

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

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**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

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STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

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Announcement for the Students

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

on the topic

NEW LABOUR REFORMS AND ROLE OF CS

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



*"If you are going to achieve excellence in big things, you develop the habit in little matters. Excellence is not an exception, it is a prevailing attitude."
- Colin Powell*

Dear Students,

The celebrations of the festival of colours in the month gone by, giving us moments of joy and familial togetherness and leaving us thoroughly exhilarated, have filled in each one of us a new sense of zeal and enthusiasm. It is this fervour enthused that has given us a new lease of life to move forward towards the achievement of our goals and missions with a renewed vigour in our heart and a bounce in our step.

Friends, having been a part of this profession for quite a few decades, even with all the uncertainties of result attached, reminiscing the journey undertaken in student life fills my heart with great delight leaving me with a big smile. The smell of new books at the beginning of each Programme, the hunt for Referencers, the countless discussions on the most recent happenings and incidents and not to mention the planning for future, the deliberation to vie the employment route or pursue practice...

What was most intriguing about being a student of a professional course was the fact that any and every interaction with senior members brought with it a common thought; the thought that no matter what the achievements, no matter which side we pursued from amongst employment or practice, and no matter our core field and area of activity; learning and attainment of knowledge must never cease or come to a halt.

To be truthful, while the hunger for knowledge must never be satiated to the fullest, yet at the same time, it must be fed with information, understanding and awareness in every way possible. It is for this very satisfaction and fulfilment of the learning desires of our members and students that the Institute of Company Secretaries of India has undertaken multifarious initiatives. Given the fact that the students, you all, will be the future torchbearers of not just the Institute but of good governance in the India Inc. as well as the entire nation, dedicated initiatives are being launched to not just have concrete interactions and deliberations but have platforms for resolution of both, your academic queries as well as grievances that may arise.

It gives me great pleasure to share that the Institute has launched two initiatives, i.e., the '*ICSI Samadhan Diwas*' and the '*Bi-weekly Academic Interactions*' for our students. While the first initiative intends to resolve the grievances pertaining to Training and other aspects, the Bi-weekly interactions shall focus on clarification of doubts by Academic Experts and Subject Officers.

While the Institute is undertaking all steps possible to enrich the knowledge base of its students, I would like to suggest to all the students that whatever you wish to do in your academic and professional life; aim for excellence, for holistic development is possible only when one aims for attaining excellence in academic and professional pursuits.

You should entrench excellence not only for performing a given task; rather excellence should be an integral element of your attitude. As it is said that attitude determines altitude, and you can attain higher altitude in your academic and professional endeavours when you embrace excellence.

So keep treading on the trajectory of wisdom leading towards excellence !

Happy reading !!! Happy Learning !!!

With warm regards,

(CS Nagendra D. Rao)

President

The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

1. **Bi-weekly video interactive sessions** for students of ICSI launched at the 3rd Leadership Summit held during February 25-27, 2021. The details of session conducted so far are as under:

<i>Session</i>	<i>Date</i>	<i>Subjects</i>
1 st	6 th April, 2021	Company Law
2 nd	8 th April, 2021	Tax Laws
3 rd	13 th April, 2021	Governance, Risk Management, Compliances and Ethics
4 th	16 th April, 2021	Strategic and Financial Management
5 th	20 th April, 2021	Setting up of Business Entities and Closure
6 th	22 nd April, 2021	Drafting, Pleading and Appearances

2. 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 **March, 2021**. The same are available on the Institute's website at the weblink : <https://www.icsi.edu/e-journals/>
3. The **CSEET e-bulletin** for the month of **March, 2021** containing the latest updates in respect of Papers of the CSEET has been placed on the ICSI Website. The same is also available at the CSEET Portal at the Institute's website at the link: <https://www.icsi.edu/student/cseet/cseet-e-bulletin/>
4. **Case Digest Series 7** have been uploaded at ICSI website at the weblink: <https://www.icsi.edu/student/sample-case-studies/>
5. **Info Capsule- A Daily update** for members and students, covering latest amendments on various laws for the benefits of our members and students. The same is available on the ICSI website at the weblink : <https://www.icsi.edu/infocapsule/>
6. Commencement of **Online Doubt clearing classes** for the students appearing in June 2021 Examination from 22nd March 2021 up to 16th May 2021. Eminent faculties are taking the classes. Students can register at the following link by paying nominal fees. <https://tinyurl.com/uz7j7jf>
7. Video bytes for ICSI Rank Holders of December, 2020 Exam who have undergone classes at ICSI Class Room Teaching Centres at Regional/Chapter Offices are available at the following link: https://www.icsi.edu/media/webmodules/Dec_2020_rank_holder.pdf

8. CSEET (July session) will be held on 10th July 2021. Last date to register is 15th June 2021.
Click here to register: https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx
9. Recorded video lectures for students of the Institute are being made available at E-Learning platform at the website of the Institute : www.icsi.edu
10. Online CSEET classes are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in May 2021 and July 2021
Click here to contact: <https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>
11. Crash Course/Revision 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>
12. Students can check their preliminary exam enrollment status for June 2021 exam at the following link.
<https://smash.icsi.edu/Scripts/Enrollment/Admin/PreliminaryEnrStatus.aspx>
13. Temporary Relaxation for Complying with Pre-Exam Test & One day Orientation Programme - June, 2021 Session.
For details visit the link:
https://www.icsi.edu/media/webmodules/Temporary_Relaxation_for_complying_with_Pre_Exam_Test_and_ODOP_June2021.pdf



Articles

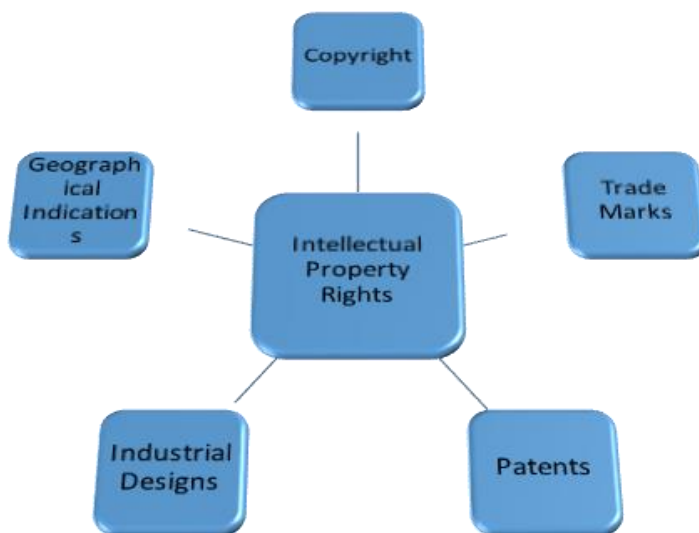
- **INTELLECTUAL PROPERTY RIGHTS (IPRS) LAWS & POLICY IN INDIA**
- **LISTING THROUGH SPECIAL PURPOSE ACQUISITION COMPANY (SPAC)**
- **JUDICIAL SETTLEMENT UNDER INTERNATIONAL COURT OF JUSTICE**

INTELLECTUAL PROPERTY RIGHTS (IPRS) LAWS & POLICY IN INDIA*

Introduction

Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The most noticeable difference between intellectual property and other forms of property, however, is that intellectual property is intangible, that is, it cannot be defined or identified by its own physical parameters. It must be expressed in some discernible way to be protectable. Generally, it encompasses four separate and distinct types of intangible property namely — patents, trademarks, copyrights, and trade secrets, which collectively are referred to as “intellectual property.”



* Directorate of Academics

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

IPR Laws in India

Various Intellectual property laws enacted by the Government of India are listed below.

- Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Semiconductor Integrated Circuits Layout-Design Act, 2000
- Protection of Plant Varieties and Farmers' Rights Act, 2001

The Copyright Act, 1957 : The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts as such.

The Patents Act, 1970 : The patent system in India is governed by the Patents Act, 1970 and the Patents Rules as amended from time to time in consonance with the changing environment.

A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent. The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty (PCT), the term of patent will be 20 years from the international filing date accorded under PCT.

The Trade Marks Act, 1999 : Trade Marks Act, 1999 amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. A trademark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking. The legal requirements to register a trademark under the Act are:

- The selected mark should be capable of being represented graphically (that is in the paper form).
- It should be capable of distinguishing the goods or services of one undertaking from those of others.
- It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person.

The Geographical Indications of Goods (Registration and Protection) Act, 1999: Geographical Indications of Goods (Registration and Protection) Act, 1999 seeks to provide for the registration and better protection of geographical indications relating to goods in India. "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

The Design Act, 2000 : Design Act, 2000 consolidate and amend the law relating to protection of designs. 'Design' means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

The Semiconductor Integrated Circuits Layout-Design Act, 2000 : SICLD Act 2000 provide for the protection of semiconductor integrated circuits layout design. A semiconductor layout design means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001 : The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001 has sufficient provisions to protect the interests of public sector breeding institutions and the farmers. The legislation recognizes the contributions of both commercial plant breeders and farmers in plant breeding activity and also provides to implement TRIPs in a way that supports the specific socio-economic interests of all the stakeholders including private, public sectors and research institutions, as well as resource-constrained farmers.

WTO's TRIPS Agreement

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated during the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. India became a signatory of the TRIPS Agreement in the year 1994 but this Agreement entered into force on January 1, 1995.

The idea of trade, and what makes trade valuable for societies, has evolved beyond simply shipping goods across borders. Innovation, creativity and branding represent a large amount of the value that changes hands in international trade today. How to enhance this value and how to facilitate the flow of knowledge-rich goods and services across borders have become integral considerations in development and trade policy.

The TRIPS Agreement plays a critical role in facilitating trade in knowledge and creativity, in resolving trade disputes over intellectual property, and in assuring WTO members the latitude to achieve their domestic objectives. The Agreement is legal recognition of the significance of links between intellectual property and trade.

"Intellectual property" refers to creations of the mind. These creations can take many different forms, such as artistic expressions, signs, symbols and names used in commerce, designs and inventions. Governments grant creators the right to prevent others from using their inventions, designs or other creations — and to use that right to negotiate payment in return for others using them. These are "intellectual property rights". They take a number of forms. For example, books, paintings and films come under copyright; eligible inventions can be patented; brand names and product logos can be registered as trademarks; and so on. Governments grant creators these rights as an incentive to produce and spread ideas that will benefit society as a whole.

The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and to settle disputes more systematically.

The Uruguay Round achieved that. The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected and enforced around the world, and to bring them under common international rules. It establishes minimum standards of protection and enforcement that each government has to give to the intellectual property held by nationals of fellow WTO members.

Under the TRIPS Agreement, WTO members have considerable scope to tailor their approaches to IP protection and enforcement in order to suit their needs and achieve public policy goals. The Agreement provides ample room for members to strike a balance between the long term benefits of incentivising innovation and the possible short term costs of limiting access to creations of the mind. Members can reduce short term costs through various mechanisms allowed under TRIPS provisions, such as exclusions or exceptions to intellectual property rights. And, when there are trade disputes over the application of the TRIPS Agreement, the WTO's dispute settlement system is available.

The TRIPS Agreement covers five broad areas:

- how general provisions and basic principles of the multilateral trading system apply to international intellectual property
- what the minimum standards of protection are for intellectual property rights that members should provide
- which procedures members should provide for the enforcement of those rights in their own territories
- how to settle disputes on intellectual property between members of the WTO
- special transitional arrangements for the implementation of TRIPS provisions.

National IPR Policy in India

Creativity and innovation have been a constant in growth and development of any knowledge economy. There is an abundance of creative and innovative energies flowing in India. India has a TRIPS compliant, robust, equitable and dynamic IPR regime. An all-encompassing IPR Policy will promote a holistic and conducive ecosystem to catalyse the full potential of intellectual property for India's economic growth and socio-cultural development, while protecting public interest.

The National Intellectual Property Rights (IPR) Policy 2016 was adopted on 12.5.2016 as a vision document to guide future development of IPRs in the country. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all.

The National IPR Policy is a vision document that encompasses and brings to a single platform all IPRs. It views IPRs holistically, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

The rationale for the National IPR Policy lies in the need to create awareness about the importance of IPRs as a marketable financial asset and economic tool. The Policy lays down seven objectives which are elaborated with steps to be undertaken by the identified nodal Ministry/ Department. The objectives are briefly mentioned below.

Objective 1 - IPR Awareness: Outreach and Promotion

To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.

The 21st century belongs to the knowledge era and is driven by the knowledge economy. A nation-wide program of promotion should be launched with an aim to improve the awareness about the benefits of IPRs and their value to the rights-holders and the public. Such a program will build an atmosphere where creativity and innovation are encouraged in public and private sectors, R&D centers, industry and academia, leading to generation of protectable IP that can be commercialized. It is also necessary to reach out to the less-visible IP generators and holders, especially in rural and remote areas. The clarion call of the program would be the holistic slogan "Creative India; Innovative India".

Objective 2 - Generation of IPRs

To stimulate the generation of IPRs

India has a large talent pool of scientific and technological talent spread over R&D institutions, enterprises, universities and technical institutes. There is a need to tap this fertile knowledge resource and stimulate the creation of IP assets. A comprehensive base line survey or IP audit across sectors will enable assessment and evaluation of the potential in specific sectors, and thus formulate and implement targeted programmes. Focus will be placed on facilitating researchers and innovators regarding areas of national priority. The corporate sector also needs to be encouraged to generate and

utilize IPRs. Steps also need to be taken to devise mechanisms so that benefits of the IPR regime reach all inventors, especially MSMEs, start-ups and grassroot innovators.

Objective 3 - Legal and Legislative Framework

To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest

The existing IP laws in India were either enacted or revised after the TRIPS Agreement and are fully compliant with it. These laws along with various judicial decisions provide a stable and effective legal framework for protection and promotion of IPRs. India shall remain committed to the Doha Declaration on TRIPS Agreement and Public Health. At the same time, India is rich in traditional medicinal knowledge which exists in diverse forms in our country, and it is important to protect it from misappropriation.

Objective 4 - Administration and Management

To modernize and strengthen service oriented IPR administration

The Offices that administer the different Intellectual Property Rights (IPOs) are the cornerstone of an efficient and balanced IPR system. IPOs now have the twin challenges of making their operations more efficient, streamlined and cost effective, with expanding work load and technological complexity on one hand, and enhancing their user friendliness by developing and providing value added services to the user community on the other. The administration of the Copyright Act, 1957 and the Semiconductor Integrated Circuits Layout-Design Act, 2000 is being brought under the aegis of DPIIT, besides constituting a Cell for IPR Promotion and Management (CIPAM). This will facilitate more effective and synergetic working between various IP offices, as also promotion, creation and commercialization of IP assets.

Objective 5 - Commercialization of IPR

Get value for IPRs through commercialization.

The value and economic reward for the owners of IP rights comes only from their commercialization. Entrepreneurship should be encouraged so that the financial value of IPRs is captured. It is necessary to connect investors and IP creators. Another constraint faced is valuation of IP and assessment of the potential of the IPRs for the purpose of marketing it. Efforts should be made for creation of a public platform to connect creators and innovators to potential users, buyers and funding institutions.

Objective 6 - Enforcement and Adjudication

To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.

There is a need to build respect for IPR among the general public and to sensitize the inventors and creators of IP on measures for protection and enforcement of their rights. At the same time, there is also a need to build the capacity of the enforcement agencies at various levels, including strengthening of IPR cells in State police forces. Measures to check counterfeiting and piracy also need to be identified and undertaken. Regular IPR workshops/ colloquia for judges would facilitate effective adjudication of IPR disputes. It would be desirable to adjudicate on IPR disputes through specialised commercial courts. Alternative Dispute Resolution mechanism may also be explored.

Objective 7 - Human Capital Development

To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

In order to harness the full potential of IPRs for economic growth, it is essential to develop an increasing pool of IPR professionals and experts in spheres such as policy and law, strategy development, administration and enforcement. Such a reservoir of experts will facilitate in increasing generation of IP assets in the country and their utilization for development purposes.

Conclusion

The National IPR Policy is a vision document that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario. The IP Policy aims to integrate IP as a policy and strategic tool in national development plans. It foresees a coordinated and integrated development of IP system in India and the need for a holistic approach to be taken on IP legal, administrative, institutional and enforcement related matters. IPR Laws and policy bringing improvement in India's rank in the Global Innovation Index (GII) and strengthening of institutional mechanism regarding IP protection and promotion.

Sources:

- <https://dipp.gov.in/sites/default/files/national-IPR-Policy2016-14October2020.pdf>
- https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm
- <https://ipindia.gov.in/>

LISTING THROUGH SPECIAL PURPOSE ACQUISITION COMPANY (SPAC)*

Introduction

SPAC (Special Purpose Acquisition Company), is an entity specifically set up with the objective of acquiring a firm in a particular sector. The aim of this SPAC is to raise money in an initial public offering (IPO), and at this point in time, it does not have any operations or revenues. Once the money is raised from the public, it is kept in an escrow account, which can be accessed while making the acquisition. If the acquisition is not made within two years of the IPO, the SPAC is delisted and the money is returned to the investors.

