



# THE INSTITUTE OF Company Secretaries of India

## भारतीय कम्पनी सचिव संस्थान

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

WESTERN INDIA

REGIONAL COUNCIL

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### **Vision**

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

### **Motto**

सत्यं वद। धर्मं चर। इष्टकारं कृतं त्वाकं। कर्तव्यं क्युं कृतं क्वचि।

### **Mission**

"To develop high calibre professionals facilitating good corporate governance"

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## From the Desk of the Chairman...

### CS Rahul Sahasrabuddhe

Every nation has a message to deliver, a mission to fulfill, a destiny to reach. The mission of India has been to guide humanity.

**-Swami Vivekanand**



Dear Professional Colleagues,

To quote exactly, at the 75<sup>th</sup> session of the United Nations General Assembly, our Prime Minister Narendra Modi said, "As the largest vaccine producing country of the world, I want to give one more assurance to the global community today. India's vaccine production and delivery capacity will be used to help all humanity in fighting this crisis."

I would like to complement our professional colleagues for doing the great work since last couple of months which is not only resulting into betterment of the profession but also of the nation in general. The New Normal is expecting a lot from human species as a whole; the professional members of our Institute have been constantly working hard and accomplishing their duties and responsibilities in different areas, whether as a Company Secretary in employment or Practicing Company Secretary. I thank the Ministry of Corporate Affairs for granting extension of compliance due-dates. Such extension of due dates has been very helpful to the industry and professionals in ensuring compliance of several provisions in present challenging times.

Monsoons have passed by and with that, last month has welcomed "The Companies (Amendment) Act, 2020" on receiving assent of our Hon'ble President of India. The broader theme of the Amendment Act is to ease corporate law compliances, ease of living for corporate, strengthens the corporate governance and decriminalize the Companies Act, 2013. The Amendment Act has also introduced a new Chapter XXIA for Producer Companies on similar lines as provided in Companies Act, 1956.

I am sure that the theme of our current edition of FOCUS is 'Annual Compliances under Corporate, Securities, Economic and Labour Laws' appropriate and aptly chosen by my Focus team members. We have received good number of articles touching upon wide gamut from Corporate Laws, Labour Laws, SEBI Regulations, POSH, Real Estate Regulations and many more. The depth of each and every article is immense reflecting the keen interest and knowledge of different Authors. I would like to share here, that we all professionals are working like a Light house, which guides and helps the sailing ships from accidents and so also, we guide the whole corporate fraternity in compliance of all laws and regulations on regular basis, in all circumstances without any breaks or intervals. Taking into account the present pandemic situation, the Government through different Ministries has granted extensions for compliance of certain provisions / annual compliances of the Act. Readers are requested to take note of such extension at the time of reading the articles published in this newsletter.

Western India Regional Council of ICSI have been facing all the challenges faced due to pandemic and have taken every step to carry out all its activities without hampering any quality aspect. Following are the activities carried out by WIRC during the last couple months:

#### **For Students:**

Online Classes for the OTC Students for two batches of CSEET was successfully completed. I specially thank all faculty members for guiding and preparing students for CSEET Exams which were conducted online. Online Training mela for students.

#### **For members:**

WIRC had organized a Regional Conference of Corporate CS, 2020, on 18<sup>th</sup>& 19<sup>th</sup> September, 2020 which was hosted by the Pune Chapter on the theme "Get an Edge in the New Normal" and graced by CS Ashish Garg, President ICSI, CS Devendra Deshpande, CCM – ICSI, CS Praveen Soni, CCM.

The Western India Regional Council of ICSI will continue the momentum of quality and relevant programs with an objective of enriching members' knowledge and skill set.

On the occasion of Celebrations of the 52nd Foundation Day of ICSI on the theme **Governance: From Grassroots to Global**. We celebrated the same by felicitating Padmashree awardee Shri Popatrao Pawar Saheb Sarpanch, Hiware Bazar, Ahmednagar, Maharashtra, for his fabulous work at Grassroots. Which has led to the real development and transformation of his village and surrounding area over past 30 years under his leadership. We distributed the ICSI Book "Model Governance code for meetings of Gram Panchayats" to harmonize diverse practices followed across the nation in convening the conducting the meetings of Panchayats.

On the occasion of Celebrations of Teacher's Week on PAN India basis all over India, WIRC organized Teacher's Conference on 10<sup>th</sup> September 2020 where more than 250 Teachers / faculties from various colleges / universities / academicians registered and participated in the event from all over India.

I invite you to for the two days' Virtual Annual Regional Practicing Company Secretaries' Conference to be hosted by Thane Chapter on October 15 and 16, 2020 on the theme, "PCS-Retrospect and Prospect".

With this I would conclude that our members have been doing a great work and contribution to corporate world, in field of Governance and Compliances and lets us constantly endeavor to give our best to the society by ending with the words of Swami Vivekananda, "**Face the brutes." That is a lesson for all life—face the terrible, face it boldly. Like the monkeys, the hardships of life fall back when we cease to flee before them.**

Yours Truly,  
CS Rahul Sahasrabudhe  
Chairman  
WIRC of ICSI  
Place: Mumbai  
Date: October 11, 2020

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## NOTE TO READERS

The Government had introduced the Companies (Amendment) Bill 2020 in the Lok Sabha on March 17, 2020 and now the bill has been passed in the both houses of the Parliament. The key objective of the Amendment Act is to decriminalize various offences, to declog NCLT Act and to provide further ease of doing business for corporates. The Amendment Act received the assent of the President on Sept 28, 2020.

The Ministry of Corporate Affairs (MCA) has also extended the LLP Settlement Scheme, 2020 and Companies Fresh Start Scheme, 2020. The MCA has granted extension of time to the Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act. MCA has also extended time for extra-ordinary general meeting through Video Conference (VC) or Other Audio-Visual Means (OAVM) or passing of certain items only through postal ballot without convening general meeting. MCA has also extended the timeline for several compliances.

Considering the present pandemic situation, SEBI has also amended several Regulations and extended the due dates for compliances.

Parliament has received the assent of the President on the 28th September, 2020 The Code on Social Security, 2020. The objective of the Code is to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors or for matters connected therewith or incidental thereto. The Parliament has also received the assent of the President on the 28th September, 2020 on the Occupational Safety, Health and Working Conditions Code, 2020. The objective of the Code is to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.

There are several amendments or new legislations introduced by the Government in the recent times. The Government has also extended the timelines for compliances under several legislations and regulations. At the time of reading and referring the articles published in the present issue of the FOCUS, the readers are requested to take into consideration the recent changes / amendments / extensions / reliefs introduced by the Government. There would some change in the timelines for compliance due dates, as mentioned above.

Yours Truly,  
CS Rahul Sahasrabuddhe  
Chairman  
WIRC of ICSI  
Place: Mumbai  
Date: October 11, 2020

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## COMPLIANCE CHECKLIST UNDER COMPANIES ACT 2013



**CS Ashwini Vartak**  
**Practicing Company**  
**Secretary**

Company is the most preferred structure to carry on business with an intention to earn profits with special features as Limited Liability, Perpetual Succession, and Separate Legal entity and so on. The Companies incorporated in India are governed by the Companies Act, 2013 (erstwhile “The Companies Act, 1956”) and Rules and Regulations framed thereunder. On the basis of different parameters such as size, liability, number of members, capital, turnover, Objects etc. Companies can be classified as small, one person company (OPC), private, public, Section 8 Company, Holding company, subsidiary or associate company, listed or unlisted company. Under the Companies Act, 2013, there are certain mandatory compliances required to be complied by every company regardless of the type of company, nature of business or activity etc.

Compliances under the Act are divided into two - 1) Event Based Compliances and 2) Regular/Annual Compliances.

Following are the steps for Event based Compliances –

Check whether activity is allowed under the Act;

Refer to the Section and Rules given under the Act for the Compliance related to it;

Check the requirements of approvals – Committee/ Board/Shareholders/ROC or Central Government or NCLT;

Check for the compliances which get triggered on attainment/crossing of various thresholds stated in the Act;

Check filing requirements with the MCA;

Check updation of Statutory Registers;

Apart from event based compliances, there are annual compliances which are mandatory in nature known as Regular Compliances or Annual Compliances.

Regular Annual Compliances of the Company are as follows: -

### **CONDUCTING OF BOARD MEETINGS AS PER SEC. 173 OF THE ACT AND SECRETARIAL STANDARD 1(SS-1):**

First Meeting of Board of Directors is required to be held within 30 days of Incorporation of Company. Thereafter, every company shall hold at least **four** Board meetings in a year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board. Also, company shall ensure that the Board shall meet once in an each calendar quarter as mentioned in SS-1.

OPC, Small Company, Dormant Company and a Private company (start-up) shall hold at least **one** Board Meeting in **each half of a calendar year** and the gap between the two meetings shall not be less than 90 days.

Specified IFSC Public companies, Specified IFSC Private companies and Section 8 companies shall hold at least **one** Board Meeting in **each half of a calendar year**.

*Due to COVID-19 pandemic, the mandatory requirement of holding meetings of the Board of Directors of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a onetime relaxation, the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the Act. This relaxation is effective from 24<sup>th</sup> March 2020. Therefore as per our view, 180 days shall be calculated from the date of previous Board meeting held.*

**Points to remember:**

Director's participation in a Board meeting may be either in person or through video conferencing (VC) or other audio visual means.(for VC /other audio visual means refer to Rule 3 and 4 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Notice of the meeting along with Agenda and relevant papers shall be given seven days before the meeting in writing to every director at his address registered with by hand delivery or by post or by electronic means. Notice shall also state availability of facility to participate through video conferencing.

In case of transactions of an urgent nature the notice of less than 7 days can be given subject to the condition that at least one independent director(if any), shall be present at the meeting and in case of his absence shall be ratified.

The quorum shall be one third of its total strength or two directors, whichever is higher. In case the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested and present at the meeting, being not less than two, shall be the quorum during such

time. The quorum shall be present throughout the meeting.

The Draft minutes of meetings of Board shall be circulated within 15 days from the date of the meeting and shall be finalized and entered in the Minute Book within 30 days from the date of meeting. Signed Minutes, certified by Company Secretary or Director, if there is no Company Secretary shall be circulated within 15 days from the date of signing except to those who have given waiver in writing or such waiver is recorded in the Minutes.

SS-1 takes care of pre, during and post meeting procedural matters which is to be observed mandatorily.

**RECEIPT OF DISCLOSURES FROM DIRECTORS U/S. 184 OF THE ACT:**

Disclosures in format MBP-1 obtained from Directors disclosing his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which also includes shareholding, shall be placed before the first Board meeting in every financial year.

**RECEIPT OF DECLARATION BY DIRECTORS THAT THEY ARE NOT DISQUALIFIED U/S.164(2) AND 143(3)(g) OF THE ACT**

Every Director of the Company in each Financial Year shall submit to the Company his disclosure in form Dir 8 informing that he is not disqualified as per Sec. 164(2) of the Act.

**RECEIPT OF DECLARATION BY INDEPENDENT DIRECTOR (if any) U/S. 149 OF THE ACT:**

Disclosures given by Independent Directors u/s. 149(7) of the Act that he meets the criteria of independence as mentioned in section 149(6) of the Act shall be placed before the first Board meeting in every financial year.



**CONDUCTING OF ANNUAL GENERAL MEETING (AGM) AS PER SEC. 96 OF THE ACT AND SECRETARIAL STANDARD 2 (SS-2) :**

Every company other than OPC shall hold meeting of its members once in a financial year to transact Ordinary Businesses as specifically mentioned under sec.102 of the Act (Adoption of Financial Statements and Reports of Board of Directors and Auditors, Declaration of Dividend, Appointment of Director in place of those retiring, Appointment and fixing of remuneration of Statutory Auditors.

First AGM of the company shall be held within a period of 9 months from the date of closing of the first financial year of the company and in any other case, within a period of 6 months, from the date of closing of the financial year. Not more than 15 months shall elapse between the date of one AGM of a company and that of the next meeting.

Apart from ordinary businesses even special businesses can be transacted at the said Meeting.

No extension can be granted for holding first AGM. However for other AGMs, Registrar of Companies may for any special reason grant extension by a period not exceeding 3 months.

OPC need not hold AGM. Any business that is to be transacted as per section 114 of the Act, it is sufficient if the resolution is communicated by the member to the company and entered in the Minutes Book, signed and dated. This date shall be deemed to be the date of the meeting for all the purposes under the Act.

**Points to remember:**

Every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Unlisted public companies may hold their AGM at any place in India if consent is given in writing or by electronic mode by all the members in advance to hold such a meeting.

AGM notice shall specify the serial number of the meeting, day, date, time and full address of the venue of the Meeting including route map. It shall contain the businesses to be transacted thereat. In respect of items of Special Business, along with proposed resolutions, explanatory statement shall be given which shall contain all mandatory disclosures required to be made under the Act.

AGM notice shall be given 21 clear days in advance except when not less than 95% of the members entitled to vote thereat consents for shorter notice and be accompanied, by an attendance slip and a Proxy form in form MGT-11 with clear instructions for filling, stamping, signing and/or depositing the Proxy form.

AGM notice of the meeting shall be given to every Member of the company, to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.

AGM Notice shall simultaneously be hosted on the website till the conclusion of the Meeting, if Company has website.

a resolution put to the vote be decided on a show of hands unless a poll is demanded under Section 109 of the Act or the voting is carried out electronically,

E-voting facility shall be provided by the company to its members if number of members is not less than 1000.

The minutes of proceedings of general meetings shall be finalized and entered in the Minute Book within 30 days from the date of meeting.

SS-2 takes care of pre, during and post meeting procedural matters which is to be observed mandatorily.

*Due to COVID-19 pandemic, the companies are allowed to hold their Annual General Meetings through video conferencing/ other audit visual means subject to the compliance of circulars issued by MCA dated 8<sup>th</sup> April, 2020, 13<sup>th</sup> April, 2020 and 5<sup>th</sup> May, 2020).*

### **PREPARATION OF BOARD'S REPORT**

Board's Report shall be prepared in accordance with Section 134 (3) of the Act and Rule 8 of the Companies (Accounts) Rules, 2014 and placed before the Board for its approval.

### **Points to remember:**

The Board's Report shall be prepared based on the basis of stand-alone financial statements of the company.

For avoiding repetition, reference shall be provided in Board's report for disclosures which have been included in financial statements and if policies are made available on website of the Company, then salient features of the policy and any change therein shall be specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available to be provided in report.

Board's Report of OPC and Small Company shall be as per rule 8A of the Companies (Accounts) Rules, 2014.

The Act casts an obligation on the companies to file the following e-forms annually with MCA:-

The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director

Board's Report shall be placed before the Board Meeting for its approval which is adopted by the Company in Annual General Meeting and same shall be filed with Ministry of Corporate Affairs (MCA).

Board's Report shall invariably contain all the clauses as per Act, SEBI (LODR) in case of Listed Companies and also additional clauses as may become applicable due to applicability of other laws.

Compliance with SS-4 even though it is recommendary in nature.

### **ANNUAL FILINGS WITH MCA –**

As a part of compliance, there are various E-forms which need to be filed under the Act with Ministry of Corporate Affairs. The basic purpose of it is to make the information available in public domain and to seek knowledge about Company's general compliances.

Sr. No.	Form	Applicability	Due Date of filling
1.	Form AOC- 4 / Form AOC 4 CFS	Financial statement of Company with/without one or more Subsidiaries or Associate Companies & to whom XBRL is not applicable).	Within 30 days from the date of adoption or 30 days of the date on which it should have been adopted
2.	Form AOC- 4 XBRL/ Form AOC 4 CFS XBRL	Financial statement of Company with/without one or more Subsidiaries or Associate Companies) and to whom XBRL is applicable, (applicability as per Companies	Within 30 days from the date of adoption or 30 days of the date on which it should have been adopted

		(Filling of documents and forms in Extensive Business Reporting Language) Rules, 2015.	
3.	Form AOC-4 NBFC (Ind AS)/ Form AOC-4 CFS NBFC (Ind AS)	Financial Statements of non-banking financial companies who are required to comply with Indian Accounting Standards (Ind AS)	Within 30 days from the date of adoption or 30 days of the date on which it should have been adopted
4.	Form FC-3 Foreign Company	Financial statements of foreign Companies	Within a period of six months of the close of the financial year of the foreign company
5.	Form MGT-7	Annual Return	Within 60 days from the date of AGM or from the date on which the AGM should have been held
6.	Form FC-4	Annual Return of foreign companies	Within 60 days from the end of financial year
7.	Form MSC-3	Return of Dormant Company indicating financial position duly audited	Within 30 days of end of financial year
8.	Form MGT-15	Report on Annual General Meeting	Within 30 days of the conclusion of the annual general meeting
9.	Form MGT-14	Filing of all resolutions by Companies holding General meetings by Video conferencing/ Other audio Visual means due to COVID-19 or passing of resolutions through postal ballot	Within 60 days of the passing of the resolution
10.	DPT-3	Information with respect to Deposits or amounts which are not considered as Deposits on the basis of audited financial statements as on 31st March of that year	On or before the 30th June of the respective year
11.	DIR-3 KYC	All the Directors of company shall file this form on or before 30th September every year for all the directors of the Company.	
12.	MSME 1	Half yearly Return	Delay in Payment to MSME Vendor: Company have to file this return half yearly in respect of pending payments for more than 45 days to

			MSME vendors as at end of half year. April to Sep - 31st October October to March - 30th April
12.	ADT-1	Appointment of Auditor	Auditor will be appointed for 5 (Five) years and form ADT-1 will be filed for 5-year appointment within 15 days of Annual General Meeting.

**Points to remember for ensuring smooth filling:**

**Form MGT 14** - Companies holding General meetings by Video conferencing/ Other audio Visual Means due to COVID-19 or passing of resolutions through postal ballot shall file all resolutions passed through form MGT-14 within 60 days of the passing of the resolution indicating compliance with mechanism provided with other provisions of the act and rules made thereunder (MCA Circular dated 8<sup>th</sup> April, 2020, 13<sup>th</sup> April, 2020 and 5<sup>th</sup> May 2020).

Check figures as on 31<sup>st</sup> March (end of financial year) and check whether XBRL is applicable or not. If applicable then contact vendor in advance for conversion of accounts or plan accordingly

**XBRL Applicability:** Listed Companies and their Indian Subsidiaries;

Companies having paid up share Capital of Rs. 5 crore or above;

Companies having turnover of Rs. 100 crore or above;

All Companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules 2015;

Not applicable to NBFC, Housing Finance Companies, Banking, Insurance;

Other Companies can file financial statements in XBRL voluntarily. However once filed in XBRL format, they would be required to file subsequent financial statements in XBRL format only.

*In our view, if the Company does not fall under any of the above category as on 31<sup>st</sup> March or end of the financial year to which accounts pertains but it meets any of the criteria after end of financial year but before AGM then Company should preferably go with XBRL Filing.*

Check whether MGT- 8 (certificate by the practicing Company Secretary) for the fulfilment of the annual return is applicable or not as if applicable, then same shall be attached to Form MGT 7.

Applicability –

having paid-up share capital of 10 crore rupees or more or;

turnover of 50 crore rupees or more or;

by a listed company

Check dates of renewals of DSCs of signatories to the Form.

Please check the attachments to be attached to the Form and keep the same ready.

Ensure size of Form after considering size of attachments. Keep buffer for affixing DSCs.

Optimise the attachments, if need be. But ensure attachments should be readable.

