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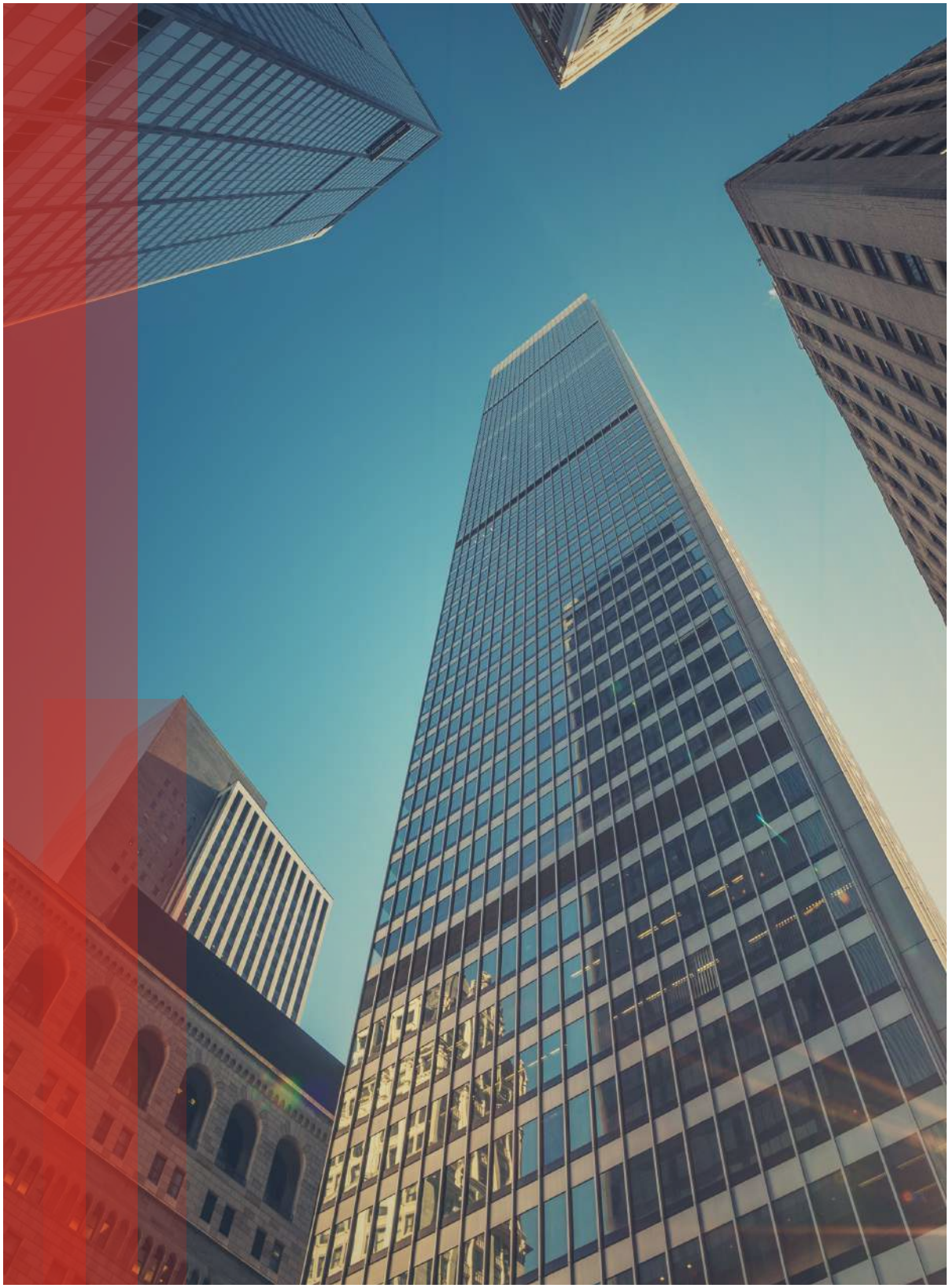

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India moves closer to 100% Dematerialization

Introduction:

The Indian regulators have been time and again emphasizing on dematerialization of shares of public companies. Specially Securities and Exchange Board of India ('SEBI') has taken special efforts to promote dematerialization of shares amongst public shareholders of listed companies. Now the Ministry of Corporate Affairs ('MCA') has extended this facility of dematerializing the shares to private companies. Also, the MCA has mandated to dematerialize the shares issued through share warrants before the enforcement of the Companies Act 2013.

