that the administrative overheads shall not exceed **5% of total CSR expenditure** of the company for the financial year.
- Further, any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

If a Company spent on CSR in excess of the requirement (i.e. 2%), such excess amount may be set-off against the requirement of the CSR Spending u/s 135(5) upto the immediate succeeding 3 financial year subject to the conditions that:

- ✓ The excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule;
- ✓ The Board of the company shall pass a resolution to that effect.

Acquisition of Capital Assets

- The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –
 - ✓ Section 8 Company, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number
 - ✓ beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities;

- ✓ a public authority
- However, any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

Rule 8: Following amendments have been made w.r.t. CSR Reporting

- **Directors Report:**

The Company shall annex with its Board Report an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced Prior To 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

- **In case of a Foreign Company:**

The Balance sheet filed u/s 381(1) (b) of the Companies Act, 2013 shall contain 'an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced prior to 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

Impact Assessment for big CSR projects

- Companies with average CSR obligation of **10 Crore or more in the three immediately preceding financial years** shall undertake impact assessment through an independent agency for projects of **Rs.1 crore** or more which have been completed not less than 1 year before undertaking the impact study.
- The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or ₹ 50 Lakh, whichever is less.

Rule 9 : Following amendments have been made w.r.t. Website Disclosure

- The Board of Directors of the Company shall ensure essentially disclosure of the following on the website of the Company, if any:
 - ✓ The composition of the CSR Committee
 - ✓ CSR Policy and Projects approved by the Board

Rule 10: Following amendments have been made w.r.t. Transfer of unspent CSR amount

- Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Companies Act, 2013 the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Companies Act, 2013.

- **Revamped reporting format:** New format inserted for disclosure of 'Annual Report on CSR activities' to be included in the Board's Report.

Penal Provision (Amended by Companies (Amendment) Act, 2020)

If a company is in default in complying with the provisions of Section 135(5) or 135(6) of the Companies Act, 2013

Penalty on the Company:

- ✓ Upto twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or
- ✓ ₹1 Crore, whichever is less,

Penalty on every officer of the company who is in default

- ✓ 1/10th of the amount required to be transferred by the company to such Fund specified in Schedule VII of the Companies Act, 2013, or the Unspent Corporate Social Responsibility Account, as the case may be, or
- ✓ ₹2 Lakhs, whichever is less.

Conclusion

The Companies (CSR Policy) Amendment Rules 2021 have overhauled India's CSR regime. Besides giving effect to changes introduced in Section 135 of Companies Act, 2013 as a result of Companies (Amendment) Act, 2019 and Companies (Amendment) Act, 2020, the new rules have introduced new requirements like impact assessment of CSR contributions, engagement of International Organisations for CSR Projects in limited capacity etc.



Legal Maxims

S.No.	Legal Maxim	Meaning	Usage & Example
1	<i>De die in diem</i>	From day to day	Generally refers to a type of labor in which the worker is paid fully at the completion of each day's work. Eg. Workers receive their payments <i>de die in diem</i>.
2	<i>De minimis</i>	About the smallest things	Various legal areas concerning small amounts or small degrees. Eg. The breaks between two periods of classes shall be <i>de minimis</i>
3	<i>Defalcation</i>	Cutting off with a sickle	Misappropriation of funds by one entrusted with them. Eg. <i>Defalcation</i> is not acceptable in any organization.
4	<i>Ex gratia</i>	By favor	Something done voluntarily and with no expectation a legal liability arising therefrom. Eg. The employee were given payment against <i>ex gratia</i> this year.
5	<i>Ex post facto</i>	From a thing done afterward	Commonly said as "after the fact." Eg. <i>ex post facto</i> laws shall be avoided in case of criminal liability.



Legal World

CORPORATE LAWS

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD & ANR v. DATAR SWITCHGEAR LTD. & ORS [SC]

Criminal Appeal No.1979 of 2010 [@S.L.P. (Crl.) No. 7336 of 2007]

D.K. Jain & H.L. Dattu, JJ. [Decided on 08/10/2010]

Equivalent citations : (2010) 159 Comp Cas 545.

Offences & Prosecution under IPC & CRPC - offence committed by company - fabricating false evidence- company and chairman found guilty- whether proceeding against the chairman is tenable - Held, No. [It has been held yes against the company]

Brief facts : In the arbitration proceedings, the Appellant Company filed certain fabricated false evidence, which has been disclosed in the award also. Therefore, a criminal complaint was filed against the Appellant Company and its chairman, which was taken cognizance by the Trial Court. The petition before the High Court to quash the proceedings was also dismissed. Hence the two accused i.e., appellant company and its chairman filed the present appeal before the Supreme Court.

Decision : Appeal partly allowed.

Reason : Thus, the question for consideration is whether or not in light of the allegations in the complaint against the appellants, the High Court was correct in law in declining to exercise its jurisdiction under Section 482 of the Code?

It is manifest that the allegation against the appellants herein is that appellant No.1 had, acting under the control and management of all the accused, including appellant No. 2 and in particular accused No. 6, superscribed an endorsement on Exhibit C-64 with an intention to support its case and tendered the same in the course of judicial proceedings before the Arbitral Tribunal, thereby committing offence of fabricating false evidence in terms of Section 192 and 199 read with Section 34 IPC.