If size of the Form exceeds, then addendum to the Form shall be filed.

*No additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, (MCA Circular 24th March 2020).*

**OTHER COMPLIANCES –**

Apart from above, the Company should comply with followings -

**Maintenance of Statutory Registers:-**

- Register of Directors and KMP
- MGT-2: Register of Members/Debenture holders
- Index of Members
- Index of Debenture Holders
- Register and Index of Beneficial Owner
- MGT-3: Foreign Register of Members, Debenture holders, other security holders or beneficial owners residing outside India
- Form SH-2: Register of Renewed and Duplicate Share Certificate
- Form SH-3: Register of Sweat Equity Shares
- Form SH-6: Register of Employee Stock Options
- Form SH-10: Register of Shares or Securities Bought Back
- Form CH-7: Register of Charges

Form MBP-2: Register of Loans/Guarantee/Security and Acquisition by Company

Form MBP-3: Register of Investments not held in its own name

Form MBP-4: Register of Contracts or Arrangements in which Directors are interested.

**PENALTIES**

Non compliances with the provision of the Act attracts penalty in the form of fine or imprisonment or sometimes both. Also it can lead to disqualification of directors and striking off companies too. Looking into the recent scenario, MCA has outperformed and struck off companies and disqualified directors for non-compliance of DIR-3 KYC and various provisions of Companies Act, 2013. Also if a company fails to follow any of the regulatory compliances then the Company and every officer who is in default shall be punishable with fine for the period for which default continues. Hence the penalties will keep on increasing as the time period of non-compliance increases. After considering the penalty, we can say that **“Compliance in time saves number of penalties and fine.”** As human being’s health it’s said that **“Prevention is better than Cure”**. Same applies to health of the Organization. Therefore, it’s always better to ensure timely Compliances.

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## ANNUAL COMPLIANCES UNDER EMPLOYMENT AND LABOUR LAWS

### **Aditya Ambastha, ACS**

Assistant Vice President – Client Services  
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### **Background**

In India, there are various laws, rules, regulations etc., governing varied sets of activities and areas; for instance, Corporate laws, Employment laws, Environmental laws, Labour laws so on and so forth. All such areas are a combination of various laws and are colloquially referred to as corporate laws, Labour laws etc.

Employment and labour laws are under the purview of the Ministry of Labour and Employment which is one of the oldest and important ministries of Government of India. Its main responsibility is to protect and safeguard the interests of workers in general and those who constitute the poor, deprived and disadvantage sections of the society in particular, with due regard to creating a healthy work environment for higher production and productivity and also to develop and coordinate vocational skill training and enhance employment opportunities. At present, there are 44 employment and labour related statutes enacted by the Central Government dealing with minimum wages, accidental and social security benefits, occupational safety and health, conditions of employment, disciplinary action, formation of trade unions, industrial relations, etc.<sup>1</sup>

Apart from the central acts, there are certain state-level acts as well which form a part of the employment and labour laws. Also, off-

late, certain central acts which have been enacted and form part of employment and labour laws are under the legislative purview of a different Ministry than the Ministry of Labour and Employment, for instance the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

### **Frequently heard of Acts under Employment and Labour Laws**

Although, there are 44 Central Acts, some of the acts which are frequently to be complied with are as under:

- The Employees State Insurance Act, 1948;
- The Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Equal Remuneration Act, 1976;
- The Industrial Disputes Act, 1947;
- The Maternity Benefit Act, 1961;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965;
- The Payment of Gratuity Act, 1972;
- The Payment of Wages Act, 1936;
- The Factories Act, 1948;
- The Employees Compensation Act, 1923;
- The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959;
- The Apprentices Act, 1961;
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Similarly, state-level acts in the state of Maharashtra are as under:

<sup>1</sup> <https://labour.gov.in/about-ministry>

The Maharashtra Labour Welfare Fund Act, 1953;

The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975;

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

The “Shops and Establishments Act” and the “Labour Welfare Fund Act” are acts which have been enacted by majority of the states and union territories in India.

### **Compliances under Employment and Labour Laws**

Employment and labour laws, just like most other laws are a combination of various legislations and subordinate legislations i.e. acts and rules which are to be read with various circulars, notifications etc., issued from time to time. Over the years, the laws have evolved and so has the acceptance towards these laws. Compliances under these laws can be broadly categorised as under:

**One-time Compliances** – those requirements which are required to be complied only once;

**Continual Compliances** – those requirements which are to be complied on a continual basis;

**Periodical Compliances** – those requirements which are to be complied on a periodical basis;

**Event-based Compliances** – those requirements which are to be complied based on the happening or not happening of an event.

Under the four broad categories as aforesaid, compliance requirements can be further grouped into separate heads, as under:

<b>One-time Compliances</b>	<b>Continual Compliances</b>
Registrations with Statutory/ Regulatory authorities (which are valid perpetually) of Constitution	Display of abstract of laws conspicuously within office premises Maintenance of prescribed working conditions/

Committees Formulation of Policies	environment including infrastructure Maintenance of Statutory Registers
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<b>Periodical Compliances</b>	<b>Event-based Compliances</b>
Registrations with Statutory/ Regulatory authorities (which require periodical renewals) Remittance of Contributions Filing of Returns	Filing of intimations/ reports (in case of accidents / dangerous occurrences etc.) Disbursement of amounts like gratuity, maternity bonus etc. Extending co-operation in case of inspections etc.

It is important to follow the provisions of employment and labour laws in true spirit as it is primarily aimed towards upliftment of the disadvantaged section of the society.

### **Annual Compliances**

Annual compliances under employment and labour laws form a part of the “periodical compliances” category. Majority of the annual compliances are filing of returns with the prescribed authority. Important to note that annual returns under employment and labour laws are to be filed for the calendar year i.e. January to December, irrespective of the financial year followed by the enterprise.

The following table<sup>2</sup> provides a bird’s eye view of the annual compliances under various central legislations forming part of employment and labour laws.

<b>Sr. No.</b>	<b>Act</b>	<b>Compliance</b>	<b>Due Date</b>
01	The Factories Act, 1948	Annual Return	15 <sup>th</sup> January

<sup>2</sup> Not exhaustive

Sr. No	Act	Compliance	Due Date
02	The Maternity Benefit Act, 1961	Annual Return along with details of maternity bonus and payments made	21 <sup>st</sup> January
03	The Employees State Insurance Act, 1948	Annual Return	31 <sup>st</sup> January
04	The Employees Compensation Act, 1923	Annual Return	01 <sup>st</sup> February
05	The Industrial Disputes Act, 1947	Annual Return	01 <sup>st</sup> February
06	The Minimum Wages Act, 1948	Annual Return	01 <sup>st</sup> February
07	The Payment of Wages Act, 1936	Annual Return	15 <sup>th</sup> February
08	The Contract Labour (Regulation and Abolition) Act, 1970	Annual Return by Principal Employer	15 <sup>th</sup> February
09	The Payment of Bonus Act, 1965	Payment of Bonus	30 <sup>th</sup> November
10	The Payment of Bonus Act, 1965	Annual Return	30 <sup>th</sup> December
11	The Sexual Harassment	Annual Return	Not prescribe

Sr. No	Act	Compliance	Due Date
	of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013		d

### Year-end Compliances

In addition to the annual compliances as aforesaid, there are certain year-end compliances as well under various central legislations forming part of employment and labour laws. These include filing of monthly, quarterly, half-yearly returns, which are as under<sup>3</sup>: acts as well. Compliances under state-level acts in Maharashtra are as under<sup>4</sup>:

Sr. No.	Act	Compliance	Due Date
01	The Employees Provident Fund and Miscellaneous Provisions Act, 1952	Remittance of contribution and filing of return for the month of December	15 <sup>th</sup> January
02	The Employees State Insurance Act, 1948	Remittance of contribution and filing of return for the month of December	21 <sup>st</sup> January
03	The Employment Exchange (Compulsory Notification of	Return for the quarter ended 31 <sup>st</sup> December	30 <sup>th</sup> January

<sup>3</sup> Not exhaustive

<sup>4</sup> Not exhaustive



Sr. No.	Act	Compliance	Due Date
	Vacancies) Act, 1959		
04	The Contract Labour (Regulation and Abolition) Act, 1970	Return for the half-year ended 31 <sup>st</sup> December by Contractor	30 <sup>th</sup> January
05	The Apprentices Act, 1961	Return for the half-year ended 31 <sup>st</sup> December	31 <sup>st</sup> January

#### Annual / Year-end Compliances under state-level acts

Apart from the annual and year-end compliances under various central legislations as aforesaid, there are certain annual and year-end compliances under the state-level

Sr. No.	Act	Compliance	Due Date
01	The Maharashtra Labour Welfare Fund Act, 1953	Return for the half-year ended 31 <sup>st</sup> December	15 <sup>th</sup> January
02	The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017	Annual Return	28 <sup>th</sup> / 29 <sup>th</sup> February

Every enterprise should consider the employment and labour laws both central as well as state-level and ensure necessary compliance. The Central and State Acts including subordinate legislations can be found on IndiaCode, a digital repository maintained by the Ministries/ Departments of the Government of India.<sup>1</sup>

Note: The due dates for annual / year-end compliances as stated aforesaid are without considering any extension / relaxation that may have been granted by the authorities in view of the pandemic caused by COVID-19 and prevailing in the country.

#### Employment and Labour Reforms

The Government of India as well as the State Governments have been taking various legislative and administrative reforms under the employment and labour laws; one such reform is the introduction of the following codes:

**The Code on Wages, 2019** – An act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto. The Code has received assent of the President on 08<sup>th</sup> August, 2019; however, it is yet to be brought into force.

**The Code on Social Security, 2019** – A bill to amend and consolidate the laws relating to social security of the employees and the matters connected therewith or incidental thereto. *(Introduced in Lok Sabha)*

**The Industrial Relations Code, 2019** – A bill to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto. *(Introduced in Lok Sabha)*

**The Occupational Safety, Health and Working Conditions Code, 2019** – A bill to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and the matters connected therewith or incidental thereto. *(Introduced in Lok Sabha)*

As employment and labour laws at present include a large number of statutes, the introduction of the aforesaid codes is aimed to consolidate all such statutes into a smaller number and also make necessary amendments to the laws which will in-turn help in **EASE OF DOING BUSINESS**.

**RULES & REGULATION MADE THEIR UNDER APPLICABLE ON ALL REAL ESTATE PROJECTS WHICH ARE SITUATED IN THE STATE OF MAHARASHTRA AND REGISTERED UNDER MAHARERA;-**



**CS Mukesh Gupta  
Company Secretary  
Terraform Realty  
Group**

The **Real Estate (Regulation & Development) Act, 2016** (RERA ACT), which came into effect from May 1, 2017, under this ACT there are various compliances which have to be adhered by each and every Developer and Builder with respect to each and every Real

Estate Projects. Some compliances to be carried out on Quarterly Basis and some on Annual basis whereas, some information/Documents are to be filed/disclosed within 7 days from the date of occurrences-

Every promoter whom the Real Estate Project have registered under the MahaRERA (State of Maharashtra) have to be complied all the provisions of the following Act, Rules and Regulation –

Real Estate (Regulation and Development) Act 2016 (to be known hereinafter as **“the ACT”**)

The Maharashtra Real Estate (Regulation and Development) Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017(to be known hereinafter as **“the Rules”**) and

The Maharashtra Real Estate Regulatory Authority (General) Regulation 2017(to be known hereinafter as **“the Regulation”**)

Every Promoter of the real estate project has to be filed following

Information/Documents/Certificates etc on the website of the Maharashtra Rera Authority i.e. <https://mahareraonline.gov.in/>

**REGISTRATION OF THE PROJECT -**

No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act-

As per the section 3 of the RERA Act read with order given by RERA Authority in the matter of ***Santosh Vs. Sai Vintage Realtors dated 11<sup>th</sup> March 2020***- **RERA Registration is not required of following Real Estate Projects-**

Where the area of land proposed to be developed does not exceed five hundred square meters.

The number of apartments proposed to be developed does not exceed eight inclusive of all phases.

where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

Any project, for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building,

as the case may be, under the real estate project.

Real Estate projects where the Promoter has received the Completion Certificate and/or Occupancy Certificate/ N/A(in case of Plotted Development) from the Competent Authority means any Real Estate Project which is completed (Received Occupancy Certificate ) after the Commencement of the RERA Act however, the Promoter has started sale after the Completion of said Real Estate Project and Promoter has created any third Party Right with respect to the said project (Decided by MahaRERA Authority in the case of ***Santosh Vs. Sai Vintage Realtors dated 1<sup>st</sup> March 2020.***)

### **COMPLIANCE CALENDAR**

#### **EVENT BASE SUBMISSION – (WITHIN 7 DAYS)**

**At the time of application for registration of Real Estate Project the Promoter of the Real Estate Project has submitted following documents/Certificate/Information with the Authority and later on if any changes occurred, the Promoter shall be informed to the Authority within 7 (Seven Days) from the date of said changes occurring – (As per Section 4(2) and Rule 3) -**

PAN card of the Promoter-

Name/ Address of the Promoter and its Partners/ Directors and Authorized Representative -

Status of the Promoter entity-

legal title report-

Joint Development Agreement (If Any)-

information relating to the encumbrances-

Any change in sanctioned plan, layout plan, and specification of the Project or phase thereof, and the whole project as sanctioned by the competent authority.

Any Changes in FSI or Proposed FSI

Any Changes in Common Amenities , Common Areas

The Proposed Plan, Proposed Layout Plan of the whole project and Floor Space Index proposed to be consumed in the whole project, as proposed by the promoter;

Number of building(s) or wing(s)

Number of floors in respect of each of the building or wing to be constructed and sanctioned number of floors in respect of each of the building or wing.

Change in Aggregate area in sq. meters of the recreation open space

Number of covered parking spaces

Proforma of Allotment Letter, Agreement of Sale and Conveyance Deed.

The Number, Type and the Carpet Area of Apartments

The Name and Address of Real Estate Agents if any

The Name and Address of the Contractors, Architect, Structural Engineer if any

Change in bank Account

#### **QUARTERLY SUBMISSION –**

**Following details to be submitted on MahaRERA website on quarterly basis-**

The list of number and types of apartments or plots, as the case may be, booked;

The list of number of garages booked;

The list of approvals taken and the approvals which are pending subsequent to commencement certificate;

The status of the project; and

Any other information and documents as may be specified by the regulations made by the Authority.

#### **ANNUAL SUBMISSION-**

The Annual Report on statement of accounts, in the Form 5 (Issued in accordance with the third Proviso to section 4(2) (I) of the Act) duly

certified by the chartered accountant. This form to be filed under the Regulation 4.

#### **OFFENCES & PENALTIES**

##### **PUNISHMENT FOR NON REGISTRATION UNDER SECTION 3 (REGISTRATION OF REAL ESTATE PROJECT)**

(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. Of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten percent of the estimated cost of the real estate project, or with both.

##### **PENALTY FOR CONTRAVENTION OF SECTION 4**

If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project, as determined by the Authority.

##### **PENALTY FOR CONTRAVENTION OF OTHER PROVISION OF THIS ACT**

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the Authority.

## SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013 – AN EMERGING OPPORTUNITY

### CS Kruti Gogri

India has about 9 crores mutual fund folios and about 4 crores registered demat accounts. These investors in mutual funds and stocks get most of their financial advice from distributors and brokers.

Inherently, such advice has a commission payout involved which is funded by the manufacturer of the product. This is the biggest issue of the current times - mis-selling of the products.

Over the last dozen years or more, SEBI has taken cognizance of this conflict of interest between distribution and advice on financial products. While several steps were introduced, one of the landmark regulations SEBI introduced was the SEBI (Investment Advisers) Regulations, 2013.

The regulations paved the way to create a 'fiduciary-only' segment of advisors who will work only in the interest of the clients they serve, thus side stepping any conflict of interest.

The regulations were notified on January 21, 2013 and came into effect on April 21, 2013. They are applicable to the wealth managers and the investment advisers in India.

#### **Take note of a couple of important definitions mentioned in the regulation:**

**As per Regulation 2.1.(I)-** *“investment adviser” means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.*

**As per Regulation 2.1.(m) -** *“investment advice” means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.*

An investment adviser has a fiduciary duty towards its clients to always act in their best interests. The IA regulations provide a framework to the Investment Adviser with an aim to manage the conflict of interest. This includes a Code of Conduct as mentioned in the Third Schedule of the IA regulations.

SEBI has showcased its seriousness towards creating an advisory oriented environment multiple times. However, yet another big step was when SEBI issued significant amendments to SEBI (Investment Advisers) Regulations, 2013 on July 3, 2020.

Its significance comes from the fact that it is a result of four consultation papers issued by SEBI on the proposed amendments to SEBI (Investment Advisers) Regulations, 2013 over the last few years. The amendments are effective from October 1, 2020.

The amendments primarily target business practices and dealing with clients. However, they are not completely explicit about compliance. The right interpretation is the key to successfully navigate the compliance related to regulations.

While interpretation can be subjective, we can rely on how SEBI has viewed non-

compliance via the orders issued against some Registered Investment Advisers (RIA). A classic case is that of Capital Via Global Research Limited (Capital Via) and order passed on it.

### **Case study of Capital Via**

On November 11, 2016, SEBI issued an order against Capital Via for non-compliance of various provisions of IA Regulations.

Capital Via was a research and investment advisory company and provided recommendations to traders on equity, derivatives and commodities.

As per the order, SEBI received approximately 240 complaints from clients of CapitalVia on SCORES platform. One such complaint was “CapitalVia charged a fee of Rs. 25,00,000/- for the services and promised an assured return of 10%.”

On inspection, SEBI observed that the CapitalVia failed to comply with the following:

- Know Your Client procedures
- Risk profiling procedures
- Ensuring suitability of the advice.
- Disclosures to clients.
- Segregating investment advisory and execution services.
- Acting in fiduciary capacity and with due skill, care and diligence towards its clients while providing advisory services.
- Maintaining records as specified in IA Regulations.
- Charging reasonable fees to the clients.
- Obtaining requisite certifications by the employees of the company to provide investment advisory services.
- Disclosing factually correct information on website with regard to the advisory services.

Disclosing relevant material information including its registration details while soliciting clients through website.

Here is a compilation of the key compliance under IA regulations, including the latest amendment regulations.

## **COMPLIANCE REQUIREMENTS UNDER IA REGULATIONS**

### **#1 - Qualification and certification requirements (Reg. 7)**

All RIAs should fulfill the qualification and certification requirements at all times.

All non-individual Investment Advisers (partnership firms, companies and LLPs) need to designate one person as the Principal Officer, who fulfills the qualification and certification requirements at all times.

#### **Qualification requirement:**

*7.1.(a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a CFA Charter from the CFA Institute;*

*7.1.(b) An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;*

**Certification requirement:**

*7.2 All Investment advisers should have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services -*

*(a) from NISM; or*

*(b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM*

Even the persons associated with investment advice also needs to fulfil the qualification and certification requirement. However, the experience requirement for such persons is two years instead of five.

**#2 – Net worth (Reg. 8)**

The individual investment advisers need to have net tangible assets of not less than Rs. 5 lakhs and the non-individuals need to have net worth of not less than Rs. 50 lakhs.

"Net worth" means the aggregate value of paid up share capital plus free reserves (*excluding reserves created out of revaluation*) reduced by the aggregate value of accumulated losses, deferred expenditure not written off, including miscellaneous expenses not written off. The entity has to maintain different Net worth for each of the other services offered as per extant rules and regulations.