Background:

Rule 9 of Prospectus and Allotment of Securities Rule 2014 ['PAS Rules'] which were notified on 1st April 2014, prescribes that the promoters of all unlisted public companies may hold securities in demat form only. As per proviso to this rule, if the promoters are holding securities in physical mode, then they must convert the same in to demat before going for initial public offer (IPO). Further as rule 9A (2) of PAS Rules before making any buyback offer, bonus issue, making any offer for issue of securities or rights issue unlisted public companies shall ensure that its holding of promoters, directors, and key managerial personnel is in demat.

MCA has now through amendment notifcation dated 28th October 2023, inserted a new sub-rule to rule 9 and added a new rule 9B in PAS Rules. These newly inserted sub-rules address the treatment of share warrants issued by public companies to shareholders before commencement of the Companies Act 2013 that is, under section 114 of Companies Act 1956 and has not yet been converted into shares. Further the newly inserted rule 9B requires the private companies to dematerialize their shares.

Amendment to rule 9 of PAS Rules – Conversion of warrants issued under Companies Act, 1956:

Up till now the Companies Act 2013 has not had any provision dealing with share warrants. But now for the first time the MCA has added provisions under rule 9 of PAS Rules that deal with share warrants issued under Companies Act 1956 but have not been converted into shares yet. As per these provisions, the companies who have issued such share warrants, should disclose details of these share warrants to the concerned Registrar of Companies ('ROC') within 3 months of the date of this amendment becoming effective that is 28th October 2023 (i.e., this information must be given by January 27, 2024). Thereafter, within 6 months of amendment becoming effective (i.e., by April 27, 2024), the holders of these warrants should deposit this warrant with the company and get it converted into demat shares. For this purpose, the company is required to give notice to all warrant holders through an advertisement in one English and one vernacular language newspaper and by hosting the same on the company's website.

The provision further states that, if the holder of warrant does not get his warrant converted in to shares within specified time, then the company shall convert such warrants in to shares and transfer the same to IEPF under section 124 of the Companies Act 2013. The amended rule 9 prescribes for a form named PAS-7 in which the company is required to give information regarding unconverted share warrants to ROC within 3 months of the amendment becoming effective. One point worth noting about this form is that this form requires certification from a practicing professional stating that he/she has verified all the records relating to share warrants

maintained by the company and they are mentioned accurately in the form. Further, the amended provisions also prescribe a specified format for giving notice/advertisement to warrant holders for conversion of warrants in to shares.

Insertion of new rule 9B. – Demat of shares by Private Companies:

MCA by inserting a new rule 9B to PAS Rules has provided for dematerialization of shares of private companies which are not small companies. As per rule 9B, those private companies who are not small companies as per audited financial statements as of 31st March 2023, shall within eighteen months from 31st March 2023, facilitate dematerialization of existing securities and issue further shares in demat form only. Also, if the shareholders of such private companies are desirous of transferring their shares, then it would be mandatory for unlisted private companies to make facility for demat available. This will allow the shareholders to first dematerialize the shares and then transfer. The company will not be able to make further offer of shares or buyback of shares unless the shares of promoters, directors and key managerial persons are in demat form. As mentioned above this new rule 9B is not applicable to small companies and government companies.

MCA has further stated that provisions of sub-rule (4) to (9) of rule 9A shall mutatis mutandis apply to private companies. This would mean that the provision of Securities Contract Regulation Act, 1956 and the rules made thereunder would be applicable to private companies also. It would also mean that provisions relating to 'spot delivery of securities' would also become applicable to private companies.

Conclusion:

The recent amendments to Rule 9 and the introduction of Rule 9B signify the government's commitment to enhancing transparency, reducing paper-based processes, and aligning with global best practices. Dematerialization of securities of private companies is expected to bring private companies on par with their public counterparts in terms of dematerialization, promoting efficiency and transparency.

These regulatory changes underline India's commitment to staying at the forefront of corporate governance and compliance, offering investors a secure and transparent environment for their investments. In the ever-evolving corporate landscape, embracing dematerialization is a significant stride forward, reducing paperwork and enhancing efficiency for businesses and shareholders alike.