A bare perusal of the complaint shows that the gravamen of the allegation is that a fabricated document containing the offending endorsement was tendered in evidence before the Arbitral Tribunal on behalf of MSEB by accused No. 6, who was in-charge of Shirpur section. It is evident from the afore-extracted paragraphs of the complaint that other accused have been named in the complaint because, according to the complainant, MSEB-accused No. 1 was acting under their control and management. It bears repetition that the only averment made against appellant No. 2 is that appellant No.1, i.e., MSEB was acting under the control and management of appellant No. 2 along with other three accused. There is no denying the fact that appellant No. 2 happened to be the Chairman of MSEB at the relevant time, but it is a settled proposition of law that one cannot draw a presumption that a Chairman of a company is responsible for all acts committed by or on behalf of the Company. In the entire body of the complaint there is no allegation that appellant No. 2 had personally participated in the arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB and it was at his instance the subject interpolation was made in Exhibit C-64. At this stage, we may refer to the extract of a Board resolution, pressed into service by the respondents in support of their plea that appellant No. 2 was responsible for the conduct of business of appellant No. 1. The said resolution merely authorises the Chief-Engineer to file counter claim before the Arbitral

Tribunal in proceedings between appellant No. 1 and respondent No. 1. It rather demonstrates that it was the Chief Engineer who was made responsible for looking after the interest of the appellant No. 1 in those proceedings.

In this regard, it would be useful to advert to the observations made by a three-judge bench of this Court in *S.M.S. Pharmaceuticals Ltd v. Neeta Bhalla (2005) 127 Comp Cas 563 (SC)* :-

"There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager, or secretary. It all depends upon the respective roles assigned to the officers in a company. A company may have managers or secretaries for different departments, which means, it may have more than one manager or secretary."

It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC, incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint.

Therefore, we are of the view that even the Board Resolution, adduced by the complainant, does not establish that appellant No.2 was involved in the alleged fabrication of false evidence or adducing the same in evidence before the arbitral tribunal. In the absence of any such specific averment demonstrating the role of appellant No.2 in the commission of the offence, we find it difficult to hold that the complaint, even assuming it to be correct in its entirety, discloses the commission of an offence by appellant No.2 under Sections 192 and 199 of IPC.

However, in so far as the case of appellant No.1 company is concerned, bearing in mind the fact that Exhibit C-64 was submitted with the intention to support the averments in the written statement filed on their behalf, which could possibly influence the decision of the arbitral tribunal in relation to the conduct of the respondent No. 1 while discharging their obligations under the contract between them and appellant No. 1, we are unable to hold that prima facie, a case of offences under Sections 192 and 199 IPC is not made out against them. It is evident from the observations of the Tribunal quoted in para 9 (supra) that had the tribunal not doubted the veracity of the said document, it could have made a material difference to the result of the arbitral proceedings.

We shall now examine whether appellant No.2 could be made liable for the afore-mentioned offences by operation of Section 34 of IPC. It is trite that Section 34 IPC does not constitute a substantive offence, and is merely in the nature of a rule of evidence, and liability is fastened on a person who may have not been directly involved in the commission of the offence on the basis of a pre-arranged plan between that person and the persons who actually committed the offence.

It is manifest that common intention refers to a prior concert or meeting of minds, and though, it is not necessary that the existence of a distinct previous plan must be proved, as such common intention may develop at the spur of the moment, yet the meeting of minds must be prior to the commission of offence suggesting the existence of a pre-arranged plan. Therefore, in order to attract Section 34 of the IPC, the complaint must, prima facie, reflect a common prior concert or planning amongst all the accused.

In our opinion, in the present case, the complaint does not indicate the existence of any pre-arranged plan whereby appellant No. 2 had, in collusion, with the other accused decided to

fabricate the document in question and adduce it in evidence before the arbitral tribunal. There is not even a whisper in the complaint indicating any participation of appellant No. 2 in the acts constituting the offence, and that being the case we are convinced that Section 34 IPC is not attracted in his case.

In the final analysis, we are of the opinion that no prima facie case has been made out against appellant No.2 in respect of offences under Sections 192 and 199 of the IPC, even with the aid of Section 34 of the IPC. Therefore, it was a fit case where the High Court should have exercised its powers under Section 482 of the Code by quashing the complaint against appellant No. 2. For the foregoing reasons, the appeal is dismissed qua appellant No. 1; it is allowed in relation to appellant No.2.

GENERAL LAWS

*PADIA TIMBER CO. PVT. LTD. v. THE BOARD OF TRUSTEES OF
VISAKAPATINAM PORT TRUST. [SC]*

Civil Appeal No.7469 of 2008

Navin Sinha & Indira Banerjee, JJ. [Decided on 05/01/2021]

Indian Contract Act - section 7- acceptance of offer- offer and counteroffer between parties- no concluded contract – lower courts allowed the suit based on the contract- whether tenable - Held, No.

Brief facts : The short question involved in this appeal is, whether the acceptance of a conditional offer with a further condition results in a concluded contract, irrespective of whether the offer or accepts the further condition proposed by the acceptor. This question does not appear to have been addressed by the High Court or the Court below.

The Respondent-Port Trust floated a tender for supply of Wooden Sleepers. Pursuant to the aforesaid tender, the Appellant submitted its offer, with a specific condition of the offer of the Appellant that inspection of the Sleepers, as per the requirement of the Respondent-Port Trust, would have to be conducted only at the depot of the Appellant. The Appellant did not accept Clauses 15 and 16 of the Tender and rather made a counter proposal.

After the tenders were opened certain discussions took place between the Appellant and the Tender Committee of the Respondent-Port Trust. The issue as to the place of inspection was not settled. Later, the Respondent Port Trust placed purchase order on the Appellant, but the place of inspection still remained a contentious issue as the appellant stuck to its stand. Respondent forfeited the earnest money deposit. Appellant did not supply any material.