**#3 – Conditions to Certificate (Reg. 13)**

All individual investment advisers have to use the term 'investment adviser' in all correspondences with clients.

All non-individuals have to include the words 'investment adviser' in their name. If the

investment advisory service is provided by a separately identifiable department or division or a subsidiary, then such separately identifiable department or division or subsidiary should include the words 'investment adviser' in its name.

All individual RIAs whose number of clients exceed 150 in total, have to apply for registration as non-individual investment adviser.

**#4 – Know Your Client (KYC) procedure (Reg. 15.1.8)**

An investment advisor has to follow KYC procedure as specified by SEBI at all times including maintaining KYC documents of the clients.

In fact, all investment advisers have to get registered on Central KYC Records Registry (CKYCR).

All RIAs have to, **within 10 days after commencement of account-based relationship**, file the electronic copy of the client's KYC with the CKYCR.

**#5 - Fees (Reg 15A and Clause 6 of Code of Conduct)**

SEBI is yet to issue a circular for the manner in which fees can be charged by the Investment Adviser. However as *per Clause 6 of Code of Conduct, an investment adviser may charge fees, subject to any ceiling as may be specified by the Board, if any. The fees charged to the clients has to be fair and reasonable.*

*The RIAs can accept fees only through direct credit into their bank account through NEFT/RTGS/IMPS/UPI.*

**#6 - Risk Profiling and assessment (Reg. 16)**

The Investment adviser needs to have a process for assessing the risk a client is willing and able to take. The Investment adviser has to obtain all the relevant information as is necessary for the purpose investment advice.

Risk profiling and risk assessment of the client should be done before the advice is given to the client.

The risk profile should be communicated to and approved by the client. A client's risk assessment should be updated periodically.

**#7 – Suitability assessment (Reg. 17 and Clause 4 of the Code of Conduct)**

The investment adviser needs to have a documented process for investment selection based on client's investment objectives and financial situation.

RIA should ensure that the investment advice is appropriate to the risk profile of the client.

**#8 – Disclosures to the client (Reg. 18 and Clause 5 of the Code of Conduct)**

The investment adviser has to ensure disclosure of all material information about itself, its business, terms and conditions on which services are offered, any actual or potential conflicts of interest and such other information as is necessary to take an informed decision on whether or not to avail its services.

**#9 - Appointment of compliance officer (Reg. 20)**

All non-individual RIAs have to appoint a compliance officer for compliance monitoring.

**#10– Grievance redressal process (Reg. 21)**

RIAs need to have an adequate procedure for grievance redressal. The same should be communicated to the client as well. RIAs need register on SCORES platform. All RIAs have to display details about complaints on the home page of their website.

**#11 - Client level segregation of advisory and distribution activities (Reg 22)**

An individual investment adviser shall not provide distribution services. The family of RIA i.e spouse, parents and children, can provide distribution services provided that the same client is not provided advisory services and vice-versa.

A non-individual investment adviser shall have client level segregation at group level for investment advisory and distribution services. This means that same client cannot be offered both advisory and distribution services within the group of the non-individual entity.

SEBI is yet to issue guidelines for compliance and monitoring process for client segregation at group or family level.

An arms-length relationship between the investment advisory and distribution activities should exist.

**#12 – Implementation of advice or execution (Reg 22A)**

RIAs can provide implementation services to clients provided no consideration in any form or manner is receive by RIA for the same.

**#13 – Maintenance of records (Reg. 19)**

An investment adviser shall maintain the following records of the client -

- (a) KYC records
- (b) Risk profiling and risk assessment



- (c) Suitability assessment of the advice
- (d) Copies of agreements
- (e) Investment advice provided - written or oral
- (f) Rationale for investment advice, duly signed and dated
- (g) A register or record containing list of clients.

All records have to be maintained either in physical or electronic form and preserved for a minimum period of 5 years.

#### **Documents to be checked during audit:**

Along with checking the documents required to be maintained under Reg. 19, here are additional documents / information to be checked during audit.

Education qualification and NISM certificates of RIA or principal officer and persons associated with advice.

Audited balance sheet or net worth certificate from a CA

Process for selecting investments suitable to clients

Disclosure document or manner in which disclosures are given

Correspondence with clients

Grievance redressal process

Communication of risk profile and approval of the risk profile of client via registered email or physical document.

#### **REQUIREMENT OF CONDUCTING ANNUAL AUDIT:**

As per Regulation 19.3 of the IA regulations, all the RIAs are required to conduct yearly

audit in respect of compliance with the regulations from a member of ICAI or ICSI.

SEBI has not given a format of the audit report to be issued by the professionals. However, in the case of CapitalVia as discussed above, SEBI mentioned that audit reports will be considered as valid proof of due compliance of IA regulations if they provide details of the steps taken by RIA to ensure compliance.

#### **DUE DATE OF AUDIT**

The existing IA regulations do not specify due date to conduct the annual audit. However in the SEBI Board meeting held on February 17, 2020, it was proposed that the audit should be completed within 6 months from the end of financial year.

#### **SUBMISSION OF REPORT**

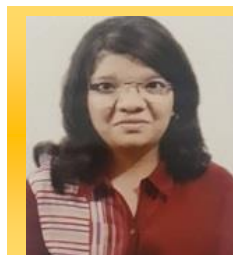
In the amendment regulations it is mentioned that the audit report has to be submitted to SEBI. However, guidelines for submission of a report are yet to be issued.

The current regulations are a work in progress to build an investor centric and focused advisory ecosystem. The changing regulations also indicate that the regulator is willing to accommodate as per changing times and investor needs.

SEBI has made its efforts to promote these objectives. We, as audit professionals, have the responsibility to guide the RIAs in this direction and serve the industry.

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## COMPLIANCE IS NOT THE BURDEN BUT COST OF NON-COMPLIANCE IS



**CS Ms. Bhairavi Anil Kulkarni**  
Team Leader  
Legal & Secretarial Department  
Makarand M. Joshi & Co

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#### Introduction

#### Importance of annual compliances

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#### Introduction:

Since ancient times there is always an importance of compliance. In those times, kings used to set Rules, Regulations, Codes of Conduct for his subjects and if any of his subjects fail to do so then it led them to fines, penalties or punishments and sometimes even death sentence.

Same way in the current scenario, Government prescribes various laws to be followed by different categories of entities. Corporates, in India, which are generally in the form of companies are bound to follow the compliances under Companies Act 2013 ("the Act"), some of which govern in-house activities of companies and some are in the form of various filings with the Ministry of Corporate Affairs ("MCA"), which is in charge of regulating the companies registered with various Registrar of Companies ("ROCs") under the broad umbrella of MCA.

These compliances include disclosures of information in respect of financials, change in

management, maintenance of records by company, financial transactions and various other transactions / corporate actions happening in the company enables the stakeholders to know the situation and health of the relevant Company.

If any entity fails to do the prescribed filing/disclosures within the prescribed due date, as required under the Act, then it has to bear the cost of non-compliances and such cost not only includes the monetary cost but also cost of status of position of the directors, key managerial personnel, cost of repute of brand and the cost of existence of the company sometimes.

#### Some Statistics of MCA actions in recent past:

In the past few years, MCA has started taking active punitive actions against companies which failed to do annual compliances of filing of financial statements or annual returns with MCA. MCA has been sending show cause notices to such companies, and if the pending filings are not done within the time prescribed under the show cause notice, MCA has been striking off such defaulting companies as per the powers given to the ROC under Section 248 the Act, Below are some statistics of struck off companies in past 3 years due to non-filing of annual returns and financial statements:-

In FY 2017-18 – 2.26 lakhs companies struck off

In FY 2018-19 – 1 lakh companies struck off

In FY 2019-20 – 55k companies struck off

Also in September 2017, MCA identified over 3 Lakh directors associated with the companies that had failed to file financial statements or annual returns on MCA for a continuous period of three **financial years 2013-14 to 2015-16** in terms of provisions of **section 164(2) r/w sec 167(1)(a)** of the Act and their Director Identification Number (DIN) were blocked, because of which they were barred from accessing the online registry of MCA. The list of such directors was published on the website of MCA and is still available in public domain.

Further, every year after identifying the companies defaulting in filing of financial statements or annual returns on MCA for a continuous period of three financial years, MCA has been releasing the list of Disqualified

Directors, on its website which can be accessed publicly.

#### **Importance of Annual Compliances:**

Annual compliances are needed for making available relevant data for public disclosure about companies registered with MCA, which has multiple utility, which go a long way in nation building, growth of society and safeguarding the personal and social interest of promoters.

Annual compliances are needed for making company and management more accountable for activities.

It helps regulators in keeping control and check on the activities of the entities.

It helps the reporting authorities and Central/State government to identify that activities of the entities are not having any adverse effect on public interest or on socio economic fronts.

It also helps the reporting authority and government also to ensure that there is discipline in the business of the company.

These compliances are introduced to highlight the seriousness of penalties and punishments imposed for contraventions of guidelines of laws. And making the corporates aware that it is better to disclose on timely basis rather than bearing the severe penalties and punishments which will harm their status.

#### **Benefits of Annual Compliances:**

Annual Compliances definitely benefits the corporates in various aspects:

Compliance can keep a company on the right side of the law. Compliance preserves the reputation of the company.

Complied Company attracts talent towards it and also helps to retain the same. Every good professional wants to work with company having proper compliance sense.

Compliances attracts investor's loyalty; stakeholders prefer to invest in the companies where there is proper mechanism and alertness to tackle the risks. Complied company boost the confidence of stakeholders as well as business alliances, auditors, consultants, bankers to work with it.

Compliances gives more opportunities, since government and society always prefer organisations with good repute and having clean record of management in its various development plans.

Compliance fulfillment shows the culture of a company of following ethics and governance and genuineness towards doing lawful business by reducing non-compliance cost.

**Let's take a journey of some of the mandatory Annual compliances under the Companies Act, 2013:**

Pursuant to Section 184 (1) of the Act, it is the duty of every director to disclose their interest in other entities & changes therein in Form MBP-1 & pursuant to section 164 (2) shall make disclosure of non-disqualification in Form DIR-8 in first board meeting of the company every year.

DIR-3 KYC of Director Identification Number (DIN) - All directors to update their KYC details

with MCA on or before 30<sup>th</sup> September every year to keep status of their DIN Active.

Filing of Return of deposit in Form DPT-3 Rule 21 of The Companies (Acceptance of Deposit) Rules, 2014 for disclosure of Public Deposits accepted by Company under section 73 of the Act and also for any amount outstanding as on year end which is not considered as deposit or excluded from definition of deposit under Companies Act 2013 and relevant rules and regulation given therein, on or before 30<sup>th</sup> June every year.

Conducting Annual General Meeting within 6 months of end of financial year i.e. 30<sup>th</sup> September every year, or within 15 months from last Annual General Meeting and Filing Audited Financials along with Auditors and Directors Report in form AOC-4 within 30 Days of AGM and Annual Return in form MGT-7 within 60 days of AGM. Every Year, MGT-8 certificate of Practicing Company Secretary on compliance by company under various acts is

also required to be attached to MGT-7, for certain bigger companies. Similarly, for a different set of bigger companies, Secretarial Audit Report from a Practicing Company Secretary in Form MR-3 has to be attached to the Directors Report.

Public companies have to file Board Resolution passed for various purposes under Section 179 in Form MGT-14 within 30 days of passing Board resolution, and most common among the list is the adoption of Financial Statements and Directors Report by Board of Directors.

Every Public company has to mandatorily take care of compliance of directors' retirement by rotation in every annual general meeting.

During the year Companies required to maintain various statutory registers such as Register of Director, Director Shareholding, Members, Register of Loan, Guarantee, Investment made by the Company, Register of Contract with Related Parties etc as prescribed under various provisions of the Act. These are just some of the compliances applicable to companies, which need to be ensured on annual basis. There are many other compliances which are applicable on half year basis, quarterly basis as well as those which trigger on happening of any event / corporate action.

**Penal Provisions for contravention of aforesaid compliances-**

Under different sections of Companies Act, 2013, different consequences are prescribed for different non-compliance which include fine, penalty or even imprisonment in some cases. For those sections where there is no consequence is mentioned for non-compliance, there is a residual section 450 which prescribes the penal provisions.

In below paras, I have tried to summarize penal provisions for some of the frequently triggered non-compliance in companies:-

### **Penal provisions for Delay in Annual Filing Forms**

Section 403, as amended by Companies (Amendment) Act, 2017, has provided that if there is any default in Sec 137 (filing of financial statements in Form AOC-4 within 30 days of annual general meeting) or Sec 92 (filing of annual return in Form MGT-7 within 60 days of annual general meeting), then Rs.

100/- additional fees per day is liable and there is no maximum cap on the amount of additional filing fees.

Over and above additional filing fees, the below mentioned penalty is also leviable for default in filing of these annually prescribed filings:-

<b><u>Forms</u></b>	<b><u>Section Number</u></b>	<b><u>Company (Fixed) One-Time Penalty</u></b>	<b><u>Company (Continuing one) Per-Day Penalty</u></b>	<b><u>Officer in default (Fixed) One-Time Penalty</u></b>	<b><u>Officer in default (Continuing one) Per Day Penalty</u></b>
AOC-4	137 (3)	1000 per day Max – 10,00,000	-	10,00,000	100 per day Max – 5,00,000
MGT-7	92(5)	50,000			

Other than this monetary cost, if the default continues for 2 years or more, then there is a risk that the ROC may initiate striking off of the registration of the Company from its records.

Further, if the default continues for 3 years or more, and that too in filing even one of these forms, then the directors of the Company become disqualified to be appointed as a Director in any other Company, and because of this disqualification, they vacate the office of Director in all other companies, wherever they are holding the position of Director, except in the defaulting Company. Moreover, till the term of disqualification continues, the Director Identification Number (DIN) of the Director remains inactivated.

All these consequences go a long way in affecting the Directors' credibility and repute in market, banks, and in the eyes of investors and all other Regulators. If any director contravenes the provisions in respect of disclosures to be given about the entities in which he is interested under section 184, at the time of joining or on an annual basis, or at the time when the company is entering into any contract or arrangement with any entity in which the director is concerned or interested, then he is punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs. 1 lakh or both.

At the time of appointment or re-appointment in any Company, a proposed director is required to declare that he is not disqualified to be appointed as a Director. If he gives an incorrect declaration in this regard, it would lead to committing of fraud and Section 447 of the Act will get attracted (which is explained below).

Further Section 448 of the Act also provides that if any person makes any statement which is false in any material particulars knowing it to be, if any return, report, certificate, financial statement, prospectus, statement or other document or which may omits any material fact, knowing it to be material, shall be liable to punishment under Section 447 i.e punishment for fraud i.e punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud. And if the fraud in question involves public interest the term of imprisonment shall not be less than 3 years.

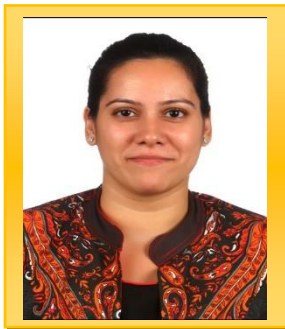
From the above, it can be seen that the consequence of non-compliance can range from huge monetary penalty and can even lead to draconian consequences in the event of fraud.

### **Conclusion**

The nature of compliances and filings expected from companies is very routine and specific in nature but costs involved for non-compliances are very huge in all the aspects whether it is monetary, personal or on social fronts. Compliances brings competitive benefit to entities, attracts stakeholders' loyalty, investment and return on investment, transparency. Timely compliances also depicts the seriousness and genuine attitude of promoters towards their business and stakeholders. 100% Complied organization is always an added advantage for entrepreneurs to succeed in their vision. Every organization should adopt mission statement of 100% Compliance and Zero Penalty.

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## DECIPHERING THE ANNUAL COMPLIANCES UNDER LABOUR LAWS



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As an emerging market, India is cited as having the potential to become the third-largest economy in the world within the next 30 years. The "Make in India" campaign coupled with other initiatives taken by the Ruling Government, like "Skill India", "Digital India", has enthused huge interest among various stakeholder being domestic and/or overseas. Conducting business in India would

require keen ability to understand some complex and some not so complex laws associated to this country while keeping in mind the changing policies of the Government, amendments to the existing statues and new laws enacted from time to time.

Our effort in this write up is to broadly highlight one such phase illustrating the Annual Compliances under Labour Laws.

### **MAJOR REVAMP UNDER LABOUR LAWS:**

In recent years, the Labour Ministry's efforts have concentrated around aligning central labour laws. In 2019, these efforts further crystallized into bills that were introduced in the Parliament. The Code on Wages, 2019

(Wage Code) was passed by both the Houses of the Parliament and has received Presidential assent. Once the effective date of the Code on Wages is notified, it shall subsume and repeal the following relevant labour laws:

- a. The Payment of Wages Act, 1936
- b. The Minimum Wages Act, 1948
- c. The Payment of Bonus Act, 1965
- d. The Equal Remuneration Act, 1976

### **MAJOR BIFURCATION UNDER LABOUR LAWS IN INDIA :**

Throughout India, labour laws are divided into four broad categories, i.e. Working Conditions, Industrial Relations, Wage, Welfare and Social Securities.

<b>1. Law of welfare &amp; Working Condition:</b>	<b>2. Law of Industrial Relations:</b>	<b>3. Law of Wages:</b>	<b>4. Social Security Legislations:</b>
<b>The Factories Act, 1948</b>	Industrial Disputes Act, 1947	The Minimum Wages Act, 1948	The Employees' State Insurance Act, 1948
<b>The Factories Act, 1948</b>	The Plantation Labour Act, 1951	The Payment of Wages Act, 1936	The Employees' Provident Funds & Miscellaneous Provisions Act, 1952
<b>The Mines Act, 1952</b>	Indian Trade Union Act, 1926	The Payment of Bonus Act, 1965	The Employee's Compensation Act, 1923
		The Equal Remuneration Act, 1976	The sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013;



**ANNUAL COMPLIANCE UNDER LABOUR LAW.**

<b>Name of the Act</b>	<b>Every Month/ Year</b>	<b>Event</b>	<b>Form No.</b>	<b>Applicability as per the number of employees</b>
Employees Provident Funds and Miscellaneous Provisions Act, 1952	15 <sup>th</sup> of every month	Remittance of Contributions	Online Challan	Specified Factory employing more than 20 employees.
Contract Labour (Regulation & Abolition) Act, 1970	Within 15 Days of commencement/ completion of each contract	Return/Notice within 15 days of commencement/ completion of each contract by the Principal employer	Form VI-B	20 or more.
Employees State Insurance Act, 1948	21 <sup>st</sup> of every month	Remittance of Contributions	Online Challan	Factory employing more than 10/ 20 employees.
Contract Labour (Regulation & Abolition) Act, 1970	Within 15 Days of commencement/ completion of contract work	Notice of commencement/ completion of contract work by the Contractor within 15 days	Form VI-A	20 or more.
Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act & the Rules, 1966	February 15	Annual Return in duplicate.	Form XXV	10 or more.
Employment Exchanges (CNV) Act, 1959 & Rules	Within 30 Days from due dates	Quarterly Return for respective quarter	Form ER-1	N.A
Employment Exchanges (CNV) Act, 1959 & Rules	Within 30 Days from due dates	Biennial Return within 30 days of the due date as	Form ER-II	N.A

		notified in the official gazette		
Payment of Gratuity Rules	Within 30 Days of applicability of the Act & any change	Notice of applicability of the Act & any change	Form A or B	10 or more
Factories Act,1948	January 15 <sup>th</sup>	Annual Returns	Form as prescribed in State Rules	10 or more
Maternity Benefit Act, 1961	January 21	Annual returns & details of payment ending December 31	Forms L, M, N, & O	10 or more.
Employees' State Insurance Act, 1948	January 31	Annual information about factory/ establishment covered	Form 01A	10 or more.
Minimum Wages Act, 1948	February 1	Annual Return	Form – III	Applicable to all.
Factories Act, 1948	July 15 & January 15	Half Yearly Return	Form as prescribed in State Rules	10 or more.
Payment of Bonus Act, 1965 & Rules	December 30	Annual Return, within 30 days after the expiry of 8 months from the close of the accounting year	Form D	20 or more.
Sexual Harassment of Women at Workplace Act, 2013	January 31	Annual Return, in such form and at such time as may be prescribed	As may be prescribed	Applicable to all.

