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New Compliance starting from April 1, 2023

There have been various amendments across SEBI Regulations and Companies Act, 2013, some of them being made effective immediately, whereas some becoming effective from a later date, while a few of them being effective from the upcoming new financial year.

The compilation of amendments which are becoming effective from April 1, 2023 is given below for reader's easy reference:-

Reg. no	Provision	Actionable
2(1)(zb)(b)(ii) – Definition of "related party"	Provision: any person or any entity, holding equity shares of **10% or more,** with effect from April 1, 2023 in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year shall be deemed to be a related party:	Entities need to identify one time and on ongoing basis – any person or any entity holding equity shares of 10% or more **directly or on beneficial interest basis** as provided under section 89 of the Companies Act, 2013, during the immediate preceding financial year (i.e. FY 2022-23) as they shall also be deemed to be related parties. Till March 31, 2023, the equity shareholding limit for being related party was 20% or more directly or on beneficial interest basis.
Regulation 2(1)(zc)(ii) – Definition of "related party transaction"	Where a listed entity or any of its subsidiaries on one hand transacts with any other person or entity on the other hand which may or may not be a related party (as per the revised definition w.e.f April 1, 2023 as mentioned above), but the **purpose and effect of which is to benefit a related party** (as per revised definition w.e.f April 1, 2023) of the listed entity or any of its subsidiaries, such transactions would be covered under the definition of Related Party Transaction	In context of above, the Entities will have to **peruse all transactions entered into by listed entity or any of its subsidiaries with any party, related or unrelated,** and identify which transactions will get covered under this revised definition of 'related party transactions'. Further, it is recommended to provide a framework whereby basis of which all such transactions will be scrutinized to assess whether they are any

Reg. no	Provision	Actionable
		way going to benefit any related party of the listed entities or any of its subsidiaries.
Regulation 23 (2)(c) – Limit for approval of subsidiaries transactions by audit committee of listed entity	Provision: with effect from April 1, 2023, a related party transaction to which the **subsidiary** of a listed entity **is a party but the listed entity is not a party**, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, **exceeds 10% of the annual standalone turnover**, as per the last audited financial statements of the subsidiary	All subsidiaries need to list out related party transactions (as per the revised definition w.e.f April 1, 2023 as mentioned above), where they are a party but listed entity is not a party and see which of those exceed 10% of annual turnover on 'standalone financial' of the subsidiary and provide those to the listed entity for seeking approval of its audit committee. Entities need to identify and analyze the said limit and bring the transactions prior to April 1, 2023, i.e., in Quarter 4 itself (for omnibus approval) to Audit Committee and/ or shareholders as the case may be.
Reg 23(9) – RPT Disclosure to stock exchanges	Provision: Disclosure of Related Party Transactions as per Regulation 23(9) needs to be filed on the same day on which financial results are published to stock exchange.	Systems have to be put in place for effective implementation and ensuring compliance while preparation of the RPT disclosure by the accounts team.
Reg. 15(2)(a) 2nd Proviso –	Provision: (2) The compliance with the corporate governance provisions shall not apply, in respect of - (a) a listed entity having paid up equity share capital not exceeding Rs. 10 crore and net worth not exceeding Rs. 25 crore, as on the last day of the previous financial year: Provided … Provided further that once the above regulations become applicable to a listed entity, they shall continue to remain applicable till such time the equity share capital or the net-worth of such entity reduces and remains below the specified threshold for a	Companies will have to check paid up share capital and net worth for applicability of Corporate Governance Provisions and also check whether the entity has completed 3 years or not below the threshold. Although this is not a new amendment effective from April 1, 2023, but this needs to be checked with the beginning of every new financial year.

Reg. no	Provision	Actionable
	period of three consecutive financial years	
Regulation 15 to Regulation 27 –	Provision: Regulation 15 to Regulation 27 of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 would have to be mandatorily complied by High Value Debt Listed Entities ("HVDLE"). As per second proviso to Regulation 15(1A) of SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015 were applicable on 'comply' or 'explain' basis until March 31, 2023.	HVDLEs will have to ensure all compliances and systems are in place in order to comply Regulation 15 to Regulation 27 as their exemptions would cease to exist after the cut-off date of March 31, 2023. Note: - HVDLEs which are in the nature of InvITs or REITs are exempted from the provisions of these Regulations. They are required to comply with corporate governance provisions covered under the respective SEBI Regulations for InvITs or REITs w.e.f April 1, 2023.
Regulation 52(1) of SEBI (LODR) read with 1st proviso to Reg. 52(2)(d)	**Provision:** For every last quarter ended listed entities shall submit unaudited or audited quarterly and year to date standalone financial results within sixty days from end of quarter to stock exchange. Challenges were faced by entities whose accounts are audited by Comptroller and Auditor General of India.	SEBI has now made relevant changes to Reg 52(1) read with Reg. 52(2)(d) of SEBI LODR. It now provides that entities who are subject to audit by Comptroller and Auditor General of India can submit unaudited financial results alongwith limited review report for last quarter and financial year. There is no change in the provision for other non-convertible debt listed entities.
Erstwhile SEBI Circular dt: Nov 26, 2018, to be read as SEBI Circular dated April 13, 2022 (for NCDs) – Fund Raising by Large entities	**Provision:** In case of large entities, as per the conditions mentioned in the said SEBI Circular, at the end of two years i.e. last day of FY 2023 (31st March, 2023), if there is a shortfall in the requisite borrowing (i.e. the actual borrowing through listed debt securities is less than 25% of the incremental borrowings for FY 2022, i.e., 1st April, 2021 to 31st March, 2023), a monetary	Entities which are getting categorized as large entities, as per the conditions mentioned in the said SEBI Circular to analyze if the borrowings in the said period of 2 financial years from April 1, 2021 to March 31, 2023 meet the above-mentioned criteria and if not then raise borrowing through issuance of listed debt securities before