The article is published in TaxGuru and can be accessed at the following link:

https://taxguru.in/company-law/india-100-percent-dematerialization-recent-regulatory-amendments.html

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Enhancing Transparency: MCA Mandates LLPs to Declare Registered and Beneficial Owners

Introduction:

The concept of registered owner and beneficial owner within the context of a company has a well-established history. The Ministry of Corporate Affairs (MCA) has consistently underscored the importance of compliance with these provisions under the Companies Act of 2013. Recognizing the substantial relevance of these roles under various legal frameworks, the MCA has taken a noteworthy step by mandating that limited liability partnerships (LLPs) declare both their registered and beneficial owners or partners within the LLP structure.

Insertion of new rules:

Through an amendment to LLP rules, MCA has mandated the LLPs to maintain a register of partners on the lines of register of members maintained under Companies Act. A new rule 22A has been inserted after rule twenty-two in LLP rules which prescribes format for register and the timeline within which the LLP shall start maintaining register. As per this rule, the existing LLPs should maintain register of partners in form 4A within 30days from the effective date of this amendment, that is 28th October 2023.

Further, newly inserted rule 22B says that, the partner whose name is entered in register of partner but who does not hold beneficial interest in the LLP, should disclose this fact to the LLP along with the details of the person who holds such interest within 30 days from entering of name in the register of partners. Similarly, the person who holds a beneficial interest but whose name is not entered in the register of partners should also give this disclosure to the LLP in form 4C within 30 days of acquiring such interest. Thereafter, the LLP should inform this fact relating to registered partner and beneficial partners to the ROC in form 4D. The amended provisions also provide for the format of these forms.

Conclusion:

MCA has extended its focus on enhancing transparency and accountability within business structures by introducing the concept of registered and beneficial partners for LLPs. This move aligns with the broader emphasis on defining ownership roles within various legal frameworks. By mandating the maintenance of a register of partners and the disclosure of beneficial interests, the MCA is driving LLPs toward increased compliance and clarity. The newly inserted rules under the LLP framework represent a significant step towards achieving these goals and fostering a more transparent and accountable business environment.

Link of the amendment is as follows:

https://www.mca.gov.in/bin/dms/getdocument?mds=VYVpE7YcJovnhBqcW9gtsw%253D%253D&type=open

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India's Ease of Doing Business: MCA's NSWS Integration

Introduction:

Doing business in India has never been more accessible. The Indian government, Ministry of Corporate Affairs ['MCA'] specially, has been hard at work, streamlining regulations and simplifying processes to create a more welcoming environment for businesses. Reducing the number of compliances, de-criminalizing of offences and providing exemption to private companies from major compliance are some of the prominent examples of government's efforts towards ease of doing business. This article provides an overview of one of the technology-based initiatives taken by central government towards ease of doing business.

Background:

In recent years, India has undertaken a series of ambitious reforms, ranging from simplifying regulatory frameworks to digitalizing administrative processes. Some more amongst these reforms are de-criminalisation of offences, exemptions to private companies from major compliance, amendment to definition of small company and introduction of SPICE+ form for incorporation of companies. The e-form SPICE+ for the first time provided the facility of obtaining PAN, DIN, and EPFO & ESIC registration etc. through one single form. This step was considered a big step in the ease of doing business as it saved a lot of time of businesspeople. Now in furtherance of its efforts towards enhancing ease of doing business, MCA has come up with a new update with respect to incorporation of companies and LLPs.

Latest MCA update with respect to incorporation of companies and LLPs:

On October 23, 2023, MCA announced that forms for incorporation of companies and LLPs can be filed through the National Single Window System (NSWS) as well, as MCA has integrated with NSWS to provide an additional option to stakeholders for filing application for incorporation of company or LLP. In other words, now incorporation application can be filed through two portals. The first being MCA portal and second being the The National Single Window System ('NSWS') portal. The application filed on NSWS portal shall be forwarded to MCA for further processing.

What is NSWS:

NSWS is a digital platform under Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry. This portal is aimed at providing guidance to entrepreneurs with respect to the central and state government approvals required by businesses they are proposing to start and allowing entrepreneurs to apply for same through the NSWS portal. NSWS is an alternative one stop destination other than the respective ministry's websites, for obtaining multiple approvals under single window. This portal is designed, developed, and owned by 'Invest India' which is the National Investment Promotion and Facilitation Agency of India, set up as a Non-profit venture under the aegis of DPIIT, Ministry of Commerce and Industry.