**BILLS PROPOSED UNDER LABOUR LAW.**

The Ministry of Labour and Employment recommended the following four codes to centralize and revamp the existing labour law framework in India:

**Code on Wages, 2019 ("Wage Code")**

This code (which repeals and consolidates the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976) received Presidential assent on August 8, 2019. However, the Central Government is yet to notify the provisions of the said code.

**Some of the significant changes introduced under the Wage Code are set out below:**

**Uniform definition of the term 'wages':** The term 'wages' is defined to include salary allowance, or any other component that can be expressed in monetary terms and lists down specific exclusions. In this regard, the Wage Code introduces a unique concept under which certain excluded components may be considered as wages if the aggregate value of such exclusions exceeds the prescribed threshold.

**A broad definition of the term "employer" and "employee":** The Wage Code broadens the definition of the term 'employer' to also include principal employers and contractors. This essentially entitles contract workers to proceed against both, the principal employer and Contractor to enforce their rights. The term 'employee' also includes persons employed at the supervisory and managerial level. Therefore, going forward, the provisions under the Wage Code will regulate the service conditions of senior-level employees.

**Floor Wage:** According to the Code, the central Government will fix a floor wage, taking into account the living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the central Government may obtain the advice of the Central Advisory Board and may consult with state governments.

**Occupational Safety, Health and Working Conditions Code, 2019 ("OSH Code")**

The OSH Code seeks to regulate health and safety conditions of workers in among other things establishments with 10 or more workers and replace labour laws relating to safety, health and working conditions, such as the Factories Act, 1948, and the Contract Labour (Regulation and Abolition) Act, 1970. This code was introduced in the Lok Sabha on July 23, 2019, and is currently pending. Trade unions across industries are extremely dissatisfied and distressed with this new code. They are insistent on it being reviewed by the department-related parliamentary standing committee in consultation with them. Some of the issues that the trade unions have raised pertain to the limited applicability of the code which does not take into consideration workers in the unorganized sector, on contracts or in home-based production and selective picking up of provisions advantageous to employers.

**The Industrial Relations Code, 2019 ("I.R. Code")**

The I.R. Code was introduced in the Lok Sabha on November 28, 2019, and is currently pending. This code seeks to replace three labour laws, namely, the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946. The Ministry is of the view that with the

introduction of the concept of "fixed-term employment" the proposed I.R. Code will make it easier for an employer to engage/disengage workers based on the requirement. Also, the concept of 'recognition of negotiating union' has been introduced under which a trade union will be recognized as sole 'negotiating union' if it has the support of 75% or more of the workers on the rolls of an establishment.

The Code on Social Security, 2019

This code intends to consolidate and amend the social security laws, including the EPF Act, the Employees State Insurance Act, 1948, and the Maternity Benefit Act, 1961. The Social Security Code, amongst other provisions, also recognizes "gig workers" and "platform workers".

### **CONCLUSION**

To conclude, non-compliance will only result in problems, and the organization will have to face the phase of judiciary, prosecutions, imprisonment, fine. Thus, every vigilant employer should always look at the positive side of compliance. The establishment should also ensure that respective dues to the employees are paid on time, and the welfare is taken care off in a reasonable manner.

"स्वस्तिप्रजाभ्यः परिपालयन्तां न्यायेन मार्गेण महीं महीशाः" (May the well-being of all people

be protected by the powerful and mighty leaders be with law and justice.). This is the real goal of practice; such values imbibe the sense of responsibility towards the economy as a whole. This ensures the right way of happiness to stakeholders.

Finally, one must keep in mind and know that Compliance cost is cheaper than Litigation Cost. Be complied; be safe.

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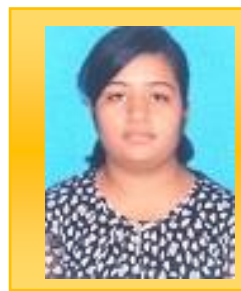
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**ANNUAL COMPLIANCES UNDER CORPORATE, SECURITIES, ECONOMIC AND LABOUR LAWS****CS Laveena Vangani****CS Sona Bachani**

<b>Particulars</b>	<b>Applicable Acts/Laws</b>	<b>Form</b>	<b>Description of Compliance</b>	<b>Due Dates (Includes Extension due to due to Covid-19)</b>
Disclosure by Directors	184(1)	MBP-1	Every Director of the Company shall disclose his concern or interest in other Companies including shareholding, if any	At 1st BM in every FY or within 30 days of appointment/relinquishment of office, whichever is earlier
			Every Director shall also submit MBP-1 whenever there is change in his interest	At the BM held immediately after change in interest or within 30 days of change of interest whichever is earlier
Disclosure by Director	164 (2) & 143(3)(g)	DIR-8	Every Director in each FY to file disclosure of non-disqualification Note: Directors are also required to confirm on compliance with code of conduct of respective Companies	To be received as on 31 <sup>st</sup> March of FY
Audited Financial Statements	129, 134, 137	AOC-4/ CFS/XBRL	Balance Sheet, statement of P&L, Cash flow statement, Director's Report	Within 30 days of AGM.

			and Auditors report in this form. [includes consolidated financial statement and other mandatory attachments]	
Annual Return	92	MGT-7	Every Company	Within 60 days of AGM
		MGT-8	Listed company or a company having paid-up share capital of ten crore or more or turnover of fifty crore or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form MGT-8	Within 60 days of AGM
Annual Return - NFRA	NFRA Rules, 2018 read with NFRA Amendment Rules, 2019	NFRA-2	Every auditor referred to in rule 3 shall file a return with the Authority on or before 30 <sup>th</sup> April every year in such form as may be specified by the Central Government.	- Within 270 days from the date of deployment of this Form - Further on or before 30 <sup>th</sup> November every year
Declaration by Independent Director	149(7)- Schedule IV Regulation 25(8) & (9) of LODR Regulations	Declaration	Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status	First meeting of the Board in which the Independent director participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director and Board of Directors of Listed entity shall

			as an independent director, give a declaration that he meets the criteria of independence	undertake due assessment of the veracity of the same
KYC of Directors	Rule 12A of the Companies (App. and Qualification of Director) Rules, 2014	DIR-3 KYC/WEB	Every Director as on 31 <sup>st</sup> March of a FY is required to file this form.	On or before 30th September every year
Report on Annual General Meeting	121	MGT-15	Every listed Company shall prepare and file a report on AGM with ROC	Within 30 days of conclusion of Annual General Meeting
Reconciliation of Share Capital report	Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014	PAS-6	Unlisted Public Companies	Half yearly basis within 60 days from the conclusion of each half year: By 30th May (Oct - Mar) By 29th November (April - Sep) (Certified by practicing CS or CA)
Outstanding payments to Micro & Small enterprise	Pursuant to Order from MCA dated January 22, 2019	MSME-1	All Companies who get supplies of Goods or services from Micro & small enterprise suppliers and whose payments to these suppliers exceed 45 days from acceptance shall submit half yearly return stating amount due and reasons [NIL return is not required to be filed]	<ul style="list-style-type: none"> <li>• By 30<sup>th</sup> April. (Oct - Mar)</li> <li>• By 31<sup>st</sup> October (April - Sep)</li> </ul>

Return of deposit	The Companies (Acceptance of Deposits) Amendment Rules, 2019 vide MCA notification dated January 22, 2019	DPT-3	Every company other than Government company shall file Return of deposit or particulars of transaction not considered as deposit or both	On or before 30 <sup>th</sup> day of June of every year
Significant Beneficial Ownership (SBO)	Rule 2A of the Companies (SBO) Rules, 2018	BEN-1	Every individual upon acquiring the significant beneficial ownership as per rules or after any change in SBO declaration provided earlier shall make declaration to the Reporting Company	Within 30 days of acquiring the significant beneficial ownership or any changes therein
	Rule 4 of the Companies (SBO) Rules, 2018	BEN-2	Upon receipt of declaration including any change in previous declaration from SBO, the Reporting Company to file a return in this form with ROC	Within 30 days of receipt of declaration or any changes therein
Appointment of Cost Auditor	Companies (Cost Records and Audit) Rules, 2014	CRA-2	Categories of Companies prescribed under rule (3) & (4) shall appoint a Cost Auditor within 180 days of the commencement of FY to get its cost records audited	- Within 30 days of BM in which appointment is made Or; - Within 180 days of the commencement of FY, whichever is earlier
Cost Audit Report		CRA-4		-29 <sup>th</sup> February 2020 & thereafter within 30 days of receipt of Cost Audit Report
Share Transfer Agent- Listed entity	Regulation 7(3) of LODR	Intimation upload	The listed entity shall submit a compliance certificate to the exchange, duly	Within one month of end of each half of the FY



			signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year	
Statement of Investor Complaints	Regulation 13(3) of LODR	XBRL format	A statement giving the number of investor complaints pending, those received, disposed of and those remaining unresolved at the end of the quarter	Within 21 days from the quarter end
Compliance Certificate	Regulation 17(3) of LODR	-	The BOD shall periodically review compliance reports pertaining to all applicable laws	Quarterly
Corporate Governance Report	Regulation 27 (2) of LODR	XBRL format available	Compliance report on Corporate Governance	Within 15 days from the quarter end
Shareholding Pattern	Regulation 31 of LODR	XBRL format available	A statement showing holding of securities and shareholding pattern separately for each class of securities	Within 21 days from the quarter end.
Disclosures of RPT	Regulation 23(9) of LODR	Intimation upload	Submit disclosures of Related Party Transactions (RPT) on a consolidated basis within 30 days from the date of publication of its standalone and consolidated	Within 30 days of Board Meeting where half-yearly financial results were approved.

			financial results for the half year to the stock exchanges and publish the same on its website	
Issuance of Share Certificates	Regulation 40 (9) & (10) of LODR	Certificate - Intimation	Submit a Certificate from PCS to the Stock Exchange certifying that all certificates have been issued within 30 days of Transfer of securities etc., within 1 month of end of each half of the FY	- 30th April of FY - 31st October of FY
Financial Results	Regulation 33(3) of LODR	Intimation upload	The listed entity shall submit quarterly and year-to-date standalone &/or consolidated financial results to the stock exchange within forty-five days from end of each quarter, other than the last quarter.	- 45 days from end of each quarter - 60 days from end of last quarter ( in case of last quarter)
Fees	Regulation 14 of LODR	Payment	Payment of Fees & other charges to the recognized stock exchange(s) within <b>1 month</b> from March 31	By 30 <sup>th</sup> April of FY
Secretarial Compliance Report	Regulation 24A of LODR	Intimation upload	Annual secretarial compliance report confirming compliance with all laws applicable to the Company.	Within 60 days of the end of the FY

Familiarization program	Regulation 25(7) read with 46(2)	-	The listed entity shall familiarise the IDs through various programmes about the listed entity and shall disseminate on its website, the details of Familiarization programmes as per the requirement under Regulation 46(2)(i) of LODR	Annually
Code of Conduct-Senior Management Personnel	Regulation 26(3) of LODR	Code of Conduct of Company - to be kept with company	All members of the BOD and senior management personnel shall affirm compliance with the code of conduct of BOD and senior management on an annual basis	Annually
Holding of AGM	Regulation 44(3) of LODR	AGM	It is related to holding of AGM by top 100 Companies based on the market capitalization	By 30 <sup>th</sup> August of each year
PDF copy of Annual Report	Regulation 34 (1) of LODR	Intimation upload	Submit a PDF copy of Annual Report along with the notice of the AGM not later than commencement of dispatch to its shareholders and publish the same on website of the Company	not later than the day of commencement of dispatch( 21 days before AGM )
Annual Report-XBRL	Regulation 36 (4) of LODR	Intimation upload	Submission Annual Report in XBRL mode	Within 30 days of AGM

Share Capital Audit	Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018	Intimation upload	Reconciliation of share capital Audit report	Within 30 days from the quarter end
Default on Loans	SEBI Circular dated 21st November, 2019	Intimation upload	Disclosures (as per the format specified by SEBI) shall be made within 7 days from the end of each quarter by listed entity, if on the last date of any quarter: a. Any loan including revolving facilities like cash credit from banks / financial institutions where the default continues beyond 30 days or b. There is any outstanding debt security under default.	- Within 24 hours from 30 <sup>th</sup> day of such default - thereafter within 7 days from the quarter end.
Annual Return for Foreign Liabilities and assets		FLA Return	It is required to be submitted mandatorily by all the India resident companies which have received FDI or made ODI in any of the previous year, including current year	On or before 15 <sup>th</sup> July of each year
External Commercial Borrowings	Foreign	ECB Return 2	Borrowers are required to report all ECB transactions to the RBI on a monthly basis through an AD	On Monthly Basis

	Exchange Management Act, 1999		Category – I Bank	
Annual Performance Report		Form ODI Part II	An Indian Party, Resident Individual which has made an Overseas Direct Investment has to submit an Annual Performance Report (APR) in Form ODI Part II to the AD bank in respect of each Joint Venture, Wholly Owned Subsidiary outside India.	On or before 31 <sup>st</sup> December of each year
Single Master Form (SMF) (With effect from 30-06-2018)		Subsumes of FC-GRP, FC-TRS, LLP-I, LLP-II, CN, ESOP, DI, DRR forms into one single master form	Integrates the reporting requirements for FDI in India, irrespective of the instrument through which foreign investment is made.	FDI reporting in Form FC-GPR under SMF has to be done within 30 days after the allotment. Reporting under FC-TRS under SMF has to be done within 60 days of transfer of capital instruments or receipt/remittance of funds whichever is earlier. Form LLP-I & LLP-II is filed for reporting FDI & transfer of capital contribution or profit share in LLPs, respectively. Reporting in respect of issue or transfer of Convertible Notes (CN) is done in Form CN within 60 days of such transfer.
Report the details of the amount of consideration received on issue of		Advance Reporting Form (ARF)	An Indian company receiving investment from outside India for issue of shares or	Within 30 days from the date of issue of shares.

shares			other eligible securities under the FDI Scheme has to report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank through its AD Category I bank	
Reporting of Acquisition of profit/Consideration		Form FDI LLP-I	A LLP receiving amount of consideration and acquisition of profit shares	Within 30 days from the date of receipt of the amount of consideration
Reporting of Disinvestment/Transfer of Capital Contribution		Form FDI LLP-II	A LLP shall report disinvestment/transfer of capital contribution or profit share between a resident and a non resident	Within 60 days from the date of receipt of funds
Reporting by Domestic Custodian		Downstream statement -Form DI	The domestic custodian shall report the issue/transfer/of sponsored/unsponsored depository receipts	Within 30 days from the date of allotment of capital instruments
Contribution towards Provident Fund	The Employees' Provident Funds And Miscellaneous Provisions Act, 1952	ECR	It covers every establishment in which 20 or more people are employed and certain organisations are covered, subject to certain conditions and exemptions even if they employ less than 20 persons each.	15 <sup>th</sup> Day of Every Month

Payment of ESIC	Employees' State Insurance Act, 1948	ESI Challan	The ESI scheme is applicable to all factories and other establishments as defined in the Act with 10 or more persons employed in such establishment.	15 <sup>th</sup> Day of Every Month
Return/Notice of commencement/ completion of each contract by the Principal employer	Contract Labour (Regulation & Abolition) Act, 1970	Form VI-B	It applies to any establishment in which twenty or more workmen are employed on any day of the accounting year as contract labor. It applies to any contractor who employs or who employed twenty or more workers on any day of the accounting year.	Within 15 Days of commencement/ completion of contract work
Annual Return of Accidents	The Factories Act, 1948	Form 31	Applicable to all factories wherein	On or Before 31 <sup>st</sup> January of each year
Annual Return		Form 21	10 or more persons are/were employed with the aid of power or 20 or more workers are/were employed without the aid of power, on any day in the preceding 12 months.	On or before 15 <sup>th</sup> January of each year
Annual Return	The Maternity Benefit Act, 1961	Form L, M, N, and O	It applies to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are	On or before 31 <sup>st</sup> January of each year

			employed for the exhibition of equestrian, acrobatic and other performances	
Notice of applicability of the Act & any change	Payment of Gratuity Act, 1972	Form A & B	The Act is applicable to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments with ten or more employees.	Within 30 Days of applicability of the Act & any change
Annual Return – Bonus paid to the employees for the accounting year	The Payment of Bonus Act, 1965 & Rules	Form D	It applies to any factory or establishment containing twenty or more workers employed on any day during the year.	On or before 30 <sup>th</sup> December of each year
Annual Return	The Minimum Wages Act, 1948	Form III, Rule 21(4A)	It applies to any employment if it employs 1000 employees in the respective state.	On or before 01 <sup>st</sup> February of each year

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## ANNUAL COMPLIANCES UNDER CORPORATE, SECURITIES, ECONOMIC AND LABOUR LAWS



CS RASHMI ARVAIYA

Regulatory compliances offer an opportunity to consistently strengthen organisation through strategic and proactive measures. Irrespective of size or nature of business, regulatory compliances are applicable to all the organisations. Regulation in India can be broadly categorised into three heads, namely economic regulation, regulation in the public interest and environmental regulation. Economic regulation aims to prevent market failure (e.g. Foreign Trade Policy). Regulation in the public interest covers mainly legislations on health and safety. Environmental regulation covers actions to protect the environment from harm.