Reg. no	Provision	Actionable
	penalty/fine of 0.2% of the shortfall in the borrowed amount shall be levied and the same shall be paid to the Stock Exchange(s)	March 31, 2023 in order to avoid penalty from stock exchange.
SEBI Circular dt: November 3, 2021 – Updation of KYC for physical shareholders	Provision: As per SEBI circular dt: November 3, 2021, the folios wherein PAN, KYC, and Nomination by physical holders of physical securities is not available on or after April 01, 2023, shall be frozen by the RTA.	Connect and get update from RTA as to procedure and systems in place for ensuring compliance of this circular and ensure communication to investors holding securities in physical form about the restriction on services that could be availed if the provisions of this circular are not complied with.
BSE and NSE Circular – July 15, 2022	Provision: Listed entities shall file BRSR report with stock exchange in XBRL mode as soon as they send annual report. (This is relevant for top 1000 listed entities on market capitalization *[Market Capitalization shall be on the basis of 31st day of March of every financial year.]*)	Companies need to check market capitalization and determine their ranking. Preparation of BRSR report for financial year 2022-2023 would need to be made if the company was in top 1000 as on March 31, 2022. Companies to check on March 31, 2023, for BRSR reporting for the financial year 2023-2024.
BSE and NSE Circular – March 31st 2022	Provision: Change of designated stock exchange for waiver application in case of commonly listed entities	Entity to check which is the designated stock exchange for waiver application on March 31, 2023. Further keep on changing from 1st April 2023 till 30th September, 2023 Although this is not a new amendment effective from April 1, 2023, but this shall get changed at the end of every half year.
Chapter V of Companies Act – The Companies (Acceptance of Deposits) Rules, 2014 – Explanation to	Provision: As per Explanation to Rule 16A of these Rules, the e-form DPT-3 is required to be filed every year by June 30, for mentioning details of money received and outstanding as on March 31, which are not deposits. This e-form is now to be filed in the new V3 version of	Awareness to accounts team about ageing schedule for items exempted under deposits. Although this is not a new amendment effective from April 1, 2023, but this shall be the first year of the e-form being filed in V3 version of MCA.

Reg. no	Provision	Actionable
Rule 16:- :- e-Form DPT-3 Point 15	MCA, wherein ageing schedule has to be given for each and every item and statutory auditor need to certify the form DPT-3. Hence companies need to ensure all amounts received by the company which will remain outstanding at the end of the financial year ending on March 31, 2023 will be in compliance with the definition of 'deposit' given under Companies (Acceptance of Deposits) Rules, 2014.	Further ageing schedule for each item is a new requirement being asked by V3 version of the e-form.
Sec 135 of Companies Act r/w Rule 3(2) of Companies (CSR) Rules, 2014	Provision: Deletion of Rule 3(2) of the said CSR Rules which prescribed that companies can discontinue from complying with CSR provisions if they do not meet the thresholds under section 135(1) for a continuous period of 3 years)	Applicability under Section 135(1) has to be checked for each year and compliances if applicable. No need to check for the earlier two financial years. Although this is not a new amendment effective from April 1, 2023, but this amendment was effective September 21, 2022 and since a new year is beginning, this aspect is relevant to be checked.
Rule 3 of Companies (Accounts) Rules, 2014	Provision: The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times accessible in India so as to be usable for subsequent reference. Provided that for the financial year commencing on or after the 1st day of April, 2023, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.	Keeping books of accounts accessible in India at all times. Also, all companies, irrespective of their size, will have to adopt an accounting software providing audit trail if existing software does not provide the same.

Reg. no	Provision	Actionable
Rule 2 of Companies (CSR) Rules,2014	Provision : Under the definition of Corporate Social Responsibility (CSR), activities undertaken in pursuance of normal course of business of the company are not covered and hence won't be considered as CSR. But during the COVID period, MCA had provided relaxations to companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business that they may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 as part of their CSR activities for financial years 2020-21, 2021-22, 2022-23 subject to certain conditions;	Companies that have undertaken CSR under this clause, would have to find an alternative activities for CSR for FY 23-24 onwards as this relaxation would cease to exist after the end of FY 22-23.
CBDT Circular dated March 30, 2022 read with SEBI Press Release dated March 8, 2023	Provision: As per SEBI Circular dt: November 3, 2021 [Point 6.3] if there is no valid PAN (PAN linked with Aadhar) by March 31, 2022, or any other date given by CBDT then RTA shall freeze folios. The due date for linking PAN with Aadhar was extended by CBDT till March 31, 2023. So, if Aadhar and PAN card is not linked by March 31, 2023, folios will have to be freezed for those physical security holders.	It is recommended to send letter to shareholders holding shares in physical form informing them about the restriction & the due dates for ensuring PAN Linkage to AADHAR.

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Introduction of Issue Summary Document (ISD) and dissemination of issue advertisements

I. Introduction:

Securities and Exchange Board of India ('SEBI') has vide its circular dt: February 15, 2023 asked listed entities and new issuers proposing to list their securities to submit certain data which they are already submitting, in a new XBRL format.

II. Background:

SEBI has stated that this information collation in new format is being done in order to facilitate consumption of data by stakeholders such as researchers, policy makers, market analysts, and market participants, in respect of public issues, further issues, buyback, offers under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SEBI SAST Regulations**") and SEBI (Delisting of Equity Shares) Regulations, 2021 ("**SEBI Delisting Regulations**"), etc. It has been decided to make available relevant information / data points at the Stock Exchanges and Depositories in a structured manner.

III. Provision / New Requirement:

1. SEBI has now released Issue Summary Document ("ISD") in XBRL form for following activities by listed entities. It means that for below mentioned activities, ISD XBRL has to be filed alongwith the existing documentation.

2. ISD filing will be in two stages i.e. ISD XBRL will have to be filed at the time of submitting application for grant of in principle approval and another ISD XBRL will also have to be filed at the listing stage, while making application grant of trading approval.

The date from which this filing of ISD in XBRL form would be applicable is mentioned below:

Sr. no	**Activities**	**Timeline for filing of XBRL utilities in addition to submission of documents to be as per respective regulations**
1	Public issue of specified securities (initial public offer / further public offer).	ISD for public issues of specified securities, **for offer documents**

		filed on or after March 01, 2023
2	Further issues {preferential issue, qualified institutions placement (QIP), rights issue, issue of American Depository Receipts (ADR), Global Depository Receipts (GDR) and Foreign Currency Convertible Bonds (FCCBs)}	From April 3, 2023
3	Buy-back of equity shares (through tender offer or from the open market);	From May 2, 2023
4	Open offer under SEBI SAST Regulations	
5	Voluntary delisting of equity shares where exit opportunity is required under SEBI Delisting Regulations	

3. SEBI has asked Stock Exchanges to develop a utility in order to facilitate the filing of the ISD by Submitting Entity. Responsibility for filing ISD XBRL utilities is on the entity responsible for submission of documents as per respective regulations.

4. While submitting this ISD, the Submitting Entity may file the details with any stock exchange where the securities of the entity, in relation to which the ISD is being filed, are listed / proposed to be listed. The Stock Exchange which receives the ISD shall further transmit the information to other Stock Exchanges and Depositories for dissemination.

5. Non filing of these ISD XBRL will be considered as violation of SEBI Circular. Hence listed entities or about to be listed entities need to file this ISD in XBRL form as is specified by SEBI.

IV. Conclusion:

This data will surely help in collating necessary data by SEBI/Stock Exchanges in machine readable form. But this will also increase compliance activity on the part of listed entity.

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SEBI tightens the norms for companies opting buyback via stock exchange mechanism

1. **Restriction on purchase of shares through open market:** Securities and Exchange Board of India ('SEBI') had vide its amendment notification dt: February 7, 2023 had approved certain amendment to SEBI (Buyback of Securities) Regulations, 2018 ['Buy-back Regulations']. These Regulations were to become effective on 30th day of notification, i.e., w.e.f March 9, 2023.
   As per Clause (vi) of Regulation 16 of the Buy-back Regulations, the buy-back through stock exchanges shall be subject to the restrictions on placement of bids, price and volume, as specified by SEBI.