Services offered by NSWS:

As mentioned above, NSWS is a one stop destination for obtaining and/or renewing approval issued by union ministries and state governments. The portal provides the guidance as to which all approvals will be needed by the stakeholders, based on the information provided by them. Further the portal also allows the stakeholders to apply for maximum of such approvals

through this same portal. NSWS hosts applications for approvals from thirty-one central departments and twenty-two state governments. Approvals from all these ministries and departments can be made through NSWS portal. In addition to this the portal also provides information relating to various government schemes which may prove beneficial to businesses. The portal also provides a facility to create a secured documents repository. The documents can be ones uploaded and used for making all required applications.

How does NSWS portal work:

As a first step, the entrepreneur is interested in knowing which all approvals will be required by him for starting a specific business. For this purpose, he can use NSWS's Know Your Approval (KYA) model. Stakeholder is required to answer the various questions about the business model asked by the portal. The questions relate to nature of entity to be registered, startup and MSME registrations, number and types of employees, requirement of intellectual property registrations, foreign investments, and taxation related registrations. Based on answers to these questions, the portal suggests the list of approvals required and indicates which of such approval can obtained through NSWS. Thereafter the entrepreneur must register on the portal using his email ID and phone number. Thereafter, he should upload all the required documents on the portal and then file the application for relevant approvals by logging in the portal.

The FAQs provided on the NSWS website clarify two important things. The first one being that the portal itself does not charge any fees for its services, but the application fees charged by the specific ministries for granting approval may be paid through this portal. The second thing is that the portal does not re-engineer any of the processes followed by the ministries for granting approvals. It simply acts as one single window for obtaining multiple approvals and as soon as an application is received, it is forwarded to relevant ministry for further processing. The portal provides a detailed list of union ministries and state governments and approvals granted by them which can be applied for through this portal. As far as MCA is concerned, applications for incorporation of company or LLP, application for obtaining DIN/DPIN, application for commencement of business and application for registration under independent director databank can be made through this portal.

Conclusion:

In furtherance of government's efforts towards ease of doing business, the latest announcement from MCA on the integration with the National Single Window System (NSWS) marks yet another remarkable milestone. This collaboration offers businesses a dual portal system for company and LLP incorporation, providing greater flexibility and convenience. Importantly, NSWS does not reinvent ministry processes but serves as a central hub, forwarding applications to the relevant ministries for efficient processing.

As India continues to be a beacon for entrepreneurs and investors, the integration of MCA with NSWS exemplifies the government's dedication to fostering a thriving business ecosystem. These initiatives not only signify the ease of doing business but also highlight the boundless opportunities awaiting those who choose India as their business destination. The future of business in India is indeed brighter than ever.

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MCA's Commitment to Business-Friendly Regulations: Rule Amendments

Introduction:

The Hon'ble, Finance minister of India has been time and again emphasizing on the efforts taken by the ministry of corporate affairs (MCA) towards the ease of doing business. The MCA has simplified thousands of compliances and has also de-criminalized several of them. In its constant endeavor to ensure ease of doing business to India MCA has brought another important amendment to Companies Incorporation Rules, 2014.

Background:

Rule 30 of the Companies Incorporation Rules 2014 prescribes the process for shifting registered office of the companies from one state or union territory to another state or union territory. As per sub-rule 9 of this rule, Central Government/Regional Director (RD) can approve the application and may also pass order as to cost if required. Further, the proviso to sub-rule 9 of rule 30, provides a condition that the shifting of registered office outside state or union territory cannot be allowed if any enquiry, inspection, investigation, or prosecution against the company is pending. MCA through the Companies Incorporation Amendments Rules 2023 has amended rule 30(9) and has inserted an additional proviso thereto.

Amendment to Rule 30 (9): MCA through the said amendment, has made two changes to sub-rule 9 of rule 30 of companies' incorporation rules 2013. Let's look at them one by one.

1. **Omission of words from 30 (9):** Through the said amendment, MCA has deleted some words from sub-rule 9. The deleted words read as, "*and may include such orders as to cost as it thinks proper,*". Prior to amendment, due to presence of these words, the central government/RD had powers to impose any cost upon the company at the time of approving the shifting of registered office outside the state or union territory if so, thought necessary by RD. However, due to removal of the said words now the RD shall not be authorized to impose any cost on the company. This shall reduce the compliance cost incurred by the company in shifting the registered office outside the state or union territory.
2. **Insertion of new proviso:** Wide the same amendment, the MCA has inserted a second proviso to Sub-rule 9 of Rule 30. The first proviso to the sub-rule says that if any prosecution is going on against the company, then the application for shifting of registered office outside the state or union territory cannot be approved. However, the newly inserted proviso provides an exception to this condition by providing that, a company who is undergoing CIRP and whose management has changed after the resolution plan being approved, can be allowed to shift its registered office outside the state or union territory if there is no appeal pending against the resolution plan and no enquiry, inspection or investigation is initiated after approval of such resolution plan.