Globally Regulatory Evolution of SPACs

Historically, SPACs were an uncommon and rarely used investment product. In the 1980s and 1990s, blank-check companies became associated with lack of regulatory oversight and, on occasion, even fraudulent activity. The ensuing backlash from market participants led to reforms that transformed the product over the years. The reformed SPAC product of the early 2000s evolved to increase protection for investors. Across the span of the last twenty years, most companies still preferred to pursue the traditional IPO route to go public and as such, SPAC IPOs accounted for just a small percentage of total IPO activity. Despite their decades-long existence, SPACs have only seen a surge in issuance in the last three years, followed by a dramatic increase in 2020 and 2021 specifically.

Year	IPO Count	Gross Proceeds(mms)	Average IPO Size(mms)
2021	298	97,326.8	326.6
2020	248	83,346.7	336.1
2019	59	13,600.3	230.5
2018	46	10,751.9	233.7
2017	34	10,048.5	295.5
2016	13	3,499.2	269.2
2015	20	3,902.4	195.1
2014	12	1,749.8	145.8
2013	10	1,455.3	145.5
2012	9	490.5	54.5
2011	15	1,081.5	72.1
2010	7	502.6	71.8
2009	1	36.0	36.0
Total	772	227,791.4	
*Includes over-allotment proceeds			
**Last updated Apr 04, 2021 12:00 PM			

Source- www.spacinsider.com

* Mahesh Airan, 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.

As per SPAC Insider, a portal that maintains a record of SPAC deals, of the 772 such IPOs by blank-cheque companies since 2009, 248 happened in 2020 and 298 in 2021, as on April 04, 2021. The gross proceeds raised by SPACs in 2020 amounted to over \$83 billion, while for 2021 the number stands at \$97.32 billion as of now. Across the span of the last twenty years, most companies still preferred to pursue the traditional IPO route to go public and as such, SPAC IPOs accounted for just a small percentage of total IPO activity.

The US Securities and Exchange Commission (SEC) oversees all transactions pertaining to SPAC. To ensure transparency and credibility, SEC has mandated exhaustive SEC filing, reporting and disclosure requirements for giving effect to transactions involving SPACs. Owing to the “well-regulated” feature of SPACs in the US, sponsors and investors have begun regarding SPACs as a better substitute to traditional IPOs.

Further, stock exchanges across the world have their own SPAC related regulations, for instance, the London Stock Exchange requires a listed entity to delist and re-apply in case of reverse merger with a listed entity, the Australian Securities Exchange allows reverse merger on a case-to-case basis. Canada too has regulatory guidelines for SPACs and is enthusiastically encouraging the same.

Regulatory Framework in India

The current regulatory framework of India is not supportive of the SPAC structure. For instance, the Companies Act 2013 authorizes the Registrar of Companies to strike-off the name of companies that do not commence operation within one year of incorporation. SPACs typically take 2 years to identify a target and perform due-diligence. If SPACs are to be made functional in India, enabling provisions will have to be inserted in the Companies Act.

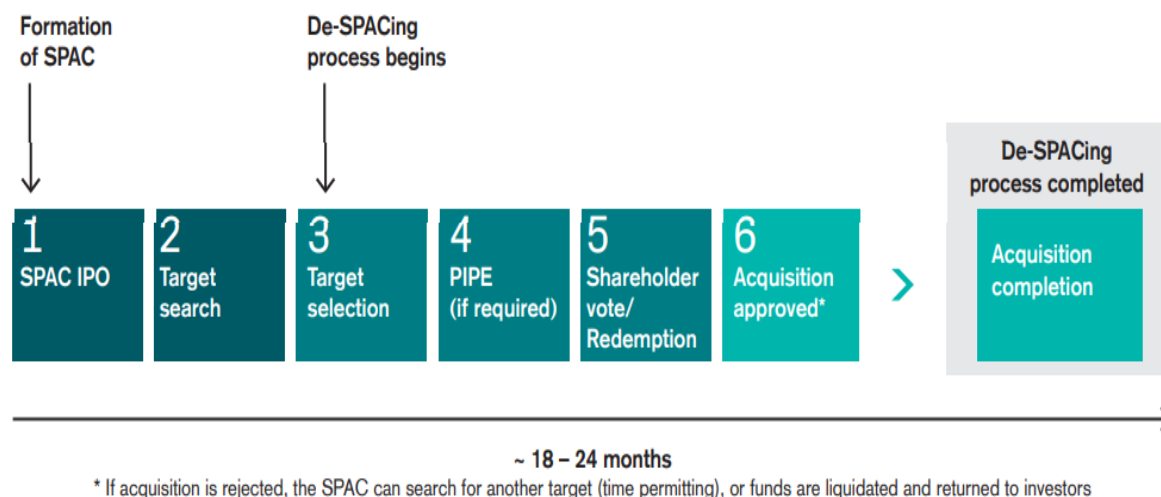
As per eligibility criteria for public listing prescribed by SEBI, a company requires to have net tangible assets of at least ₹3 crore in the preceding three years, minimum average consolidated pre-tax operating profits of ₹15 crore during any three of last five years and net worth of at least ₹1 crore in each of the last three years. The absence of operational profits, net tangible assets would prevent SPACs from making an IPO in India.

As of now, Indian legislature has not prescribed any comprehensive regulatory requirements for SPACs. SEBI recently formed a group of experts to examine the feasibility of introducing Special Purpose Acquisition Companies (SPACs) under its Primary Market Advisory Committee (PMAC) with aim to explore the potential of SPACs while at the same time building adequate checks and balances in regulatory framework to take care of the associated risks.

One of India's leading renewable energy companies, ReNew Power, recently announced the execution of a definitive business combination agreement with RMG Acquisition Corporation II. The USD 8-billion transaction enables the combined power generation company to get listed on NASDAQ by the second quarter of 2021. This transaction marks the first major overseas listing of an Indian company by means of a Special Purpose Acquisition Company (“SPAC”) vehicle in recent times.

While overseas listing is not a new phenomenon in India, with companies like Videocon d2h and Yatra Online Inc. already listed on the NASDAQ, new investment opportunities in Indian companies have resurfaced and have set the ball rolling for SPAC transactions.

The SPAC Life Cycle



1. **Formation of the SPAC and its IPO:** The sponsors or investment professionals, or both, choose to form a SPAC. The SPAC completes the regulatory filings necessary to go public, which are relatively simpler than those needed for a traditional IPO process. This simplicity is because the company is a “shell” with no formal operations, and the value of the company will be roughly equivalent to the net value of the cash it raises.
2. **Target search:** After the SPAC goes public, the sponsors begin to search for a company to acquire. In most cases this is a private company, but there have been rare instances where a SPAC has targeted a segment of a public company. SPACs usually have just 18 to 24 months to identify and acquire a target company (unless the life of the SPAC is extended), otherwise the SPAC liquidates and the capital raised is returned to investors. The structured timeframe creates a sense of urgency for the SPAC sponsors to quickly find and combine with potential targets; in more conventional M&A paths, there is no time limit on a suitor’s potential acquisition of a target.
3. **Target selection / de-SPACing process:** The de-SPAC process refers to the process of a private company becoming public via combination with a SPAC. Once a target company is identified and announced, the de-SPACing process begins. De-SPACing is arguably the most important and intense phase in the lifecycle of a SPAC. During this time, the SPAC sponsors and target owners negotiate and the target’s valuation and transaction structure are determined. Although the negotiation is between the seller and the SPAC sponsor, valuation and terms must ultimately be validated by the public.

4. **Private Investments in Public Equity (PIPEs)** : PIPEs are additional equity commitments from either institutional investors who participated in the SPAC, or from new institutional investors. After the SPAC and the target agree on transaction terms, structure and valuation, they can go to the market to raise additional capital to complete the acquisition. This additional capital is usually raised by PIPEs.
5. **Shareholder vote / Redemption** : Any acquisition the SPAC proposes is subject to approval by shareholders, which enables investors to choose whether or not they approve of the target company selected by the SPAC founders. This is typically a non-event as shareholder approval is obtained for most transactions. Notably, the vote and the redemption decision are not mutually exclusive – meaning that investors can vote to approve the transaction, while electing to redeem their shares to recoup their original investment. If a transaction “fails” due to either a lack of shareholder approval (a rare circumstance), or investor redemptions, then the SPAC is able to look for another target. However, the SPAC still has to adhere to the time frame set at its IPO. In the event of SPAC liquidation, the funds are released from escrow and all proceeds are returned to public shareholders on a pro rata basis.
6. **Acquisition of the target** : If the shareholder vote is successful, and the transaction is approved (including on a regulatory basis), the SPAC and its target merge. In the combination process, SPACs adhere to merger proxy rules, so they can include projections of the company's performance in their conversations with potential investors, including with potential PIPE investors. Once the merger is complete, the SPAC changes its name and exchange ticker to new ones reflective of the acquired target and the de-SPACing process is complete. The shares then freely trade, just like any other public company.

Conclusion

SPACs can offer many unique advantages versus more conventional alternatives (i.e. traditional IPO and M&A), such as price certainty, secure upfront capital, greater execution confidence, structural flexibility and managerial expertise. Various countries like, US, Australia, Canada have the regulatory framework/guidelines on SPACs and witnessed a high rise in SPAC deals but in India, regulatory framework is not supportive of the SPAC structure as on date and requires to incorporate the provisions suitably in Companies Act, 2013 and SEBI Act, 1992 which is being taken care after formulating an expert group by SEBI.

Keeping in view, the pros and cons of the SPAC route, it is the best fit for Indian companies to go with a foreign holding company, i.e. companies that have externalised in a jurisdiction that allows cross-border mergers. This will ease compliance with cross-border merger regulations but would attract heavy tax implications. Several Indian companies like Flipkart, Zomato, Delhivery, and Grofers, are planning to go public this year. The costs and benefits of an indirect overseas listing through SPACs must be compared to a direct listing in India through an IPO, which is supported by a favourable regulatory structure but at the cost of a risky valuation.

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JUDICIAL SETTLEMENT UNDER INTERNATIONAL COURT OF JUSTICE*

Historical Perspective

Article 14 of the Covenant of the 'League of Nations' gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice (PCIJ). At its second session early in 1920, the Council appointed an Advisory Committee of Jurists to submit a report on the establishment of the PCIJ. The chairman of the committee was Baron Descamps (Belgium). After an exhaustive study by a subcommittee, the Committee submitted a revised draft to the Assembly, which unanimously adopted it. This was the Statute of the PCIJ. The Assembly decided that a vote alone would not be sufficient to establish the PCIJ, and that the Statute would have to be formally ratified by each State represented in the Assembly. The outbreak of war in September 1939 inevitably had serious consequences for the PCIJ, which had for some years been experiencing a decline in its level of activity.

In 1943, China, the USSR, the United Kingdom and the United States issued a joint declaration recognising the necessity of establishing international organization for the maintenance of international peace and security. This declaration came to be the fundamental for set up of International Court of Justice. A committee of jurists representing 44 States, under the chairmanship of G. H. Hackworth (United States), was entrusted with preparing a draft Statute for the future international court of justice. The draft was based on the text of PCIJ. The main reasons that led the Conference to decide to create a new court were the following:

- (i) as the court was to be the principal judicial organ of the United Nations, it was felt inappropriate for that role to be filled by the Permanent Court of International Justice, with its connection to the League of Nations, which was itself on the point of dissolution;
- (ii) the creation of a new court was more consistent with the provision in the Charter that all Member States of the United Nations would *ipso facto* be parties to the court's statute;
- (iii) several States that were parties to the Statute of the PCIJ were not represented at the San Francisco Conference and, conversely, several States represented at the Conference were not parties to the Statute;
- (iv) there was a feeling in some quarters that the PCIJ formed part of an older order, in which European States had dominated the political and legal affairs of the international community, and that the creation of a new court would make it easier for States outside Europe to play a more influential role.

* CS Kushal Kumar, Executive (Academics), The ICSI

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The objective was achieved and it is evident from the fact, as membership of the United Nations has grown from 51 in 1945 to 193 in 2020.

The PCIJ met for the last time in October 1945 and resolved to transfer its archives and effects to the new International Court of Justice.

Introduction

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Out of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The role of ICJ is to settle the disputes, in accordance with international law, submitted to it by states and to give advisory opinions on questions referred to it by authorized United Nations organs and specialized agencies.

ICJ has 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. The official languages of the court are English and French.

Mode of Operation

Article 33 of the United Nations Charter lists the methods for the settlement of disputes between States:

- (i) negotiation
- (ii) enquiry
- (iii) mediation
- (iv) conciliation
- (v) arbitration
- (vi) judicial settlement

For instance, mediation places the parties to a dispute in a position in which they can themselves resolve their dispute with the help of intervention of a third party. Arbitration goes further, in the sense that the dispute is submitted to the decision or award of an impartial third party, so that a binding settlement can be achieved. The system of Judicial settlement is similar to arbitration except that a court is subject to stricter rules than an arbitral tribunal, particularly in procedural matters. The method of Judicial Settlement is applied by the International Court of Justice.

Members/Judges of ICJ

The 15 judges of ICJ are elected for nine-year terms by the United Nations General Assembly and the Security Council. These organs vote simultaneously but separately. A candidate must receive an absolute majority of the votes in both these bodies for selection. One third of the Court is elected every three years. Judges are also eligible for re-election. The provisions of special election are also made to fill the unexpired term in case of death or resignation of a Judge. All States parties to the Statute of the Court have the right to propose candidates. Such proposals are made not by the government of the State but by a group consisting of the members of the Permanent Court of Arbitration designated by that State. In the case of countries not participating in the Permanent Court

of Arbitration, nominations are made by a group constituted in the same way. Four candidates can be proposed by each group. Two may be from the nationality of nation and the other two may be from any other country(ies). The name of the candidates shall be communicated to the Secretary-General of United Nation.

Once elected, a Member of the Court is not a delegate to the government of his own country. The members of the court are independent. In order to ensure the independence, a member cannot be dismissed unless unanimous opinion of all other members is obtained to the effect that he/she no longer fulfils the required conditions. The members enjoy privileges and immunities similar to those of head of a diplomatic mission. The members receive an annual salary of US\$ 1,75,000 and a special supplementary allowance of US\$15,000. The judges are also eligible for an annual pension which is equal to half the annual base salary.

Each Member of the Court receives an annual salary consisting of a base salary (which, for 2018, amounts to US\$ 176,437) and post adjustment, with a special supplementary allowance of US\$15,000 for the President. On leaving the Court, judges receive an annual pension which, after a nine-year term of office, is equal to half the annual base salary. The President and Vice-President of the court are elected by the Members of the Court every three years by secret ballot.

Judge Dalveer Bhandari from India is the member since 27th April, 2021 and re-elected as from 6th February, 2021.

The President and Vice-President may be elected and re-elected. The Court generally discharges its duties as a full Court (a quorum of nine judges, excluding judges *ad hoc*, being sufficient). But it may also form permanent or temporary chambers and committees.

Process of ICJ

ICJ may entertain two types of cases:

- (i) Contentious cases
- (ii) advisory proceedings

Contentious cases

The member states on UN, other States which have become parties to the Statute of the Court or which have accepted its jurisdiction may be parties to contentious litigation.

ICJ may entertain a dispute only if the states have agreed on its jurisdiction in one or more of the following ways:

- by entering into a special agreement to submit the dispute to the Court
- by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision to its effect
- through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory

The state communicates with the registrar of ICJ through their Minister of Foreign Affairs or ambassador. The parties to a case are represented by an 'Agent', which is similar to solicitor in national courts. However, in view of the International relations are involved, the agent is also as it were the head of a special diplomatic mission with powers to

commit a sovereign State. He is the receiver of communications from the Registrar and forwards all correspondence and pleadings, duly signed and certified. There is no special International Court of Justice Bar. Therefore, there are no conditions for being the counsel or advocate except they must be appointed by a government

Proceedings may be instituted in one of two ways:

- Through the notification of a special agreement: this document, which is bilateral in character, can be lodged with the Court by either or both of the States parties to the proceedings.
- By means of an application: the application, which is unilateral in character, is submitted by an applicant State against a respondent State.

Contentious proceedings includes written phase relating to points of fact and of law and oral hearing at which the agent or counsel addresses the court. The languages of the court is English and French, therefore, each document is translated into the other. The written pleading may be made available to the press only after opening of the oral proceedings and No objection is given by the parties.

After the oral proceedings Court deliberates *in camera* and delivers its judgement at a public sitting. *This judgement is final, binding and non-appelable.* a Member State of the United Nations undertakes to comply with the decision of the Court by signing a charter. In case of failure to perform the obligations under the judgement, may bring the matter before the Security Council, which is empowered to recommend or decide upon measures to be taken to give effect to the judgment. *The ICJ may allow the Joining of the case in case of same arguments and submissions against a common opponent in relation to the same issue. The sources of law for ICJ is international custom; the general principles of law; judicial decisions; and the teachings of the most highly qualified publicists. In case the parties agree, ICJ may vary from the existing rules of international law.*

Advisory proceedings

Advisory proceedings before the Court are only open to five organs of the United Nations and 16 specialized agencies of the United Nations family or affiliated organizations.

Any legal question may requested by United Nation General Assembly and Security Council. But the other organs may request for advice only on 'legal questions arising within the scope of their activities'. After the receipt of request for an advisory opinion, the court is may hold written and oral proceedings similar to those in contentious cases. The written proceddings are comparatably shorter in contentious proceedings and rules governing are also flexible. After the written proceedings, the parties are generally invited for oral proceedings. The opinions of ICJ are essentially advisory and non binding. But, the Court's advisory opinions are associated with its authority and prestige, and a decision by the organ or agency concerned to endorses an opinion is as it were sanctioned by international law.