   SEBI has now, vide its Circular dated March 8, 2023 stated as follows:
   a. No company shall purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made.
   b. The Company will not place bids in the pre-open market, first 30 minutes and the last 30 minutes of the regular trading session and
   c. the company's purchase order price should be within the range of +/- 1 % on either side from the last traded price.

   All these above referred points were part of recommendations from Primary Market Advisory Committee and market participants. For the ease of convenience, SEBI has now brought in this restriction by way of SEBI circular instead an amendment.

   SEBI has further mandated the Companies as well the appointed brokers to ensure compliance with the provisions. In case of any non-compliance the Stock Exchange shall impose fines and/or take other enforcement action as deem fit.

2. **Margin Requirement for deposit in Escrow account:** With regards to margin requirement for deposits in Escrow Account SEBI has stated that the escrow account should consist of cash and/or other than the cash.
   SEBI has further stated that the portion of the escrow account in the form of other than the cash will be subject to an appropriate haircut in accordance with the SEBI Master Circular for Stock Exchange and Clearing Corporations dated July 05, 2021, as amended from time to time.

SEBI has directed the merchant banker to the buyback offer to ensure that the adequate amount after the applicable haircut is available in an escrow account till the completion of all formalities of the buyback.

These rules and this circular have come into effect from March 9, 2023.

The link of this SEBI Circular is given below:-

https://www.sebi.gov.in/legal/circulars/mar-2023/operational-guidance-amendment-to-sebi-buy-back-of-securities-regulations-2018_68765.html

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SEBI asks Investors to link PAN with Aadhaar by 31st March 2023

- **SEBI has issued a Press Release dated 8th March 2023** directing all investors to link their PAN with their Aadhaar numbers by 31st March 2023 for seamless transaction in securities market.
- SEBI has stated that the deadline for linking PAN with Aadhar Card deadline of 31st March 2023 was given by Central Board of Direct Taxes (CBDT) vide its circular No. 7 of 2022 dated 30th March 2022 last year. As this deadline is approaching SEBI has directed investors to ensure that Aadhar card is linked with PAN. In this press release **SEBI has also highlighted about consequences of not linking PAN with Aadhar card.**
- It further needs to be highlighted here about SEBI vide circular SEBI/HO/MIRSD/ MIRSD_RTAMB/P/CIR/2021/655 dated **03rd November 2021** - Point 6.1 which denotes compulsory linking of PAN and Aadhaar by all holders of physical securities. In that circular, SEBI had stated that time limit provided by CBDT would be the timeline for linking of PAN with Aadhar Card under the SEBI circular too. **Investors holding securities in physical form needs to be link PAN with Aadhar Card failing which their folios would be freezed.**
- So, investors holding securities in physical form will now be required to comply with this requirement before 31st March 2023 failing which they would attract consequences under SEBI Circular dt: 3rd November 2021, i.e., freezing of their folios.
- SEBI has also stated that since PAN is the key identification number and part of KYC requirements for all transactions in the securities market. Hence all SEBI registered entities and Market Infrastructure Institutions (MIIs) are required to ensure valid KYC for all participants. It also needs to be noted that for investors holding securities in demat account also linking of PAN and Aahdar is mandatory. So it necessary that all investors including investors with demat account shall ensure linking of PAN with Aadhaar card before deadline.

The link of SEBI Press Release dated 8th March 2023 is given below: - https://www.sebi.gov.in/media/press-releases/mar-2023/linking-of-pan-with-aadhaar-to-be-done-by-march-31-2023_68757.html

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Corporate Governance provisions for InvITs & REITs

I. Background:

SEBI had, vide its amendment dt: September 7, 2021 made corporate governance provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'] applicable to all such entities that have listed their non-convertible debentures (NCDs) exceeding outstanding value of 500 crores or more [to be called as "High Value Debt Listed Entities"] w.e.f April 1, 2021 on a 'comply or explain' basis till March 31, 2023. These provisions would become mandatorily applicable w.e.f April 1, 2023.

Recently SEBI amended SEBI LODR w.e.f. January 17, 2023 for exempting these provisions for High Value Debt Listed Entities in the nature of InvITs and REITs with effect from April 1, 2023. Consequently, certain amendments were made in the respective SEBI Regulations for InvITs and REITs for prescribing corporate governance provisions to all listed InvITs and REITs, irrespective of whether they are listed or not and irrespective of their size.

II. Amendment:

SEBI, vide its amendment notification dt: February 14, 2023 amended provisions relating to SEBI (Infrastructure Investment Trusts) Regulations, 2015 ['InvIT Regulations'] and SEBI (Real Estate Investment Trusts) Regulations, 2015 ['REIT Regulations'] Analysis of these amendments is given below:

For the purpose of simplicity, analysis of the amendment to InvIT Regulations and REIT Regulations is bifurcated in following manner:

A. Newly inserted provisions under InvIT Regulations and REIT Regulations.
B. Harmonization of InvIT Regulations and REIT Regulations with SEBI LODR
C. Provisions of corporate governance under SEBI (LODR) which are applicable for High Value Debt Listed Entities but not brought under InvIT Regulations and REIT Regulations.

A. Newly inserted provisions:

1. **Regulation 10(6) and (6A) and Regulation 13(2)(e) of InvIT Regulations / Regulation 10(6) and (6A) and Regulation 13(5) of REIT Regulations – Provisions relating to Statutory Auditor appointment and limited review:**
   a. **Term of appointment and re-appointment:** SEBI has now made appointment of statutory auditor provisions in accordance with Companies Act, 2013. The investment manager of the InvIT / Manager of the REIT shall appoint an individual or a firm as the auditor, who shall hold office from the date of conclusion of the annual meeting in which the auditor has been appointed till the date of conclusion of the sixth annual meeting of the unitholders in accordance with the procedure for selection of auditors, as may be specified by SEBI. It is further stated that the investment manager of the InvIT / Manager of the REIT shall not appoint or re-appoint—
   (a) an individual as the auditor for more than one term of five consecutive years; and
   (b) an audit firm as the auditor for more than two terms of five consecutive years:

Provided that—
(i) the individual auditor who has completed the term under clause (a) shall not be eligible for re-appointment as the auditor in the same InvIT / REIT for a period of five years from the date of completion of the term;
(ii) the audit firm that has completed its term under clause (b), shall not be eligible for reappointment as the auditor in the same InvIT / REIT for a period of five years from the date of completion of its term."

b. **Limited review:** SEBI has further stated that statutory auditor shall undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of the InvIT / REIT as per the applicable Indian Accounting Standards (Ind AS) and any addendum thereto as defined in Rule 2 (1) (a) of the Companies (Indian Accounting Standards) Rules, 2015, in such manner as may be specified by SEBI.