Effective Date of Amendment:

The effective date of the Amendment is 21 October 2023. That means, if the company whose resolution plan is approved, makes an application for shifting of registered office outside the state or union territory after 21 October 2023, its application shall be approved if all other provisions are complied with.

Conclusion:

This step of MCA will not enable the ease of doing of business in India but will also fasten up the process of CIRP. This amendment is expected to be beneficial to the new promoters of the company, as they shall be able to shift the registered office of the company to the area where their existing businesses are located.

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Opening Doors to Global Capital: India's Direct Listing Move on Overseas Exchanges

Introduction:

The Ministry of Corporate affairs ('MCA') had come up with Companies Amendment Act 2020 ['Amendment Act']. Amendment Act was notified on 28th September, 2020, but not all sections of Amendment Act were notified on that date. MCA has been notifying different sections of the Amendment Act on different dates. In this process, MCA has now notified section 5 of Amendment Act

Section 5 of Amendment Act:

Section 5 of Amendment Act amends section 23 of Companies Act, 2013 [the Act'] by adding sub-section (3) and sub-section (4). Sub-section (3) gives enabling power to MCA to notify such class of public companies and such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions. Sub-section (4) empowers MCA to exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127. Therefore, as of now, clarity as to which category of public companies and in which foreign jurisdiction is awaited from MCA. Rules in this regard is also clarification regarding exemption from specific provisions is awaited.

Conclusion:

Hon'ble Finance Minister of India had during her Finance Budget Speech recently and also during some public events highlighted that the central government is desirous of enabling the direct listing of listed and unlisted companies on overseas exchanges or stock exchanges in Gujarat International Finance Tec-City - International Financial Services Centre. Notification of sub-sections 3 and 4 of section 23 of the Act indicates the steps towards implementing this move. As a result of such listing, access to global capital will be facilitated and the same shall result in better valuation for Indian companies.

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SEBI gets power to notify norms for claiming of amounts from Investor Protection and Education Fund

Background:

Regulation 61A(3) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['LODR Regulations'], inter-alia, provided that the amounts pertaining to non-convertible securities and benefits thereon which remain unclaimed for a period of seven years should be transferred to Investor Protection and Education Fund ['IPEF'] in terms of the provisions of section 125 of the Companies Act, 2013 ('the Act'). This provision did not provide for listed entities[1] which do not fall within the definition of 'company' under the Act and the rules made thereunder, and the manner of handling the amount, if any, lying in escrow account which remains unclaimed for seven years.

To address this regulatory vacuum, based on internal discussions and with the market participants, it was proposed to mandate such listed entities which are not companies to transfer the unclaimed amounts lying in their escrow account for more than seven years to IPEF. On approval of this proposal in SEBI Board amendment was made to regulation 61A (3) of LODR Regulations mandating listed entities which do not fall within the definition of 'company' under the Act and rules made thereunder, to transfer any amount in escrow account that remains unclaimed for seven years to the IPEF created by SEBI.[2]

Introduction:

Securities and Exchange Board of India ('SEBI') has vide its amendment notification Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2023 ['LODR Sixth Amendment'] dt: October 20, 2023, amended regulation 61A (3) of LODR regulations.

Pursuant to this amendment SEBI has stated that any amount transferred to IPEF pursuant to provisions of Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009 shall not bear any interest.

SEBI has further stated that it will soon notify the procedure for claiming of unclaimed amount by a person from IPEF.

Conclusion:

SEBI may soon notify norms for appointment of nodal officer by listed entities, form in which investor can of a listed entities can claim money from IPEF, compliances to be done by listed entities till the unclaimed amount is transferred to IPEF, whether the securities to which the unclaimed amount pertains too shall be transferred to IPEF, norms to be followed in case of freezing of securities etc.

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[1] Listed entities which have issued non-convertible securities, and which do not fall within the definition of 'company' under the Act and the rules made thereunder, are hereinafter referred to as the 'listed entities.'

[2] SEBI Board Meeting note dt: September 21, 2023

Unlocking Unclaimed Investor Funds: SEBI's New IPEF Regulations 2023

Background:

Regulation 4 of Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, ['IPEF Regulation'] provide for various amounts that can be credited to Investor Protection and Education Fund ['IPEF']. IPEF Regulation contained a blanket provision under regulation 4(1)(j) providing for credit of such other amount to IPEF as SEBI may specify.