Annual Reports

The court submits an annual report on its activities to United Nation General Assembly every year. The reporting period is from 1st August to 31st July. The annual report includes an introductory summary and information about the Court's organization, jurisdiction and judicial work, together with reports of visits, events and lectures, the Court's

publications and documents, and administrative and budgetary issues. These reports are available in electronic form at the website of ICJ since 1985.

The Registry

The administrative secretariat of ICJ is called 'the registry'. The registry is accountable for the court only. It is headed by the Registrar and assisted by Deputy-Registrar(s). It has judicial and diplomatic, as well as administrative function. The registry has three departments i.e. Legal Matters, Linguistic Matters and Information. It also has a number of other divisions. All the officials take an oath of loyalty and discretion on commencing their duties and enjoy the same privileges and immunities as members of comparable missions of diplomatic rank in The Hague.

Texts for Regulation of International Court of Justice

ICJ was established by virtue of charter of UN, which made all members of UN *ipso facto* parties to the court's statute. The statute and the rules of court are text for composition and functioning of the Court. The following are few of the important text for administration of justice by ICJ:

Charter of the United Nations

The Charter of the United Nations was signed in San Francisco on 26 June 1945. It is the foundational treaty of the United Nations. It is also the constitutive text of the ICJ.

Statute of the Court

The statute is an integral part of the United Nations. The purpose of the Statute is to organize the composition and functioning of the Court. The Statute is amendable by a two-thirds majority vote in the General Assembly and ratification by two thirds of the States.

Rules of Court

Article 30 of the Statute of ICJ made provision for framing the rules by it for carrying out its functions. These Rules are supplements the general rules set out in the Statute and to make detailed provision for the steps to be taken to comply with them.

Practice Directions

The first Practice Directions was adopted by ICJ for use by States appearing before it in October 2001. Practice direction supplements the rules of court rather than altering. After adoption, the Practice Directions are posted on the Court's website and published in the Court's Yearbook, with a note of any temporal reservations relating to their applicability.

Conclusion

International peace and security is one of the most important aspect of International Relation. An independent organisation was the need in this direction. The organised structure of ICJ makes it more effective. Independent members or Judges are appointed for administration of Justice making this institution an impartial organisation. Members state shall endeavour to make ICJ more effective and impartial, which shall repose the trust in this Institution. Effective use of Jurisdiction of ICJ may be a win-win situation for all the nations.

Reference:

- <https://www.icj-cij.org/en>



Practice Mentor

- **AN APPLICATION WITH NCLT/NCLAT**

AN APPLICATION WITH NCLT/NCLAT*

The National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT") are quasi-judicial body in India that adjudicates issues relating to the Companies in India. The NCLT and NCLAT were established under the Companies Act 2013 and were constituted on June 01, 2016. The constitution of the aforesaid Tribunals is in exercise of the powers conferred by Sections 408 and 410 respectively of the Companies Act, 2013. In the first phase the Ministry of Corporate Affairs have set up eleven Benches, one Principal Bench at New Delhi and ten Benches at New Delhi, Ahmadabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. These Benches were headed by the President and 16 Judicial Members and 09 Technical Members at different locations. Subsequently more members have joined and Benches at Cuttack, Jaipur, Kochi, Amravati, and Indore have been setup.

General procedures relating to NCLT and NCLAT have been specified in NCLT Rules, 2016 and NCLAT Rules, 2016.

Following are the requisite points for consideration before filing petition, appeal or application before NCLT/NCLAT:

- Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English.
- It must be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimetre width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form and the petition/Application/Appeal etc. should be printed on legal size pages.
- The cause title shall state "Before the National Company Law Tribunal" or "In the National Company Law Appellate Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.
- Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.
- Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.

* Prepared by CS Ajanta Sen, Consultant, The ICSI and reviewed by CS Nikhil Kumar Verma.

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- The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.
- At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.
- These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his Legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.
- Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.
- Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

Particulars to be set out in the Address for Service:

The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:-

- (a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;
- (b) the name of the town or village;
- (c) the post office, postal district and PIN Code, and
- (d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

Service on the Respondent and E-filing of Petition, Caveat, Interlocutory Application, Documents and Appeal:

Before presenting any petition, caveat, interlocutory application, documents and appeal in the Registry of NCLT or NCLAT, such petition, caveat, interlocutory application, documents and appeal shall be required to be served on the Respondents at their registered addresses by registered post or at their Email.

The National Company Law Tribunal vide its notification dated August 16, 2018, has ordered for the commencement of e-filing of applications, petitions, appeals, replies, etc. **After serving the Respondents, such petition, caveat, interlocutory application etc. along with the Proof of Service to the Respondents shall be filed online at the portal of the NCLT (<https://efiling.nclt.gov.in>) or NCLAT (<https://efiling.nclat.gov.in> /) as the case may be.**

Following are the steps for the e-filing of the petition at the NCLT Portal:

1. **Registration :** Log on to NCLT E-Filing Website (<https://efiling.nclt.gov.in>) → Click on Registration in the home page → Registration can be done as Individual, Advocate, IRP, or other than an individual → Phone No., Email ID, Address, Registration No. etc. will be required → OTP will be sent to the registered phone no. which needs to be submitted to proceed further → Verification Documents needs to be uploaded such as PAN, Aadhar, Voter ID, Registration Certificate → After successful registration Id & password will be sent to the registered email id. Password needs to be changed after logging in for the first time.

2. **Filing :** Click on the “Petitioner Corner” or “Respondent Corner” option as the case may be → Basic details needs to be filled such as case type, case title, NCLT Location, Section of relevant statute, name of respondent etc. → Reference number will pop up after submitting the basic details → Reference number should be noted down for future reference → Petitioner’s details needs to be filled. Also, Authorised Person’s name, PAN no. and email id needs to be submitted mandatorily → Respondent’s details needs to be filled. Also, Authorised Persons name, PAN no. and email id needs to be submitted mandatorily → Documents including proof of service needs to be uploaded. Please note that entire set needs to be uploaded in PDF format (not exceeding 100 mb), total Number of pages needs to be mentioned (not exceeding 200 in one pdf) → After uploading the documents, a check list will show up, it will contain general questions like whether NCLT have jurisdiction, whether brief of synopsis, dates of events has been filed in 2-3 pages → Final preview of the submission will be shown and one needs to check the information and submit it → Payment can be done through both modes i.e. online and offline. If we select online option, then it will direct the person to ‘Bharatkosh’ website. If one wants to pay through offline mode then that person needs to keep the details of demand draft handy → Receipt generated can be downloaded and that needs to be submitted before NCLT with the hardcopies of petition.

Presentation of petition or appeal

- Every petition, application, caveat, interlocutory application, documents and appeal along with the receipt generated from the Online Portal and Demand Draft (if payment made offline) drawn in favour of the “Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/ Kolkata/ Chennai/ Mumbai, as the case may be shall be presented in:
 - ✓ Duplicate in NCLT and Triplicate in NCLAT by the appellant or applicant or petitioner or respondent, as the case may be,
 - ✓ in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter. The filing Counter of the Registry shall be open on all working days from 10:30 AM to 5:00 PM.
- In case of NCLT- Every petition or application or appeal may be accompanied by documents duly certified:
 - ✓ by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.
- In case of NCLAT - Every appeal shall be accompanied by a certified copy of the impugned order.
- In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.

- The person in charge of the filing-counter shall immediately on receipt of petition or appeal or application or document affix the date stamp of Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.
- On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein
- The Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter. Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Companies Act, 2013.
- Once the petition or application is admitted before the NCLT, the Tribunal notifies to the parties the date and place of hearing.
- While appearing before Tribunal, the authorised representatives shall wear the same professional dress as prescribed in their Code of Conduct;
- The Registry shall send a certified copy of final order passed to the parties concerned free of cost within Seven days from the date of the pronouncement of order, it is to be noted that the order also published over the portal of NCLT and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

Following are the Necessary Documents to be accompanied with the Appeal / Petition/Application along with the other documents required as per the provisions of the Section under which such Application/Appeal is filed, however, list of documents to be attached with a Petition or Application are mentioned in 'Annexure -B' of the NCLT Rules, 2016:

- ✓ Index of the appeal or petition;
- ✓ Notice of admission (Form No. NCLT 2 / NCLT 3);
- ✓ Memo of Parties;
- ✓ Brief synopsis;
- ✓ Important dates and Events;
- ✓ Petition or application stating the grounds (Form No. NCLT 1 / NCLT 9);
- ✓ Every petition/application shall be verified by an affidavit in Form No. NCLT 6 and it shall be notarised on a stamp paper of 10 rupees;
- ✓ The authorised representative e., Company Secretary, Chartered Accountant or Advocate shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT 12 representing the respective parties to the proceedings, it shall be notarised on a stamp paper of 20/- rupees;

- ✓ Certified true copy of Extract of resolution in favour of the Authorised Signatory/Authorised Representative;
- ✓ Power of Attorney is must as suggested by the registry for us, it should be notarised on a stamp paper of 50/- rupees;
- ✓ Master data of the company procured from MCA portal;
- ✓ Audited financials of the company filing the application/petition;
- ✓ Certificate of Incorporation, Memorandum and Article of Association of the company;
- ✓ Demand draft of statutory fees / Online Payment Receipt;

Various Forms have been prescribed in 'Annexure A' of the NCLT Rules, 2016 in respect of procedure before NCLT, the particulars of such forms are:

Form No.	Details
NCLT 1	Form of Application/reply/rejoinder/inter-locutory Application
NCLT 2	Notice of Motion
NCLT 3	Notice of motion for interlocutory application
NCLT 3A	Advertisement detailing petition
NCLT 3B	Individual Notice of petition/ application to creditors, members, etc.
NCLT 4	General heading for Proceedings
NCLT 5	Notice to opposite party to be issued by NCLT
NCLT 6	Form of Affidavit
NCLT 7	Affidavit by way of evidence
NCLT 8	Application for Execution of Order under clause (3) of section 424 of the Act with reference to a Decree
NCLT 9	General Form for all purposes if specific form is not prescribed
NCLT 10	Application for the Registration of a Intern of Authorised Representative under the Rules
NCLT 11	Application for Repayment of Deposit or debentures

NCLT 12	Memorandum of appearance by Practicing CA/CS/CMA
NCLT 13	Public Notice of Petition under Section 245 of the Companies Act, 2013
NCLT 14	Certificate when deponent is blind or illiterate or unacquainted language
NCLT 15	Application for order of Production of Documents
NCLT 16	Form of recording Deposition of Witness
NCLT 17	Certificate of discharge of court witness
NCLT 18	Record of appeals filed before NCLAT against order of NCLT

Appeal to National Company Law Appellate Tribunal:

- Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved;
- The Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period;
- No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties;
- Process of filing an appeal before NCLAT is same as mentioned above in the case of NCLT, however, <https://efiling.nclat.gov.in/portal> would be used to file an appeal or application etc. online after registering on the same. Fee for filing an appeal under Section 421 (1) of Companies Act, 2013 would be Rs. 5,000/-.

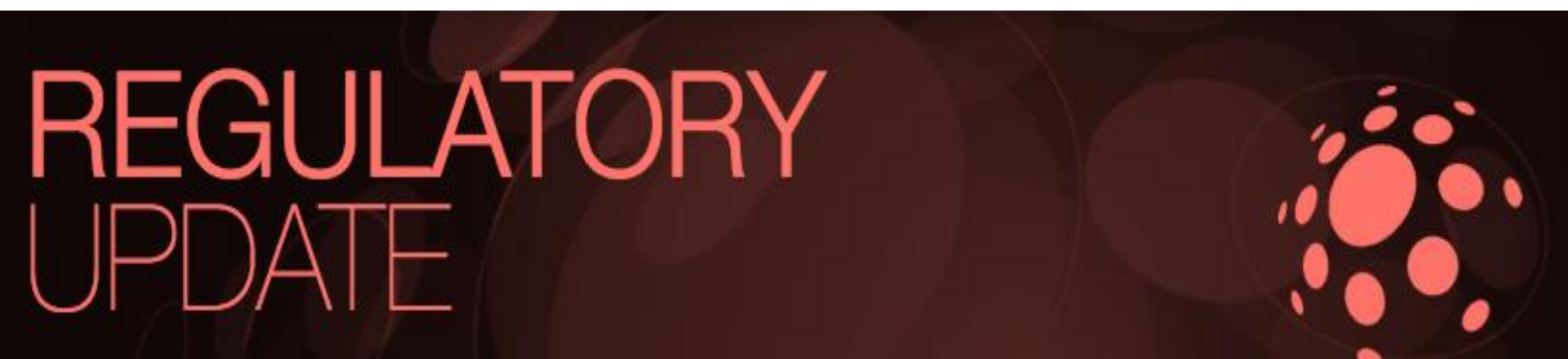
Scope of Practicing Company Secretaries under NCLT/NCLAT:

The establishment of NCLT/NCLAT shall offer various opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/Appellate Tribunal. Therefore, Practicing Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt with by the High Court viz. mergers, amalgamations and winding up proceedings under the Companies Act, 2013. Section 432 of the Companies Act, 2013 authorises the party to any proceeding or appeal to appear in person or through CA, CS, CMA or legal practitioner.

The Areas under the Companies Act, 2013 opened up for Company Secretaries in Practice to represent various companies before the Tribunal includes:

- ✓ Section 2 (41) Application for change in Financial Year;
- ✓ Section 58 (3) Appeal against refusal of registration of shares;

- ✓ Section 59 Appeal for rectification of register of members;
- ✓ Section 73 Acceptance of Deposits by Companies;
- ✓ Section 97(1) Application for calling Annual General Meeting;
- ✓ Section 100 Reduction of Capital;
- ✓ Section 230-232 Compromise and Arrangement;
- ✓ Section 241-242 Oppression and Mismanagement;
- ✓ Section 272 Winding up;
- ✓ Section 218 (3) Protection of Employee during investigation (Before NCLAT);
- ✓ Section 421 (1) Appeal to National Company Law Appellate Tribunal.



COMPANY LAW

1. **The MCA notified the commencement date of Sections 32 & 40 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 1255(E), Dated March 18, 2021)**

The MCA has appointed **March 18, 2021** as the commencement date of section 32 & 40 of the Companies (Amendment) Act, 2020 for implementation of changes brought by:

- (i) **Section 32 of the Companies (Amendment) Act, 2020 which seeks to amend Section 149(9) of the Companies Act, 2013 wherein, a proviso has been added**

“that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.”

- (ii) **Section 40 of the Companies (Amendment) Act, 2020 which seeks to amend Section 197(3) of the Companies Act, 2013 where in Non-Executive Director and Independent Director has been brought within the scope of remuneration payable following Schedule V of the Companies Act, 2013 in the event of absence or inadequate profits**

“Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager [or any other non-executive director, including an independent director], by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.”

For details:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_19032021.pdf

2. **The MCA has notified amendments in Schedule V of the Companies Act, 2013 (Notification No: S.O. 1256(E), Dated March 18, 2021)**

In exercise of the powers conferred by sub-sections (1) and (2) of section 467 of the Companies Act, 2013, the Central Government hereby makes the following amendment in Part II of Schedule V of the Companies Act, 2013 w.r.t. Remuneration

In Schedule V of the Companies Act, 2013, in PART II, under the heading “REMUNERATION”.-

- (a) **in Section I, in the first para, after the words “managerial person or persons”, the words “or other director or directors” shall be inserted;**

*Amended Section I is “Remuneration payable by companies having profits: Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons **or other director or directors** not exceeding the limits specified in such section.”*

- (b) **in Section II -**

- (i) **after the words “managerial person”, wherever occurred, the words “or other director” shall be inserted;**

(ii) for Table (A), the following shall be substituted, namely -

<i>Where the effective capital (in rupees) is</i>	<i>Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person</i>	<i>Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director</i>
Negative or less than 5 crores.	60 lakhs	12 Lakhs
5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores.	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

(c) In Section III, -

- (i) after the words “managerial person”, wherever occurred, except in clause (i) of the proviso, the words “or other director” shall be inserted;
- (ii) after the words “managerial persons”, wherever occurred, the words “or other directors” shall be inserted;
- (iii) following explanation shall be inserted at the end, namely: -

“Explanation. - For the purposes of Section I, Section II and Section III, the term “or other director” shall mean a non-executive director or an independent director.”

Impact

With this Amendment the MCA has amended Schedule V of the Companies Act, 2013 pertaining to Remuneration by inserting the provisions w.r.t. the maximum limit of remuneration payable by companies to other directors (non-executive director or an independent director). Earlier the limit was only for managerial person.

For details:

http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf

3. Establishment of Central Scrutiny Centre (CSC) (Notification No: S.O.1257 (E), Dated March 18, 2021)

In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013, the Central Government hereby has established a Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the companies under the Companies Act, 2013 and the rules made thereunder which has come into force from March 23, 2021.

- The CSC shall function under the administrative control of the e-governance Cell of the Ministry of Corporate Affairs.