2. **Unclaimed or unpaid amount out of distributions declared by InvIT:** As per newly inserted Reg. 18(6)(e) of InvIT Regulations / Reg. 18(6)(e) of REIT Regulations, any amount remaining unclaimed or unpaid out of the distributions declared by a InvIT / REIT in terms of sub-clause (c), shall be transferred to the 'Investor Protection and Education Fund' constituted by SEBI in terms of section 11 of the SEBI Act, 1992, in such manner as may be specified by SEBI. There was a public notice from SEBI in this regard dt: September 6, 2022 whereby SEBI had asked non-corporate entities to provide update of unclaimed and unpaid securities *[https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20220906-30].* Now it has been officially included in InvIT Regulations and REIT Regulations.

3. SEBI has further clarified the meaning of 'Cash and Cash Equivalents' for the purpose of Reg 20(2) of InvIT Regulations / Reg 20(2) of REIT Regulations.

B. Harmonization of InvIT Regulations & REIT Regulations with SEBI LODR

4. **Definitions of SEBI LODR modified and inserted in InvIT Regulations / REIT Regulations –** The following terms have been defined in InvIT Regulations and REIT Regulations with some changes as compared to the equivalent definitions in SEBI LODR:-

Sr. no	Regulation no.	Rationale for Amendment	Key features of the Amendment
1	**Change in control** Regulation 2(1)(g) of	The definition and references of "control" in the SEBI LODR refers only in respect to listed entities as the LODR Regulation is only applicable for listed entities.	How "change of control" would be construed has been given a different angle of classification. 1. **Body Corporate – Listed:** Control in terms of regulations

Sr. no	Regulation no.	Rationale for Amendment	Key features of the Amendment
	both InvIT Regulations & REIT Regulations	However, in case of InvIT & REIT, "change in control" may occur in Sponsor, Investment Manager / Manager, Project Manager or Trustee, which may not be listed entities. The Trustee of InvIT /REIT being a SEBI Registered Debenture trustee, change in control of Trustee is covered under SEBI (Debenture Trustees) Regulation, 1993. Further, as per InvIT Regulations & REIT Regulations, sponsor can be any person i.e. other than body corporate. Hence, the definition of control under InvIT Regulations & REIT Regulations is required to cover scenarios for listed body corporate, unlisted body corporate and also entities other than body corporate. SEBI is also harmonizing the definition of "change in control" across various SEBI Regulations in order to have uniform definition, wherein for listed entities or listed bodies corporate, it shall be as per SAST Regulations, whereas for unlisted bodies corporate, it shall be as per Companies Act and a uniform definition for entities other than bodies corporate.	framed under clause (h) of sub-section (2) of section 11 of the Act i.e. as per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 2. **Body Corporate – Unlisted:** Control as provided in Section 2 (27) of the Companies Act, 2013 3. **Entity other than Body Corporate:** Change in its legal formation or ownership or change in controlling interest. Note: "controlling interest" means an interest, direct or indirect, to the extent of not less than 50% of voting rights or interest;
2	**Independent Director** Regulation 2(1) (saa) of InvIT Regulations & Regulation 2(1) (qai) of REIT Regulations	It is suitably changed in accordance with InvIT Regulations & REIT Regulations.	The eligibility conditions prescribed for independent director of InvIT & REIT are similar to the eligibility conditions prescribed in existing Regulation 16(1)(b) of SEBI LODR.
3	**Senior Management**	'Senior Management' has been defined under InvIT Regulations & REIT Regulations in line with SEBI	Senior management has been defined and shall mean officers and personnel of the investment

Sr. no	Regulation no.	Rationale for Amendment	Key features of the Amendment
	Regulation 2(1) (zxa) of InvIT Regulations and Regulation 2(1) (zra) of REIT Regulations –	LODR in order to mandate succession plan, requirement of code of conduct and disclosure to board of directors all material, financial and commercial transactions with personal interest of senior management. Further, compliance officer of the Investment Manager of InvIT has also been included in the definition of senior management as Regulation 10 of both InvIT Regulations & REIT Regulations mandate designation of an employee or director as the compliance officer for monitoring compliance.	manager / manager, who are members of its core management team excluding Board of Directors but including one level below CEO/ MD/ WTD/ Manager (including CEO & Manager if they are not part of Board of Directors), and shall specifically include CFO and Compliance officer. The **difference between this definition and the definition in LODR** is that LODR has recently amended the definition of 'senior management' to include **'functional heads'** which is not covered in this definition and the LODR definition says 'company secretary' whereas this definition says 'compliance officer'. **Actionable:** Core management team will need to be identified and accordingly senior management. Compliance of declaration of code of conduct of board of directors and senior management has to be affirmed by such persons.

5. **Insertion of Chapter VIB in InvIT Regulations / Chapter VIA in REIT Regulations – Obligations of Investment Managers:** SEBI has vide its amendment notification dt: February 14, 2023 added a new chapter under InvIT Regulations and REIT Regulations. This chapter makes certain provisions of SEBI LODR mutatis mutandis applicable to all InvITs and REITs, irrespective of whether their units are listed on stock exchange or not and irrespective of their size.

- **Regulation 26G of InvIT Regulations & Regulation 26A of REIT Regulations:-**
  The following provisions of SEBI LODR are applicable to InvITs and REITs whose units are listed, "the provisions contained in sub-regulations (2), (4), (5), (9) and (10) of regulation 17 and regulations 18, 19, 20, 21, 26 and sub-regulation (1), (2), (2A), (3), (4), (5), (7), (8), (9), (10) and (11) of regulation 25 of SEBI LODR shall be applicable.

  SEBI has further by way of an explanation stated that, "For the purpose of this regulation, unless the context otherwise requires, the provisions under the SEBI LODR, shall be interpreted as under:
  i. Board of directors unless context otherwise provide, it would mean "the Board of Directors of the Investment Manager" in case of InvIT whereas,

"the Board of Directors of the Manager" in case of REIT ('BOD of IM/ Manager').

ii. "Promoters" wherever it occurs, shall be read as "parties to the InvIT" in case of InvIT whereas, "parties to the REIT" in case of REIT;

iii. "Listed entity" wherever it occurs, shall be read as "InvIT" or "investment manager of InvIT", as may be applicable in case of InvIT whereas, "Manager" in case of REIT;

iv. "Company Secretary" wherever it occurs, shall be read as "compliance officer";

v. "Executive Director" wherever it occurs, shall be read as "non-independent director";

vi. "Non-executive Director" wherever it occurs, shall be read as "independent director";

vii. "subsidiary of listed entity" wherever it occurs, shall be read as "HoldCo and/or SPV of InvIT," as applicable in case of InvIT, whereas "HoldCo and/or SPV of REIT," as applicable in case of REIT.