However, a need to clearly specify the credit of unclaimed amounts lying with the listed entities and the unclaimed or unpaid amounts out of distributions by REITs and InvITs, in the IPEF Regulations, was necessitated by the fact that the utilization of such amounts differ from utilization of other amounts that are credited to the Investor Protection and Education Fund ['IPEF']. Hence it was necessary that regulation 4(1) of IPEF Regulation clearly specify credits that can be made to IPEF.

Regulation 5(1) and 5(2) of IPEF Regulation, provide specific purpose for which the IPEF can be utilized. However, as per regulation 5(3) of IPEF Regulation amount credited pursuant to regulation 4(1)(h) i.e., amounts disgorged under section 11B of Securities and Exchange Board of India Act, 1992 or section 12A of Securities Contract (Regulations) Act, 1956 or section 19 of Depositories Act, 1996 can be utilized unless it earmarked for some specific purposes. Further it needs to be highlighted that any unclaimed amount that gets transferred by a listed entity, REIT or InvIT, needs to be held in the IPEF on behalf of the investors, till it gets claimed.

In view of this it was also proposed that a suitable exception may be required under regulation 5 of IPEF Regulation, prescribing manner of utilization of unclaimed amounts, given the fact that the manner of utilization of such amounts shall differ from the utilization of other amounts credited to IPEF.

Introduction:

SEBI has now vide its Securities and Exchange Board of India (Investor Protection and Education Fund) (Second Amendment) Regulations, 2023 ['IPEF Second Amendment'] amended provisions of regulation 4 and regulation 5 of IPEF Regulations. Regulation 4 provides for amounts that can be credited to the IPEF and Regulation 5 provides for utilization of amounts credited to the Fund.

a. **Amendment to regulation 4 of IPEF Regulations:**
With this IPEF Second Amendment SEBI has brought the provisions of IPEF Regulations in line with the provisions of Regulation 61A (3) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 18(16)(f) of Securities and Exchange Board of India (Real Estate Investment Trust) Regulations, 2014 and Regulation 18(16)(e) of Securities and Exchange Board of India (Infrastructure Investment Trust) Regulations, 2014. With this amendment regulation 4 of IPEF Regulation provides for receipt of money in IPEF from listed entities, real estate investment trusts and infrastructure investment trust.

b. Amendment to regulation 5 of IPEF Regulations:

SEBI has also replaced the provisions of regulation 5(3) of IPEF Regulations. With this amendment rewards from IPEF can be given to informants who provide original information to SEBI to recover amounts directed to be disgorged. Till now as per regulation 5(3) of IPEF Regulation amount could be given from IPEF for making restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws.

Further SEBI has also stated that amounts credited to IPEF in accordance with regulation 61A(3) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 18(16)(f) of Securities and Exchange Board of India (Real Estate Investment Trust) Regulations, 2014 and Regulation 18(16)(e) of Securities and Exchange Board of India (Infrastructure Investment Trust) Regulations, 2014 shall be utilized for refund to the entities transferring the said amounts pursuant to their making payment to eligible and identified investors and then making a claim to IPEF.

SEBI in its Board Note dt: September 21, 2023, has stated that for handling claims of investor, it is proposed to follow a procedure like that being followed by banks, for unclaimed deposits, as per directions of Reserve Bank of India under the Depositor Education and Awareness Fund Scheme, 2014. After transfer of unclaimed amount to the Fund, a claim shall have to be filed by an investor with the listed entity, REIT or InvIT, which shall verify the claim, process it, and make the payment to the investor. The amount payable to the investor shall not exceed the amount credited against such investor by the listed entity, REIT and InvIT in the IPEF. Thereafter, the listed entity, REIT or InvIT shall claim refund/reimbursement of the said amount from the Fund. The manner of making a claim and refund of money would be specified by SEBI separately.

Further the provisions of regulation 5(3) state that amount which is not earmarked for refund to the entities who have made payments to identified investors or for restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws, can be utilized for purposes specified in regulation 5(2) of IPEF Regulation.

Conclusion:

SEBI has now made enabling provisions for the transfer of unclaimed amounts by listed entities, InvIT and REITs to IPEF. With this procedure norms for claiming the same by concerned investors would take us step further in ease of doing business.