Decision : Appeal allowed.

Reason : With the greatest of respect, the High Court has cursorily dealt with the contentions of the Appellant and has not even discussed the cases that had been cited on behalf of the Appellant.

The Trial Court relied on Section 4 of the Contract Act, but completely overlooked Section 7. The High Court also overlooked Section 7 of the Contract Act. Both the Trial Court and the High Court over-looked the main point that, in the response to the tender floated by the Respondent-Port Trust, the Appellant had submitted its offer conditionally subject to

inspection being held at the Depot of the Appellant. This condition was not accepted by the Respondent-Port Trust unconditionally. The Respondent-Port Trust agreed to inspection at the Depot of the Appellant but imposed a further condition that the goods would be finally inspected at the showroom of the Respondent-Port Trust. This Condition was not accepted by the Appellant. It could not, therefore, be said that there was a concluded contract. There being no concluded contract, there could be no question of any breach on the part of the Appellant or of damages or any risk purchase at the cost of the Appellant. The earnest deposit of the Appellant is liable to be refunded.

Since we hold that the Appellant was neither in breach nor liable to damages, it is not necessary for us to examine the questions of whether the compensation and/or damages claimed by the Respondent Port Trust was reasonable or excessive, whether claim for damages could only be maintained subject to proof of the actual damages suffered, and whether the Respondent Port Trust had taken steps to mitigate losses. We also need not embark upon the academic exercise of deciding whether prior approval of the Board of Trustees is a condition precedent for creation of a valid contract for supply of goods, or whether post facto ratification by the Board would suffice.

The Appellant was entitled to refund of earnest money deposited with the Respondent-Port Trust. The earnest money shall be refunded within four weeks with interest @ 6% per annum from the date of institution of suit till the date of refund thereof. The appeal is, accordingly, allowed.

LABOUR LAWS

THE STATE OF UTTARAKHAND v. SURESHWATI [SC]

Civil Appeal No. 142 of 2021[@ SLP(C) No. 9864 of 2020]

L. Nageswara Rao, Navin Sinha & Indu Malhotra [Decided on 20/01/2021]

Employment law- respondent abandoned her job- after 9 years filed complaint that she had been dismissed- Labour Court dismissed the complaint – High Court reversed the judgement observing domestic enquiry was not conducted before dismissal- whether tenable- Held, No.

Brief facts : The State of Uttarakhand has filed the present Special Leave Petition to challenge the Judgment passed by the High Court of Uttarakhand, whereby the High Court has reversed the Award passed by the Labour Court and directed reinstatement of the Respondent. It was the case of the Appellants that the Respondent had abandoned her service as a clerk in the School since 1.7.1997 when she got married and shifted to Dehradun. On the contrary the case of the Respondent was that she was dismissed from services w.e.f 15.07.2006 when she filed her complaint before the Labour Court.

Decision : Appeal allowed.

Reason : We have heard the learned Counsel for the parties and perused the record. We find that the High Court has set aside the Award passed by the Labour Court on the sole ground that no disciplinary enquiry was held by the School regarding her alleged abandonment of service.

This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before

the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

We have perused the Award passed by the Labour Court and find that a full opportunity was given to the parties to lead evidence, both oral and documentary, to substantiate their respective case. The High Court has not even adverted to the said evidence and has disposed of the Writ Petition on the sole ground that the School had not conducted a disciplinary enquiry before discharging the respondent from service. The School has led sufficient evidence before the Labour Court to prove that the Respondent had abandoned her service from 01.07.1997 when she got married, and moved to another District, which was not denied by her in her evidence. The record of the School reveals that she was not in employment of the School since July 1997.

On the basis of the evidence led before the Labour Court, we hold that the School has established that the Respondent had abandoned her service in 1997 and had never reported back for work. The Respondent has failed to discharge the onus to prove that she had worked for 240 days' in the preceding 12 months prior to her alleged termination on 8.3.2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days' in the twelve months preceding the date of her alleged termination on 8.3.2006, which she failed to discharge. In view of the aforesaid discussion, we allow the present Appeal, and set aside the Judgment of the High Court. The Award is restored.

COMPETITION & CONSUMER LAW

IREO GRACE REALTECH PVT. LTD. v. ABHISHEK KHANNA [SC]

Civil Appeal No. 5785 of 2019 with connected appeals

D. Y. Chandrachud, Indira Banerjee & Indu Malhotra, JJ. [Decided on 11/01/2021]

Consumer Protection Act, 1986 read with RERA- housing project- delay in handing over flats by builder to the buyers- refund of money with interest allowed by National Commission- whether correct - Held, Yes.

Brief facts : The present batch of Appeals had been filed by the Appellant-Developer, to challenge the judgment passed by the National Commission directing refund of the amounts deposited by the Apartment Buyers in the project – The Corridors developed in Sector 67-A, Gurgaon, Haryana, on account of the inordinate delay in completing the construction and obtaining the Occupation Certificate. Aggrieved by the said Judgment, the Appellant-Developer has filed the present batch of Appeals. Since common issues have arisen for consideration, they are being decided by a common Judgment.

Decision : Appeals dismissed.

Reason : We have heard the learned Counsel for the parties. The issues which have arisen for consideration are :

- (i) Determination of the date from which the 42 months period for handing over possession is to be calculated under Clause 13.3, whether it would be from the date of issuance of the Fire NOC as contended by the Developer; or, from the date of sanction of the Building Plans, as contended by the Apartment Buyers.