<table>
<tr><th colspan="4">Brief points taken from SEBI LODR which shall be applicable to InvITs and REITs as per above Chapter</th></tr>
<tr><th>Sr. No</th><th>Regulation no.</th><th>Rationale for Amendment</th><th>Key features of the Amendment</th></tr>
<tr><td colspan="4">As per Regulation 26G of InvIT Regulations & Regulation 26A of REIT Regulations</td></tr>
<tr><td>1</td><td>Reg. 17(2) of LODR – Meeting of BOD of IM / Manager</td><td rowspan="5">As mentioned in the above background paragraph, high value debt listed entities in the nature of InvITs and REITs are exempted from compliance of Reg 15 to 27 of SEBI LODR w.e.f April 1, 2023.

Hence, only those provisions from SEBI LODR which may be relevant for InvITs and REITs have been incorporated in relevant InvIT Regulations &</td><td>Board of Directors of investment manager / manager shall meet at least 4 times in a year, with a maximum time gap of one hundred and twenty days between any two meetings</td></tr>
<tr><td>2</td><td>Reg. 17(4) of LODR – Succession planning for BOD & Senior management</td><td>The board of directors of the investment manager / Manager shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management</td></tr>
<tr><td>3</td><td>Reg. 17(5) of LODR – Code of Conduct</td><td>Board of Directors of investment manager shall lay down a code of conduct for all members of board of directors of investment manager / manager and senior management (as defined specifically in below paras) of investment manager / manager and accordingly incorporate duties of independent directors as laid down in Schedule IV of Companies Act, 2013</td></tr>
<tr><td>4</td><td>Reg. 17(9) of LODR – Risk assessment and Risk Management Plan</td><td>The InvIT / REIT shall lay down procedures to inform members of Board of Directors of investment manager / manager about risk assessment and minimization procedure along with framing, implementing and monitoring the risk management plan for the InvIT / REIT.</td></tr>
<tr><td>5</td><td>Reg 17(10) of LODR – Independent</td><td>The entire Board of Directors of investment manager / manager shall undertake evaluation of independence directors including performance of directors and</td></tr>
</table>

	(Non-executive) Director evaluation	REIT Regulations and mandated to be complied by all InvITs and REITs irrespective of whether they are listed or not and irrespective of their size.	fulfilment of independence criteria as specified in InvIT / REIT Regulations and independence from management. Participation of independent directors who are being evaluated shall be prohibited from participation in their own evaluation.
6	Reg 18 to 21 of LODR – Audit Committee, Nomination & remuneration Committee, Stakeholders Relationship Committee, Risk Management Committee Reg 26 of LODR – Obligations with respect to employees including senior management, key managerial personnel, directors and promoters		Provisions as specified in Regulation 18, 19, 20, 21 and 26 of SEBI LODR mutatis mutandis.
7	Reg 25 of LODR - Obligations with respect to independent directors	Rationale as mentioned in above point	Following point in brief from Regulation 25 of SEBI LODR are applicable to InvITs and REITs: • No alternate director for independent director (Reg 25(1)) • Maximum tenure shall be as per Companies Act (Reg 25(2)) • Appointment, Re-appointment or removal shall be subject to special resolution along with exceptions as mentioned under Regulation 25(2A) of SEBI LODR • At least one separate meeting, in a financial year, of independent directors without the presence of non-independent directors (Reg 25(3) & (4)) • Independent director shall be liable for acts done or omission during his tenure as director (Reg 25(5)) • Investment Manager shall familiarise independent directors about various programs including nature of industry, business model, role

			and responsibilities of independent director etc (Reg 25(7)) • Declaration of independence at first board meeting in which he participates as director and thereafter at first board meeting in every financial year (Reg 25(8)) • On receipt of the declaration of independence, the BOD shall take on record after due assessment of the veracity of the same. (Reg 25(9)) • Directors and Officers insurance ('D and O Insurance') for all independent directors of such quantum and for such risks as may be determined by board of directors of investment manager / manager. (Reg 25(10)) • Independent director, who resigns from the board of directors of investment manager / manager, shall not be appointed as an non-independent director on the board of the investment manager / manager, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group (parties to InvIT/ REIT), unless a period of one year has elapsed from the date of resignation as an independent director. (Reg 25(11))

- **Additional Requirements - Regulation 26H to 26K of InvIT Regulations / Regulation 26B to 26E of REIT Regulations:-**

  Other than the above-mentioned provisions of SEBI LODR which are made mutadis mutandis applicable to InvITs and REITs, the below provisions of SEBI LODR are also made applicable to InvITs and REITs after making some suitable changes:-

Sr. No	Regulation no.	Rationale for Amendment	Key features of the Amendment
	Regulation 26H of InvIT Regulations / Regulation 26B of REIT Regulations		
1	Min. six directors	For better governance this provision from SEBI LODR is brought in InvIT / REIT Regulations.	Minimum six directors and one woman independent director.
2	Quorum	As there was no provision for quorum for board meetings of investment manager in InvIT Regulations / manager in REIT Regulations, it has been added alongwith criteria for attending meetings through video conferencing.	Quorum of meetings of board of directors of investment manager / manager shall be 1/3rd of total strength or 3 directors including at least one independent director (Participation through virtual mode shall be counted).
3	Compliance Report	Reg. 10(24) read with Reg. 10(27) of InvIT Regulations / Reg. 10(25) read with Reg. 10(29) of REIT	The Board of Directors of InvIT / REIT shall review of all compliance report every quarter pertaining to all

		Regulations require investment manager of an InvIT / manager of REIT to place a report on the activity of performance of the InvIT / REIT before its board of directors or governing board on a quarterly basis and ensure that all activities of intermediaries or service providers are in accordance with the relevant regulations and guidelines or circulars issued thereunder. These obligations to review and rectify compliance is not on Board of Directors of Investment Manager of InvIT / manager of REIT. SEBI LODR do not specify any period to review compliance by the Board of Directors of the listed entity. Considering that there are certain compliance requirement under InvIT Regulations / REIT Regulations on a quarterly basis, hence it is proposed to mandate Board of Directors of the Investment Manager of InvIT / Manager of REIT to periodically review compliance reports, at least once in three months, pertaining to all laws applicable to the InvIT / REIT, as well as steps taken to rectify instances of non-compliances.	laws applicable to the InvIT / REIT as well as steps taken to rectify instances of non-compliances.
4	Min. information to be placed before board.	It was decided to make minimum information to be placed in the Board meeting of the Investment Manager of the InvIT / Manager of REIT as a good corporate governance practice. In addition to information mandated to be placed before Board of Directors as specified under SEBI LODR, additional requirement introduced about "Reports of tabletop exercises or workshops for identifying risks and vulnerabilities and specifying risk mitigations and processes for addressing vulnerabilities". Further provision on information on transaction involving goodwill, brand equity or intellectual property (which	Minimum information to be placed before the Board of Directors of Investment Manager / Manager shall include the items specified in Part A of Schedule VII of InvIT Regulations / Part A of Schedule VIII of REIT Regulations.