Make in India and other initiatives by Government of India have stirred huge interest among various domestic and overseas stake holders. India has wide and complex legislative framework. Companies incorporated in India are broadly governed by the following categories of laws:

**Corporate Laws** (such as Companies Act, 2013 and allied Rules, Secretarial Standards)

**SEBI** (such as SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Prohibition of Insider Trading) Regulations, 2015, etc)

**Taxation** (Such as Income Tax Act, 1961, Goods and Service Tax Act, etc)

**Environment Laws** (such as Environment (Protection) Act 1986, Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016, etc)

**Labour Laws** (such as Factories Act, 1948, Contract Labour (Regulation & Abolition) Act, 1970, Employees' State Insurance Act, 1948, Employees Provident Fund & Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, etc)

**Cyber Laws** (such as Information Technology Act, 2000, The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2012, etc)

**FEMA** (such as Foreign Exchange Management Act, 1999, Master Direction on Foreign Investment in India, etc)

**Intellectual Property Laws** (such as Trade Marks Act, 1999, Indian Copyright Act, 1957, etc)

**Sectorial Regulations** (such as Reserve Bank of India Act, 1934, IRDA Act, 1999, etc)

**Other local compliances** (such as village panchayat act, etc) Summary of key annual compliances of selected Corporate, Securities, Economic and Labour Laws are as under :

Sr. No.	Legislations	Section/ Rule/ Regulation	Regulatory Requirement	Due-Date
<b>Corporate Laws</b>				
	Companies Act, 2013	Section 184(1)	Every Director of the Company in first Meeting of the Board of Director in each Financial Year shall disclose his interest in other entities in Form MBP-1.	First Board Meeting of Financial Year
	Companies Act, 2013	Sections 164(2) and 143(3)(g)	Every Director of the Company in each Financial Year shall submit the disclosure of non-disqualification in Form DIR-8 with the Company.	First Board Meeting of Financial Year
	Companies Act, 2013	Section 136	The Company shall send to the members of the Company approved Financial Statement, Directors' Report and Auditors' Report at least 21 clear days before the Annual General Meeting ('AGM'). In case of AGM conducted at shorter notice, consent of members should be obtained.	AGM Date - 21 days
	Companies Act, 2013	Sections 117 read with 179	Public Company shall submit Board resolution for approval of Directors' Report and Financial Statement in Form MGT 14 within 30 days of Board Meeting ('BM') with Registrar of Companies ('ROC').	BM Date + 15 days
	Companies Act, 2013	Section 139	The Company shall submit Form ADT-1 for appointment of Statutory Auditors within 15 days of Annual General Meeting ('AGM') with ROC.	AGM Date + 15 days
	Companies Act, 2013	Section 137	The Company shall submit its Balance Sheet along with Statement of Profit and Loss Account, Cash flow statement, Directors' Report and Auditors' Report in Form AOC 4 within 30 days of holding of Annual General Meeting with ROC.	AGM Date + 30 days
	Companies Act, 2013	Section 92	The Company shall submit Annual Return in Form MGT 7 within 60 days of holding of Annual General Meeting with ROC.	AGM Date + 60 days
	Companies Act, 2013	Section 73 Rule 16	Every Company shall submit Form DPT 3 on or before 30th June in respect of return of Deposit and Particulars not considered as Deposit as on 31st March.	30 <sup>th</sup> June
	Companies Act, 2013	Rule 12A	All the Directors of company shall file Form DIR 3KYC on or before 30th September every year for all the directors of the Company with ROC.	30 <sup>th</sup> September
	Companies Act, 2013 Companies	Rule 9A(3)	Reconciliation of Share Capital Report in Form PAS 6 is required to submitted by all unlisted public company with ROC audited by a practicing company secretary as at end of half year:	29 <sup>th</sup> October 30 <sup>th</sup> May

Sr. No.	Legislations	Section/ Rule/ Regulation	Regulatory Requirement	Due-Date
	(Prospectus and Allotment of Securities) Rules, 2014		April to September – 29 <sup>th</sup> October October to March – 30 <sup>th</sup> May	
	Companies Act, 2013  Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019	Section 405	Every Company shall file half yearly return in Form MSME - 1 in respect of pending payments to MSME vendors as at end of half year. April to September - 31st October October to March - 30th April	30 <sup>th</sup> April 31 <sup>st</sup> October
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 7 (3)	The listed entity shall submit a compliance certificate to the exchange, duly signed by both that is by the compliance officer of the listed entity and the authorized representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying maintaining physical & electronic transfer facility either in house or RTA as applicable.	30 <sup>th</sup> April 31 <sup>st</sup> October
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 13 (3)	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.	21 <sup>st</sup> April 21 <sup>st</sup> July 21 <sup>st</sup> October 21 <sup>st</sup> January
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 14	The listed entity shall pay annual listing fees.	30 <sup>th</sup> April

Sr. No.	Legislations	Section/ Rule/ Regulation	Regulatory Requirement	Due-Date
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 27 (2)	The listed entity shall submit a quarterly compliance report on corporate governance within fifteen days from close of the quarter.	15 <sup>th</sup> April 15 <sup>th</sup> July 15 <sup>th</sup> October 15 <sup>th</sup> January
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 31	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities within twenty one days from the end of each quarter.  In case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.	21 <sup>st</sup> April 21 <sup>st</sup> July 21 <sup>st</sup> October 21 <sup>st</sup> January
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 33	The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, (other than last quarter ) along with Limited Review Report or Audit Report as applicable.  The listed entity shall submit Annual Audited standalone Financial results (also annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications if the company is having subsidiaries) for the financial year, within sixty days from the end of the financial year along with the audit report and either with Statement on Impact of Audit Qualifications (applicable for audit report with modified opinion(s)) or declaration (applicable for audit reports with unmodified opinion(s) ).  In case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) along with the annual audited financial results.	30 <sup>th</sup> May 14 <sup>th</sup> August 14 <sup>th</sup> November 14 <sup>th</sup> February
	SEBI (Listing Obligations and Disclosure Requirements)	Regulation 34	The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting.	AGM Date + 21 working days

Sr. No.	Legislations	Section/ Rule/ Regulation	Regulatory Requirement	Due-Date
	Regulations, 2015			
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 40(9)	The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.	30 <sup>th</sup> April 31 <sup>st</sup> October
	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Regulation 44	The listed entity shall submit the details regarding the voting results to the stock exchange, within forty eight hours of conclusion of its General Meeting.	AGM Date + 48 hours
	SEBI (Depositories and Participants) Regulations, 2018	Regulation 76	Every issuer shall submit quarterly audit report , to the concerned stock exchanges audited by a qualified Chartered Accountant or a practicing Company Secretary, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.	30 <sup>th</sup> April 30 <sup>th</sup> July 30 <sup>th</sup> October 30 <sup>th</sup> January
	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	Regulation 30(1) and 30(2)	Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.  The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.	7 <sup>th</sup> April

Sr. No.	Legislations	Section/ Rule/ Regulation	Regulatory Requirement	Due-Date
			Above disclosures shall be made within seven working days from the end of each financial year to; every stock exchange where the shares of the target company are listed; and the target company at its registered office.	
<b>Environmental Laws</b>				
	E-Waste (Management) Rules, 2016	Rule 9	Submission of annual returns in Form-3, to the concerned State Pollution Control Board by Bulk consumers of electrical and electronic equipment listed in Schedule I.	30 <sup>th</sup> June
	Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016	Rule 6	Submission of annual return in Form 4 to the State Pollution Control Board by every occupier authorised under these rules.	30 <sup>th</sup> June
	Batteries (Management and Handling) Rules, 2001	Rule 10	Submission of half-yearly return in Form VIII to the State Board by Bulk consumer.	30 <sup>th</sup> April 30 <sup>th</sup> September
	Environment (Protection) Rules, 1986	Rule 14	Submission of an environmental audit report in Form V for the financial year ending the 31st March to the concerned State Pollution Control Board by every person carrying on an industry, operation or process requiring consent under Environment (Protection) Act.	30 <sup>th</sup> September
<b>Labour Laws</b>				
	Minimum Wages (Central) Rules, 1950	Rule 21(4A)	Submission of annual return in Form III to the Inspector.	1 <sup>st</sup> February
	Payment of Bonus Act, 1965	Rule 5	Submission of annual return in Form D to the Inspector	1 <sup>st</sup> February
	Employment Exchanges (Compulsory Notification of Vacancies)	Section 5	Submission of quarterly return in form ER-I to the local Employment Exchange.	30 <sup>th</sup> April 30 <sup>th</sup> July 30 <sup>th</sup> October 30 <sup>th</sup> January

Sr. No.	Legislations	Section/ Rule/ Regulation	Regulatory Requirement	Due-Date
	Act,1959			
	Contract Labour (Regulation and Abolition) Act, 1970	Section 35	Submission of annual return by every principal employer of a registered establishment to the Registering Officer.	1 <sup>st</sup> February
	Maternity Benefit Act,1961	Section 20	Submission of annual return to the Chief inspector (as per factories Act).	15 <sup>th</sup> January
	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Section 21	Submission an annual report (covering the number of cases filed/disposed) to district officer.	31 <sup>st</sup> January

Over the past several years, the policy and procedures regulating and governing the Indian corporation have been progressively liberalized and simplified. However, there are several compliances requirements that need to be adhered to, failing which there could be consequences of disqualification of directors, attracting of penal provisions and in some cases even imprisonment of the directors and key personnel.

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## ALL ABOUT EMPLOYEE PROVIDENT FUND AND COMPLIANCE

### CS Sonam Jain

Employees Provident Fund and Miscellaneous Provisions Act, 1952 is a Social Security Legislations, applicable to the whole of India and to every establishment specified in Schedule I on engaging twenty or more persons.

The Act and Schemes framed under the Act are administered by a tri-partite Board known as the Central Board of Trustees, Employees Provident Fund, consisting of representative of Government (Both Central and State), Employers and Employees. The



Board is assisted by Employees Provident Fund Organisation (EPFO). The Board operates through three schemes Employees Provident Fund Scheme, 1952 which details about provident fund contribution amount, nomination and procedure for withdrawal of funds.

Pension Scheme, 1995 details about monthly benefit for superannuation/ retirement, disability, survivor, widow(er) and children.

Insurance Scheme, 1976 (EDLI) states benefit provided in case of death of an employee who was a member of the scheme at the time of death. And, it provides benefit amount upto 20 times of the wages maximum benefit of 6 Lakhs.

Compliance requirements for the Entities under the Act and schemes framed thereunder is provided as below -

<b>Type</b>	<b>Un-Exempted Establishment</b>	<b>Exempted Establishment</b>
<i>Meaning</i>	Entities, which has not applied for exemptions and deposit provident fund contribution amounts of its employees at Regional Provident Fund Office.	Exempted Establishment means entities providing benefit like Provident Fund to its employees through itself, favourable than the benefits provided under the Act, and has obtained exemption from EPFO.
<i>Wages for the purpose of Act and Scheme</i>	All emoluments which are earned by employees while on duty but does not include Dearness Allowance ,House Rent Allowance, Overtime , Bonus, Commission or any similar allowance payable.  The Supreme Court on 28 <sup>th</sup> February, 2019 in the matter of West Bengal v. Vivekanada Vidyamandir & Others, ruled that all the allowances, excluding the allowances which are variable in nature, linked to any incentives for production resulting in greater output, allowances mentioned in wages definition to be excluded for the purpose of deducting provident fund contribution, and allowance which are paid universally, ordinarily and necessarily to all the employees in a particular category shall be	



	considered as “wages” for the purpose of provident fund (PF).	
<i>Wage Ceiling under the Act and Scheme</i>	Wage ceiling is Rs. 15,000 for contributing to Provident Fund Account. Employer can limit its contribution to provident fund account upto Rs 15,000. However, Employees can contribute provident fund voluntarily exceeding on wages above Rs 15,000 , but in that case employer is not bound to contribute.	
<i>Employees Contribution</i>	12% since 1997	
<i>Employers Contribution</i>	Provident Fund - 3.67% Pensions Fund - 8.33% EDLI - 0.5% Administrative charges - 0.5% of contribution amount or minimum Rs. 500/- Rs. 75/- is payable if there is no contributory member in any specific month.	Provident Fund - 3.67 % Pension Fund - 8.33 % EDLI - 0.5% In place of Administrative Charges following are payable - PF Inspection charges - @0.18% or minimum Rs 5/- Under EDLI Scheme - Inspection charges @ 0.005% or minimum Re 1/- is payable.
<i>Benefit under Atma Nirbhar Bharat due to ongoing Pandemic</i>	Following benefit was granted to the unexempted establishment during Pandemic- Contribution rate Employees Contribution - @10% of wages  Employers Contribution - Provident Fund - @1.67% of Wages Pension - @8.33% of Wages EDLI & Administrative Charges – No Change  Only for the month of May, June and July of year 2020.  Aforementioned benefit will not be applicable to establishments eligible for Pradhan Mantri Garib Kalyan Yogna.	Reduced rate as applicable to unexempted establishment is also applicable to exempted establishment.
<i>Defaulting in payment</i>	Delay is made in contributing contribution amount by the establishment entities will be liable for simple interest on the amount due according to the rate of interest specified- Less than 2 months – 5% 2 months – 4 months – 10% 4 months – 6 months – 15% 6 moth and above 25%	For delay in contribution amount by establishment to Board of Trustees it will be liable for simple interest as specified for unexempted establishments.  Continuous non-compliance will lead to cancellation of the exemption granted to the Establishment.

<i>Statutory Date</i>	15 <sup>th</sup> of Every month	15 <sup>th</sup> of Every month
<i>Display</i>	No display is required to be made.	Employer shall display on the notice board of the establishment a copy of rules of fund.
<i>Preliminary Compliances</i>	Establishment needs to be register with the Employee Provident Fund and Provident fund Code needs to be obtained. (Companies which are not incorporated will get the Provident Fund number at the time of registration on Ministry of Corporate Affair Portal and compliances are need to be done once when they cross threshold limit of employees).	Apply for Exemption. Eligibility criteria for applying for exemption - Establishment should comply as unexempted establishment for a period of 5 years Employment Strength > 500 Employees Corpus Size > 100 Crore at the time of seeking exemption Establish a Board of Trustees. File an e-return in Module A and B.
<i>Monthly Compliances</i>	Electronic Challan Cum Return (ECR) needs to be uploaded – On or before 15 <sup>th</sup> of succeeding month.  However, to ease the compliance ECR is segregated from Payment w.e.f 30 <sup>th</sup> April 2020. The ECR can now onwards be filed by an employer without the need of simultaneous payment of contributions and contributions may be paid later by the employer after filing the ECR.  Contribution statement submission by contractor to PE - 7 <sup>th</sup> of succeeding month	Employer should transfer the PF amount in the account maintained by Trust on due date i.e. 15 <sup>th</sup> of every month. Contribution statement submission by contractor to PE - 7 <sup>th</sup> of succeeding month. File an e-return in Modules C and D related to employment and contribution details on a monthly basis. The Board of Trustees to invest the provident fund contribution amount within two weeks of receipt of money from the Employer. Employees Provident Fund Organisation vide its notification no. S.O.1433 (E) has specified the patterns of investment to be made by Board of Trustees.  Online return Modules E providing details of investment on a monthly basis. Establishments which are also maintaining the Trust of their own need to file this return. If an establishment is not maintaining a Trust of its own and is a participating unit in a common provident fund Trust maintained by some other establishment, it is not required to fill this module.  Monthly return mentioned above need to

		be filed by establishments on or before 25th of the following month to which it relates.
<i>Annual Compliances</i>	No compliance requirements	<p>Annual statement of accounts or pass books to be issued to every employee by the Board of Trustees within six months of the close of financial/accounting year.</p> <p>Account of the Provident Fund maintained by the Board of Trustees shall be audited by an independent chartered accountant annually.</p> <p>Yearly return in Module F providing for details regarding audit, annual statement of accounts and financial health of the Trust by Parent Trust only.</p> <p>Copy of the Auditor's report along with the audited balance sheet should be submitted to the concerned RPFC by the Auditors within six months of closure of financial year i.e. April 01<sup>st</sup> to March 31<sup>st</sup>.</p>
<i>Event base compliances</i>	<p>Nomination in Form 2 - at the time of joining.</p> <p>Online return for change of ownership in 5A - within 15 days of such change.</p> <p>Form 13 - PF Transfer from one to other Establishment.</p> <p>Form 11 - claiming exemption from PF if earlier not a member and wages more than 15,000/-.</p> <p>Form 19 / Form 10C / Form 31 - Withdrawal of Provident Fund</p>	<p>Exempted establishments should periodically transmit the details of members' accounts electronically to CPFC/RPFC - As and when direct by the CPFC/RPFC.</p> <p>Other compliances remain same as to the unexempted Establishments.</p>

**Additional compliances & liabilities for exempted establishment**

Appointed Board of Trustees should meet once in every three months.

Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up the statutory limit and

it should not be lower than rate of interest declared by the Central Government.

If the PF contribution amount is invested in the securities, it shall be obtained in the name of Trust. The cost of maintaining DEMAT account and all types of cost like brokerage etc. should be treated as incidental cost of investment by the Trust.

Failure to make investments as per directions of the Government shall made the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

A company reporting loss for three consecutive financial years or erosion in their

capital base shall have their exemption withdrawn from the first day of the next/succeeding financial year.

**Source** – **EPFO** **Website**  
([https://www.epfindia.gov.in/site\\_en/index.php](https://www.epfindia.gov.in/site_en/index.php)).

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## ANNUAL COMPLIANCES UNDER COMPANIES ACT, 2013 AND SEBI (LODR)

**CS Richa Sharma**

**Partner, Shashikala Rao & Co.**

Every company is required to comply with certain mandatory requirements under various provisions of the Companies Act, 2013 (“**CA 2013**”). Every listed company is required to comply with additional requirements under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR**”).

Such compliances involve conducting board meetings and annual general meeting; disclosures by directors under section 164 and 184 of the CA 2013; preparing, signing and filing of financial statements of the Company; filing of annual return; maintenance of statutory registers, minutes book and attendance sheet and so on.