The first issue which has been raised by the Appellant - Developer as also the Apartment Buyers, is the relevant date from which the 42 months' period is to be calculated for handing over possession.

The point of controversy is whether the 42 months' period is to be calculated from the date when the Fire NOC was granted by the concerned authority, as contended by the Developer; or the date on which the Building Plans were approved, as contended by the Apartment Buyers.

The computation of the period for handing over possession would be computed from the date of issuance of fire NOC. The Commitment Period of 42 months plus the Grace Period of 6 months from 27.11.2014, would be 27.11.2018, as being the relevant date for offer of possession. The aforesaid chronology for obtaining Fire NOC would indicate a delay of approximately 7 months in obtaining the Fire NOC by the Developer.

- (ii) Whether the terms of the Apartment Buyer's Agreement were one-sided, and the Apartment Buyers would not be bound by the same.

The second issue which has been raised by the Apartment Buyers is that the Agreement in this case, contains wholly one-sided clauses, and would not be bound by its terms.

The aforesaid clauses reflect the wholly one-sided terms of the Apartment Buyer's Agreement, which are entirely loaded in favour of the Developer, and against the allottee at every step. The terms of the Apartment Buyer's Agreement are oppressive and wholly one-sided and would constitute an unfair trade practice under the Consumer Protection Act, 1986.

We are of the view that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An unfair contract has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement.

- (iii) Whether the provisions of the Real Estate (Regulation and Development) Act, 2016 must be given primacy over the Consumer Protection Act, 1986 ?

The Consumer Protection Act, 1986 was enacted to protect the interests of consumers, and provide a remedy for better protection of the interests of consumers, including the right to seek redressal against unfair trade practices or unscrupulous exploitation.

In a recent judgment delivered by this Court in *M/s Imperia Structures Ltd. v. Anil Patni & Anr* [See LW 90:12:2020], it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special statutes. The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a fora which is not a civil court, read with Section 88 of the RERA Act makes the position clear.



1 DECLARATION OF DECEMBER, 2020 EXAMINATION RESULT

The result of CS Professional Programme and Executive Programme (Old/New Syllabus) examinations held in December, 2020 would be declared on Thursday, the 25th February, 2021 at 11.00 A.M. & 02.00 P.M. respectively. The result along with individual candidate's subject-wise break-up of marks would be made available on Institute's website www.icsi.edu after the declaration of result.

2. ISSUING OF MARKS-SHEETS OF DECEMBER, 2020 EXAMINATION

According to the decision taken by the Institute, the dispatch of Result-cum-Marks Statement for Executive Programme Examination in physical form has been discontinued. Instead formal E-Result-cum-Marks Statement for Executive Programme (Old/New Syllabus) Examination December, 2020 would be uploaded on the website: www.icsi.edu for downloading by the students for their reference, use and records. No physical copy of the Result-cum-Marks Statement will be issued to Executive Programme candidates. However, the Result-cum-Marks-Statement for Professional Programme Examination would be issued in physical form.

3. VERIFICATION OF MARKS OF COMPANY SECRETARIES EXAMINATIONS

In terms of Regulation 42 (2) of the Company Secretaries Regulations, 1982 as in force, a candidate can seek "Verification of Marks" in any subject(s) of CS examination within **twenty one (21)** days from the date of declaration of result. The application for verification of marks should be made by interested candidates in the prescribed mode with requisite **fee @ Rs. 250/- per subject within 21 days** from the date of declaration of results. Interested candidates can apply for verification of marks either through **on-line** mode or **off-line** mode by following the procedure hosted on the Institute's website (www.icsi.edu) at the URL: <https://www.icsi.edu/media/webmodules/VOM.pdf>

4. PROVIDING INSPECTION OR SUPPLY OF CERTIFIED COPY (IES) OF ANSWER BOOK(S) TO STUDENTS

The Institute has been providing the facility of inspection or supply of certified copies of answer book(s) to the candidates on their request as per Guidelines, Rules and Procedures framed by the Institute in this regard. The "Guidelines, Rules and Procedures for Providing Inspection and/or Supply of Certified Copy (ies) of Answer Book(s) to students" and the format of the application are given below.

**GUIDELINES, RULES AND PROCEDURES FOR PROVIDING INSPECTION AND/OR
SUPPLY OF CERTIFIED COPY (IES) OF ANSWER BOOK(S) TO STUDENTS
(As amended by the Council in its 263rd meeting held on 23rd September, 2019)**

1. These guidelines, rules and procedures for providing inspection and/or supply of certified copy(ies) of answer book(s) to students will be applicable beginning from June, 2019 session of examinations onwards. Under these guidelines, a student can seek inspection and/or supply of certified copy (ies) of his/her evaluated answer book(s).
2. A student who wishes to inspect and/or obtain certified copy(ies) of his/her answer book(s) of any subject(s) of a particular examination shall apply either on-line through the website of the Institute or off-line on the prescribed application form together with (a) requisite fee; and (b) self-attested photocopy of his/her Admit Card (Roll No.) or Student Identity Card so as to reach the Institute within 45 days from the date of declaration of the result.
3. A student who has inspected or received the photocopy of his/her answer book(s) of any subject(s) of a particular examination under the RTI Act, 2005 and wishes to address his/her grievances in respect of any error(s) or inconsistency in valuation of answer books, if any, should apply off-line on the prescribed application form together with (a) requisite fee; and (b) self-attested photocopy of his/her Admit Card (Roll No.) or Student Identity Card so as to reach the Institute within the 75 days from the date of declaration of result or 15 days of inspection or receipt of photocopy of the answer book whichever is earlier.
4. Fee of ₹500 per subject/answer books is payable for supply of certified copy(ies) of answer book(s) and ₹450 per answer book for providing inspection thereof respectively. In case of off-line application, the fee shall be paid through Demand Draft drawn in favour of "The Institute of Company Secretaries of India", payable at New Delhi.
5. The off-line application Form, duly completed in all respect, together with the requisite fee and photocopies of the supporting documents, as mentioned in para 2/3 above, shall be superscribed "Application for providing Inspection/Supply of Certified Copies of Answer Books" and sent to:

The Joint Secretary
Directorate of Examinations
The Institute of Company Secretaries of India
C-37, Sector – 62, Institutional Area
NOIDA – 201 309

6. Off-line application form without requisite fee and supporting documents and complete particulars, as indicated above, shall not be entertained.
7. Before providing inspection and/or supplying certified copy(ies) of answer book(s) to a student on his/her request, if it is noticed that any sub-question/question of his/her answer book(s) has inadvertently remained unevaluated or there is some posting or

totalling error, the Institute would rectify such omission and commission and communicate the revised marks/result to the student. However, it may be noted that re-valuation of answers is not permissible under Regulation 42(2).

8. The inspection done and/or certified copies of the answer books supplied to the student shall be for his/her exclusive self-inspection/ personal reference and guidance only.
9. No other person except the student concerned would be allowed to inspect his/her answer book(s) on the designated date and time as communicated by the Institute. Similarly, on receipt of certified copy (ies) of the answer book(s), the applicant student shall be the sole custodian of it and he/she shall not part with the custody/possession of the same and shall not use the same for any other purpose(s).
10. If any error is found at any point of time as provided in para 7 above, the Institute shall have *suo motu* power to rectify the same.

APPLICATION FORM FOR PROVIDING INSPECTION AND/OR SUPPLY OF CERTIFIED COPY(IES) OF ANSWER BOOK(S)

(Before filling-up this form, please go through the Guidelines, Rules and Procedures)

The Joint Secretary
 Directorate of Examinations
 The Institute of Company Secretaries of India
 C – 37, Sector – 62, Institutional Area
 NOIDA – 201 309.

Dear Sir,

I, the undersigned, request you to supply me the certified copy(ies) of my answer books as per details given below :

PART – A

1.	Name of Student				
2.	Student Regn. No.				
3.	Complete Correspondence Address				
4.	E-mail id				
5.	Specify your request for : (by ticking (√) the appropriate box)	Providing inspection of my answer book(s)		Supply of certified copy(ies) of my answer book(s)	
6.	Details about appearance in the subjects of examination for which copy(ies) of answer books is/are requested	<i>Stage & Session of Exam.</i>	<i>Roll No.</i>	<i>Name of the Subject(s)</i>	<i>Marks Obtained</i>

7.	Details of fee remitted: (i) Rs. 500 per subject/ answer book for supply of certified copy(ies); and (ii) Rs. 450 per answer book for seeking inspection.	<i>Demand Draft No.</i>	<i>Date</i>	<i>Name of the Issuing Bank</i>	<i>Amount (Rs.)</i>

PART - B

Have you applied for Verification of Marks also? YES / NO

(Tick the appropriate choice)

I have read the prescribed guidelines, rules and procedures and the same are acceptable to me.
My Email-ID, Mobile Number and Correspondence Address are the same as registered on my student's portal of the ICSI.

I hereby undertake that I am a *bona fide* student of the Institute and the above answer book(s) belong to me. For this purpose, I am enclosing self-attested photocopy of my Admit Card (Roll No.)/Student Identity Card issued to me by the Institute. In case, any particulars or statement is found to be false, the Institute may take appropriate action against me, as deemed fit.

Yours faithfully,

(Signature)

Place: _____

Name: _____

Date: _____

5. HOW TO APPLY FOR PROVIDING INSPECTION OR SUPPLY OF CERTIFIED COPY(IES) OF ANSWER BOOK(S)

A candidate who wishes to inspect and/or obtain certified copy(ies) of his/her answer book(s) of any subject(s) of a particular examination, can apply either through **on-line** or **off-line** mode **within 45 days from the date of declaration of the result.**

On-Line Mode Procedure: For submitting application through on-line mode, candidates are advised to follow the procedure hosted on the Institute's website www.icsi.edu at the link given below:

https://www.icsi.edu/webmodules/Verification_of_Marks_of_CS_Exam.pdf

Off-Line Mode Procedure: In case any candidate wishes to apply for inspection or supply of certified copies of answer book(s) through off-line mode, he/she can download the Application Form available on the website and send the same duly filled in along with the requisite fee through Speed/Registered Post addressed to *The Joint Secretary, Dte. of Examinations, The Institute of Company Secretaries of India, C-37, Sector 62, Institutional Area, NOIDA – 201 309 (U.P.)*. Candidates can also submit their applications at Regional/Chapter/Head Office (Noida).