- It shall carry out scrutiny of the aforesaid forms and forward findings thereon, wherever required, to the concerned jurisdictional Registrar of Companies for further necessary action under the provisions of the Companies Act, 2013 and the rules made thereunder.
- It shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.

For details:

<http://www.egazette.nic.in/WriteReadData/2021/225985.pdf>

4. The Companies (Accounts) Amendment Rules, 2021, (Notification No: G.S.R. 205(E), Dated March 24, 2021) (Effective from April 01, 2021)

In exercise of the powers conferred by section 134 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the Companies (Accounts) Amendment Rules, 2021 to further amend the Companies (Accounts) Rules, 2014, namely:-

(i) In rule 3, in sub-rule (1) of the Companies (Accounts) Rules, 2014, the following proviso shall be inserted, namely:-

"Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled."

However, the MCA vide the Companies (Accounts) Second Amendment Rules, 2021, (Notification No: G.S.R. 247(E), Dated April 01, 2021) has postponed the mandatory applicability for maintaining the Books of Accounts by every Company in an accounting software which has a feature of recording audit trail (edit log) facility by one year.

It is now applicable from April 01, 2022 instead of April 01, 2021 notified earlier.

(ii) In Rule 8(5) after clause (x) of the Companies (Accounts) Rules, 2014, the two new clauses shall be inserted in the Board Report namely:

“(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.”

For details:

http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_13042021.pdf

http://www.mca.gov.in/Ministry/pdf/AccountsSecondAmendmentRules_13042021.pdf

5. The Companies (Audit and Auditors) Amendment Rules, 2021 (Notification No: G.S.R. 206 (E), Dated March 24, 2021 (Effective from April 01, 2021))

In exercise of the powers conferred by sections 139, 143, 147 and 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the Companies (Audit and Auditors) Amendment Rules, 2021, to further amend the Companies (Audit and Auditors) Rules, 2014, namely:—

In Rule 11 of the Companies (Audit and Auditors) Rules, 2014

- (i) The Clause (d) shall be omitted
- (ii) After Clause (d) following clauses shall be inserted namely:
 - (e) (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;
 - (ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
 - (iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.
- (f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.
- (g) Whether the company, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

Impact

With this Amendment MCA has deleted the requirement of reporting by the Auditor in his Audit Report regarding requisite disclosures w.r.t. holdings as well as dealings in Specified Bank Notes in the financial statements of the company.

Further, it has broadened the scope of reporting by the Auditors by adding more reporting requirements in the Audit Report.

For details:

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_13042021.pdf

6. The Companies (Audit and Auditors) Second Amendment Rules, 2021 (Notification No: G.S.R. 248(E), Dated April 01, 2021)

In exercise of the powers conferred by sections 139, 143, 147 and 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes The Companies (Audit and Auditors) Second Amendment Rules, 2021, to further amend the Companies (Audit and Auditors) Rules, 2014, namely: —

In the Companies (Audit and Auditors) Rules, 2014, in rule 11, in clause (g), for the words

"Whether the company", the words, figures and letters "Whether the company, in respect of financial years commencing on or after the 1st April, 2022," shall be substituted."

Impact

The MCA has amended rule 11 i.e. "Other Matters to be included in Auditors' report", clause (g) of the Companies (Audit and Auditors) Rules, 2014 which has earlier mandated that Auditor has to report in his Audit report starting from April 01, 2021 that if the Company is maintaining its Books of Accounts in an Accounting Software which has a feature of recording audit trail (edit log) facility or not.

This reporting is now applicable from April 01, 2022 instead of April 01, 2021 notified earlier.

For details:

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsSecondAmendmentRules_13042021.pdf

7. Amendments to Schedule III of the Companies Act, 2013, (Notification No: G.S.R. 207(E), Dated March 24, 2021 (Effective from April 01, 2021))

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013, the Central Government hereby makes further amendments in Schedule III to the said Act with effect from 1st day of April, 2021, to incorporate various additional disclosure requirements while preparing the financial statements of an entity which are covered under the three divisions of Schedule III of the Companies Act, 2013.

As per the amendment some of the Additional disclosures which are also required to be made:

- Disclosure of Shareholding of Promoters
- Trade Payables ageing schedule
- Reconciliation of the gross and net carrying amounts of each class of assets
- Trade Receivables ageing schedule
- Detailed disclosure regarding title deeds of Immovable Property not held in name of the Company.
- Disclosure regarding revaluation & Capital-Work-in Progress (CWIP).
- Intangible assets under development.
- Loans or Advances granted to promoters, directors, KMPs and the related parties
- Details of Benami Property held

- Reconciliation and reasons of material discrepancies, in quarterly statements submitted to bank and books of accounts.
- Disclosure where a company is a declared wilful defaulter by any bank or financial Institution
- Relationship with Struck off Companies
- Pending registration of charges or satisfaction with Registrar of Companies
- Compliance with number of layers of companies
- Disclosure of 11 Ratios
- Compliance with approved Scheme(s) of Arrangements
- Utilisation of Borrowed funds and share premium
- Undisclosed Income
- Disclosure regarding Corporate Social Responsibility
- Details of Crypto Currency or Virtual Currency

For details:

http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

8. **The MCA notified commencement date for Section 23 and 45 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 1303 (E) Dated March 24, 2021)**

The MCA has appointed **March 24, 2021** as the commencement date for Section 23 and 45 of the Companies (Amendment) Act, 2020 for implementation of changes brought by:

- (i) **Section 23 of the Companies (Amendment) Act, 2020 which seeks to amend Section 124(7) of the Companies Act, 2013 by imposing Penalty on Company and every officer of the Company instead of earlier notified fine for non-compliance of Section 124 of the Companies Act, 2013 w.r.t. Unpaid Dividend Account**

Amended Section 124(7)

"If a company fails to comply with any of the requirements of Section 124, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees."

- (ii) **Section 45 of the Companies (Amendment) Act, 2020 which seeks to amend Section 247(3) of the Companies Act, 2013 by imposing penalty on valuer instead of earlier notified fine for contravention of the provisions of section 247 or the rules made thereunder.**

Amended Section 247(3)

*"If a valuer contravenes the provisions of section 247 or the rules made thereunder, the valuer shall be **[liable to a penalty of fifty thousand rupees]**."*

For details:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_13042021.pdf

9. Finance Minister Smt. Nirmala Sitharaman launches Central Scrutiny Centre and IEPFA's Mobile App to leverage digital solutions to achieve Prime Minister's vision of 'Digitally empowered India', Dated March 25, 2021

Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman virtually launched Central Scrutiny Centre (CSC) and Investor Education and Protection Fund Authority's (IEPFA) Mobile App — two tech-enabled initiatives by Ministry of Corporate Affairs. These initiatives leverage to strengthen the Prime Minister's vision of 'Digitally Empowered India'.

Announcing the launch of new initiatives, Smt. Nirmala Sitharaman said, "Digital India is a campaign launched by the Government of India in order to ensure that the Government's services are made available to citizens electronically by making the country digitally empowered in the field of technology. These two initiatives would create a new corporate and investor friendly ecosystem. Going forward, MCA would bring in more tech-enabled services for ease of doing business and ease of living for the people."

For details:

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1707511>

10. MCA Update (April 01, 2021)

- "E-form INC-6" revised as per the Companies (Incorporation) Second Amendment Rules, 2021 is now available for filing.
- "CSR-1 Form related to registration of Entities for undertaking CSR Activities" is now available for filing as e-Form.

For details:

<http://www.mca.gov.in/MinistryV2/companyformsdownload.html>

SECURITIES LAWS AND CAPITAL MARKET

1. Master Circular on Surveillance of Securities Market

(SEBI Circular No. SEBI/HO/ISD/ISD/CIR/P/2021/22 dated March 01, 2021)

SEBI from time to time, has been issuing various circulars for effective surveillance of the securities market. In order to enable the users to have an access to all the applicable circulars at one place, the Master Circular on Surveillance of Securities Market has been prepared by SEBI. This Master Circular is a compilation of the circulars issued by Integrated Surveillance Department, which are operational as on date of this circular i.e. March 01, 2021. The list of applicable Circulars has been appended. In case of any inconsistency between the Master Circular and the applicable circulars, the content of the relevant circular shall prevail.

For details:

https://www.sebi.gov.in/legal/master-circulars/mar-2021/master-circular-on-surveillance-of-securities-market_49354.html

2. Code of Conduct & Institutional mechanism for prevention of Fraud or Market Abuse

(SEBI Circular No. SEBI/HO/MRD/DCAP/CIR/P/2021/23 dated March 03, 2021)

Brief of the Circular

Pursuant to the report of the Committee on Fair Market Conduct ('Committee'), set up inter-alia to recommend appropriate Institutional Mechanism to ensure accountability of the management / designated persons in case of negligence / failure, necessary changes have been carried out in SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations').

Based on the above, SEBI vide this circular provided that the Code of Conduct and Institutional Mechanism for prevention of fraud or market abuse shall be applicable to Stock Exchanges, Clearing Corporations and Depositories ('MIIs') also, on the lines of Regulation 9(1) to 9(4) of PIT Regulations.

Accordingly, MIIs shall do the following:

1. Formulate a Code of Conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with the PIT Regulations, by adopting the minimum standards set out in Schedule C to the PIT Regulations.
2. Managing Director (MD) / Chief Executive Officer (CEO) of the MII shall be obligated to frame the referred code of conduct. The Board of Directors may ensure the compliance by MD / CEO in this regard.

(It has been clarified that a MII, which is listed, is already required to adopt minimum standards set out in Schedule B of PIT regulations. Further, such MII shall adopt minimum standards as set out in Schedule B of PIT regulations with respect to trading in its own securities and in Schedule C with respect to trading in other securities.)

3. MII shall identify and designate a compliance officer to administer the aforesaid code of conduct.
4. The Board of Directors of MII, in consultation with the aforesaid compliance officer, shall specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include the position / designation as specified in the Regulation 9(4) of the PIT Regulations.

Further, MIIs shall put in place an Institutional Mechanism for prevention of fraud or market abuse covering the following:

1. MD / CEO of the MII shall put in place adequate and effective system of internal controls to ensure compliance with the regulations and circulars issued by the SEBI from time to time, to prevent fraud or market abuse by MII or its designated persons and immediate relatives of designated persons.
2. The Board of Directors of the MII shall ensure that the MD / CEO ensures compliance with the prescribed provisions. The compliance officer of the respective MII shall administer the internal controls to prevent fraud or market abuse by designated persons and immediate relatives of designated persons of the MII.
3. The Regulatory Oversight Committee of the MII shall review compliance with the provisions of this Circular at least once in a financial year and shall also verify that the systems for internal control are adequate and are operating effectively.
4. MII shall formulate written policies and procedures for inquiry in case of suspected fraud or market abuse by its designated persons and immediate relatives of designated persons, which shall be approved by its Board of Directors. Any enquiry / investigation against the designated persons and immediate relatives of designated persons of the MII may be undertaken under the supervision of Regulatory Oversight Committee comprising of PIDs and independent external expert with consideration of avoidance of conflict of interest, if any, so as to ensure maximum fairness and transparency.
5. MII shall initiate appropriate inquiry upon becoming aware of any illegal or unethical practices or transactions of suspected fraud or market abuse by its designated persons and immediate relatives of designated persons and promptly inform its Board of Directors of such suspected fraud or market abuse and results of the inquiry.
6. MII shall have an effective whistler-blower policy to enable stakeholders, including employees to freely communicate their concerns about illegal or unethical practices and report instances of fraud or market abuse or any suspicion of fraud or market abuse.

7. MII shall ensure that the policy framed provides for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who reports instances of fraud or market abuse or any suspicion of fraud or market abuse.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/code-of-conduct-and-institutional-mechanism-for-prevention-of-fraud-or-market-abuse_49374.html)

3. Circular on Mutual Funds

(SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/024 March 04, 2021)

Brief of the Circular

SEBI vide March 04, 2021 issued a circular on Mutual funds which inter-alia covers the following:

- procedure for change in controlling interest of asset management companies and issued guidelines for new sponsors of mutual funds. No change in the control of an AMC, directly or indirectly, can be made unless prior approval of the trustees and the SEBI is obtained, among other requirements. In addition, a written communication about the proposed change need to be sent to each unit holder and an advertisement need to be given in one English daily newspaper having nationwide circulation, and in a newspaper published in the language of the region where the head office of the mutual fund is situated. Besides, unit holders need to be given an option to exit on the prevailing Net Asset Value (NAV) without any exit load within a time period of not less than 30 calendar days from the date of communication,
- The new sponsor will have to give an undertaking to the SEBI as well as unit holders taking full responsibility of the management and the administration of the schemes, including matters relating to the reconciliation of accounts. In case the applicant proposing to take the control of an AMC is not an existing sponsor of a mutual fund registered with SEBI, it would have to apply to the regulator for approval of taking over control of an existing AMC. Also, the new sponsor will have to assume the trusteeship of the assets and liabilities of the schemes, including outstanding borrowings, unclaimed dividends and unclaimed redemptions, if any, as well as take all responsibilities and obligations relating to investor grievances.
- In case of taking over of the schemes by an existing mutual fund registered with SEBI, the draft letter should also include the condensed financial information of all the schemes in prescribed format and the amount of unclaimed redemption and dividend and also the procedure for claiming such amount by the unit holders.
- "In case of any other situation like indirect change in control of the AMC or indirect change in the promoters of the sponsor(s), which was beyond the control of the sponsor(s), etc., the mutual fund should provide the full details of the information to the board for further course of action
- Apart from procedure for change in control of AMCs (Asset Management Companies), the SEBI has come out with additional benchmarks for standardisation of mutual fund schemes. While seeking the SEBI's approval for change in the control of the AMC, the mutual fund handing over the control to

another person should also file the draft letter to be sent to the unit holders along with draft advertisement to be published in the newspaper.

- For the sake of standardisation, a similar return in Indian rupee and by way of CAGR must be shown for the all equity schemes (benchmark Sensex or Nifty), all debt schemes having maturity up to one year and Arbitrage Fund, retirement fund and children's fund, among others, apart from the scheme benchmarks. These disclosures should form part of the statement of additional information and all advertisements of mutual funds.
- The annual report containing accounts of the AMC should be displayed on the websites of the mutual funds immediately after approval in Annual General Meetings within four months from the date of closing of the financial year. It should also be mentioned in the annual report of mutual fund schemes that the unit holders, if they so desire, may request for the annual report of the AMC. Further, the annual report of AMCs should be displayed on their websites in machine readable format.
- With regard to disclosures of votes cast by mutual funds, AMCs need to be required to make disclosure of votes cast on their website on a quarterly basis, within 10 working days from the end of the quarter. A detailed report in this regard along with summary should also be disclosed on their websites. Further, AMCs should provide the web link in their annual reports regarding the disclosure of voting details.
- Employees of AMCs may participate in private placement of equity by any company subject to there being no conflict with the interest of investors of the mutual fund and disclosure of such investments are made to the Compliance Officer immediately.
- The SEBI has also made changes in dividend distribution procedure as well as updation of Scheme Information Document (SID) and Key Information Memorandum (KIM). It has been decided that non-convertible preference shares should be treated as debt instruments and hence investment restrictions as applicable on debt instruments as specified in mutual fund norms should also be applicable to such shares.
- Under its go green initiative, AMCs need to submit Monthly Cumulative Report (MCR) to the regulator through e-mail instead of physical mode.

4. Guidelines for votes cast by Mutual Funds

(SEBI Circular No. SEBI/HO/IMD/DF4/CIR/P/2021/29 dated March 05, 2021)

Brief of the Circular

SEBI, vide its Circulars dated March 15, 2010, March 24, 2014, August 10, 2016 and December 24, 2019, had prescribed guidelines for votes cast by Mutual Funds. In order to further improve transparency as well as encourage Mutual Funds/AMCs to diligently exercise their voting rights in best interest of the unit holders and based on the deliberations in Mutual Fund Advisory Committee (MFAC), SEBI has prescribed the following additional guidelines.

- 1) Mutual Funds including their passive investment schemes like Index Funds, Exchange Traded Funds etc. shall, w.e.f. April 01, 2021, be required to cast votes compulsorily in respect of the following resolutions:
 - Corporate governance matters, including changes in the state of incorporation, merger and other corporate restructuring, and anti-takeover provisions.
 - Changes to capital structure, including increases and decreases of capital and preferred stock issuances.
 - Stock option plans and other management compensation issues.
 - Social and corporate responsibility issues.
 - Appointment and Removal of Directors.
 - Any other issue that may affect the interest of the shareholders in general and interest of the unit-holders in particular.
 - Related party transactions of the investee companies (excluding own group companies).

(For this purpose, “Related Party Transactions” shall have same meaning as assigned to them in clause (zc) of Sub-Regulation (1) of Regulation (2) of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.)