Companies registered under the CA 2013 and under any previous company law are required to comply with following mandatory requirements every year:

<b>Section and Rules under CA 2013</b>	<b>Compliance</b>	<b>Form</b>	<b>Due Date for compliance</b>	<b>Filing of Form with Registrar of Companies or other relevant authority</b>
Section 173	Board Meetings  (Not applicable to One Person Company in which there is only one Director)	Not Applicable	1 <sup>st</sup> board meeting within 30 days of the date of incorporation and thereafter hold a minimum number of 4 meetings every year in such a manner that not more than 120 days shall intervene between two consecutive board meetings  (In case of One Person Company, small company and dormant company – 1 board meeting in each half of a calendar year and	No

			the gap between the two meetings is not less than 90 days	
Section 164(2)	Disclosure of Non-Disqualification by Directors	DIR 8	1 <sup>st</sup> Board Meeting of respective financial year	No
Section 184(1)	Disclosure of interest by Directors	MBP 1	1 <sup>st</sup> Board Meeting of respective financial year	No
Section 149 (7)	Declaration meeting criteria of independence as provided under section 149(6)  (Applicable in case of Independent Directors)	Not Applicable	1 <sup>st</sup> Board Meeting of respective financial year	No
Rule 2(c)(viii) of The Companies (Acceptance of Deposits) Rules, 2014	Director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others	Not Applicable	As and when money is given to the company	No
Rule 16 of The	<i>Return of deposit or particulars of</i>	DPT 3	On or before 30 <sup>th</sup> June of every year	Yes

Companies (Acceptance of Deposits) Rules, 2014	<i>transactions not considered as deposit as on 31<sup>st</sup> March of every financial year.</i> (Not applicable to Government company)			
MCA Notification dated 22 <sup>nd</sup> January, 2019  (Under section 405 of CA 2013)	Details of all outstanding dues to Micro or small enterprises suppliers	MSME-1	Half yearly return:  April to September – 31 <sup>st</sup> October of every year October to March – 30 <sup>th</sup> April of every year	Yes
Rule 12 A of The Companies (Appointment and Qualifications of Directors) Rules, 2014	KYC of Director Identification Number allotted to an individual in previous financial year or in case of change in mobile number and e-mail address of Director who has already submitted DIR 3 KYC in previous financial year	DIR 3 KYC	On or before 30 <sup>th</sup> September of every year	Yes
	Director who has already submitted DIR 3 KYC in previous financial year	DIR 3 KYC WEB	On or before 30 <sup>th</sup> September of every year	Yes
Section 90	Return of significant beneficial owners of the company  (Not Applicable to One Person Company)	BEN 2	Within 30 days from the date of declaration received under Rule 3 of The Companies (Significant Beneficial Owners) Rules, 2018	Yes

Section 96	Annual General Meeting  (Not Applicable to One Person Company)	Not Applicable	Within a period of 6 months from the date of closing of the financial year and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next	No
Section 139	Appointment of statutory auditor if proposed during the year	ADT 1	Within 15 days from the date of meeting in which the auditor is appointed	Yes
Section 137	<i>Copy of Financial Statement to be filed with Registrar</i>	AOC 4	Within 30 days from the date of Annual General Meeting  In case of One Person Company within 180 days from the closure of the financial year	Yes
Section 204(1)	<i>Secretarial Audit Applicable to – Every listed company Every public company having paid up share capital of Rs. 50 cr. or more or having turnover of Rs. 250 cr. or more Every company having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 cr. or more</i>	MR 3		Attached as Annexure to Directors' Report and filed as an attachment to Form AOC-4
Section 92	Annual Return  Certification by Practicing Company Secretary in Form MGT	MGT 7	Within 60 days from the date of Annual General Meeting or deemed date of Annual General Meeting	Yes



	8 is required to be attached to Form MGT 7 in following cases:  Every listed company Company having paid up share capital of Rs. 10 cr. or more or turnover of Rs. 50 cr. or more			
Section 148 (3)	Appointment of cost auditor  (If cost audit is required under section 148(2) of the CA 2013)	CRA 2	Within 30 days of appointment	Yes Central Government
Section 148(6)	Cost Audit Report  (If cost audit is required under section 148(2) of the CA 2013)	CRA 4	Within 30 days from the date of receipt of a copy of the cost audit report	Yes Central Government

**b) Additional compliances in case of public company:**

Section and Rules under CA 2013	Compliance	Form	Due Date	Filing with Registrar of Companies
Section 117 read with Section 179	Resolution passed in pursuance of sub-section (3) of section 179 of the CA 2013	MGT 14	Within 30 days from the date of passing of resolution	Yes
Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014	Reconciliation of Share Capital Report	PAS 6	Half yearly return:  April to September – 31 <sup>st</sup> October of every year October to March – 30 <sup>th</sup> April of every year	Yes
Section 152(6)	Retirement of directors by rotation	Not Applicable	Not Applicable	No

Section 121	Report on Annual General Meeting  (Applicable to listed public company)	MGT 15	Within 60 days from the date of Annual General Meeting	Yes
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**c) Additional compliances under SEBI LODR for listed companies:**

Regulation under SEBI LODR	Compliance	Due Date	Filing with stock exchange
Regulation 7(3)	Compliance certificate duly signed by compliance officer and authorised representative of share transfer agent, certifying that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent	Within 1 month of end of each half of the financial year	Yes
Regulation 13(3)	Statement giving number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter	Within 21 days from the end of each quarter	Yes
Regulation 14	Listing fees or other charges paid to recognised stock exchange	Within 30 days from the end of relevant financial year	No
Regulation 23(9)	Disclosure of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website	Within 30 days from date of publication of half year standalone and consolidated financial results	Yes
Regulation 24A	Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice.		Annexure to annual report

Regulation 27(2)	Quarterly compliance report on corporate governance	Within 15 days from the closure of the quarter	Yes
Regulation 29(1)(a)	Prior intimation to stock exchange about the meeting of the board of directors in which financial results viz. quarterly, half-yearly or annual, as the case may be	Atleast 5 clear days in advance, excluding date of intimation and date of meeting and such intimation shall include the date of such meeting of BODs	Yes
Regulation 29(1)(b) to(f)	<p>Prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:</p> <p>(b) proposal for buyback of securities</p> <p>(c) proposal for voluntary delisting</p> <p>(d) fund raising by way of further public offer, rights issue, ADR/ GDR/ FCCB, qualified institutional placement, debt issue, preferential issue or any other method and for determination of issue price</p> <p>Provided that intimation shall also be given in case of AGM or EGM or postal ballot, that is proposed to be held for shareholder approval for raising fund</p> <p>(e) declaration/ recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying right to subscribe to equity shares or the passing over of dividend</p> <p>(f) proposal for declaration of bonus securities</p>	Atleast 2 working days in advance, excluding date of intimation and date of meeting	Yes
Regulation 30 (6)	Disclosure of all events or information specified in Para A of Schedule III of SEBI LODR	As soon as reasonably possible but not later than 24 hours	Yes

	Disclosure of all events or information specified in sub-para 4 of Para A of Part A of Schedule III	Within 30 minutes of conclusion of the board meeting	Yes
Regulation 31(1)	A statement showing holding of securities and shareholding pattern separately for each class of securities	On quarterly basis, within 21 days from the end of each quarter	Yes
Regulation 33(3)(a) and (b)	Quarterly and year to date standalone and consolidated financial results	Within 45 days of end of each quarter, other than last quarter	Yes
Regulation 33(3)(d)	Annual audited standalone and consolidated financial results to the exchange, along with audit report	Within 60 days from the end of financial year	Yes
Regulation 34(1)	Submission of annual report to the exchange and publishing the same on website of the company (a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting; (b) in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes.	(a) Not later than the day of commencement of dispatch of annual report to the shareholders of the company. (b) Not later than 48 hours after the annual general meeting	Yes
Regulation 36(1)	Annual Report shall be sent in following manner (a) In softcopy to all shareholders who have registered their email address (b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not registered their email id	Not less than 21 days before Annual General Meeting	No

	(c) Hard copy of full annual report, on request		
Regulation 39(3)	Information regarding loss of share certificate and issue of duplicate certificates	Within 2 days of getting information	Yes
Regulation 40(9) and (10)	Certificate from practising company secretary, certifying that all certificates have been issued within 30 days of date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/ allotment monies	Within one month of the end of each half of the financial year	Yes
Regulation 42 (1)	Record date shall be intimated to stock exchange for following purpose: (a) declaration of dividend; (b) issue of right or bonus shares; (c) issue of shares for conversion of debentures or any other convertible security; (d) shares arising out of rights attached to debentures or any other convertible security (e) corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available; (f) such other purposes as may be specified by the stock exchange(s)	Atleast 7 working days in advance (excluding date of intimation and record date) specifying purpose of record date  Provided that in the case of rights issues, the listed entity shall give notice in advance of atleast three working days (excluding the date of intimation and the record date)	Yes

Regulation 44(3)	Voting results	Within 48 hours of conclusion of general meeting	Yes
Regulation 44(5)	Annual General Meeting of top 100 listed entities by market capitalization	Within a period of five months from the date of closing of the financial year	Not Applicable
Regulation 44(6)	Top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings	Not applicable	Not Applicable
Regulation 46	Information as specified in Regulation 46(2) of SEBI LODR shall be disseminated on the website of the company	Update any change within 2 working days from the date of change	Not Applicable
Regulation 47	Advertisement of information specified in Regulation 47(1) of SEBI LODR shall be published in newspaper		Yes simultaneously with publication of information in newspaper

All above mentioned compliances are mandatory annual compliances. In addition to these, there are various event-based compliances which every company is required to comply with. For instance, in case of issue of shares, debentures, alteration of articles of association, alteration of memorandum of association, borrowings and mortgages, appointment and change of directors and key managerial personnel, etc.

**Following is the list of statutory records required to be maintained under CA 2013 and updated on an ongoing basis:**

- a) Minutes book of Board meetings, committee meetings and general meetings
- b) Attendance registers
- c) Register of Members in Form MGT 1

d) Register of Debenture Holders in Form MGT 2

e) Index of Members and Debenture Holders

f) Register of Renewed & Duplicate Share Certificates in Form No. SH 2

g) Register of Significant Beneficial Owners in Form No. BEN 3

h) Register of Deposits

i) Register of Charges in Form CHG 7

j) Registers of Directors & Key Managerial Personnel (KMP) and their shareholding

k) Register of Loan and Guarantee given, security provided, acquisition made in Form MBP 2

l) Register of Investments by the Company but not held in its own name in Form MBP-3

- m) Register of Contracts and Arrangements in which directors are interested in Form MBP 4
- n) Register of Sweat Equity Shares
- o) Register of Employee Stock Option (ESOP)
- p) Register of securities bought back

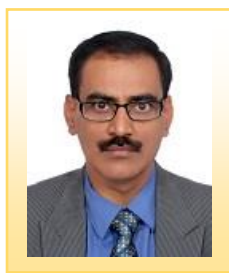
It is also necessary to ensure that entries in the above registers is made within the prescribed time and are signed and

authenticated as required in the respective sections or Rules of the CA 2013.

**Company secretaries, whether in employment or in practice play a vital role in ensuring compliance with the provisions of the CA 2013 and SEBI LODR.**

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## PRACTICAL ASPECTS OF CONVENING EXTRA ORDINARY GENERAL MEETING/ANNUAL GENERAL MEETING THROUGH VC OR OAVM – OPPORTUNITIES & CHALLENGES



**CS Rajesh Arora**  
Sr. General Manager – Group  
Secretarial

The Ministry of Corporate Affairs (“MCA”) had issued General Circular No. 14/2020 on 8<sup>th</sup> April, 2020 and General Circular No. 17/2020 on 13<sup>th</sup> April, 2020 for providing clarifications on passing of ordinary and special resolutions by companies by holding extraordinary meetings through Video Conferencing (“VC”) or Other Audio Visual Means (“OAVM”) and passing of certain resolutions only through postal ballot, without convening Extraordinary General Meeting (“EGM”). The framework is also been provided in the said circulars, which was initially up to 30<sup>th</sup> June, 2020 and has further been extended till 30<sup>th</sup> September, 2020.

Further, in view of the continuing restrictions on the movement of persons at several places in the country, MCA vide its Circular dated May 5, 2020 and SEBI vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/ 2020/79 dated 12<sup>th</sup> May, 2020, have allowed Companies to conduct their Annual General Meeting (“AGM”) through VC or OAVM during the calendar year 2020, in the similar way as it had allowed to conduct EGM vide earlier circulars dated April 8, 2020 and April 13, 2020, during the calendar year 2020, subject to fulfillment of certain requirements as mentioned hereunder:-

For the purpose of providing ease, the process is divided into two parts/categories:-

For Companies mandatorily required to provide e-voting & Companies who have opted for e-voting – Category I

Other Companies – Category II

### **The process to be followed by both categories of Companies:**

1. Framework mentioned in para 3-A & 3-B of EGM Circular – I, dated April 8, 2020 and the manner and mode of issuing notices provided in sub-para (i)-A & (i)-B of EGM Circular – II, dated April 13, 2020, shall be applicable mutatis mutandis for conducting the AGM;
2. Other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted;
3. The financial statements (including Board’s report, Auditor’s report or other documents required to be attached therewith), shall be sent only by e-mail to the members, debenture trustees, and to all other persons so entitled (instead of dispatching physical copies).

Category I	Category II
Before sending the Notices and Copies of Financial statements, a public notice by way of advertisement (specifying details as mentioned in the circular) be published at least once in a vernacular language newspaper and at least once in English	Companies conducting AGM through VC or OAVM shall have e-mail addresses of at least 50% of its shareholders on its records, who: - in case of companies having share capital, represent not less than 75% of such part



<p>language newspaper.</p>	<p>of the paid-up share capital of the company as gives a right to vote at the meeting; in case of companies not having share capital, have the right to exercise not less than 75% of the total voting power exercisable at the meeting.</p>
<p>In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.</p> <p><i>Remark: Better to send by the DD as it would be difficult to get the RBI approval etc. during the lock down to get the permission of dividend warrants.</i></p>	<p>The company shall take all necessary steps to register the email addresses of all the Members who have not registered their email addresses with the company.</p>
	<p>The companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in</p>

	<p>their bank accounts through the Electronic Clearing Service (ECS) or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.</p>
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The Companies which are not covered in General Circular No. 18/2020, dated April 21, 2020 and are unable to conduct their AGM in accordance with the framework provided in this Circular are advised to prefer applications for extension of AGM at suitable point of time before the concerned Registrar of Companies under section 96 the Act.

The Securities and Exchange Board of India (SEBI) has vide its Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated 22<sup>nd</sup> June, 2020, clarified that InvITs and REITs may conduct their meetings through VC/OAVM, and shall follow the procedure as set out in the annexure to the circular.

This Facility shall be available for the annual meeting of Unit Holders in terms of Regulation 22 (3) (a) of InvIT Regulations and Regulation 22(3) of REIT Regulations, to be conducted during the calendar year 2020.

For meetings, other than annual meeting of unit holders, the facility for conducting meeting of unit holders through VC or OAVM shall be available upto September 30, 2020.

Let us now evaluate certain practical issues/challenges that our professional colleagues would be facing and certain questions that they might be having for convening the EGM/AGM through VC or

OAVM by taking the benefit of the aforesaid circulars.

Whether the presence of an Independent Director is must – **YES**

Whether the presence of the Statutory Auditor is must – **YES**. If due to some reason, the representative of statutory auditor could not join, can you still convene the AGM/EGM? In absence of any clarification in the Circular, the answer seems to be negative. However, the MCA may be requested to clarify this.

Whether the presence of the Secretarial Auditor is must – **NO**, unless he has been appointed as the Scrutinizer.

In case of unlisted entities, for passing of a resolution in the AGM/EGM, whether the resolution needs to be proposed and seconded – **YES**.

In case of unlisted entities, whether to pass the resolution, show of hands is must – **YES**.

In case of listed entities, as the E-voting facility has to be provided, whether the resolution to be proposed and seconded – **NO**.

Pursuant to the provisions of the Companies Act, 2013, a Member entitled to attend and vote at the AGM/EGM is entitled to appoint a Proxy. In case, the EGM/AGM being conducted through VC/OAVM pursuant to the aforesaid MCA and SEBI Circulars, physical attendance of Members has been dispensed with and accordingly, the Members cannot appoint Proxy and so, there is no need to annex the Proxy Form and Attendance Slip with the Notice of the Meeting.

**Venue of the AGM/EGM** – Registered Office of the Company shall be deemed to be the Venue of the Meeting and must categorically specify the same in the Notice for the Meeting.

Should the time for holding of the EGM be scheduled keeping in mind the different time zones of members? - **NO**

Inspection of documents such as Register of Directors & KMPs, their shareholding, Register

of Contracts u/s 189 and other relevant documents referred to in the Notice of the Meeting and explanatory statement, to be made available electronically to the Members during the Meeting? - **YES**

**Capacity & Principle of First-Come-First-Serve**

- Above facility should enable at least 1000 members to participate on first-come-first-serve basis.

Proceedings of the meeting to be recorded and the transcript of the same to be kept in safe custody - **YES**

**Submission of questions/queries prior to the Meeting:**

To comply with the requirements of the MCA Circulars and for ease of conduct of the Meeting, facilitate two way teleconferencing or Webex facility for ease of participation of Members, they may be so requested by inserting a paragraph in the notes to the Notice for convening the meeting providing an email id on which the interested member may post his/her queries. Such Members shall also be requested to provide their folio number, registered email Id, mobile number and the query may be answered during the Meeting, if time permits or otherwise, response should be given to them by the authorized person.

For listed entities, the opportunity can be provided to the shareholders to register themselves as speaker to enlarge the democratic process. Facility for joining the Meeting through VC to be opened at least 15 minutes before the scheduled time of the meeting.

**TDS on the dividend on shares transferred to IEPF**

– Pursuant to the Income-tax Act, 1961 as amended by the Finance Act, 2020, dividend income is taxable in the hands of the members with effect from 1<sup>st</sup> April, 2020. The companies are deducting the TDS from the Dividend payable to the shareholder. What about the TDS on dividend on shares which are transferred to IEPF? As per my understanding, IEPF is holding the unclaimed

shares as a trustee and dividend on those shares also needs to be transferred to IEPF Account as the said Fund is a trustee of those shareholders who have not claimed the shares. Technically, questions will arise in future for the said shareholder when he/she claims the shares and unpaid dividend on those shares. Tax on the Dividend is already deducted by the Company in a particular year, however while he/she claims the credit of TDS in future, how the assessee is going to get the same while filing his/her tax return? Seems to be a tricky question.

Logistics Arrangement: High speed internet connectivity and bandwidth of 10 MBPS is desirable. This should be clearly specified as a pre-requisite for joining the Meeting in the AGM/EGM Notice clearly. Otherwise, the Members attending the Meeting will face a lot of issues of buffering in the live streaming and

the shareholders would not be able to view the meeting proceedings of the Meeting seamlessly.

**Conclusion:**

By now, most of the listed entities as well as unlisted entities have convened their respective AGMs/EGMs by following the guidelines prescribed by the MCA and SEBI. Barring few, overall experience seems to be good and enlightening. Further, the Supreme Court, many of the High Courts as well as the NCLT Benches nationwide, are taking up the matters through VC and are considering this a very cost effective and time saving option for all the stakeholders and the statutory authorities must consider this making a permanent feature.

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## ANNUAL COMPLIANCES UNDER POSH ACT, 2013, SEBI (LODR) REGULATIONS, 2015, IBC 2016 & LABOUR LAWS



### I. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) (POSH) ACT, 2013 AND ITS COMPLIANCES

The POSH, Act, 2013 was introduced with an aim to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for related matters.

The POSH Act, 2013 stipulates that a woman shall not be subjected to sexual harassment at her workplace. Accordingly, it may be noted that in-order for a woman to claim protection under the POSH Act, the incident of sexual harassment should have taken place at the 'workplace'.

#### **COMPLIANCE REQUIREMENTS UNDER THE POSH ACT, 2013 \_ IN BRIEF:**

##### **1. Constituting an Internal Complaints Committee (ICC) and Local Complaints Committee (LCC)**

Every employer with 10 or more employees must constitute an Internal Complaints Committee (ICC) within the organization to handle complaints of Sexual Harassment. A Local Complaints Committee (LCC) will be set up in each district to hear complaints from institutions where there are fewer than ten employees, or where the complaint is against the employer himself.

##### **2. Sexual Harassment Policy**

The employer needs to prudently draft a sexual harassment policy and approval of the same by the Board of the Company.

Basic Details required to be entered while drafting POSH Policy:

ICC Composition: names, designation and contact details of the ICC members.

Acts which constitutes as a sexual harassment act

The process for Resolution, Settlement, Prosecution, enquiry and trial procedure

##### **3. Committee Meetings**

Convening meetings of the Internal Complaints Committee as and when required.

##### **4. Creating awareness**

Briefing the employees (both males and females) about sexual harassment Act, Policy, consequences thereof via conducting orientation sessions or seminars.

##### **5. Filing of Annual Report under the Act:**

The Internal/ Local Committee, as the case may be shall prepare an annual report in each calendar year and submit it to the employer and District Officer.

**6. Complaints Reporting in Annual Report:**

Disclosures regarding compliance with POSH Act and rules made thereunder are required along with reporting number of sexual harassment complaints received in a year, the number of sexual harassment disposed off in the year and cases pending for more than 90 days, in its Annual Report.

**7. Investigation** of the Complaints made to the Committee and submitting a report thereto;

**8. Assistance by the Company to the complainant in filing of FIR or complaint to the police, if required**

The Main objective of POSH Act, 2013 is to Provide a safe and secure environment to every woman, regardless of her age, designation, religion, employment status, and making the employer accountable for any Compliant / grievance.

**II. ANNUAL COMPLIANCES UNDER SEBI (LODR) REGULATIONS, 2015**

SEBI (LODR), Regulations, 2015 are applicable to only those Entities / Companies, whose securities are listed on any Recognized Stock Exchange.