It has been observed that many a times, candidates are found confused with the procedure of inspection of their answer book(s) or getting the certified copies of their evaluated answer book(s). Thus, candidates may understand the procedures followed for inspection and supply of certified copies of answer book(s) as detailed below before they apply for the same:

S. No.	Inspection of answer books	Supply of certified copies of answer books
1.	Under Inspection of answer books, candidates can physically inspect the certified true photo copies of their answer books applied for.	In the case of providing certified copies of answer books, the certified true copies of the same in <i>pdf</i> format shall be uploaded on the website of the Institute and candidates can take the print out for their reference.
2.	Candidates can apply for inspection of their answer books either through on-line or off-line mode as per the prescribed procedure	Candidates can apply for certified copies of answer books either through on-line or off-line mode as per the prescribed procedure
3.	The prescribed fee for inspection is ₹450 per subject. If any candidate wishes to apply for Inspection of Answer Book(s) through off-line mode, he/she can download the prescribed Application Form available on the website and send the same duly filled in along with	The prescribed fee for supplying certified copies of answer books is ₹500 per subject. If any candidate wishes to apply for supply of Certified Copy(ies) of Answer Book(s) through off-line mode, he/she can download the prescribed Application Form available on the website and send the same duly filled in

	the requisite fee through Speed/Registered Post. The fee can be paid through Demand Draft drawn in favour of <i>"The Institute of Company Secretaries of India"</i> , payable at New Delhi.	along with the requisite fee through Speed/Registered Post. The fee can be paid through Demand Draft drawn in favour of <i>"The Institute of Company Secretaries of India"</i> , payable at New Delhi.
4.	Before providing inspection to the candidates, the answer book(s) shall be processed as per the prescribed Guidelines in this regard.	Before providing certified copies of answer book(s) to the candidates, the same shall be processed as per the prescribed Guidelines in this regard.
5.	Candidates have to personally visit ICSI's Noida office, located at C-37, Sector-62, Institutional Area, Distt- Gautam Budh Nagar, Noida 201309, (U.P.) as per the specified time and date informed to them for inspecting their answer books. They have to carry Institute's I-card, copy of the E-Admit Card of the relevant session to establish their identity for inspecting their answer books. No other person will be allowed to accompany him/her during the process of inspection.	The scanned copy of the answer book(s) in <i>pdf</i> format shall be hosted on the website which can be accessed through a secured password. Necessary communication in this regard shall be sent to the candidate concerned through e-mail and SMS as registered on student's portal. Candidates can take the print out of the scanned certified copies of their answer books for their reference.
6.	The status/outcome of the application received for providing Inspection of the answer books will be shown on the Institute's website: www.icsi.edu . The candidate concerned can enquire about the status/outcome of his/her application by entering his/her Roll No. or Student Registration Number.	The status/outcome of the application received for supply of certified copies of answer books will be shown on the Institute's website: www.icsi.edu . The candidate concerned can enquire about the status/outcome of his/her application by entering his/her Roll No. or Student Registration Number.
7.	During inspection of the answer book(s), no queries regarding answers written by the candidates or award of marks shall be entertained. Copy of the answer book(s) shall not be provided to the candidates after the completion of inspection.	Candidates can take the print out of the scanned certified copies of their answer books for their reference from the link given to this effect from the website of the Institute. No photo copies of answer book(s) in physical form shall be dispatched to the candidates. No queries regarding award of marks shall be entertained by the Institute.

6. TIME-TABLE FOR JUNE, 2021 EXAMINATIONS

 THE INSTITUTE OF Company Secretaries of India भारतीय कम्पनी सचिव संस्थान IN PURSUIT OF PROFESSIONAL EXCELLENCE Statutory body under an Act of Parliament (Under the jurisdiction of Ministry of Corporate Affairs)				
COMPANY SECRETARIES EXAMINATIONS, JUNE, 2021				
TIME-TABLE				
EXAMINATION TIMING : 9:00 A.M. TO 12:00 NOON				
Day	Executive Programme (Old Syllabus)	Executive Programme (New Syllabus)	Professional Programme (Old Syllabus)	Professional Programme (New Syllabus)
1.06.2021 Tuesday	Cost and Management Accounting (Module-I) (OMR Based)	Jurisprudence, Interpretation and General Laws (Module-I)	Advanced Company Law and Practice (Module - I)	Governance, Risk Management, Compliances and Ethics (Module - I)
2.06.2021 Wednesday	Industrial, Labour and General Laws (Module-II) (OMR Based)	Securities Laws and Capital Markets (Module-II)	Information Technology and Systems Audit (Module - II)	Secretarial Audit, Compliance Management and Due Diligence (Module - II)
3.06.2021 Thursday	Tax Laws and Practice (Module-I) (OMR Based)	Company Law (Module-I)	Advanced Tax Laws and Practice (Module - III)	Corporate Funding and Listings in Stock Exchanges (Module - III)
4.06.2021 Friday	Company Accounts and Auditing Practices (Module-II)	Economic, Business and Commercial Laws (Module-II)	Secretarial Audit, Compliance Management and Due Diligence (Module - I)	Advanced Tax Laws (Module - I)
5.06.2021 Saturday	Company Law (Module-I)	Setting up of Business Entities and Closure (Module-I)	Financial, Treasury and Forex Management (Module - II)	Corporate Restructuring, Insolvency, Liquidation and Winding - up (Module - II)
6.06.2021 Sunday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
7.06.2021 Monday	Capital Markets and Securities Laws (Module-II)	Corporate and Management Accounting (Module-II) (OMR Based)	Drafting, Appearances and Pleadings (Module - III)	Multidisciplinary Case Studies (Module - III) [Open Book Exam.]
8.06.2021 Tuesday	Economic and Commercial Laws (Module-I)	Tax Laws (Module-I) (OMR Based)	Corporate Restructuring, Valuation and Insolvency (Module - I)	Drafting, Pleadings and Appearances (Module - I)
9.06.2021 Wednesday	NO EXAMINATION	Financial and Strategic Management (Module-II) (OMR Based)	Ethics, Governance and Sustainability (Module - II)	Resolution of Corporate Disputes, Non-Compliances and Remedies (Module - II)
10.06.2021 Thursday	NO EXAMINATION	NO EXAMINATION	Elective 1 out of below 5 subjects (Module - III) [Open Book Exam.]	
			(i)	Banking Law and Practice
			(ii)	Capital, Commodity and Money Market
			(iii)	Insurance Law and Practice
			(iv)	Intellectual Property Rights - Law and Practice
			(v)	International Business-Laws and Practices
			(vi)	Direct Tax Law and Practice
			(vii)	Labour Laws and Practice
			(viii)	Valuations and Business Modelling
			(viii)	Insolvency - Law and Practice

Note: The Institute reserves 11th, 12th, 13th and 14th June, 2021 to meet any exigency.