- 2) Mutual Funds shall also compulsorily be required to cast their votes with effect from April 01, 2022 for all remaining resolutions other than above.
- 3) In case of the Mutual Funds having no economic interest on the day of voting, it may be exempted from compulsorily casting of votes.
- 4) The vote shall be cast at Mutual Fund Level. However, in case Fund Manager/(s) of any specific scheme has strong view against the views of Fund Manager/(s) of the other schemes, the voting at scheme level shall be allowed subject to recording of detailed rationale for the same.
- 5) Fund Managers/Decision makers shall submit a declaration on quarterly basis to the Trustees that the votes cast by them have not been influenced by any factor other than the best interest of the unit holders. Further, Trustees in their Half Yearly Trustee Report to SEBI, shall confirm the same.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/circular-on-guidelines-for-votes-cast-by-mutual-funds_49405.html

5. Rollout of Legal Entity Template

(SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2021/31 dated March 10, 2021)

Background

SEBI vide circular no. CIR/MIRSD/66/2016 dated July 21, 2016 on Operationalization of Central KYC Records Registry (CKYCR) directed the Registered Intermediaries (RI) to upload the KYC records with CKYCR, in respect of all individual accounts opened on or

after August 01, 2016. Changes to the template, as and when required are released by CERSAI.

Brief of the Circular

SEBI vide this circular has extended CKYCR to Legal Entities (LE) as well. Accordingly, RIs are directed to upload the KYC records of LE accounts opened on or after April 01, 2021 on to CKYCR in terms of Rule 9 (1A) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005.

The LE Template and the Annexure are attached as Annexure “A” and Annexure “B” respectively to this circular.

RIs shall ensure that in case of LE accounts opened prior to April 1, 2021, the KYC records are uploaded on to CKYCR when the updated KYC information is obtained/received from the client. RIs shall ensure that during such receipt of updated information, the clients’ KYC details are migrated to current Client Due Diligence (CDD) standards.

Further, to ensure that all existing KYC records of individual clients are incrementally uploaded on to CKYCR, RIs shall upload the KYC records pertaining to accounts of individuals opened prior to August 01, 2016, as and when updated KYC information is obtained/received from the client.

The provisions of this circular are not applicable to Foreign Portfolio Investors (FPIs).

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/rollout-of-legal-entity-template_49461.html

6. Review of norms regarding investment in debt instruments with special features, and the valuation of perpetual bonds.

(SEBI Circular No. SEBI/HO/IMD/DF4/CIR/P/2021/032 dated March 10, 2021)

SEBI norms:

- Reviews investment norms of instruments with special features such as AT1 bonds and Tier 2 bonds.
- Maturity of all perpetual bonds shall be treated as 100 yrs from the issuance date for the purpose of valuation.
- Close-ended debt schemes shall not invest in perpetual bonds.
- MF under all schemes to own up to 10% of such instruments issued by a single issuer.
- An MF scheme can invest up to 10% of its NAV of debt portfolio of the scheme in such instruments and MF can invest up to 5% of its NAV of the debt portfolio of the scheme by a single issuer.
- The above investment limit for an MF scheme shall be within the overall limit for debt instruments issued by a single issuer.
- Investments in excess of the limits may be grandfathered. Such an MF scheme may not make any fresh investments until investments come within specified limits.

- This circular shall come into effect from April 01, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/review-of-norms-regarding-investment-in-debt-instruments-with-special-features-and-the-valuation-of-perpetual-bonds_49463.html

7. Clarification on the valuation of bonds issued under Basel III framework.

(SEBI Circular No. SEBI/HO/IMD/DF4/CIR/P/2021/034 dated March 22, 2021)

SEBI, vide its circular No. SEBI/HO/IMD/DF4/CIR/P/2021/032 dated March 10, 2021, had inter alia stated that the maturity of all perpetual bonds shall be treated as 100 years from the date of issuance of the bond for the purpose of valuation.

Based on the representation of the Mutual Fund Industry to consider a glide path for implementation of the policy and request of other stakeholders, SEBI has decided that the deemed residual maturity for the purpose of valuation of existing as well as new bonds issued under Basel III framework shall be as below:

<i>Time Period</i>	<i>Deemed Residual Maturity of Basel III AT-1 bonds (Years)</i>	<i>Deemed Residual Maturity of Basel III Tier 2 Bonds (Years)</i>
Till March 31, 2022	10	10 years or Contractual Maturity whichever is earlier
April 01, 2022 – September 30, 2022	20	Contractual Maturity
October 01, 2022 – March 31, 2023	30	Contractual Maturity
April 01, 2023 onwards	100	Contractual Maturity

8. SEBI (Annual Report) Rules, 2021

(Ministry of Finance vide Notification no. G.S.R.176 (E) dated March 12, 2021)

- The Ministry of Finance vide gazette notification dated March 12, 2021 has made the SEBI (Annual Report) Rules, 2021. As per the notification, SEBI will follow a new format for its annual report as part of efforts to have a "true and full account" of its activities, policies and programmes during a financial year.
- Under the new rules notified by the finance ministry, source of income and expenditure would be part of the annual report as against the existing provision of presenting annual account statements separately.
- The report has to be submitted within 90 days after the end of a financial year.
- The new format comprises 13 chapters on different topics, including equity markets, commodity derivatives markets, fund management activity (Mutual Funds, Alternative Investment Funds, Collective Investment Schemes, Real Estate Investment Trusts and Infrastructure Investment Trusts) and corporate governance and corporate restructuring.

For details:

https://www.sebi.gov.in/legal/rules/mar-2021/sebi-annual-report-rules-2021_49611.html

9. Streamlining the process of IPOs with UPI in ASBA and redressal of investor grievances

(SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/2480/1/M dated March 16, 2021)

Background

SEBI vide circular dated November 01, 2018, introduced the use of Unified Payment Interface (UPI) as an additional payment mechanism with Application Supported by Blocked Amount (ASBA) for Retail Individual Investors along with timelines for listing within six days of closure of issue (T+6). While in Phase 1 it was operational but in Phase II with effect from July 01, 2019, vide SEBI circular dated June 28, 2019, UPI was mandated for applications by Retail Individual Investors submitted through Intermediaries.

Subsequently, SEBI vide circular dated November 08, 2019, extended the timeline for implementation of Phase II. The said circular had prescribed the detailed timelines of T+6 listing, compliance, reconciliation process and reporting standards to be followed by Intermediaries.

Brief of the Circular

The SEBI proposed to streamline the Initial Public Offering (IPO) process with unified payment interface (UPI) in Application Supported by Blocked Amount (ASBA) and redressal of investor grievances.

The Circular was issued addressing all the Registered Merchant Bankers, Recognized Stock Exchanges, Registered Registrars to an Issue, and Share Transfer Agents Self-Certified Syndicate Banks.

Streamlining the IPO Process

- In terms of Regulations 23(2), 23(4), 23(5), 271, Schedules I & II of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and SEBI Circular No. dated November 8, 2019, the Lead Manager is the nodal entity for any issues arising out of a public issuance process and the timelines, processes, and compensation policy defined in this circular shall form part of the agreement(s) that shall be signed among the intermediaries. Lead Managers shall ensure the adherence of timelines, processes, and compensation policy by intermediaries.
- In order to ensure timely response with regard to IPO process, SCSBs shall identify the nodal officer for IPO applications processed through UPI as a payment mechanism and submit the details to SEBI within 7 working days from the issuance of this circular. For ease of reference, the details of nodal officers of SCSBs shall be hosted on the SEBI Website. For ensuring timely information to investors, SCSBs shall send SMS alerts for mandate block and unblock.

- For ease of doing business, Sponsor Banks shall host a web portal for intermediaries (closed user group) from the date of IPO opening till the date of listing with details of statistics of mandate blocks/unblocks, performance of Apps and UPI Handles, down-time/network latency (if any) across intermediaries and any such processes having an impact/bearing on the IPO bidding process.

Reinitiations of UPI Bids

To avoid duplication, the facility of re-initiation provided to Syndicate Members shall preferably be allowed only once per bid/batch and as deemed fit by the concerned Stock Exchange, after bid closure time.

Further, the Circular has provided the provisions regarding:

- a. Unblocking of UPI Mandates
- b. Cancelled/Withdrawn/Deleted applications

The new rule would come into force for IPOs opening on or after May 01, 2021.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/streamlining-the-process-of-ipos-with-upi-in-asba-and-redressal-of-investors-grievances_49522.html

10. SEBI (Portfolio Managers) (Amendment) Regulations, 2021

SEBI (Investment Advisers) (Second Amendment) Regulations, 2021

SEBI (Research Analysts) (Amendment) Regulations, 2021

[SEBI Notifications Dated March 16, 2021]

SEBI approved amendment to SEBI (Portfolio Managers) Regulations, 2020 (PMS Regulations), SEBI (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014 to recognise the Post Graduate Program in Securities Market of not less than one year offered by National Institute of Securities Markets (NISM) as eligible qualification for Portfolio Managers, Investment Advisers and Research Analysts. SEBI also approved amendment to PMS Regulations with respect to NISM certification requirements and provides that a fresh NISM certification shall be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with the certification requirements.

For details:

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-portfolio-managers-amendment-regulations-2021_49537.html

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-research-analysts-amendment-regulations-2021_49538.html

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-investment-advisers-second-amendment-regulations-2021_49542.html

11. Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs)

(SEBI Circular No. SEBI/HO/MRD1/DTCS/CIR/P/2021/33 dated March 22, 2021)

The SEBI has modified the framework of Business Continuity Plan (BCP) and Disaster Recovery (DRS) of Market Infrastructure Institutions (MIIs).

With advancement in technology and improved automation of processes, it was felt that the extant framework needs to be re-examined with a view to reducing the time period specified for moving from Primary Data Centre (PDC) to DRS.

The modified framework for BCP and DR *inter-alia* covers the following:

- It has been provided that the Stock Exchanges, Clearing Corporations and Depositories shall have in place BCP and DRS so as to maintain data and transaction integrity.
- Apart from DRS, all MIIs including Depositories shall also have a Near Site (NS) to ensure zero data loss.
- MIIs should develop systems that do not require configuration changes at the end of trading members/clearing members/depository participants for the switchover from the PDC to DRS. Further, MIIs should test such switchover functionality by conducting unannounced live trading from its DRS for at least 1 day every six months. Unannounced live trading from DRS of MIIs shall be done at a short notice of 45 minutes after 90 days from the date of this circular.
- In the event of disruption of any one or more of the 'Critical Systems' (as defined below), the MII shall, within 30 minutes of the incident, declare that incident as 'Disaster' and take measures to restore operations including from DRS within 45 minutes of the declaration of 'Disaster'. Accordingly, the Recovery Time Objective(RTO)- the maximum time taken to restore operations of 'Critical Systems' from DRS after declaration of Disaster- shall be 45 minutes, to be implemented within 90 days from the date of the circular. 'Critical Systems' for an Exchange/ Clearing Corporation shall include Trading, Risk Management, Collateral Management, Clearing and Settlement and Index computation. 'Critical Systems' for a Depository shall include systems supporting settlement process and inter-depository transfer system.
- MIIs to also ensure that the Recovery Point Objective (RPO) - the maximum tolerable period for which data might be lost due to a major incident- shall be 15 minutes.
- Solution architecture of PDC and DRS / NS should ensure high availability, fault tolerance, no single point of failure, zero data loss, and data and transaction integrity.
- Adequate resources (with appropriate training and experience) should be available at all times to handle operations at PDC, NS or DRS, as the case may be, on a regular basis as well as during disasters.
- Considering the above, Stock Exchanges, Clearing Corporations and Depositories are advised to submit their revised BCP-DR policy to SEBI within 3 months from the date of this circular.

For details:

<https://www.sebi.gov.in/legal/circulars/mar-2021/guidelines-for-business-continuity-plan-bcp-and-disaster-recovery-dr-of-market-infrastructure-institutions-miis-49601.html>

12. Review of delivery default norms

(SEBI Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2021/35 dated March 23, 2021)

Brief of the Circular

SEBI issued a circular for review of delivery default in case of derivative segment. SEBI in consultation with clearing corporations came out with the following delivery default norms, which will be effective from the first trading day of May 2021.

- In agricultural and non-agricultural commodities, the penalty for delivery default by seller will now be 4 % and 3 % of the settlement price plus replacement cost, respectively.
- The provisions for levy of penalty on delivery default by the buyer will be put in place by the clearing corporations.
- With regard to futures contracts on agri-commodities, penalty on seller in case of delivery default would be 4 % of settlement price along with replacement cost (difference between settlement price and average of three highest of the last spot prices of 5 succeeding days after the commodity pay-out date, if the average price so determined is higher than settlement price, else this component will be zero).
- In case of futures contracts on non-agri commodities, the penalty would be 3 % of settlement price along with replacement cost.
- In respect of norms for apportionment of penalty, at least 1.75 % of settlement price will be deposited in the Settlement Guarantee Fund (SGF) of the clearing corporation, while up to 0.25 % of settlement price may be retained by such corporation towards administration expenses. It further said 1 % of settlement price in case of non-agri goods or 2 % of settlement price in case of agri goods plus replacement cost will go to a buyer who was entitled to receive the delivery.
- In addition, clearing corporation may have an appropriate deterrent mechanism including penal/disciplinary action in place against intentional /wilful delivery default.
- In the case of default by a buyer in both agricultural and non-agricultural commodities, clearing corporation need to review the loss incurred by the non-defaulting party, i.e. seller, at its sole discretion, and accordingly, levy a penalty on the defaulting buyer. However, such penalty should be within the overall cap of delivery margins collected by the clearing corporations, from such defaulting buyer.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/review-of-delivery-default-norms_49610.html

13. Prior Approval for Change in control: Transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control
(SEBI Circular No. SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated March 25, 2021)

Background

SEBI in its circular in 2011, addressed to stock exchanges/ depositories and intermediaries, had specified the procedure for seeking prior approval for change in control from SEBI. Now, the SEBI has provided some clarifications on change in control criteria for market intermediaries and requirement for seeking its prior approval.

Brief of the Circular

The following is clarified with respect to transfer of shareholding among immediate relatives and transmission of shareholding:

- 1. Transfer /transmission of shareholding in case of unlisted body corporate intermediary**
 - With regard to unlisted body corporate intermediary, transfer of shareholding among immediate relatives would not be construed as change in control.
 - Transfer of shareholding by way of transmission to immediate relative or not, shall not result into change in control.
 - Immediate relatives include any spouse of that person, or any parent, brother, sister or child of the person or of the spouse.
- 2. Transfer /transmission of shareholding in case of a proprietary firm type intermediary:**
 - In case of an intermediary being a proprietary concern, the transfer or bequeathing of the business/capital by way of transmission to another person is a change in the legal formation or ownership and is hence a change in control.
 - The legal heir or transferee in such cases is required to obtain prior approval and thereafter fresh registration needs to be obtained in the name legal heir/ transferee.
- 3. Transfer /transmission of ownership interest in case of partnership firm type intermediary:**
 - For transfer of ownership interest in case of partnership firm with more than two partners, inter-se transfer amongst the partners would not be construed to be change in control.
 - Where the partnership firm consists of two partners only, the same would stand as dissolved upon the death of one of the partners.
 - However, if a new partner is inducted in the firm, it would be considered as a change in control, requiring fresh registration and prior approval of SEBI.
 - Where the partnership deed contains a clause that in case of death of a partner, the legal heir of deceased partner be admitted, then the legal heir

may become the partner of the partnership firm. In such a scenario, the partnership firm is reconstituted. Bequeathing of partnership right to legal heir by way of transmission will not be considered as change in control.

- Incoming entities or shareholders becoming part of controlling interest in the intermediary pursuant to transfer of shares from immediate relative or transmission of shares, whether immediate relative or not, need to satisfy the fit and proper person criteria stipulated in Schedule II of SEBI (Intermediaries) Regulations, 2008.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/prior-approval-for-change-in-control-transfer-of-shareholdings-among-immediate-relatives-and-transmission-of-shareholdings-and-their-effect-on-change-in-control_49663.html

14. Transfer of business by SEBI registered intermediaries to other legal entity (SEBI Circular No. SEBI/HO/MIRSD/DOR/CIR/P/2021/46 dated March 26, 2021)

Brief of the Circular

SEBI has put in place a new registration framework for registered intermediaries transferring business to other legal entity. SEBI has been receiving registration applications pursuant to transfer of business (SEBI regulated business activity) from one legal entity which is a SEBI registered intermediary (transferor) to another legal entity (transferee).

In this regard, SEBI clarified that –

- The transferee shall obtain fresh registration from SEBI in the same capacity before the transfer of business if it is not registered with SEBI in the same capacity. SEBI will issue new registration number to transferee different from transferor's registration number if "Business is transferred through regulatory process (pursuant to merger / amalgamation / corporate restructuring by way of order of primary Regulator/Govt./NCLT, etc.) or non-regulatory process (as per private agreement /MOU pursuant to commercial dealing / private arrangement) irrespective of transferor continues to exist or ceases to exist after the said transfer."
- In case of change in control pursuant to both regulatory process and non-regulatory process, prior approval and fresh registration will be obtained. While granting fresh registration to the same legal entity pursuant to change in control, the same registration number will be retained.
- If the transferor ceases to exist, its certificate of registration will be surrendered.
- In case of complete transfer of business by the transferor, it will surrender its certificate of registration.
- In case of partial transfer of business by the transferor, it can continue to hold a certificate of registration.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/transfer-of-business-by-sebi-registered-intermediaries-to-other-legal-entity_49678.html

15. Guidelines pertaining to Surrender of FPI Registration

(SEBI Circular No. SEBI/ HO/ IMD/ FPI&C/ CIR/ P/ 2021/ 045 dated March 30, 2021)

Background

The SEBI issued the guidelines pertaining for Surrender of Foreign Portfolio Investors ("FPIs") Registration. In terms of SEBI (Foreign Portfolio Investors) Regulations, 2019, any FPI ('applicant') desirous of surrendering the certificate of registration may request for such surrender to the Designated Depository Participants ("DDPs").