**An Annual Compliance Overview under SEBI (LODR), Regulations, 2015**

Sl. No	Regulation No. & Compliance Particulars	Due Date	COVID-19 Relaxation (in Due Dates)
1.	Regulation 33: Annually Relating to Financial Result	30.05.2020	15.09.2020
2.	Regulation 24A & SEBI circular dated February 08, 2019 ((within 60 days from the Closure of FY)	30.05.2020	31.07.2020
3.	Reg.15(1)(t)(i): Issuer of the listed Debt securities shall on yearly basis Submit with debenture trustee certificate from the statutory Auditor giving the value of book debts/receivables	Annual Basis	
4.	Regulation 34: Submission of Annual Report Within 21 working days of it being approved and adopted in the annual general meeting.	Within 21 working days	
5.	Regulation 44: Submission of voting results	Within 48 hours of conclusion of general meeting	
6.	Regulation 52 (1) and (2) relating to Financial Results 60 days from the end of Financial Year for Annual Financial Results	30.05.2020	31.07.2020
7.	Regulation 36 (1)(b) & (c) ; Regulation 58 (1)(b) &(c) Hard copy of the statement containing salient		SEBI has dispensed with the

	features of all the documents, as prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses and hard copies of full annual reports to those shareholders, who request for the same		requirement of dispatch of hard copies for all listed entities who conduct their AGM till December 31, 2020
8.	Regulation 14: Listing fees & Others charges	Within due dates in the manner specified by the Boards of SEBI	

#### IV. COMPLIANCE REQUIREMENTS UNDER IBC, 2016 AN OVERVIEW

Sl. No	Provisions and Particulars	Timelines	Remarks
1	IBBI circular dated 14th August, 2018: Submission of Form IP-1	Within 3 days of giving consent	submitted at online portal of IBBI
2	Regulation 7(2) (c) of IP Regulations Membership Fees Pay to the Board every five years after the year in which the certificate is granted and such fee shall be paid	on or before the 30th April of the year it falls due	Every 5 years
3	Regulation 7(2) (ca) of IP Regulations Professional fees Pay to the Board, a fee calculated at the rate of 0.25% of the professional fee earned for the services rendered by him as an insolvency professional in the preceding Financial Year	on or before the 30th of April of every year	Form E along with fee at online portal of IBBI
4	Bye law 11 of Bye- Laws of ICSI Institute Of Insolvency Professionals: Annual Membership fees: The Agency may require the professional members to pay a fixed sum of money as its annual membership fee.	Upto 30th June for every year	
5	Regulation 7(2) (g) of IP Regulations Maintenance of records: Maintain records of all assignments undertaken by him under the Code.	For at least 3 years from the completion of such assignment	
6.	Section 208 (2)(d) & Clause 1.9(A) of monitoring policy of ICSI IIP: Part IV of time-based reporting platform Details	Within 15 days of demitting office as IRP	To be submitted at online portal of ICSI IIP

	of claims of creditors		
7.	Regulation 7A of IP Regulations & Clause 23 of Schedule of First Schedule of Code of Conduct of IP regulations: An Insolvency professional must not engage in any employment when he holds a valid authorization for assignment or when he is undertaking an assignment	During the CIRP and Liquidation process	

#### IV. LABOUR LAW COMPLIANCES

Labourers are the backbone for every organization and are also covered in the Concurrent List of the Constitution of India. Labour Laws are framed to provide decent working conditions and improved quality of life of workers, ensuring India without child labor in hazardous sectors and enhancing employability through employment services and skill development on a sustainable basis.

Sl. No.	Name of the Act(s)	Compliance Particulars
1.	<b>Factories Act, 1948</b>	Annual returns and half year returns submitted on time with correct details  All story statutory registers are maintained  Appointment of Safety Officer, Welfare Officer, if applicable, and its qualification matching as per the act  Canteen, Creche, rest room facilities are available
2.	<b>Contract Labor Act, 1970</b>	First check if this act is applicable to factory and to contractor. General rule states it is applicable for more than 20 contract workers. But it differs from state to state  Principal Employer Registration, all contractors are listed on Registration Certificate  Contractors have valid License  Contractors have submitted all dues like PF, ESIC, PT, LWF on time.
3	<b>Payment of Gratuity Act, 1972:</b>	Gratuity is paid as a superannuation benefit to the employees who have completed 5 years Company have authorized one managerial personnel

		in the organization to receive all notice, letter, communication, etc.
4.	<b>Payment of Wages Act, 1936 and Minimum Wages Act, 1948:</b>	All registers are maintained Payment of Wages are done on time. Wages are paid above minimum wages.
5.	<b>Provident Fund (PF) Employees State Insurance Corporation (ESIC) Professional Tax (PT)</b>	Company have issued UAN, ESIC card to all employees All dues paid on time
6.	<b>Industrial Standing Order</b>	Standing orders are certified from Certifying officer All the provision of standing order are complied with.
7.	<b>Apprentices Act, 1961</b>	Birth proof of apprentice should be kept Medical certificate of apprentice by Medical Practitioner is required Regular attendance registers are required for checking working hours, overtime leave and holidays. Agreement letter and joining letter is to be kept Stipend statement is requested by the employer Attendance register should be maintained
8.	<b>Employees Compensation Act, 1923</b>	The mode of payment of compensation by company in case of injury of the employee by accident arising in course of employment should be disclosed by submitting the required Document for eg. In case of Payment is being made by Cheque the copy of Cheque is Required or any other document through which payment Can be Cross verified. Register of Notice of Accidents should be maintained The Documentary Proof of the Reporting document to the commissioner in case of fatal injury in Form E as per Section 10B read with Rule 11 Copy of receiving the compensation by the Commissioner are Required also copies of Form No - A as per Section 8(1) read with Rule 6(1) Certified copies of Form D is applicable as per Section 8(2) read with Rule 9 Copies of Form K, L, M and copies application submitted to the commissioner. (On settlement of



		compensation amount in between company and workman, company executed a memorandum of agreement with the workman in Form No. K, L or M, as the case, may be and submitted such agreement along with an application to register it to the Commissioner, as prescribed in Rule 48)
9.	<b>Maternity Benefits Act, 1961</b>	<p>If the employer has knowingly employed a woman in any establishment during the six weeks immediately following the date of her delivery, miscarriage or medical termination of her pregnancy, written declaration from the employer and reasons thereof for such employment is required.</p> <p>Whether or not a pregnant woman has made any request not to give her service which is of a hazardous nature or which involves long hours of standing etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.</p> <p>If any woman employee is entitled for maternity benefit, medical bonus and nursing break and if yes, whether payment has been made and nursing break was allowed in accordance with the Act, and the documentary evidence of the same.</p> <p>The employer exhibited the abstract of the provisions of the Act and the rules made thereunder in accordance with Section 19 of the Act.</p> <p>Whether the employer has maintained muster roll, register and records as prescribed, if any, by the appropriate Government.</p>

### Compliance Requirements under The Code on Wages, 2019

The Code on Wages Bill, 2019 (received the assent of President on 8th August, 2019) is a historic Bill which aims to transform the old and obsolete labour laws into more accountable and transparent ones which is need of the hour and universalizes the provisions of minimum wages and timely payment of wages to all employees irrespective of the sector and wage ceiling. The Code on Wages Bill, 2019 subsumes relevant provisions of:

- a. The Minimum Wages Act, 1948,
- b. The Payment of Wages Act, 1936,
- c. The Payment of Bonus Act, 1965 and
- d. The Equal Remuneration Act, 1976.

**Key Compliance Requirements in brief:****i) Minimum Wages:**

No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.

Overtime Wage Rate: the rate has been fixed at twice the normal rate of wages for the hours worked in excess of the normal working hours.

**ii) Payment of Wages**

The Payment of wages shall be made in currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode, except for certain specified establishments, wages shall be paid only by cheque or by crediting the wages in his bank account.

**Time limits for payment of wages for respective wage periods:**

Sl. No.	Wage Period	Time Limits
1	For daily basis	at the end of the shift
2	For weekly basis	on the last working day of the week
3	For fortnightly basis	before the end of the second day after the end of the fortnight
4	For monthly basis	before the expiry of the seventh day of the succeeding month
5.	Miscellaneous Cases: removed or dismissed from service; or retrenched or has resigned from service, or unemployed due to closure of the establishment,	within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation

**iii) Deductions from Wages**

Only authorized deduction allowed as mentioned under the Code.

The total amount of deductions in any wage period shall not exceed 50% of such wages otherwise the excess deductions may be recovered in such manner, as may be prescribed.

**iv) Revision of Minimum Wages**

Minimum Wages shall be revised/reviewed at the interval of not exceeding 5 years.

**v) Prohibition of discrimination**

The Code expressly prohibits any discrimination on the basis of gender.

**vi) Fines and Penalty Provisions:**

The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period.

No fine shall be imposed on any employee who is under the age of 15 years.

No fine imposed on any employee shall be recovered from him by installments or after the expiry of 90 days from the day on which it was imposed.

vii) Particulars about payment of Bonus:

Eligibility: establishments in which 20 or more persons are employed or were employed on any day during an accounting year, drawing wages not exceeding the notified threshold.

The limitation period for filing the claims for minimum wages, bonus, equal remuneration etc., by workers has been raised to 3 years as against the varying period between 6 months to 2 years the Code additionally provides that dismissal from service due to conviction for sexual harassment could also be considered as a ground for disqualification for receipt of bonus under the Code.

viii) Preparation of Records and Registers

All the employers are required to maintain registers under this code containing details including the details of the employees, the wages payable to the employees, muster rolls and any such other details as prescribed by the rules.

**The Code on wages, 2019, ensures that:**

a) "Right to Sustenance" for every worker and intends to increase the legislative protection of minimum wage from existing about 40% to 100% workforce.

b) Every worker gets minimum wage which will also be accompanied by increase in the purchasing power of the worker thereby giving fillip to growth in the economy.

**Conclusion:**

The compliance of Corporate Laws which includes Company Laws, Securities Laws, Economic Laws, Taxation Law and Intellectual Property Laws etc. are very important for good corporate governance. All the records and disclosures should be made properly and kept in the custody of Properly Authorized Officer of the Company.

## IBC CORNER



*By CS Anagha Anasingaraju, Partner, KANJ & Co, LLP and Insolvency Professional, With Sanjana Raman, Student*

### MORATORIUM UNDER IBC

#### Introduction and Meaning:

Moratorium has not been defined under the Code. However, the Oxford dictionary defines the term as **“a legal authorization to debtors to postpone payment”**. In Cambridge Dictionary the expression ‘Moratorium’ has been defined to mean **“a stopping of an activity for an agreed amount of time”**.

Moratorium under IBC is a fixed period granted by the Tribunal to the Corporate Debtor, wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets or termination of essential contracts can be initiated or continued against the Corporate Debtor.

The provisions relating to moratorium are laid down under Section 14 of the Code. Under section 13(1)(a) of the Code, the Adjudicating Authority being the National Company Law Tribunal is required to impose a moratorium for matters referred to in section 14.

The purposes of the moratorium also include keeping the corporate debtor’s assets together during the CIRP and facilitating orderly completion of the processes envisaged during the process.

#### Commencement and Effective period of Moratorium

The moratorium comes into effect on the insolvency commencement date. This means that the date of admission of an application for initiation of CRIP by the NCLT under sections 7, 9 or 10, as the case may be, shall

be the insolvency commencement date. In certain cases, the Interim Resolution Professional is appointed by the Adjudicating Authority at a later date, that being the insolvency commencement date.

The moratorium is effective until the completion of the CIRP (180 days, with a further extension subject to a maximum of 90 days) or on the approval of a resolution plan by the adjudicating authority or on a resolution of the COC members to liquidate the Corporate Debtor, whichever date is earlier.

#### Scope of section – Interpretation of terms “proceedings” “including” and “against the corporate debtor”

The provisions under Section 14(1)(a) are wide in nature, thus imposing a complete bar on the institution or continuation of suits or any legal proceedings against a Corporate Debtor from the date of declaration of moratorium.

#### Moratorium: A debtor friendly provision

In light of the object of IBC, the provisions of Section 14 shall not be applicable to proceedings which are in the benefit of the Corporate Debtor. This was rightly held by the Hon’ble Delhi High Court in the matter of ***Power Grid Corporation Vs Jyoti Structures Limited*** wherein the Court held that for testing the applicability of the provisions of Section 14 of the Code, we have to see the nature of proceedings, whether they are against or in favor of the Corporate Debtor.

### **Statutory rights vis a vis Contractual obligations**

The statutory right of a financial creditor to proceed under SARFAESI Act, 2002 stands suspended for the period of the moratorium, however, existing contracts between the surety, principal debtor and the creditor remains unaffected.

When a financial creditor applies under Section 7 of the Code of 2016 it is exercising a statutory right. The exercise of such statutory right does not depend upon the contractual obligations of the parties bound by the respective contracts between the creditor, principal debtor and the surety. Such contracts cannot be said to have rescinded, novated, frustrated, modified, altered or affected in any manner, on an application under Section 7 of the Code of 2016 being filed. After its admission under Section 7(5) of the Code of 2016, when an order under Section 14 is passed, then also only the statutory right of a financial institution to proceed under the SARFAESI Act, 2002 remains suspended for a limited period. The existing contracts between the surety, principal debtor and the creditor remains unaffected.

### **Effect of moratorium on any suit or case pending before the Hon'ble Supreme Court under Articles 32 or High court under Article 226 or where an order is passed under Article 136**

The Hon'ble NCLAT in the matter of *Canara Bank Vs. Deccan Chronicle Holdings Limited* held that there is no provision to file any money suit or suit for recovery before the Hon'ble Supreme Court except under Article 131 of the Constitution of India where dispute between Government of India and one or more States or between the Government of India and any State or States on one side and one or two or more States is filed. Some High Courts have original jurisdiction to entertain

the suits, which may include money suit or suit for recovery of money.

The Hon'ble Supreme Court has power under Article 32 of the Constitution of India and Hon'ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, it is clear that moratorium will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. Moratorium will also not affect the power of the High Court under Article 226 of Constitution of India.

However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the corporate debtor such suit cannot proceed after declaration of moratorium, under Section 14 of the Code.

### **Effect on Criminal Proceedings**

The Hon'ble Bombay High Court in the matter of *Tayal Cotton Pvt. Ltd. Vs. The State of Maharashtra & Others* interpreted the clause (a) of Section 14 (1) that word 'proceedings' used will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits.

The Legislature has not conspicuously used the words 'criminal' as an adjective to the word 'proceedings', therefore it must be assumed that the Legislature has consciously omitted to use such adjectives since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature.

Therefore, applying the principle of interpretation, it may be concluded that Section 14 of the Code prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.

### **Sale of assets during the Moratorium period**

The Supreme Court in the matter of **Mr. Anand Rao Korada Resolution Professional Vs. M/s. Varsha Fabrics (P) Ltd. & Ors.** set aside the impugned Interim Orders passed by the Odisha High Court and held that in view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT.

If the assets of the Corporate Debtor are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardize the interest of all the stakeholders.

#### **Invoking Performance Guarantee during Moratorium period**

The Hon'ble NCLAT in the matter of **GAIL (India) Limited Vs. Rajeev Manaadiar & Ors.** held that from sub-section (31) of Section 3, it is clear that the security interest do not include the Performance Bank Guarantee (PBG), therefore, the security interest mentioned in clause (c) of Section 14(1) do not include the PBG. Thereby the PBG given by the Corporate Debtor in favour of the Appellant is not covered by Section 14. The Appellant is entitled to invoke its Performance Bank Guarantee in full or in part.

#### **Continuation of Licenses, etc. granted by the Government authorities during the Moratorium period on the ground of Insolvency**

Existing licenses, permits and quotas, concessions, registrations, etc given by the government or local authority, cannot be suspended or terminated on the grounds of insolvency. However, there should not be any default in payment of the dues for the use of such grants.

The moratorium period thus, is very crucial for running the Corporate Debtor as a going concern during the CIRP. The aforementioned grants the Corporate Debtor enjoys, form the basis of its business, without which, it will not

be possible for the Corporate Debtor to function as a going concern. Therefore, this moratorium was incorporated in order to bar the termination or suspension of such grants by Government Authorities

#### **Continuation of Critical Supplies during the Moratorium period**

Section 14(2) of the Code states that the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period. The provision requires the continuation of supply of essential goods or services to the Corporate Debtor during the moratorium period.

Further, the dues to the suppliers for essential goods and services supplied during the moratorium period are held to be a part of the IRP costs and are required to be paid back in priority to any other creditor as a part of the resolution plan. The supply of essential supplies will be made as long as these are not a direct input to the output produced or supplied by the Corporate Debtor. For example, water will be essential for drinking and sanitization, not for generation of hydro electricity.

#### **Punishment for Contravention of Moratorium**

Under Section 74 of the IBC, officials of the corporate debtor who violate provisions of moratorium can be imprisoned for a minimum of three years, which may be extended up to five years. Such officials will also be fined a minimum of Rs 100,000 but not more than Rs 300,000. Officials of creditors who knowingly and willfully authorize or permit such contravention can be jailed for a minimum of one year, with a maximum tenure of five years. Such officials will also be fined a minimum of Rs 100,000, with the maximum penalty of up to Rs 10 million.

### Personal Guarantors to Corporate Debtor

The Central Government via Ministry of Corporate Affairs, vide notification dated 15 November 2019 has brought into effect Part III of the Insolvency and Bankruptcy Code (except with regard to fresh start process) dealing with Insolvency and Bankruptcy of Individual and Partnership Firms in so far as it is applicable to Personal Guarantors of Corporate Debtors and Corporate Guarantors. This was brought into effect from 1st of December 2019. Separate set of rules and regulations for three different classes of non-corporate persons and its implementation are proposed.

According to Section 5(22) of IB code “personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor. While Section 3(e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has defined Personal Guarantor as “guarantor means a debtor who is a personal guarantor to a corporate debtor and in respect of whom the guarantee has been invoked by the creditor and remains unpaid in part or full”

Section 126 of the Contracts Act 1870 states that :A ‘contract of guarantee’ is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the ‘surety’; the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’.

To Initiate an Insolvency Process against the personal guarantor:-

an application u/s 94 of the Code be filed by the debtor, either personally or through a

resolution professional, to the Adjudicating Authority in Form -A ; or

an application u/s 95 of the Code by a creditor, either by himself or jointly with other creditors, or through a resolution professional to the Adjudicating Authority in Form C be made..

Moratorium as regards to this part can either be interim or final. It will be Interim when an application filed u/s 94 or u/s 95 of the Code; date of form filing application to its admission is not specified. Such an interim moratorium period shall begin on the date of the application with regards to all debts and the same shall end on the date of admission of such application.

Final Moratorium comes into picture when the application is admitted u/s 100 of the Code. The period shall begin on the date of admission of the application and end after 180 days beginning from date of admission of the application or the date when the Adjudicating Authority passes an order u/s 114, whichever is earlier. During the said period, the debtor shall not transfer, alienate or encumber, any of the assets or legal right.

### RECENT CASES ON INSOLVENCY AND BANKRUPTCY CODE 2016

#### MORATORIUM

#### Anand Rao Korada Resolution vs M/S Varsha Fabrics (P) Ltd.

**Case citation / Writ petition :** CIVIL APPEAL NOS. 8800–8801 OF 2019

**Decided on:** 18 November 2019

**Order passed by:** Bench: Hon'ble Ms. Malhotra, Ajay Rastogi ; Supreme Court of India

#### **Facts in brief:**

W.P. (Civil) No. 7939/2011 was filed by Hirkud Industrial Works Ltd. for payment of their dues before the Hon'ble Odisha High Court whereby the hon'ble High Court directed the Deputy Labour Commissioner,

Sambalpur Division to recover the workmen's dues by sale of the assets of the company, through a public auction. The amount payable to the workmen was quantified to be ₹45,66,67,133/- by the Labour Court, Sambalpur -. The High Court vide Order dated 12.01.2017 directed the Deputy Labour Commissioner, Sambalpur Division to sell a parcel of company's land admeasuring 157.27 acres to the Hirakud Dam Project. Upon receipt of ₹10,04,12,105/-- as sale proceeds from the Government of Orissa, it was disbursed towards workmen's dues.