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

https://taxguru.in/sebi/unclaimed-investor-funds-sebi-ipef-regulations-2023.html

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Unitholders of InvIT can claim the amount that has been transferred to IPEF

Introduction:

SEBI vide gazette notification dated 20th October 2023 bearing no. SEBI/LAD-NRO/GN/2023/159 has made an amendment in the Securities and Exchange Board of India - Infrastructure Investment Trusts - Regulations, 2014 has amended the Regulation viz., Securities and Exchange Board of India Infrastructure Investment Trusts Third Amendment Regulations, 2023 (Amendment Regulation).

Amendment:

Vide this Amendment Regulation, SEBI has given a right to the Unitholders to claim their entitled amount that has been transferred to Investor Protection and Education Fund ("**IPEF**") by InvIT being unclaimed or unpaid out of the distributions declared by a InvIT by following the manner which may be specified by SEBI. Further, the amount so transferred to the IPEF shall not be liable to bear any interest. Hence, the claimant while claiming the amount shall not be entitled to any interest accrued thereon.

It is also pertinent to note that for giving effect to aforementioned amendment, the SEBI vide gazette notification dated 20th October, 2023 bearing reference number SEBI/LAD-NRO/GN/2023/157 has also amended the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009 ("**IPEF Regulations**") namely Securities and Exchange Board of India (Investor Protection and Education Fund) (Second Amendment) Regulations, 2023 ("**IPEF Amendment Regulations**").

Vide the IPEF Amendment Regulations, it was further provided that the amounts credited to the Fund shall be utilised for refund to the entities i.e., InvITs, transferring the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund in the manner specified by the SEBI. Further, the monies remaining in the Fund after earmarking may be utilised for the purposes of the Fund as specified in the IPEF Regulations.

Conclusion:

By this amendment, SEBI has explicitly given the rights to the Unitholders to claim their entitled amount that has been transferred to the IPEF by InvIT being unclaimed or unpaid out of the distributions declared by a InvIT in the manner as may be specified by the SEBI.

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REVISION IN THE FRAMEWORK FOR FUND RAISING BY ISSUANCE OF DEBT SECURITIES BY LARGE CORPORATES ('LC's')

Regulation 50B of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations') read with Chapter XII of the NCS Master Circular dt: July 07, 2023 ['NCS Master Circular'] on 'Fund raising by issuance of debt securities by large corporates' ('LC Chapter'), inter-alia, mandates LCs to raise a minimum 25% of their incremental borrowings in a financial year through issuance of debt securities which were to be met over a contiguous block of three years. After considering prevailing market conditions and representations from market participants, the framework for fund raising by issuance of debt securities by LCs is revised by Securities Exchange Board of India ("SEBI") through circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/172 dated October 19, 2023.

Summary of the said revised framework is as follows:

A. Applicability

1. This framework is applicable with effect from April 01, 2024, for LCs following April-March as their financial year and with effect from January 01, 2024, for LCs which follow January-December as their financial year.

2. The framework shall be applicable for all listed entities (except for Scheduled Commercial Banks), which as on last day of the FY (i.e., March 31 or December 31) and listed entities fulfilling following criteria shall be considered as Large Corporate's:

    a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised Stock Exchange(s) in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). **And**
    b) have outstanding long-term borrowings of Rs.1000 crore or above.

    Explanation: 'Outstanding long-term borrowings' for the purpose of this framework shall mean any outstanding borrowing with an original maturity of more than one year but shall exclude the following:

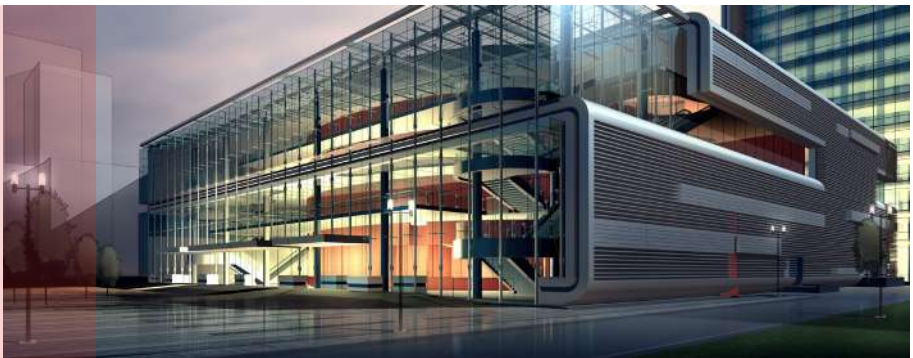
    i. External Commercial Borrowings.

    ii. Inter-Corporate Borrowings involving the holding company and/ or subsidiary and/ or associate companies.

    iii. Grants, deposits, or any other funds received as per the guidelines or directions of Government of India.

    iv. Borrowings arising on account of interest capitalization; and

    v. Borrowings for the purpose of schemes of arrangement involving mergers, acquisitions, and takeovers.