Operational Guidelines for FPIs and DDPs issued vide SEBI circular No. IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019, prescribes the procedural requirements to be followed by the DDP for processing such requests.

Brief of the Circular

In order to have a uniform market practice for processing of such surrender requests, DDPs shall adhere to the various additional guidelines.

Firstly, while making an application to SEBI for seeking "No Objection Certificate" (NOC) for surrender, the DDP shall confirm the Accounts held by the applicant in the capacity of FPI have NIL balance and are blocked for further transactions. Further, the CP code of the FPI is also blocked. There are no dues/ fees pending towards SEBI. There are no actions/ proceedings pending against the said applicant with respect to the FPI.

Secondly, DDP shall ensure that all the accounts (including bank account and securities account) held by the applicant in the capacity of FPI are closed; and the CP code is deactivated within 10 working days from the date of receipt of NOC from SEBI.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/circular-on-guidelines-pertaining-to-surrender-of-fpi-registration_49687.html

16. SEBI (Underwriters) (Repeal) Regulations, 2021

(SEBI Notification No. SEBI/LAD-NRO/GN/2021/15 dated March 30, 2021)

The SEBI vide gazette notification dated March 30, 2021 has made the SEBI (Underwriters) (Repeal) Regulations, 2021 to repeal the SEBI (Underwriters) Regulations, 1993. These Regulations shall come into force on the date of their publication in the Official Gazette i.e March 30, 2021. On and from the commencement of these regulations, the SEBI (Underwriters) Regulations, 1993 shall stand repealed and the certificate of registration granted to any person under it shall deemed to be surrendered.

For details:

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-underwriters-repeal-regulations-2021_49746.html

17. SEBI (Merchant Bankers) (Amendment) Regulations, 2021

(SEBI Notification dated March 30, 2021)

The SEBI vide gazette notification dated 30th March, 2021 has issued the SEBI (Merchant Bankers) (Amendment) Regulations, 2021. The amendments inter-alia covers the following:

- **The following new Definitions have been inserted in Regulation 2, namely–**
 - (g) **“Underwriter”** means a person who engages in the business of underwriting of an issue of securities of a body corporate.
 - (h) **“Underwriting”** means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.

The following new clause (g) has been inserted in Regulation 9A (1), Conditions of registration

(g) Where the merchant banker is acting as an underwriter, it shall enter into a valid agreement with the body corporate on whose behalf it is acting as an underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

- **The following new sub-regulation has been inserted in Regulation 14, after sub-regulation 3 namely–**

Maintenance of books of account, records etc.

(4) Every merchant banker acting as an underwriter shall also maintain the following records with respect to—

- (i) details of all agreements entered with a body corporate on whose behalf it is acting as an underwriter;
- (ii) total amount of securities of each body corporate subscribed to in pursuance of an agreement;
- (iii) statement of capital adequacy requirements;
- (iv) such other records as may be specified by the Board from time to time.

- **The following new regulations have been inserted after regulation 22, namely–**

22A - Agreement with clients

The amendment provides that every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter and the said agreement shall, amongst other things, provide for the following, namely—

- i. The period for which the agreement shall be in force;
- ii. The allocation of duties and responsibilities between the underwriter and the client
- iii. The amount of underwriting obligations;

- iv. The period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
- v. The amount of commission or brokerage payable to the underwriter;
- vi. Details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

22B - General responsibilities of a merchant banker as an underwriter

- 1) A merchant banker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under the agreement for underwriting entered with client.
- 2) At any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.
- 3) Every merchant banker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement for underwriting, shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.

- **The following new clauses have been inserted in schedule III, after clause 32 namely—**

Code of Conduct for Merchant Bankers

- 33. A merchant banker or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.
- 34. A merchant banker acting as an underwriter shall not make any statement, either oral or written, which would misrepresent—
 - (a) the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company;
 - (b) his underwriting commitment.
- 35. A merchant banker acting as an underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other entities acting as underwriters carrying on the business of underwriting or likely to place such other underwriters in a dis-advantageous position in relation to the underwriter while competing for, or carrying out any assignment.

For details:

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-merchant-bankers-amendment-regulations-2021_49748.html

18. SEBI (Stock Brokers) (Amendment) Regulations, 2021

(SEBI Notification dated March 30, 2021)

The SEBI vide gazette notification dated 30th March, 2021 has issued the SEBI (Stock Brokers) (Amendment) Regulations, 2021. The amendments inter-alia covers the following:

- **The following new Definitions have been inserted in Regulation 2, namely–**
 - (i) **“Underwriter”** means a person who engages in the business of underwriting of an issue of securities of a body corporate.
 - (j) **“Underwriting”** means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.
 - (k) **“issue”** means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through a merchant banker.

- **The following new sub-regulation has been inserted in regulation 3, after sub-regulation 3 namely–**

Registration of Stock Brokers

- (4) Every stock broker holding a valid certificate of registration shall be entitled to act as an underwriter.

- **The following new clause has been inserted in Regulation 9, after clause (g) namely–**

Conditions of Registration

- h. Every stock broker who act as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.
- i. Every Stock Broker shall be entitled to act as an underwriter only out of its own net worth/funds as may be prescribed from time to time.”
- **The following new sub-regulation has been inserted in regulation 17, after sub-regulation 3 namely–**

General Obligations and Responsibilities

To maintain proper books of account, records, etc.

- (4) (1) Subject to the provisions of any other law, every Stock Broker acting as an underwriter shall keep and maintain the following books of account and documents, namely: —
 - (a) In relation to an underwriter being a body corporate—
 - i. a copy of the balance sheet and profit and loss account as at the end of each accounting period;
 - ii. a copy of the auditor’s report on the accounts for that period;

- (b) In relation to an underwriter not being a body corporate—
 - (i) records in respect of all sums of money received and expended by them and the matters in respect of which the receipt and expenditure take place; and
 - (ii) their assets and liabilities.
- (2) Every Stock Broker acting as an underwriter shall also maintain the following records with respect to —
 - a) details of all agreements
 - b) total amount of securities of each body corporate subscribed to in pursuance of an agreement
 - c) such other records as may be specified by the Board for underwriting.

Agreement with clients

- (5) Every stock broker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as underwriter and the said agreement shall, amongst other things, provide for the following, namely: —
 - a) the period for which the agreement shall be in force;
 - b) the allocation of duties and responsibilities between the underwriter and the client
 - c) the amount of underwriting obligations;
 - d) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
 - e) the amount of commission or brokerage payable to the underwriter;
 - f) details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

General responsibilities of a Stock Broker as an underwriter

- (6) (a) Every Stock Broker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.
- (b) The total underwriting obligations under all the agreements shall not exceed twenty times of the net worth.
- (c) Every Stock Broker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.”

- **The following new clause has been inserted in schedule II, after clause D namely–**

Code of Conduct for Stock Brokers

“E – Duty as an underwriter

In addition to duties specified above, the Stock Broker while acting as an Underwriter shall comply with following:

1. A Stock Broker shall make all efforts to protect the interests of its clients.
2. A Stock Broker shall ensure that it and its personnel will act in an ethical manner in all its dealings with a body corporate making an issue of securities (hereinafter referred to in the Schedule as “the issuer”).
3. A Stock Broker shall not make any statement, either oral or written, which would misrepresent—
 - a. the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company;
 - b. his underwriting commitment.
4. A Stock Broker shall avoid conflict of interest and make adequate disclosure of its interest.
5. A Stock Broker shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.
6. A Stock Broker shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as underwriter which would impair its ability to render fair, objective and unbiased services.
7. A Stock Broker shall not divulge to other issuer, press or any party any confidential information about its issuer company, which has come to its knowledge and deal in securities of any issuer company without making disclosure to the Board and also to the Board of directors of the issuer company.
8. A Stock Broker shall ensure that any change in registration status/any penal action taken by board or any material change in financials which may adversely affect the interests of clients/investors is promptly informed to the clients and any business remaining outstanding is transferred to another registered person in accordance with any instructions of the affected clients/investors.
9. (a) A Stock Broker or any of its employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of its interest including its long or short position in the said security has been made, while rendering such advice.

(b) In case, an employee of a Stock Broker is rendering such advice, the Stock Broker shall ensure that he shall disclose its interest, the interest of dependent family members and that of the employer including their long or short position in the said security, while rendering such advice.

10. A Stock Broker or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.
11. A Stock Broker acting as an underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other entities acting as underwriters carrying on the business of underwriting or likely to place such other underwriters in a dis-advantageous position in relation to the underwriter while competing for, or carrying out any assignment.
12. An underwriter shall not be party to or instrumental for—
 - (a) creation of false market;
 - (b) price rigging or manipulation; or
 - (c) passing of unpublished price sensitive information in respect of securities which are listed or proposed to be listed in any stock exchange to any person or intermediary.

For details:

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-stock-brokers-amendment-regulations-2021_49747.html

19. Reduction in unblocking/refund of application money

(SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/47 dated March 31, 2021)

Brief of the Circular

SEBI has reduced the timelines for refund of investors' money to 4 working days in case of non-receipt of minimum subscription and the issuer failing to obtain listing or trading permission from the stock exchanges. The timelines have been reduced after taking into consideration that Application Supported by Blocked Amount (ASBA) has been mandated for all applicants in public issues, the application money is not transferred but only blocked in the account of the investor and is debited only upon allotment and unblocked if there is no/part allotment. Further, post introduction of UPI mechanism in public issues, intermediaries are responsible to compensate the investors for any delay in unblocking of amounts in the ASBA Accounts exceeding four working days from the bid/issue closing date.

At present, in case of non-receipt of minimum subscription, the issuer is mandated to refund all the application money within 15 days from the closure of the issue. If the issuer fails to obtain listing or trading permission from the stock exchanges where the securities were to be listed, it shall refund the entire money received within 7 days of receipt of intimation from the exchanges rejecting the application. These timelines have now been reduced to four days.

For details:

https://www.sebi.gov.in/legal/circulars/mar-2021/reduction-in-unblocking-refund-of-application-money_49722.html

INDIRECT TAX

Goods and Services Tax

1. Clarification on Refund related issues (Circular No. 147/03/2021 – GST, dated March 12, 2021)

The Board while issuing clarification in respect of refund claim by recipient of Deemed Export Supply said that previous circular of 2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file a refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger. There is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated November 18, 2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient.

For details:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_147.pdf

2. Notification to waive penalty for non-compliance of capturing dynamic QR code in GST Invoice (Notification No. 06/2021 – Central Tax, dated March 30, 2021)

CBIC has further extended the waiver of penalty on non-implementation of dynamic Quick Response (QR) code by registered persons having aggregate turnover exceeding Rs. 500 crore till June 30, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-06-central-tax-english-2021.pdf>

Customs

1. Common Customs Electronic Portal (Notification No. 33/2021 – Customs (NT), dated March 29, 2021)

CBIC notified the common portal accessible through uniform resource locator (URL) <https://www.icegate.gov.in> as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the Customs Act, 1962.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt33-2021.pdf>

2. Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021 [Notification No. 34/2021 – Customs (NT), dated March 29, 2021]

CBIC made regulations to amend the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. The amended regulations is called the Bill of

Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt34-2021.pdf>

3. Bill of Entry (Forms) Amendment Regulations, 2021 (Notification No. 35/2021 – Customs (NT), dated March 29, 2021)

These regulations are called the Bill of Entry (Forms) Amendment Regulations, 2021. They shall come into force on the date of their publication in the Official Gazette. In case of a customs port (other than inland container depot and air freight station) at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vessel carrying the goods arrives at the customs port: Provided that the authorised person shall file the bill of entry before the end of the day (including holidays) of said arrival of the vessel where the goods are consigned from any of the countries mentioned below:- (i) Bangladesh ; (ii) Maldives ; (iii) Myanmar ; (iv) Pakistan ; (v) Sri Lanka.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt35-2021.pdf>

4. Clarifications on the legislative changes in Section 46 of Customs Act, 1962 (Circular No. 08/2021 – Customs, dated March 29, 2021)

Amendments in Section 46 of the Customs Act, 1962 introduced through the Finance Act, 2021 facilitates pre-arrival processing and assessment of Bills of Entry (BE) by mandating their advance filing thus leading to significant decrease in the Customs clearance time. The amended Section 46 requires an importer to file a BE before the end of the day (including holidays) preceding the day of arrival of the vessel/aircraft/vehicle carrying the imported goods at a Customs port/station at which such goods are to be cleared for home consumption or warehousing. The BE can now be filed anytime from 30 days prior to the expected arrival of the aircraft or vessel or vehicle up to the end of day preceding the day of such arrival.

For details:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-08-2021.pdf>

DIRECT TAX

1. Residential status of certain individuals under Income-tax Act, 1961 (Circular No. 2 Dated March 3, 2021)

Section 6 of the Income-tax Act, 1961 (the Act) contains provisions relating to determination of residency of a person. The status of an individual, as to whether he is resident in India or a non-resident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year.

The Board has received various representations requesting for relaxation in determination of residential status for previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights. The matter has been examined by the Board and following facts have emerged:

1. Short stay will not result into Indian residency
2. Possibilities of dual non-residency in case of general relaxation
3. Tie breaker rule as per Double Taxation Avoidance Agreement (DTAA)
4. Employment income taxable only subject to conditions as per DTAA
5. Credit for the taxes paid in other country
6. International Experience

Thus, it can be seen that OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAA, there does not appear a possibility of the double taxation of the income for PY 2020-21. The possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAA. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, the Board shall examine that,

- i. whether any relaxation is required to be provided in this matter; and
- ii. if required, then whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.

Therefore, if any individual is facing double taxation even after taking into consideration the relief provided by the respective DTAA, he may furnish the information in Form -NR annexed to this circular by 31st March, 2021. This form shall be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation).

For details:

<https://www.incometaxindia.gov.in/communications/circular/residency-circular-02-of-2021.pdf>

2. Circular under section 10 of the Direct Tax Vivad se Vishwas Act, 2020 (Circular No. 3 Dated March 4, 2021)

Vivad se Vishwas Act, 2020 provides that the designated authority 'DA' shall pass a determination order within 15 days from the date of receipt of the declaration and also required to pass another order for full and final settlement of the tax arrear.

Representations have been received from the field authorities that under the Income-tax Act, 1961 'the Act', there is no provision available to the Assessing Officer to give effect to the order passed by the DA under Direct Tax Vivad se Vishwas Act, 2020. Accordingly, it is hereby clarified that where the DA has passed orders under Direct Tax Vivad se Vishwas Act, 2020, the Assessing Officer shall pass consequential order under the Act.

For details:

https://www.incometaxindia.gov.in/communications/circular/circular_3_2021.pdf

3. CBDT Notifies Rule 3B Prescribing Computation of Perquisite for Annual Accretion in PF and Other Funds u/s 17(2)(viia) for excess contribution by Employer Over Rs. 750000 [Notification No. 11 Dated March 5, 2021]

Finance Act, 2020 has amended the provisions of section 17(2)(vii) of the Income tax Act to provide that the amount or the aggregate amounts of any contribution made by the employer in respect of the assessee, to the account of an assessee in a recognised provident fund; in the scheme referred to in sub-section (1) of section 80CCD (NPS); and in an approved superannuation fund shall be treated as a perquisite, to the extent it exceeds Rs. 7,50,000 in a previous year.

Further, Finance Act, 2020 has inserted a new sub-clause (viia) in section 17(2) so as to provide that annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme referred to in sub-clause (vii) may also be treated as perquisite to the extent it relates to the contribution referred to in the said new sub-clause (vii), which is included in total income and shall be computed in the prescribed manner.

The manner of computation of such annual accretion in the provident and other welfare funds specifying the method of computation of perquisite u/s 17(2)(viia) is now notified by this Notification 11 of 2021.

For details:

https://incometaxindia.gov.in/communications/notification/notification_no_11_2021.pdf

4. Notification No. 12 / 2021 [Dated March 9, 2021]

The Central Government hereby approves M/s Bennett University, Greater Noida, Uttar Pradesh (PAN: AAAJB13B8A) under the category of 'University, College or other institution' for Scientific Research and Research in Social Science and Statistical Research for the purposes of clauses (ii) and (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5E of the Income-tax Rules, 1962. This Notification shall be deemed to have been applied for the assessment year 2020-2021 and shall apply with respect to the assessment years 2021-2022, 2022-2023, 2023-2024, 2024-2025.

For details:

https://incometaxindia.gov.in/communications/notification/notification_12_2021.pdf

5. CBDT notifies Amendment to Rule 10V for Computation of Remuneration payable to Fund Managers [Notification No. 13 Dated March 9, 2021]

The Board notified the Income-tax (2nd Amendment) Rules, 2021 which seeks to further amend rule 10V of the Income-tax Rules, 1962. Sub-rule (12) of Rule 10V provides for the amount of remuneration to be paid by the fund to a fund manager. Second provision 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 the Income-tax Rules, 1962, in rule 10V, in sub-rule (12), after the second proviso and before the Explanation, the two provisos shall be inserted.