A hand is shown pointing at a central button labeled 'Training'. The button is a rounded rectangle with a white border and a slight shadow. The background is a solid red color. Scattered around the central button are several other rounded rectangular shapes of varying sizes and opacities, some appearing to float or be part of a larger interface. The overall aesthetic is clean and modern, with a focus on the 'Training' button.

Training

ORGANIZED WEBINAR FOR LAUNCHING “NEW TRAINING STRUCTURE” ON 03RD FEBRUARY 2021

The Institute organized a webinar on “Implementation of New Training Structure 2020” on 03rd February 2021 which was attended by thousands of CS students and members.



The new training structure for students, comprises of the following training which shall provide them a platform to develop their core competencies and harness their soft skills including managerial and leadership capabilities.

Under New Training structure, the Executive passed students are required to undergo:

- A) One month Executive Development Programme (EDP)
- B) Students are required to undergo 21 months practical training, with Industry/Practicing Company Secretary and other entities after completion of their one month EDP.
- C) Corporate Leadership Development Programme (CLDP) after completion of their Professional programme examination and long term practical training as per the guidelines of the Institute.

ICSI Academic Collaborations with Universities and Academic Institutions

ICSI “Academic Collaborations with Universities and Academic Institutions” initiative of the Institute is aimed to establish a connect between ICSI and various Universities and institutions of national repute, through a memorandum of understanding (MoU) covering a number of schemes under one umbrella towards learning and development of students, academicians and professionals.

MoUs were signed with the following universities and academic Institutions under the Academic Collaborations with Universities and Academic Institutions initiative of ICSI.

MoU signed with various Universities in the Month of Jan, 2021 is as under:

Sl. No	Name of University	Date of MOU
1	Xavier University, Bhubaneswar, Plot No:12(A) Nijigada Kurki, Harirajpur, Dist-Puri, Odisha	07th January, 2021
2	Uttaranchal University, Arcadia Grant, Chandanwari, Prem Nagar, Dehradun, Uttarakhand	07th January, 2021
3	Moulana Azad National Urdu University , Urdu University Road, Near LNT Towers, Telecom Nagar, Gachibowli, Hyderabad,Telangana	12th January, 2021
4	Tilak Maharashtra Vidyapeth , Mukund Nagar, Gultekdi , Pune	16th January, 2021

Introduction of 15 Days Executive Development Programme (e-Mode)” (New Training Structure) under the Company Secretaries (Amendment) Regulations, 2020.

In accordance with regulation 46BB of the Company Secretaries (Amendment) Regulations 2020, students are required to complete one month Executive Development Programme (EDP) prior to commencing 21 months Practical training. Out of one month, students may undergo 15 Days EDP through online mode (e-mode) and 15 Days EDP through classroom mode.

The Institute has introduced “**EDP (15 Days) e-Mode**” through its E-Learning Portal and the students may enroll for the same through ICSI Stimulate Portal i.e. <https://stimulate.icsi.edu/>. Eligible students can undergo “EDP (15 Days) e-Mode” on anytime, anywhere basis within 90 days of their registration. In addition to the 15 Days EDP in e-Mode, students are required to complete remaining 15 days EDP through classroom mode as per the guidelines of the Institute.



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Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

VISION
"To be a global leader in providing
good corporate governance"

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

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

Launch of New Training Structure under CS (Amendment) Regulations, 2020

Wednesday, 03rd February, 2021

Training Structure



One month EDP
(15 days Class room
mode & 15 days e-EDP)
after passing Executive
Programme Examination



21 months
practical training
with industries,
PCS & other entities



30-60 days
Corporate Leadership Development
Programme (CLDP) after Professional
programme examination & long term
practical training

For more information please visit www.icsi.edu





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ICSI/TRG/2021

01/02/2021

“Introduction of 15 Days Executive Development Programme (e-Mode)” (New Training Structure) under The Company Secretaries (Amendment) Regulations, 2020.

In accordance with regulation 46BB of the Company Secretaries (Amendment) Regulations 2020, students are required to complete One month Executive Development Programme (EDP) prior to commencing 21 months Practical training. Out of one month, students may undergo 15 Days EDP through online mode (e-mode) and 15 Days EDP through classroom mode.

The Institute has introduced “**EDP (15 Days) e-Mode**” through its E-Learning Portal and the students may enroll for the same through ICSI Stimulate Portal i.e. <https://stimulate.icsi.edu/> . Eligible students can undergo “EDP (15 Days) e-Mode” on anytime, anywhere basis within 90 days of their registration. In addition to the 15 Days EDP in e-Mode, students are required to complete remaining 15 days EDP through classroom mode as per the guidelines of the Institute.

Eligibility: All Students who have passed Executive Programme and wish to start training under New Training structure as per the Company Secretaries CS (Amendment) Regulations, 2020.