		is covered in SEBI LODR) is not included in InvIT Regulations & REIT Regulations.	
5	Compliance Certificate to be given by CEO and CFO	Considering that the InvIT Regulations / REIT Regulations mandates designation of compliance officer by the Investment Manager of InvIT / Manager of REIT, it is proposed that in addition to what has been mandated under SEBI LODR for listed entities, the Compliance Officer be also mandated to provide compliance certificate to the board of directors of Investment Manager / Manager of the InvIT / REIT. Further it is also proposed that the compliance certificate shall be provided along with the supporting evidence.	CEO, CFO and the compliance officer shall provide the compliance certificate, along with the supporting documents, to the Board of Directors including the items specified in Part B of Schedule VII of InvIT Regulations / Part B of Schedule VIII of REIT Regulations.
6	Recommendations by board of directors	Since the item as special business is not defined under InvIT / REIT Regulations, it is proposed to mandate Board of Directors of the Investment Manager / Manager of the InvIT / REIT to include its recommendation on each item which requires that the votes cast in favour of the proposal are more than one and half times of the votes cast against the proposal pertaining to InvIT / RETI in the general meeting of unitholders in line with SEBI LODR.	Board of Directors of Investment Manager / Manager shall set forth clearly their recommendations in the notice to the unitholders for each item referred to in Regulation 22(5) of InvIT Regulations / Regulation 22(6) of REIT Regulations.
	Regulation 26I to 26K of InvIT Regulations / Regulation 26C to 26E of REIT Regulations		
13	Vigil Mechanism - 26I of InvIT Regs / Reg 26C of REIT Regs	In lines with SEBI LODR, it is proposed that Investment Manager of InvIT / Manager of REIT may be mandated to formulate a vigil mechanism (whistle-blower policy) for directors and employees to report genuine concerns. In addition to the provisions in SEBI LODR,, an option has been specifically mentioned in InvITs / REITs Regulations to have an independent service provider for providing or operating vigil	• Investment Manager / Manager shall formulate a vigil mechanism including, ➢ a whistle blower policy for directors and employees to report genuine concerns, ➢ Adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism, ➢ Provide for direct access to the chairperson of the audit

		mechanism, who shall report to audit committee. The audit committee shall also be mandated to review the functioning of vigil mechanism.	committee in appropriate or exceptional cases. ➢ Review of policy Independent service provider may be engaged by the investment manager for providing or operating the vigil mechanism who shall report to the audit committee
14	Secretarial Compliance Report 26J of InvIT Regs / Reg 26D of REIT Regs	As Companies Act, 2013 is not applicable to InvITs & REITs, Secretarial Audit Report provisions would not be applicable. Hence provisions of Secretarial Compliance Report are made applicable.	Investment Manager / Manager submit secretarial compliance report given by a practicing company secretary to Stock Exchange within 60 days of end of FY and also annex it in the annual report of InvIT / REIT.
15	Quarterly Compliance Report on Corporate governance - 26K of InvIT Regs / Reg 26E of REIT Regs	This provision is also mandate reporting to stock exchanges by InvITs and REITs, with regard to compliance with corporate governance provisions on quarterly basis	• Investment Manager / Manager to submit quarterly compliance report on governance, to the recognized stock exchange(s) within twenty-one days from the end of each quarter. • The report shall be signed either by the compliance officer or the CEO of the investment manager.

C. Provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI (LODR)'] not brought under InvIT Regulations.

It can be seen that most of the corporate governance related provisions as per SEBI LODR have been make applicable for InvITs and REITs, irrespective of whether they are listed or not and irrespective of their size, after making suitable modifications based on the general structure of InvITs and REITs.

However, below are some provisions of SEBI LODR which were earlier made applicable to InvITs and REITs which were High Value Debt Listed Entities ('HVDLE') (as explained in the first para – Background – of this article), which are now exempted to HVDLE InvITs and REITs and are not covered under the InvIT Regulations and REIT Regulations too:-

Sr. no	Provision in SEBI LODR	Probable rationale for non-coverage
1	Definition of material subsidiary Reg. 24 of SEBI LODR	InvITs / REITs typically do not have significant operations at the trust level and income and cash flows are primarily derived from the underlying SPVs and Holdcos. Thus, the structure of a Holdco or an SPV is different from that of a subsidiary. InvITs / REITs hold SPVs or Holdcos which in turn hold the underlying

		infrastructure assets that comprise the portfolio of a InvIT / REIT. Therefore, there is no concept of a "material subsidiary" in InvIT / REIT Regulations, however, its requirements are applicable to all SPVs and Holdcos held by a InvIT / REIT.
2	Conditions for appt. of non-executive director who attained age of 75 years Reg 17(1A) of SEBI LODR	The unitholders of InvIT / REIT have no role in the appointment of directors in the Investment Manager / Manager of the InvIT / REIT. The directors of the Investment Manager / Manager are appointed by the shareholders of that Investment Manager / Manager. In view of the same, the requirement of special resolution/resolution for appointment of directors /managers/ appointment of non-executive director who has attained seventy-five years of age in the Investment Manager / Manager of the InvIT / REIT, are not made applicable in case of InvIT / REIT, as they are not relevant.
3	Approval of shareholders for appointment of director or manager Reg 17(1C) of SEBI LODR	
4	Approval of shareholders on recommendation of Board of Directors regarding fees or compensation to directors Reg 17(6) of SEBI LODR	The Investment Manager / Manager of InvIT / REIT are appointed by the unitholder on the basis of various parameters including the quantum of fees which are linked to the distributions made by the InvIT / REIT, hence the fees or compensation paid to the non-executive director is out of the total fees collected by the Investment Manager / Manager of the InvIT / REIT. Therefore, it is proposed that the approval of unitholders to recommend fees or compensation to the directors of the Investment Manager / Manager of the InvIT / REIT may not be made applicable in case of InvIT / REIT.
5	Stock Options not applicable to Independent Directors Reg 17(6)(c) of SEBI LODR	In case of a listed entity, stock options are allowed under SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021. However, SEBI LODR provides that the independent directors are not entitled to stock option of the listed entity. In case of InvITs / REITs, since there is no framework for stock option under InvIT / REIT Regulations, at present, any restriction with respect to same need not be specified.
4	Maximum no. of directors Reg 17A of SEBI LODR	SEBI LODR restricts the maximum number of listed entities in which a person can be appointed as director, where the count shall be done only for those whose equity shares are listed on the stock exchange. Since these limits are applicable only for equity listed entities, such restrictions are not applicable for Board of Directors of Investment Manager / Manager of InvITs / REITs and would be applicable automatically when the shares of the Investment Manager / Manager of InvIT / REIT are listed on the recognized stock exchange. Hence, it is not required to include this provision in InvIT / REIT Regulations.