Firstly, "Provided also that the provisions of sub-rules (3) to (12) of rule 10VA shall, mutatis mutandis, apply to the application made under the second proviso as they apply to application made under sub-rule (2) of the said rule,"

Secondly, "Provided also that the provisions of sub-rule (3) of rule 10VA shall not apply to an application made under the second proviso, if it is for the previous year beginning on the 1st day of April, 2021, and made on or before the 1st day of February, 2021,"

For details:

https://incometaxindia.gov.in/communications/notification/notification_no_13.pdf

6. **Income-tax (5th Amendment) Rules, 2021 (Dated March 16, 2021)**

The Central Board of Direct Taxes makes the Income-tax (5th Amendment) Rules, 2021 (w.e.f. April 1, 2021).

Rule 29BA has been inserted with respect to "Application for grant of certificate for determination of appropriate proportion of sum (other than Salary), payable to non-resident, chargeable in case of the recipients".

Form No. 15E has been inserted with respect to "Application by a person for a certificate under section 195(2) and 195(7) of the Income-tax Act, 1961, for determination of appropriate proportion of sum (other than salary) payable to non-resident, chargeable to tax in case of the recipient".

For details:

<http://egazette.nic.in/WriteReadData/2021/225942.pdf>

7. **Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020 (Circular No. 4 Dated March 23, 2021)**

FAQ No.70 of circular 21/2020 clarified eligibility for search case under *Vivad se Vishwas* that if the assessment order has been framed in the case of a taxpayer under section 143(3) / 144 of the Income-tax Act based on the search executed in some other taxpayer's case, it is to be considered as a 'search case' under *Vivad se Vishwas*.

In order to remove any uncertainty in this regard, it is hereby further clarified that a 'search case' means an assessment or reassessment made under sections 143(3)/ 144/ 147/ 153A/ 153C/ 158BC of the Income-tax Act in the case of a person referred to in section 153A or section 153C or section 158BC or section 158BD of the Income-tax Act on the basis of search initiated under section 132, or requisition made under section 132A of the Income-tax Act. The FAQ no. 70 of circular 21/2020 stands modified to this extent.

For details:

https://incometaxindia.gov.in/communications/circular/circular_4_2021.pdf

8. Tax Audit Report - Form 3CD- Applicability of Clause 30C and Clause 44 extended by one more year i.e. will be applicable for the Financials year 2022-23 [Circular No. 5 Dated March 25, 2021]

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules, 1962 ('the Rules') requires specified persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification dated 20th July, 2018 with effect from 20th August, 2018. However, the reporting under clause 30C (impermissible avoidance arrangement) and clause 44 (Break-up of total expenditure of entities registered or not registered under the GST) of the Tax Audit Report was kept in abeyance till 31st March, 2019 vide Circular No. 6/2018 dated 17.08.2018, which was subsequently extended to 31st March, 2020 vide Circular No. 912019. Vide circular no. 10/2020 dated 24.04.2020, it was further extended to 31st March, 2021.

In view of the prevailing situation due to COVID-19 pandemic across the country, it has been decided by the Board that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2022.

For details:

https://incometaxindia.gov.in/communications/circular/circular_no_5_2021.pdf

9. CBDT notifies New Income Tax Rules & Forms for Trust & NPOs (Notification No. 19 Dated March 26, 2021)

CBDT issues Notification no. 19/2021 dated 26/03/2021 pertaining to procedure for registration of fund/ trust/charitable institutions etc.

Notification Substitutes

Substitutes Rule 2C -Application for the purpose of grant of approval of a fund or trust or institution or university or any hospital or other medical institution under clause (i) or clause (ii) or clause (iii) or clause (iv) of first proviso to clause (23C) of Section 10

- Amends Rule 5C, Inserts Rule 5CA Intimation under Fifth Proviso to sub-section (1) of section 35,
- Amends Rule 5F, Substitutes Rule 11AA – Requirement for approval of institution of fund under clause (vi) of sub-section (5) of section 80G
- Substitutes Rule 17A - Application for registration of charitable or religious trusts etc.
- Inserts Rule 18AB - Furnishing of Statement of particulars and certificate under clause (viii) and clause (ix) of sub-section (5) of section 80G or under sub-section (1A) of section 35 and Substitutes/Inserts/Amends various Forms.

For details:

https://incometaxindia.gov.in/communications/notification/notification_19_2021.pdf

10. Faceless Appeal (Amendment) Scheme, 2021 (Notification No. 26 Dated March 31, 2021)

“National Faceless Assessment Centre” shall mean the National e-Assessment Centre set up under the scheme notified under sub-section (3A) of section 143 of the Act or the National Faceless Assessment Centre referred to in section 144B of the Act, as the case may be. In this regard, for the expression “National e-Assessment Centre”, wherever it occurs, the expression “National Faceless Assessment Centre” shall be substituted.

For details:

<http://egazette.nic.in/WriteReadData/2021/226320.pdf>

11. Extension of Time for Intimation of Aadhaar and Certain Other Time Limits (PIB Dated March 31, 2021)

The extended last date for intimating Aadhaar number under the Income-tax Act, 1961 (the Act) for the purposes of linking Aadhaar with PAN is 31st March, 2021. Keeping in view the difficulties faced by the taxpayers due to wake of the on-going COVID-19 pandemic, the Central Government has issued notification extending the last date for the intimation of Aadhaar number and linking thereof with PAN to 30th June, 2021.

The said notification also extended time-limits for issue of notice under section 148 of the Act, passing of consequential order for direction issued by the Dispute Resolution Panel (DRP) and processing of equalisation levy statements to 30th April, 2021.

For details: <http://egazette.nic.in/WriteReadData/2021/226312.pdf>

For details: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1708786>

12. Income-tax (7th Amendment) Rules, 2021 (Notification No. 21 Dated March 31, 2021)

The Central Board of Direct Taxes has notified Income Tax Return Forms (ITR Forms) for the Assessment Year 2021-22 vide Notification no.21/2021. Keeping in view the ongoing crisis due to COVID pandemic and to facilitate the taxpayers, no significant change have been made to the ITR Forms in comparison to the last year's ITR Forms. Only the bare minimum changes necessitated due to amendments in the Income-tax Act, 1961 have been made.

1. ITR 1 (Sahaj) - For Individuals having income upto Rs. 50 lakh and who receives income from salary, one house property / other sources (interest etc.).
2. ITR 2 - For Individuals and HUFs not having income from business or profession (and not eligible for filing Sahaj).
3. ITR 3 – For Individuals and HUFs having income from business or profession.
4. ITR 4 (Sugam) – For Individuals, Hindu Undivided Families (HUFs) and firms (other than Limited Liability Partnerships (LLPs)) having total income upto Rs. 50 lakh and income from business and profession computed under the presumptive taxation provisions.
5. ITR 5 – For Persons other than individual, HUF and companies i.e. partnership firm, LLP etc.
6. ITR 6 – For Companies

7. ITR 7 – For Trusts, political parties, charitable institutions etc.

For details:

<http://egazette.nic.in/WriteReadData/2021/226336.pdf>

13. CBDT authorizes DIT (CPC) & CIT (Exemption), Bengaluru under Rule 2C, 5CA, 11AA & 17A (Notification No. 30 Dated March 31, 2021)

The Central Board of Direct Taxes hereby authorizes the Director of Income Tax (Centralized Processing Centre), Bengaluru and Commissioner of Income-Tax (Exemption), Bengaluru, for the following purposes, namely

1. for receiving applications for provisional registration or registration or provisional approval or approval or intimation in Form 10A
2. for passing order granting provisional registration or registration or provisional approval or approval in Form 10AC
3. for issuing Unique Registration Number (URN) to the applicants
4. for cancelling the approval granted in Form 10AC and Unique Registration Number (URN)

For details:

<http://egazette.nic.in/WriteReadData/2021/226349.pdf>

BANKING LAWS

1. **Extension of Cheque Truncation System (CTS) across all bank branches in the country**

(Notification no. RBI/2020-21/107DPSS.CO.RPPD.No.SUO 21102/04.07.005/2020-21 dated March 15, 2021)

The CTS is in use since 2010 and presently covers around 1,50,000 branches. All the erstwhile 1219 non-CTS clearing houses (ECCS centres) have been migrated to CTS effective September 2020. It is, however, seen that there are branches of banks that are outside any formal clearing arrangement and their customers face hardships due to longer time taken and cost involved in collection of cheques presented by them.

To leverage the availability of CTS and provide uniform customer experience irrespective of location of her/his bank branch, it has been decided to extend CTS across all bank branches in the country. To facilitate this, banks shall have to ensure that all their branches participate in image-based CTS under respective grids by September 30, 2021. They are free to adopt a model of their choice, like deploying suitable infrastructure in every branch or following a hub & spoke model, etc. and concerned banks shall coordinate with the respective Regional Offices of RBI to operationalise this.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12039&Mode=0>

2. **Amendment to Master Direction (MD) on KYC – Procedure for Implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967 (Notification no. RBI/2020-21/110DOR.AML.REC.48/14.01.001/2020-21 dated March 23, 2021)**

In line with the revised order dated February 2, 2021, issued by the Ministry of Home Affairs (MHA), Sections 52 and 54 of the Master Direction on KYC dated February 25, 2016, are amended. Further Section 54 has been amended to include “The list of Nodal Officers for UAPA is available on the website of Ministry of Home Affairs”.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12042&Mode=0>

3. **Master Circular – Facility for Exchange of Notes and Coins (Notification no. RBI/2021-22/01 DCM (NE) No.G-4/08.07.18/2021-22 dated April 01, 2021)**

A revised version of Master Circular – Facility for Exchange of Notes and Coins issued by the Reserve Bank of India and placed on its website. All branches of banks in all parts of the country are mandated to provide the customer services related to Issuing fresh / good quality notes and coins of all denominations, Exchanging soiled / mutilated / defective notes and Accepting coins and notes either for transactions or exchange more actively and vigorously to the members of public so that there is no need for them to approach the RBI Regional Offices for this purpose.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12052&Mode=0>

4. Master Circular - Lead Bank Scheme (Notification no. RBI/2021-22/04 FIDD.CO.LBS.BC.No.02/02.01.001/2021-22 dated April 01, 2021)

The Reserve Bank of India has issued a number of guidelines/instructions on Lead Bank Scheme from time to time. This Master Circular consolidates the relevant guidelines/instructions issued by Reserve Bank of India on Lead Bank Scheme up to March 31, 2021.

For details:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12064&Mode=0>

INSURANCE LAWS

1. Communications on basic information on health insurance policies to the policyholders

(Circular no. IRDAI/HLT/REG/CIR/038/03/2021 dated March 01, 2021)

While the policy document of health insurance policy is forwarded with relevant information, in order to continue the relationship with policyholders and to ensure information flow, it is considered important to periodically notify the policyholders certain relevant and key details relating to health insurance coverage available to the policyholders. Informations like Name of Product and policy number, Policy period, Due date of renewal and premium payment frequency etc. shall be communicated by insurers to all the policyholders twice in a year, i.e., 6 months after issuance of policy and at least 1 month prior to the renewal due date. However, in case of a multiyear policy, the information can be shared with a frequency of 6 months from the date of issuance of policy.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4384&flag=1

2. Modified guidelines on product filing in health insurance business

(Circular no. IRDAI/HLT/REG/CIR/049/ 03/2021 dated March 16, 2021)

In addition to the norms specified at Clause (C) of Chapter-III of the guidelines, general and health insurers should adhere to the following norms while effecting modification of existing products.

- a. General and health insurers are not allowed to modify the existing benefits, add new benefits in the existing products which leads to imposing an increase in premium.
- b. Appointed Actuary should review the financial viability of every health insurance product at the end of every financial year in accordance to the provisions of Regulation 6 of IRDAI (Health Insurance) Regulations, 2016.
- c. A status report should be submitted by 30th September of every financial year to the Authority along with the Board's suggestions and the corrective actions to be taken in the specified format.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4397&flag=1

3. Issuance of Electronic Policies

(Circular no. IRDAI/Life/Cir/Misc/056/03/2021 dated March 23, 2021)

In the wake of continuing situation of Covid19 Global Pandemic with all public health measures in place such as hand hygiene and social distancing, the IRDAI on the basis of feedback received from the Life Insurers expressing difficulties in printing, handling and dispatch of policy documents and the desirability of adopting total digital means of doing business in the interests of policyholders and other stakeholders has decided to allow

another six months i.e. up to September 30, 2021 to issue Policy document to the proposer on their registered email ids.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4416&flag=1

4. Dispensing with physical signatures on proposal forms

(Circular no. IRDAI/NL/CIR/MISC/064/03/2021 dated March 23, 2021)

Life Insurers are allowed to obtain the customer's consent through electronic means, i.e., without requiring wet signature on the proposal form, for the business solicited by Individual Agents and Insurance Intermediaries, under all products, till 30th September 2021.

For details:

https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4412&flag=1

ECONOMIC BUSINESS AND COMMERCIAL LAWS

Review of the FDI Policy on downstream investments made by Non-Resident Indians (NRIs)

The Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry vide its Press Note 1 dated March 19, 2021 has clarified that any investments made by NRIs, on a non-repatriation basis, stipulated under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules 2019 are deemed to be domestic investments at par with the investments made by residents. Accordingly, an investments made by an Indian entity that is owned and controlled by NRIs, on a non-repatriation basis, shall not be considered towards calculation of indirect foreign investment.

For details:

<https://dipp.gov.in/sites/default/files/pn1-2021.PDF>

INSOLVENCY AND BANKRUPTCY CODE

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021

According to the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021, Regulation 31(2) provides that the liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.

Further, as per Regulation 31(5) (d), the list of stakeholders, as modified from time to time, shall be filed on the electronic platform of the Board for dissemination on its website.

For details:

<https://www.ibbi.gov.in/uploads/legalframework/2a0408cf690dc73b21a2faa8805281fe.pdf>



Company Law Corner

GUIDANCE ON READING OF COMPANIES ACT, 2013

Understanding the structure of Companies Act and the manner of identifying complementary legislations.

The Principal Legislation/Statute

Statute law is the body of law contained in Acts of Parliament. Companies Act, 2013 is principal legislation.

Schedules- It is appended to an Act, to form part of it. They are generally added to avoid encumbering the statutes with matter of excessive details.

Delegated Legislations

Delegated legislation (subordinate legislation) is a legislation made under powers conferred by an Act of Parliament (an enabling statute, often called the parent Act). Here Parent Act is Companies Act and the delegated legislations are Rules notified by Ministry of Corporate Affairs. Example Companies (Corporate Social Responsibility Policy) Rules 2014.

Notifications/Circulars/clarifications by Ministry of Corporate Affairs

Example: Clarification on spending CSR funds for awareness and public outreach on Covid vaccination programme is eligible for CSR activity under Schedule VII of Companies Act, 2013.

How to read and understand a section?

The Companies Act, 2013 is to be read with relevant Rules, schedules under Companies Act, circulars/ clarifications issued by Ministry of Corporate Affairs.

For example Section 135 (Relating to Corporate Social Responsibility) may be read with Companies (Corporate Social Responsibility Policy) Rules 2014, Schedule VII (Activities relating to Corporate Social Responsibility) and circulars/clarifications issued by Ministry of Corporate Affairs on Section 135.

Reading provisions of Companies Act, 2013 with complimentary legislations.

For example when you read sections relating to issue of capital you should read the sections with Companies (Share Capital and Debentures) Rules, Companies (Prospectus and Allotment of Securities) Rules. Besides, other legislative aspects including the provisions of SEBI Act, SECI (ICDR) Regulations, SEBI (LODR) Regulations, provisions of Depositories Act for dematerialisation provisions and even the provisions of FEMA when the shares are issued to non-residents.

Breaking sections into parts and preparing notes for each section:

Company law is so wide that it cannot be easily remembered after only one reading. Students may make notes for each topic about sections, the genesis, amendments notified, reasons for amendments along with delegated legislation. They may also make notes on exemptions provided, exceptions and the reasons behind such exemptions/exceptions. This will help in understanding the background of the provisions, the spirit of law and would help in remembering the provisions also. The

exemptions provided for certain class of companies under Section 470 of Companies Act are provided in the e-book at MCA portal under respective sections.

Students may break the sections at relevant places and giving emphasis on critical words and read for getting more clarity.

For examples Section 2(6) deals with the Definition of “Associate Company” which may be read with the following breaks.

"associate company", in relation to another company...../, means a company in which that other company has a significant influence...../,

but which is not a subsidiary company of the company having such influence and/. includes a joint venture company.

2[Explanation.—For the purpose of this clause,—

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;]

Thus the definition can be read by breaking at the places as indicated above, by understanding the terms ‘joint venture company’, ‘significant influence’ and the definition of subsidiary as mentioned in section 2(87) as the definition associate company excludes subsidiary company.

INTERPRETATION OF SOME STANDARD WORDS AND PHRASES USED IN STATUTES¹

Meaning of ‘proviso’

A clause, as in a document or statute, that begins with the words Provided that is called ‘proviso’. The term ‘proviso’ is defined as a clause making some condition or stipulation; a clause in a statute, deed, or other legal document introducing a qualification or condition to some other provision, frequently the one immediately preceding the proviso itself.

It is well settled that “the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it.