Date of Opening of Registration : 03rd February, 2021 (11:00 am on wards)

Programme Fees : Rs. 2000/- (Rupees Two Thousand Only)

Modalities:

1. “EDP (15 Days) e-Mode” is on anytime, anywhere basis.
2. For registration, a student need to click on <https://stimulate.icsi.edu/> ; Use their Smash Login id and Password for logging into the Stimulate Portal. Select Short Term Training – Apply for Training and then click on the grid showing particulars of training.
3. Students can access “EDP (15 Days) e-Mode” content via e-learning portal of the Institute. The User Id and Password for the same will be sent to registered e-mail id within 7 working days from the date of registration.

4. Students already registered at the e-learning portal may access EDP (15 Days) e-Mode Course Content through the following link:
https://elearning.icsi.in/LX/home/home_page?c_id=edp-15-days-e-mode-660-1677
5. Students are required to whitelist the mail ID LearningExchange@tcs-ittontap.com in their registered email id, so that they may get system generated email in their inbox.
6. A student is required to complete all the sessions of EDP (15 Days) e-Mode within 90 days from the date of activating their account in the e-learning portal for the said training.
7. Fees for the 15 Days EDP through e-Mode is Rs.2000/- (Rupees Two Thousand Only). If any student is not able to complete the training within the time frame, then the access to the e-learning portal will be deactivated after 90 days and he/she will need to do the remaining part of the training after paying 50% of the fees. In case any students is not able to complete the training during the extended period, no further extension will be allowed and he/she will have to seek fresh registration to the 15 Days EDP through e-mode.
8. Students will be required to undergo the sessions in a sequential manner as available on the E-Learning Portal.
9. Until a session is completed, no student will be allowed to start the next session.
10. Students may undergo sessions at any time, any day with full flexibility of selecting the time.
11. Students are advised NOT to click on the “Mark as Complete” button unless the course completion status is 100%.
12. Once the course completion status becomes 100%, students have to click on “Mark as Complete” button to generate the certificate.
13. e-learning portal User Manual/FAQ: For better utilization portal, students may refer the user Manual/FAQ available at the following link :
<https://www.icsi.edu/media/webmodules/15day EDP E-Mode FAQandStepWise GuidanceforStudents.pdf>
14. In case of any query/clarification, students may write to the Institute at e-training@icsi.edu

**Directorate of Training
The ICSI**



THE INSTITUTE OF Company Secretaries of India

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ICSI/TRG10/2020

1st February, 2021

Announcement

Introduction of New Training structure from 3rd February, 2021 based on the Company Secretaries (Amendment) Regulations, 2020 issued vide Gazette Notification No. 710/1(M)/1 dated 3rd February, 2020

The Institute vide Notification no. ICSI/Trg/2020 dated 3rd August, 2020 granted temporary relaxation to the students on the applicability of Regulation 46BA and 46BB of The Company Secretaries (Amendment) Regulations, 2020 for a period of six months i.e., upto 2nd February, 2021.

Accordingly, with effect from 3rd February, 2021, the new training structure, as per Regulation 46BA and 46BB under The Company Secretaries (Amendment) Regulations, 2020 shall be applicable.

Students shall be required to complete the following training requirements, as per the new training structure:

- a) **Executive Development Programme (EDP)** of one month duration after passing of Executive Programme examination;
- b) **Practical Training** for Twenty One months after completion of Executive Development Programme on whole time basis during normal working hours,-
 - i. in a company having a Company Secretary in whole time employment or any other company fulfilling such criteria as may be determined by the Institute; or
 - ii. under a Company Secretary in whole-time practice fulfilling such criteria as may be determined by the Institute; or
 - iii. in any other body corporate or institution or organisation or entity fulfilling such criteria as may be determined by the Institute;
- c) After passing the Professional Programme Examination, a **Corporate Leadership Development Programme (CLDP)** for not less than thirty days but not exceeding sixty days as may be determined by the Institute.

(CS Asish Mohan)
Secretary

Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टार्थं तेन त्वात्तेः श्रेयं तेन तेन त्वात्तेः

Mission

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI

ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110 003
tel 011- 4534 1000 fax +91-11-2462 6727 email info@icsi.edu website www.icsi.edu







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ICSI SECRETARIAL EXECUTIVE CERTIFICATE

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

ELIGIBILITY

A student who has:-

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

VALIDITY OF CERTIFICATE

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

BENEFITS



Entitled to use the description "ICSI Secretarial Executive".



Seek employment with Practising Company Secretaries



Serve the nation while preparing to become a full-fledged professional.



Gain relevant experience with India Inc.



Eligible to receive the coveted ICSI Journal 'Chartered Secretary'.

Procedure to apply shall be available at <http://bit.do/secicsi>

For queries, please write to member@icsi.edu or contact on Phone No.: **0120-4522000**

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LAUNCHING OF ONLINE LICENTIATE ENROLLMENT



ELIGIBILITY

A student who has:-

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

VALIDITY OF CERTIFICATE

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

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

BENEFITS

Recognition as
'Licentiate ICSI
or entitled to use the
descriptive letters
Licentiate ICSI

Subscription of
Chartered Secretary
Journal

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

Entitled to use
Library facilities
of the Institute,
Regional Council
or Chapter

Procedure to apply shall be available at <http://stimulate.icsi.edu/>

For queries, please write to member@icsi.edu or contact on phone number 0120-4522000

Connect with ICSI

www.icsi.edu



Online Helpdesk : <http://support.icsi.edu>

Motto

सत्यं वद। धर्मं चर।

Speak the truth. Abide by the law.

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