5	Related Party Transactions Reg 23 of SEBI LODR	As of these provisions of SEBI LODR are not made applicable to InvITs / REITs, probably they might be made applicable InvITs / REITs separately.
6	Corporate governance requirements with respect to subsidiary of listed entity Reg 23 of SEBI LODR	SEBI LODR mandates that at least one independent director of listed entity to be on the board of unlisted material subsidiary, audit committee of listed entity to review financial statements and investments by the unlisted subsidiary etc. InvITs / REITs typically do not have significant operations at the trust level and income and cash flows are primarily derived from the underlying special purpose vehicles ("SPVs") and holding companies ("Holdcos"). As per InvIT / REIT Regulations, the InvIT / REIT is required to hold or propose to hold not less than 51% of the equity share capital or interest of the SPV. Hence the question of reducing the stake in SPV less than 51% also do not arise. Further the InvIT / REIT Regulations already mandates Investment Manager / Manager of InvIT / REIT to appoint nominees in the board of directors of SPVs in proportion to shareholding or holding interest of InvIT / REIT. In view of the same, it is proposed that the provision related to subsidiary is not required to be made applicable for InvITs / REITs.
7	Composition of Board of Directors linked to Chairperson Reg 17(1) of SEBI LODR	InvIT / REIT Regulations provides that the half of the board of directors of Investment Manager / Manager shall be independent irrespective of the Chairperson being related to promoter or not. Hence the equivalent provision of SEBI LODR is not relevant.

III. Conclusion:

It appears that lot of efforts were taken at SEBI's end to segregate the corporate governance provisions under SEBI LODR and determine their applicability in terms of InvITs and REITs, so as to avoid any anomalies and ambiguities once the corporate governance provisions of SEBI LODR become mandatorily effective to all "High Value Debt Listed Entities" w.e.f April 1, 2023.

However, in process of introducing these provisions in the respective InvIT Regulations and REIT Regulations, these provisions have been made applicable to all listed InvITs and REITs, irrespective of whether they are listed or not and irrespective of their size.
Whether this was the actual intent of SEBI, or whether some unlisted or listed but smaller size InvITs and REITs will get exempted from these provisions is to be seen in due course of time !!!

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ROC Adjudication orders u/s 12

The letterheads, billheads and other official documents of any company is the communication about various details of the company such as the registered office address, Corporate Identity Number[CIN], telephone number, Fax number and email ID of the company.

It is an obligation on the company's part to ensure that such details are correctly filled in on all such official documents and papers for the knowledge of the regulator and all stakeholders.

In the recent years MCAs internal Adjudication mechanism has played an active role in penalising all such section 12 non compliances. [Approximately 450 plus orders have been passed till date]

Following are a few distinctive orders passed under the ROC Adjudication Mechanism which are relating to violation of provisions of section 12:

Name of the Company and ROC Adjudication officer	Source of finding violation	Brief facts/Violations observed	Penalty levied
Kadimi Tool Manufacturing Company Private Limited. [ROC Delhi order dated: 06.09.2022]	ROC Delhi received directions from RD(NR) for taking actions u/s 12 in the process of amalgamation.	Letterhead used in Letter furnished to RD in process of amalgamation does not contain following details • Registered office address, • CIN • Email address of the companies (i.e Thus it was a violation of section 12 (3) (c) of the Act.	Since both the Transferor company have already been amalgamated, the liability of the transferor companies were borne by the Transferee Company. On Company: Rs 3,00,000/- (Two transferor companies and one transferee Company – 1 lakh each) On 4 officers in Default:Rs

			8,00,000/-
Teleone Online Ventures Private Limited [ROC Delhi order dated 30.11.2022]	Scrutiny of AOC 4 filed by the company for the FY ended 31st March 2018	In the given case the company had failed to mention the contact number on the letterhead used for filing the director's report along with the Balance sheet for the Financial year ended 31.03.2018	Period of Default – 243 days (From date of Filing AOC-4 to reply to SCN) On company: Rs 50,000/- (half penalty due to Small Co.) On 2 Officers in Default: Rs 1,00,000/- (half penalty due to Small Co.)
Infinite Computer Solutions (India) Limited ROC Delhi order dated: 03.10.2022	ROC Delhi received directions from RD (NR)	CIN on the subject company's letterhead indicates that it is listed even after becoming delisted w.e.f 21.12.2018 from both NSE and BSE Letter head used by the subject company for filing certain E-forms contained such wrong CIN	Penalty u/s 12 (8) On Company: Rs 1,00,000/- On 1 Whole Time Director: Rs 1,00,000/-

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Role and Responsibilities of CSR Committee and BOD

Introduction:

Section 135(1) prescribes certain criterion based on which CSR applicability is decided for any company. Every company to which CSR Criteria is applicable shall constitute CSR committee and needs to comply with other applicable provisions of Companies Act, 2013.

Although provisions of Companies Act, 2013 makes it mandatory to spend on CSR, it positively influences the Company's reputation. It manifolds positive impact like building brand image, customer loyalty, signalling values to the community that they serve. CSR planning along with its effective implementation and monitoring the same to achieve a desired result is key for any Company to successfully meet its social obligation in true letter and spirit.

To make this possible companies are required to constitute a CSR Committee and although board is responsible or answerable to do overall compliances, proper demarcation of roles and responsibilities between committee and board is also necessary.

CSR Committee

Section 135(1) lays down the composition of CSR Committee, it states that it shall consist of three or more directors, out of which at least one shall be Independent Director, if any. Further it is necessary for every company to constitute CSR committee except the companies whose CSR obligation is less than 50 lakhs and who are not undertaking ongoing projects as stipulated in Section 135(9) read with Rule 3 of CSR policy rules, 2014. In case where exemption is provided from constituting CSR Committee, the Board is expected to do the role of such committee.

Further, the guidance w.r.t functions of CSR Committee and Board of Directors is also provided in Section 135 read with CSR Policy Rules.

Functions of CSR Committee:

CSR committee is expected to take policy level decisions. Sub-section (3) of section 135 assigns functions to CSR committee as follows:

- Recommend to the board, the **amount to be spent on CSR** in a particular financial year.
- Formulate and recommend to the board, a **CSR policy to undertake CSR activity** and to **monitor the said policy from time to time**.

- Formulate and recommend to the Board, an **annual action plan** in pursuance of its CSR policy.

CSR Committee by framing policy is expected to provide **approach, guidance, and Direction** for carrying out its CSR obligation. One of the functions as stated in Section 135(3) is to monitor policy from time to time, it signifies that such committee must overview whether all the above factors are reflected comprehensively in CSR policy. Committee can review policy based on parameters like evaluating the need assessment, thrust areas identified vs. whether such policy gives proper yield or not. Further after analysing it, committee should report the same to Board of Directors by providing some data points like how many projects were decided to be undertaken pursuant to CSR policy, mapping of disbursement, how many projects are stuck up due to some or other reason etc. which will enable the Board to take proper decisions for effective implementation of CSR policy.