A Financial Creditor-M/s Nandakini Contractors Pvt. Ltd, during the pendency of proceedings filed a Petition u/s 7 of the IBC, 2016, before NCLT, Cuttack Bench for initiation of the CIRP against the Corporate Debtor – Hirakud Industrial Works Ltd., as a result of its default in paying the financial debt of ₹24,11,975/-- and the insolvency petition was admitted by the NCLT vide its Order dated 04.06.2019.

During the pendency of the moratorium, W.P.(Civil) 7939/2011 was posted for hearing before the High Court and by a further Order dated 05.09.2019, the Hon'ble High Court recorded the submission of the Appellant – Resolution Professional that there were other companies which had expressed an interest to participate in the public auction.

**Issue:** Whether after the initiation of proceedings under the IBC had commenced, and an order declaring moratorium was passed by the NCLT ; the proceedings before the High Court be stayed?

**Judgment:**

The Supreme Court set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court and held that in view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor, once the proceedings under the IBC had commenced, and an Order

declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. The moratorium having been declared by the NCLT on 06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Corporate Debtor before the NCLT. If the assets of the Company(Corporate Debtor) are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.

**Reference:**

<https://ibbi.gov.in/uploads/order/afe933dd13a2b823c13d761afc475636.pdf>

**NUI Pulp and Paper Industries Pvt. Ltd. Vs. M/s. Roxcel Trading GMBH**

**Case citation / Writ petition :** Company Appeal (AT) (Insolvency) No. 664 of 2019

**Decided on:** 17 July 2019

**Order passed by:** Justice S.J.Mukhopadhaya(Chairperson),Kanthi Narahari(Member-Technical) ;NCLAT, New Delhi

**Facts in brief:**

The Respondent-Operational Creditor M/s. Roxcel Trading GMBH filed an application u/s 9 of the Insolvency and Bankruptcy Code, 2016 against NUI Pulp and Paper Industries Pvt. Ltd.-Corporate Debtor before the NCLT, Chennai Bench. Counsel for Corporate Debtor filed a Caveat and submitted that there is an existence of dispute between the parties; thereby praying time for filing reply.Time to file reply affidavit was allowed and also to the 'Operational Creditor' for file rejoinder.

While Adjourning the case for a further date an interim order was passed by the bench, as per Rule 11 of the NCLT rules,2016;



restraining the Corporate Debtor and its Directors from alienating, encumbering or creating any third party interest on the assets of the Company till further orders. Counsel for the Appellant submitted that the Adjudicating Authority had no jurisdiction and no such power can be exercised under Rule 11 unless it comes to the notice that the 'Corporate Debtor' somehow or other trying to get adjournment or to alienate the matter after filing of the application under Sections 7 or 9. Counsel for Respondent submitted that the 'Corporate Debtor' and its Directors intended to sell the assets of the company to defeat the purpose of the 'I&B Code' and cause losses to all the creditors.

The appellate tribunal asked the counsel for corporate debtor if it intends to sell or alienate or transfer or create any third party interest on the assets to which it submitted that any such undertaking cannot be given as, it will act taking into consideration the necessity for its day-to-day functioning of the Corporate Debtor.

**Issue:** Whether NCLT has inherent power to impose Moratorium before initiation of CIRP?

**Judgment:** It was evident from Rule 11, that the Tribunal can pass any such appropriate interim order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal. Once an application u/s 7 or 9 is filed/allowed, it is not necessary for the Adjudicating Authority to await hearing of the parties for passing order of 'Moratorium' under Section 14 of the 'I&B Code'. Such a moratorium order will be followed by, taking away the right of the Board of Directors to take any decision on behalf of the 'Corporate Debtor' and prohibiting others from taking any action against the 'Corporate Debtor' which is different from interim order. The appeal was dismissed with no costs.

**Reference:**

<https://nclat.nic.in/Useradmin/upload/14411968585d3065a868ff2.pdf>

**Shri Ramchandra D Chaudhary Vs. CIT**

**Case citation / Writ petition :** IA 562 of 2019 with CP(IB) No. 127 /2017

**Decided on:** 18 June 2020

**Order passed by:** Manorama Kumari (Member-Judicial),  
Chockalingam Thirunavukkarasu (Member-Technical)

**Facts in brief:**

CIRP process was initiated against the Corporate Debtor-M/S Neesa Leisure Ltd., vide order dated 26.04.2019 upon which the Management and Affairs of the Corporate Debtor vested with Interim Resolution Profession. The counsel for applicant stated that Bank Accounts of the corporate debtor maintained with various Banks were attached by Income Tax Department u/s 226 (3) of Income Tax Act, 1961 and are seized/ frozen by other various authorities of the Department of the Government such as Service Tax Department etc. He further stated that the statutory dues of the Income Tax Department are Operational Debt for which Income Tax Department has already submitted a claim of their dues with Interim Resolution Profession, and it shall be settled in accordance of sec 30(2) and section 53 of the Code for the payment of the Operational Creditor.

IA was filed u/s 60 (5) of the Code by the applicant praying to pass an order to remove attachment/ lien marked by Income Department, Centre Circle (2), Ahmedabad on all the Bank accounts Of Corporate Debtor, M/S Neesa Leisure Limited and that the notice of the Income Tax Department u/s 226(3) of Income Tax Act, 1961 shall not be held good and therefore the lien so made by Income Tax Department shall not hold good.

**Issue:** Whether NCLT has power to direct removal of attachment/ lien marked on Bank

accounts of Corporate Debtor by Income Tax Department u/s 226(3) of Income Tax Act, 1961?

**Judgment:**

NCLT held that it is to be remembered that the time is the essence of the code and CIRP has to be completed in time bound manner and, as such, if the attachment of Bank Account is not removed by the Income Tax Commissioner in that event the very object of the Code will get frustrated, more so when the respondent (s) have already filed his/ their claim before the RP. Hence, under the facts and circumstances as narrated above the application so filed by the applicant under section 60(5) is allowed and respondent is directed to remove attachment/ lien marked by Income Tax Department Central Circle-2(2). Accordingly, instant applicant is allowed and stands disposed off.

**Reference:** <https://ibclaw.in/case-name/shri-ramchandra-d-chaudhary-vs-cit/>

**Power Grid Corporation Of India Ltd Vs. Jyoti Structures Ltd.**

**Case citation / Writ petition :** O.M.P. (COMM) 397/2016

**Decided on:** 11 December 2017

**Order passed by:** Hon'ble Mr. Yogesh Khanna, J.; High Court of Delhi

**Facts in brief:** Petition was filed u/s 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral award which was in the nature of a pure money decree, passed by the arbitral tribunal in favour of the respondent. During the pendency of the proceedings, an application u/s 7 of the IB Code 2016 was filed by a financial creditor

against the respondent company before the National Company Law Tribunal – Mumbai, seeking initiation of the corporate insolvency resolution against the respondent and by an order dated 04.07.2017 the NCLT admitted the application and had declared a moratorium in terms of Section 14 of the Code.

**Issue:** Whether the proceedings under Section 34 of the Act, need to be stayed, per Section 14 of the Code?

**Judgment:** It was held by the Hon'ble High Court that purpose or object behind the moratorium, Section 14 of the Code will not apply to the proceedings which are in the benefit of the corporate debtor, unless the proceedings are not a "debt recovery action" and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and shall be in sync with the purpose of moratorium which includes keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern. Stay of proceedings against an award in favour of the corporate debtor would rather be stalling the debtor's effort to recover money and hence does not fall in the embargo of Section 14 (1) (a) of the Code.

**Reference:** <https://ibclaw.in/moratorium-would-not-apply-to-the-proceedings-which-are-in-the-benefit-of-the-corporate-debtor-power-grid-corporation-of-india-ltd-vs-jyoti-structures-ltd-delhi-high-court/>

**WORD SEARCH – VOL. V****By CS Hema Gaitonde****PCS, Mumbai**

A	M	K	I	U	J	U	D	R	T	H	J	K	M	A	N
G	I	N	S	I	D	E	R	T	R	A	D	I	N	G	A
P	R	O	D	U	C	T	L	I	A	B	I	L	I	T	Y
T	V	E	W	Q	S	A	X	Z	V	H	U	S	A	C	T
R	N	I	V	C	S	J	H	S	A	A	E	M	E	G	G
A	M	U	S	N	G	Z	X	C	E	D	G	N	D	H	R
D	S	Y	V	I	B	K	L	I	L	M	T	R	W	J	F
E	J	P	Q	U	O	W	O	A	P	R	J	D	B	E	E
M	H	M	I	K	Z	N	I	K	A	H	S	R	G	N	T
A	K	W	Z	R		R	Z	L	M	Y	T	M	A	I	A
R	L	D	I	N	T	E	L	L	E	C	T	U	A	L	T
K	T	S	R	S	Q	A	Z	F	O	J	K	D	R	N	S
D	R	V	U	N	O	P	D	S	G	H	N	R	T	O	E
C	I	D	B	L	I	C	I	D	O	C	B	A	X	G	T
V	N	M	Y	C	N	E	R	A	P	S	N	A	R	T	N
I	O	N	L	I	N	E	D	I	S	P	U	T	E	F	I

**CLUES TO WORD SEARCH**

S NO	Clue
1	Legal rights resulting from intellectual activity in the industrial, scientific, literary and artistic field ; _____Property Rights (12).
2	Consumer Protection(CP) Act 2019 to now include _____transactions also .(6)
3	Consumer can now seek compensation for harm caused by the defective product manufactured or sold or deficiency in the service rendered under the CP ACT 2019 , referred to as _____Liability. (6,9).
4	Regulatory body under Consumer Protection Act 2019: _____ Consumer Protection Authority (6)
5	RBI had announced introduction of _____ Resolution system for resolving customer disputes and grievances pertaining to digital payments, with zero or minimal manual intervention (6,7)
6	Government Securities denominated in grams of gold (3)
7	Government Scheme to extend affordable loans to the non-corporate, non-farm micro and small enterprises to cater to their funding needs: Pradhan Mantri _____Yojana (5)
8	One of the Pillars of Corporate Governance (12)
9	A _____ statement defines where an organisation wants to be in future (6)
10	Comprehensive International Agreement on IPR (5)
11	The practice of trading in company securities to one's own advantage by those having access to confidential information.(7,7)
12	Document executed by the testator for making changes in his original will.( 7)
13	Mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others (9)
14	The ornamental aspect of an article (with reference to intellectual property )(10, 6)
15	When a person dies without a Will , it is called as _____Succession ( 9)



**CLUES TO WORD SEARCH**

HORIZONTAL ACROSS (AADWA)		
1	A person cannot be director in more than _____ companies, including alternate directorship.(6 Letters)	Twenty
2	Pursuant to Sec.173(1) of the Companies Act,2013, first board meeting after incorporation of the company should be held within _____ days.(6 Letters)	Thirty
3	In one of case of Portuguese Consolidated Copper Mines In Re [1889], it was held that notice to director is necessary even if he has informed that he will not be able to attend the _____. (12 Letters)	Board Meeting
4	_____ professional means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the IBBI under section 207 of the IBC,2016. (10 Letters)	Insolvency
5	The business of the Joint Hindu Family is controlled and managed under the _____ ( 8 Letters)	Hindu law
6	Pursuant to Regulation 22 of SEBI(LODR),2015,the listed entity shall formulate _____ for directors and employees to report genuine concerns.( 14 Letters)	vigil mechanism
7	The decisions of _____ Court are binding on all the subordinate courts within its jurisdiction.(4 Letters)	High
8	Union Ministry of Micro, Small and Medium Enterprises (MSME), vide its Notification Dated 26.06.2020 notifies the new definition of MSME along with its new name i.e., _____ Registration.(5 Letters)	UDYAM
9	_____ Bank is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs.(5 Letters)	MUDRA
10	_____ Director is appointed in place of a director who is away from India for a period of not less than 3 months or for longer duration, as permissible, from INDIA.(9 Letters)	ALTERNATE
11	_____ is a process of combining various material inputs and immaterial inputs (plans, know-how) in order to make something for consumption (output). (10 Letters)	PRODUCTION
12	The responsibility of Collecting _____ lies with the CBIC(3 Letters)	GST
13	Ind AS 116 defines a _____ as a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration. (5 Letters)	LEASE

14	Lending platforms connect borrowers with individual lenders. (3 Letters)	P2P
15	A Committee formed by SEBI, in January,2020, with the primary objective is to review the developments in Commodity Derivatives market;(4 Letters)	CDAC
VERTICAL DOWN (UBHA)		
1	One of the ways of monetarily compensating the directors for their participation in the meetings of the BOD and its committees. (11 Letters)	SITTING FEES
2	As per Sec.175(1) of the Companies Act,2013, in some urgent matters, approval is provided by directors by way of _____resolution(8 Letters)	CIRCULAR
3	_____ means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office. (13 Letters)	PROJECT OFFICE
4	Pursuant to Regulation 11 & 12 of ESI Act, 1948, a declaration form i.e. FORM I to be filled by the _____ with his signature and submit it to the employer.(8 Letters)	Employee
5	Section 455 of the Companies Act, 2013 is dealing with the provisions of _____ Company, which means a company which is an inactive company in the records of the Registrar of Companies and which is not carrying out any business activity. (7 Letters)	Dormant
6	The appellate authority above NCLAT is _____ Court. (7 Letters)	Supreme
7	In case of Winding up of a company, the liability of the Shareholders is limited to their share of _____ only. (12 Letters)	Contribution

8	Form PAS-6 is a half yearly audit report on _____ of share capital which is to be certified by a Company Secretary in Practice or a Chartered Accountant in Practice.(14 Letters)	Reconciliation
9	As per Rule 18 of the Nidhi Rules, 2014 a Nidhi company shall not declare __ _____ exceeding twenty five per cent or such higher amount as may be specifically approved by the Regional Director. (8 Letters)	Dividend
10	In this pandemic and Covid-19 situation it is mandatory to maintain social distancing for protection of self and _____.(7 Letters)	Society
11	_____ is a greatly valued currency in the global economic sphere after the US \$, in international trade and currency reserve of different countries. (4 Letters)	EURO
12	_____ is an Indian company, engaged in providing ratings, research, and risk and policy advisory services and is a subsidiary of American company S&P Global. (6 Letters)	CRISIL
13	The term _____ is derived from the accounting practice of recording asset value at the original historical cost in the books. (9 Letters)	BOOK VALUE
14	Cost of borrowings by RBI from other lending banks is determined by _____ (11 Letters)	REVERSE REPO
15	A person who creates a Trust, is known as _____ (7 Letters)	SETTLOR



## GUIDELINES FOR MEMBERS CONTRIBUTING ARTICLES TO BE PUBLISHED IN FOCUS

Western India Regional Council (“WIRC”) of The Institute of Company Secretaries of India (“ICSI”) is pleased to bring out a monthly magazine for corporate executives and other professionals, viz., “FOCUS” under the guidance of its newly formed Editorial Board. However, the Editorial Board wouldn’t be able to succeed in releasing FOCUS unless all the members of ICSI put in some efforts to make release of FOCUS a success. What better than writing articles for FOCUS and getting a ‘FOCUSSED’ recognition!

*“Start writing, no matter what. The water does not flow until the faucet is turned on.” — Louis L’Amour*

Well, if the above quote inspires you and you decide to author an article to be published in FOCUS, following are a few guidelines for authoring the articles for FOCUS (“Guidelines for FOCUS articles”).

The article must be original contribution of the author.

The article must be an exclusive contribution for FOCUS. The article must not have been published elsewhere and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.

The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.

An article can be jointly written by not more than two (2) members.

Case studies and research based articles with empirical data which would be of practical relevance to the company secretaries are welcome.

Unless a particular theme is provided by WIRC, articles on topics related to management, international trade, finance, tax and other related areas may be written and submitted for FOCUS.

Copyright of the article published in FOCUS shall vest with ICSI. However, in the event the article is hosted on some website/portal through ICSI or is reproduced elsewhere, prior intimation of the same shall be given to the author.

Extensive reproduction from other published works should be avoided. If the article contains any extracts from any other published work, reference to the original source should be given by way of foot notes. If prior permission of the original writer/publisher is required, it should be duly obtained by the author. The author alone would be responsible for the consequences arising from failure to do so.

ICSI or the Editorial Board of FOCUS has the sole discretion to accept/reject an article for publication in FOCUS or to publish it with modification and editing, as it considers appropriate.

The article submitted for FOCUS shall be accompanied by a ‘Declaration-cum-Undertaking’ by the author(s) in the format as prescribed below.

Any contravention of the aforesaid guidelines and breach of the undertaking furnished by the authors would be viewed seriously by ICSI and ICSI is entitled to take necessary action as it may deem fit in such cases.

Looking forward for your contribution.

CS Rahul P. Sahasrabuddhe  
Chairman  
ICSI-WIRC

**DECLARATION-CUM-UNDERTAKING**

I, \_\_\_\_\_ have read and understood the Guidelines for FOCUS and affirm that:

The article titled as “\_\_\_\_\_” as sent by me for publication in FOCUS is my original contribution and no portion of it has been adopted from any other source.

The above article is an exclusive contribution for FOCUS and has neither been nor would be sent elsewhere for publication.

The copyright in respect of my aforesaid article shall vest with ICSI and that if I intend to make use of the article in any other manner, I shall obtain prior permission from ICSI and shall abide by the conditions as may be imposed by ICSI, including without limitation disclosure of the original source i.e. FOCUS and its copyright owner.

The views expressed in my aforesaid article are mine and I solely shall be responsible for the views expressed in the article.

I undertake that I:

- a. comply with the Guidelines for FOCUS;
- b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing; and
- c. shall be liable for any breach of this ‘Declaration-cum-Undertaking’.

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**Signature of Author**

Date:

Place:



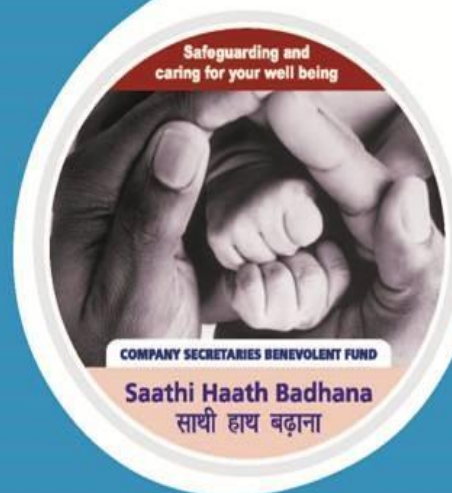
THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

**CSBF**

COMPANY SECRETARIES  
BENEVOLENT FUND



## What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

### Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

### Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

## Advantages of enrolling into CSBF

- 1 To ensure that your immediate family has some financial support in the event of your unfortunate demise
- 2 To finance your children's education and other needs
- 3 To ensure that you have extra resource during serious illness or accident
- 4 Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal ([www.icsi.edu](http://www.icsi.edu)) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

*Decide Now! Decide Wise!*

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