‘Notwithstanding anything contained’

Notwithstanding means, in spite of; without being opposed or prevented by; nevertheless; although, regardless of. A provision in a statute beginning with the words ‘Notwithstanding anything contained’ is called a ‘non-obstante’ provision and is generally used in a statute to give an overriding effect to a particular section or the statute as a whole. A non-obstante clause is used in a statutory drafting to create an exception to or override the provision which this phrase follows.

Subject to

The ordinary meaning of the phrase ‘subject to’ is being dependent upon; conditional upon; subordinate to; subservient to something else to happen or to be true; that on the condition of the provisions of the specified section being observed or complied with. It is

¹ Ref: Rules and tools for interpretation of statutes by Dr Chandratre

used to express the intention that when while complying with one statutory provision, another provision relating to the subject matter also must be complied with.

Nothing contained in this section shall apply

The phrase “Nothing in this section shall apply” or “Nothing contained in this section shall apply” is frequently used in legislative drafting. Literally, it means anything contained in the preceding part of the section would not apply in the situation stated in the provision that begins with this phrase.

Without prejudice to the provisions contained in this Act/any other Act

The phrase ‘without prejudice’ means without dismissing, damaging, or otherwise affecting; without detriment; harm. So when one provision says ‘without prejudice to any other provision’, it means that no other provision is affected by that provision or that other provisions remain unaffected. This is a qualifying phrase used in statutory drafting in a provision to protect the operation of another provision which it refers to. In other words, both the provisions operate independently.

That is to say

This phrase explains or clarifies the preceding word, phrase or expression.

For the purposes of this section/provision/definition

It has limited applicability; it applies to only the relevant section / provision/ definition but applies to the whole of it.



Legal Maxims

S.No.	Legal Maxim	Meaning	Usage & Example
1.	<i>animus possidendi</i>	The intention of Possession	The refusal of the seller may be perceived by considering his animus possidendi
2.	<i>contra legem</i>	Against the law	During COVID – 19 pandemics, not wearing the mask at public place is <i>contra legem</i>
3.	<i>corpus delicti</i>	Body of the Crime	Before accusing any person, it is necessary to prove <i>corpus delicti</i> first
4.	<i>crimen falsi</i>	Crime of falsify	The forgery is the best example of <i>crimen falsi</i>
5.	<i>ejusdem generis</i>	Of the same class	Television, refrigerator, Laptops, Computers etc. may be read as <i>ejusdem generis</i> , as they may be considered in same class “Electronic Items”



Legal World

CORPORATE LAWS

LANDMARK JUDGEMENT

ASSOCIATED JOURNALS LTD v. THE MYSORE PAPER MILLS LTD [SC]

Appeal (Civil) 183 of 2000

Dr. Ar. Lakshmanan & L. S. Panta, JJ [Decided on 11/07/2006]

Equivalent citations: (2006) 132 Comp Cas 470.

Companies Act 1956 read with Rule 21 of the company court Rules, 1959 - winding up petition- defective affidavit- allowed to be cured- whether tenable-Held, Yes.

Brief facts : Respondent filed a winding up petition against the appellant. The affidavit accompanying the said petition was defective and the company judge permitted the respondent to cure the defect and file fresh affidavit. Appellant challenged this decision of the company judge in appeal which was dismissed. Aggrieved by the dismissal, the appellant had filed the present appeal before the Supreme Court.

Decision : Appeal dismissed.

Reason : We have carefully perused the judgment of the Division Bench. The learned judges of the Division Bench dismissed the appeal filed by the appellant herein and directed that after fresh affidavit as required in the order dt.10.01.1994 has been filed, the Company Petition be listed before the learned Company Judge for passing fresh orders regarding advertisement of the Company Petition.

A careful perusal of the affidavit filed by the respondent and Form No.3 as prescribed under Rule 21 would show that there is substantial compliance of the said Rule. A Three-Judge Bench of this Court in an identical matter in *Malhotra Steel Syndicate v. Punjab Chemicals Ltd, (1993) Suppl.3 SCC 565* has also opined that even if there is some slight defect or irregularity in the filing of affidavit, the appellant should have been given an opportunity to rectify the same. In the instant case, the same liberty was given to the respondent by the Company Judge as also by the Division Bench of the High Court. We are, therefore, of the opinion that the Division Bench was right in dismissing the appeal filed by the appellant. This Court has in catena of decisions held that substantial compliance is enough. Rules are undoubtedly statutory, and the forms are to be adopted wherever they are applicable. The Rules relating to the affidavit and the verification cannot be ordinarily brushed aside, but then what is required to be seen is whether the petition substantially complies with the requirements and, secondly, even when there is some breach or omission, whether it can be fatal to the petition. In the instant case, both the learned Company Judge and also the Division Bench were of the opinion that there is substantial compliance of Rule 21.

In *Khaitan Overseas & Finance Ltd v. Dhandhanias Bros. P. Ltd., (2002) 1 Comp LJ 274*, a petition was filed by the Chairman-cum-Director of the company. He annexed with the petition a resolution of the Board of Directors permitting him to execute necessary petitions, documents, applications, affidavits and to lodge a suit to recover dues from the debtor company. This was held to include the authority to file a Winding Up Petition also. The affidavit accompanying the petition was signed, sworn, and affirmed on oath in the

prescribed manner. The court said that the affidavit conformed with the requirements of law.

We are of the opinion that the Rules of procedure cannot be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy disposal of justice. The learned Judges of the Division Bench has appreciated that the technical plea raised by the respondent regarding defective affidavit was raised after seven years of filing the petition. The learned counsel submitted that the appellant is raising the defence of technical plea to protect himself from the consequence of his default and this plea cannot be considered effective enough to review the order of advertisement. Assuming without admitting that the affidavit was not verified as per the Company Rules, the learned counsel has correctly submitted that if this objection were taken earlier the respondent would have cured the defect. For the aforesaid reasons, we are of the opinion that the appeal has no merit and the order passed by the learned Judges of the Division Bench confirming the order passed by the Learned Company Judge does not call for any interference by this Court. The appeal stands dismissed accordingly.

GENERAL LAWS

BHARAT SANCHAR NIGAM LTD v. NORTEL NETWORKS INDIA PVT. LTD [SC]

Civil Appeal Nos. 843-844 of 2021[@ SLP (C) No. 1531-32/ 2021]

Indu Malhotra Ajay Rastogi, JJ.[Decided on 10/03/2021]

Arbitration and Conciliation Act, 1996 - section 11- appointment of arbitrator by courts- limitation period for filing application - Supreme court explains applicable limitation period.

Brief facts : The present Appeals raise two important issues for our consideration : (i) the period of limitation for filing an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"); and (ii) whether the Court may refuse to make the reference under Section 11 where the claims are ex facie time-barred?

Decision : Appeal dismissed.

Reason : Applying the law to the facts of the present case, it is clear that this is a case where the claims are ex facie time barred by over 5 ½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 04.08.2014. The notice of arbitration was invoked on 29.04.2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless there is a pleaded case specifically adverting to the applicable Section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.

The present case is a case of deadwood / no subsisting dispute since the cause of action arose on 04.08.2014, when the claims made by Nortel were rejected by BSNL. The Respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the Final Bill by making deductions.

The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, 20 or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that : “where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” There must be a clear notice invoking arbitration setting out the “particular dispute” 21 (including claims / amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.

In the present case, the notice invoking arbitration was issued 5 ½ years after rejection of the claims on 04.08.2014. Consequently, the notice invoking arbitration is ex facie time barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case.

Conclusion Accordingly, we hold that :

- The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator.
- It has been suggested that the Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings.
- In rare and exceptional cases, where the claims are ex facie time-barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.

In view of the aforesaid, the present Civil Appeals are allowed, and the impugned orders passed by the High Court are set aside.

AMWAY INDIA ENTERPRISES PVT. LTD. v. RAVINDRANATH RAO SINDHIA [SC]

Civil Appeal No. 810 of 2021(@ SLP(C) No.15982 of 2020)

R.F.Nariman & Hrishikesh Roy, JJ. [Decided on 04/03/2021]

Arbitration and Conciliation Act, 1996 - sections 2 (1)(f) and 11(6)- international arbitration- appointment or arbitrator - one of the parties to the dispute was residing outside India- High Court appointed the arbitrator on the ground that the management control was in India- whether tenable - Held, No.

Brief facts : In the year 1998, the Respondents were appointed as Distributor for Appellant for undertaking sale, distribution, and marketing of its products in India and were registered as Amway Business Owner (ABO)/ Amway Direct Seller (ADS), in the name of the sole proprietorship ‘Sindhia Enterprises’ with ABO No. 141935. The proprietor was residing in USA. Disputes arose between the parties and on the application of the Respondent, the Delhi High court appointed the sole arbitrator. The reason was that though

the Respondent was residing in USA the Indian concern's management and control was in India. Aggrieved by the appointment, the appellant appealed to the Supreme Court.

Decision : Appeal allowed.

Reason : The question lies in a very narrow compass. As rightly contended by Ms. Arora, the documentary evidence in this case would be decisive of whether the requirements of sub-clause (i) to Section 2(1)(f) have been met, in which case it is unnecessary to go to sub-clause (iii), as under Section 2(1)(f), "at least one of the parties" must fall under sub-clauses (i) to (iv) of Section 2(1)(f).

A reading of the application form as filled in, together with the Code of Ethics, would show that a distributorship may be taken up either in individual capacity, a sole proprietorship concern, partnership firm, or company. When it comes to a husband and wife's distributorship, they are entitled not to two, but to a single distributorship, it being made clear under clause 3.17 of the Code of Ethics that they are to operate only as a single entity. The form that was filled in made it clear that the respondents applied to become a distributor as a sole proprietorship, it being made clear that the husband, Ravindranath Rao Sindhia, was the sole proprietor / "primary applicant", the wife, Indumathi Sindhia, being a "co-applicant".

However, it was argued, that from a reading of the Code of Ethics and correspondence between the parties, that there was no international flavour whatsoever to the transaction as the business that is to be conducted can be conducted only in India, an exception being made only for personal use under clause 4.16.1. Most importantly, the address of the so-called sole proprietorship in all the correspondence between the parties was the address of the Bangalore office of the sole proprietorship.

By way of contrast, we have seen how the respondents have themselves applied to become distributors of Amway products in India as a sole proprietorship concern under the relevant forms issued by the appellant, read with the Code of Ethics referred to hereinabove. In *Ashok Transport Agency v. Awadhesh Kumar*, (1998) 5 SCC 567, this Court has clearly held that a sole proprietary concern is equated with the proprietor of the business. In this view of the matter, the argument that there is no international flavour to the transaction between the parties has no legs to stand on.

Indeed, an analysis of Section 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between persons, at least one of whom is either a foreign national, or habitually resident in, any country other than India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes an international commercial arbitration notwithstanding the fact that the individual, body corporate, or government of a foreign country referred to in Section 2(1)(f) carry on business in India through a business office in India.

This being the case, it is clear that the Delhi High Court had no jurisdiction to appoint an arbitrator in the facts of this case. Respondent made an impassioned plea to this Court to use its power under Article 142 of the Constitution to straightaway appoint an arbitrator, now that the matter is before this Court. We are afraid we cannot countenance such a suggestion as the respondents would have to now follow the drill of Section 11(6) read with Section 11(9) of the Arbitration Act. The appeal is allowed, and the judgment under appeal is set aside.

ALKA KHANDU AVHAD v. AMAR SYAMPRASAD MISHRA [SC]

Criminal Appeal No. 258 of 2021

Dr. D. Y. Chandrachud & M.R. Shah, JJ. [Decided on 08/03/2021]

Negotiable Instruments Act, 1882 - section 138 - dishonour of cheque- husband signed and issued the cheque- wife also impleaded in the complaint and summoned by the trial court- whether wife is liable to be prosecuted-Held, No.

Brief facts : It emerges from the record that the dishonoured cheque was issued by original accused No. 1 – husband of the appellant. It was drawn from the bank account of original accused No. 1. The dishonoured cheque was signed by original accused No. 1. Therefore, the dishonoured cheque was signed by original accused No. 1 and it was drawn on the bank account of original accused No. 1. The appellant herein-original accused No. 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein – original accused No. 2 can be prosecuted for the offence punishable under Section 138 r/w Section 141 of the NI Act?

Decision : Appeal allowed.

Reason : We have heard learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint.

Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

Now, so far as the case on behalf of the original complainant that the appellant herein – original accused No. 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance. Section 141 of the NI Act is relating to the offence by companies, and it cannot be made applicable to the individuals. Learned counsel appearing on behalf of the original complainant has submitted that “Company” means anybody corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within “other association of individuals” and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be “other association of individuals”. Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liability) but cannot be said to be the offence committed by a company or by its corporate or firm or other associations of individuals.

The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 r/w Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 r/w Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside. In view of the above and for the reasons stated above, the present appeal succeeds.

STATEMENT OF MARKS
(December 2020 Examination)

The detailed paper wise Examiner's Observations and Comments for December 2020 is annexed as Annexure.

**Statement Showing the Marks Obtained by the Candidates in all Papers of
Executive Programme (Old Syllabus)
in December 2020 Examination**

Subjects	Percentage of Candidates Secured		
	40 to 49% marks	50% to 59% marks	60% and above marks
EXECUTIVE PROGRAMME			
MODULE I			
Company Law	21.93	10.40	2.13
Cost and Management Accounting	20.67	9.88	1.55
Economic and Commercial Laws	27.62	15.80	2.96
Tax Laws and Practice	21.40	12.46	3.51
MODULE II			
Company Accounts and Auditing Practices	19.74	10.62	2.10
Capital Market and Securities Laws	22.89	14.22	3.41
Industrial, Labour and General Laws	29.91	25.18	11.43

**Statement Showing the Marks Obtained by the Candidates in all Papers of
Professional Programme (Old Syllabus) in December 2020 Examination**

Subjects	Percentage of Candidates Secured		
	40 to 49% marks	50% to 59% marks	60% and above marks
PROFESSIONAL PROGRAMME			
MODULE I			
Advanced Company Law & Practice	39.61	23.56	4.53
Secretarial Audit, Compliance Management and Due Diligence	37.64	24.78	4.35
Corporate Restructuring, Valuation and Insolvency	39.63	24.29	4.07
MODULE II			
Information Technology and System Audit	29.30	21.15	9.95
Financial, Treasury and Forex Management	27.23	23.44	11.08
Ethics, Governance and Sustainability	38.74	25.83	5.60
MODULE III			
Advanced Tax Laws and Practice	35.19	22.42	4.73
Drafting, Appearances and Pleadings	46.55	26.52	2.37
Banking Law & Practice (Elective Paper)	33.53	23.08	5.72
Capital Commodity & Money Market (Elective Paper)	32.31	37.58	19.12
Insurance Law & Practice (Elective Paper)	26.80	31.96	4.12
Intellectual Property Rights-Law & Practice (Elective Paper)	50.71	28.74	3.34
International Business-Law & Practice (Elective Paper)	44.74	24.70	2.96

Statement Showing the Marks Obtained by the Candidates in all Papers of Executive Programme (New Syllabus) in December 2020 Examination

Subjects	Percentage of Candidates Secured		
	40 to 49% marks	50% to 59% marks	60% and above marks
EXECUTIVE PROGRAMME (NS)			
MODULE I			
Jurisprudence, Interpretation and General Laws	23.45	11.95	3.45
Company Law	17.14	7.26	2.09
Setting up of Business Entities and Closure	19.66	9.06	2.31
Tax Laws	15.01	6.29	1.94
MODULE II			
Corporate and Management Accounting	21.95	11.88	5.05
Securities Laws and Capital Markets	19.36	9.93	2.61
Economics Business and Commercial Laws	22.50	13.54	4.63
Financial and Strategic Management	17.68	12.55	9.70

Statement Showing the Marks Obtained by the Candidates in all Papers of Professional Programme (New Syllabus) in December 2020 Examination

Subjects	Percentage of Candidates Secured		
	40 to 49% marks	50% to 59% marks	60% and above marks
PROFESSIONAL PROGRAMME (NS)			
MODULE I			
Governance, Risk Management, Compliances and Ethics	39.58	20.66	4.62
Advanced Tax Laws	32.02	11.22	2.45
Drafting, Pleading and Appearances	45.76	24.27	2.73
MODULE II			
Secretarial Audit, Compliances Management and Due Diligence	43.93	14.03	2.56
Corporate Restructuring, Insolvency, Liquidation and Winding up	43.04	17.69	4.47
Resolution of Corporate Disputes, Non-Compliances and Remedies	41.16	13.51	1.72
MODULE III			
Corporate Funding and Listings in Stock Exchanges	38.15	22.26	5.46
Multidisciplinary Case Studies	42.56	22.33	3.66
Banking Law & Practice (Elective Paper)	5.41	40.54	52.25
Insurance Law & Practice (Elective Paper)	30.77	30.77	7.69
Intellectual Property Rights-Law & Practice (Elective Paper)	48.08	29.95	4.12
Forensic Audit (Elective Paper)	25.93	9.52	1.06
Direct Tax Law & Practice (Elective Paper)	28.32	23.30	17.20
Labour Law & Practice (Elective Paper)	28.17	38.59	26.76
Valuation and Business Modelling (Elective Paper)	44.00	20.00	4.00
Insolvency Law and Practice (Elective Paper)	34.19	36.48	15.28





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