Functions of Board of Directors:

CSR Committee takes policy level decisions whereas the Board of directors are expected to keep check on end level compliances.

Sub-section (4) of section 135 lists down the functions of board as follows:

- Approval of CSR policy as recommended by the CSR committee and its disclosure to stakeholders.
- Ensuring the expenditure of amount recommended by committee on CSR activity and
- Disclosure WRT spent and unspent CSR amount and reasons for amount remaining unspent.

The examples of end level compliances can be the actual activities carried out as decided in annual action plan or not, utilisation of funds as per disbursement schedule and whether such disbursed amount is spent towards the defined purpose. Is there any unspent amount and if so, reasoning for the same. Whether such amount is transferred to Schedule VII fund or to a separate Bank Account, as the case may be. Whether proper disclosures are provided to regulators in prescribed Forms such as CSR-2, Annual Report on CSR which is an annexure to Board's report, website disclosures etc. Whether Impact Analysis is required to be carried out and the same is carried out through independent agency or not. Is there any excess amount spent during year and if so whether set off of the same is to be availed in next year etc.

Conclusion:

The roles and responsibilities of CSR Committee and Board is defined Section 135 read with rules thereto. As deliberated above, CSR Committee is expected to take policy level decisions vis a vis board of directors needs to take ownership of end level compliances. Although board can get comfort by taking certification from CFO for proper utilisation of CSR expenditure etc. but ultimately board is held responsible for overall compliances. Although Section 135 provide guidance w.r.t role of Committee and board, if role of committee and board is properly clarified at initial stage only, it will lead to hassle free and smooth functioning.

Since we are in the last month of financial year and the management can foresee the possibility of applicability of CSR to companies. Rather than waiting for closure of financial statements and deciding thereafter it is advisable to take steps from the beginning of the financial year i.e. from 1st month of financial year itself. At this stage, formation of CSR Committee, demarcating their role vis a vis role of board, need assessment, selection of area, etc. may be undertaken. The proper planning and initiating activities at early stage will avoid last minute rush and non-compliances and will lead to proper compliance of law in letter and spirit.

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Exemptions/waiver Granted to the Successful bidder in case of Takeover of Company as a Going Concern

In the matter of State Bank of India - Financial Creditor/Appellant vs. K.R.R. Infraprojects Private Limited (Corporate Debtor/Respondent) at National Company Law Tribunal (NCLT) Hyderabad Bench dated 9 January 2023.

***Background*:**

In this case - State Bank of India (Financial Creditor /FC/Appellant) filed a petition u/s 7 of Insolvency and Bankruptcy Code (IBC) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against K.R.R. Infraprojects Private Limited (Corporate Debtor/CD) at the NCLT. The petition was admitted by NCLT and Corporate Insolvency Resolution Process (CIRP) was initiated. An Interim Resolution Profession (IRP) was also appointed.

Since there were no assets available and there was clarity on the possibility of realization of the receivables, which were under litigations and with the chances of continuing the Corporate Debtor as going concern and receiving resolution plans being remote the Committee of Creditor (CoC) with majority vote resolved to liquidate the CD which was followed by the order of NCLT and accordingly the Liquidator was appointed.

Since the CD had no fixed assets except some receivables, Liquidator published e-auction sale notices for selling CD as a going concern on 'as is where is', 'as is what is', whatever there is' and 'no recourse basis.' Pursuant to the this, CD was sold as a going concern and accordingly a letter of intent was issued by successful bidder. The successful bidder also paid the consideration amount in two tranches.

Post this – the successful bidder submitted the letter to the CD laying down certain reliefs, exemptions and concessions for concluding the sale of the CD as a going concern.

Question for the Consideration:

Can the successful bidder claim the reliefs/exemptions/concession for taking over the CD as a going concern?

Submission by the Liquidator:

On the advice of the stakeholders committee the Liquidator filed an application before NCLT seeking reliefs /waivers/concessions on behalf of successful bidder. The liquidator prayed for the reliefs/waivers/concessions stating that it is imperative for the successful bidder to the CD as the going concern.

Further, buttress the submission - reliance was placed on the order of Hon'ble Tribunal, dated 30.06.2021, in the matter of *Vishwa Infrastructure Finance & Services Pvt. Ltd*. and the order of the NCLT, Mumbai Bench, in the matter of *Topworth Pipes & Tubes Pvt Ltd*.

Held:

The NCLT held that the sale of business and assets of the CD as a going concern, is consistent to the objectives of the IBC. NCLT further held that the reliefs sought for in the form of waivers and concessions, can be granted for the smooth transition of the CD and continuation of the business by the successful bidder.

Waivers/Concession granted by NCLT:

As the CD was sold as going concern and the successful bidder was not to be saddled with the liabilities prior to the effective date and accordingly the NCLT granted the following waivers/concessions:

- The Registrar of Companies (ROC) to waive off all penalties for non-compliances by the erstwhile management and allow the new management to file the old records such as Balance Sheet, Annual Reports other returns etc., without any penalty.
- All approvals, licenses, and benefits in the name of the CD to continue with the new management subject to payment of renewal fees without any penalties.
- A request was made for clearance from the secured financial creditors and filing of satisfaction of charge by them.
- Relief from all claims, liabilities, obligations or guarantees from the books or out of books of the CD.
- Existing Share Capital to be extinguished without any payment to the present/existing shareholders. The amount bid by the bidder, towards the purchase consideration of acquiring the CD as a going concern, to be considered as paid-up capital share capital.
- For taking the offset of loses against the further profits as per the Income Tax Act – NCLT directed successful bidder to approach the concerned and request under the relevant law, keeping in view the object of IBC.
- In case of non-maintenance of requisite record or non-filing of the returns by the CD, which has resulted in lapsing - benefits to be made available on retrospective basis/reinstated, without fees/penalties

under the new GST regime - NCLT directed successful bidder to approach the concerned and request under the relevant law, keeping in view the object of IBC.

- Penal Charges, late fee, and penal interest under the provisions of Companies Act, 2013 for any non- compliance by the erstwhile Board, RP and liquidator were waived by ROC.
- The non- compliance of provisions of any of the laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licences, approvals, consents or permissions, prior to the date of acquisition would stand extinguished qua the bidder.
- The new management would not be responsible to any statutory liabilities outstanding as on the liquidation date which arise due to past deeds.
- All the rights, title and interest whole and every part of the CD would be entitled to the new management.
- The assets mentioned in the e-auction process document shall vest with the new management of the CD.
- The new management would not be liable for any payment arising out of the contingent liabilities on account of bank guarantees.
- Any proceedings pending against the CD (other than against the erstwhile promoters or former members of the management of the CD) as on date of liquidation with respect to its liabilities, enquiries, investigations, assessments, claims, disputes, litigations etc. would not have any bearing against the bidder.

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