And

c) have a credit rating of "AA"/ "AA+"/AAA ", where the credit rating relates to the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in.

Explanation: In case a listed entity has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered for the purpose of this framework.

B. Fund raising by LC:

1. An LC shall raise not less than 25% of its qualified borrowings by way of issuance of debt securities in the financial year after the financial year in which it is identified as an LC.

Explanation: For this framework, the expression "qualified borrowings" shall mean incremental borrowing between two balance sheet dates having original maturity of more than one year but shall exclude the following:

i. External Commercial Borrowing.

ii. Inter-Corporate Borrowings involving its holding company and/ or subsidiary and/ or associate companies.

iii. Grants, deposits, or any other funds received as per the guidelines or directions of Government of India.

iv. Borrowings arising on account of interest capitalization; and

v. Borrowings for the purpose of schemes of arrangement involving mergers, acquisitions, and takeovers.

It is also clarified that the qualified borrowings for a FY shall be determined as per the audited accounts for the year filed with the Stock Exchanges.

<u>Compliance Framework for LC with effect from FY 2025 onwards</u>

1. For entities identified as LC's following shall be applicable:

a) From FY 2025 onwards, the requirement of mandatory qualified borrowing by an LC in a FY shall be met over a contiguous block of three years.

b) If at the end of three years, there is a surplus in the requisite borrowings (i.e., the actual borrowings through debt securities are more than 25% of the qualified borrowings for FY), the following incentives shall be available to the LC:

i. Reduction in the annual listing fees of FY "T+2" pertaining to debt securities or non- convertible redeemable preference shares as specified in Table I of Annex-I to this circular; and

ii. Credit in the form of reduction in contribution to the Core Settlement Guarantee Fund (SGF) of LPCC as specified.

iii. If at the end of three years, there is a shortfall in the requisite borrowings (i.e., the actual borrowings through debt securities are less than 25% of the qualified borrowings for FY), a dis-incentive in the form of additional contribution to the core SGF shall apply as specified.

Explanation: The actual borrowing done through issuance of debt securities by a LC in FY "T", shall first get adjusted with the deficit of the FY "T-2" if any, and further, against the deficit of FY "T-1" if any. The remaining amount shall get adjusted against the mandatory borrowings for FY

"T." This will also help to minimize the disincentive, if any, that may accrue due to shortfall in the borrowings.

Responsibilities of Stock Exchanges

2. **Stock Exchange to identify LC:** Pursuant to submission of financial results by listed entities as per regulations 33 and 52 of LODR Regulations, the Stock Exchanges shall,
    a) by June 30, for LCs following April-March as their financial year or
    b) by March 31, for LCs following January-December as their financial year, as applicable.

   determine the list of LCs for the financial year. The Stock Exchanges shall co-ordinate and release a uniform list of LCs for the financial year and place the same on their websites. They shall also notify listed entities so identified as LCs by email, to enable them to comply with the requirements.

3. **Stock Exchange shall calculate incentive or dis-incentive:** Based on the financial results submitted by LCs, the Stock Exchanges shall, in co-ordination with each other, calculate the incentive or dis-incentive as on the last day of third financial year. The Stock Exchanges shall intimate the same to the LCs as follows:
    a) by May 31 for LCs following April-March as their financial year or
    b) by February 28/29 for LCs following January-December as their financial year, as applicable.

4. As regards the incentive/ dis-incentive with respect to the contribution to the core SGF, the Stock Exchanges shall share relevant information with the Limited Purpose Clearing Corporation by May 31 for LCs following April-March as their financial year or by February 28/29 for LCs following January-December as their financial year, as applicable.

Relaxations to LC identified till date:

1. **Disclosure relating to identification of listed entity as LC:** SEBI has relaxed the requirements of listed entities intimating stock exchanges on being identified as LC as per Chapter XII of NCS Master Circular. Now the same will be done by a common list by stock exchanges on their website and individually to LC with effect from FY 2025.

2. **Disclosure relating to incremental borrowing for FY 2024:** Further LCs that were identified based on erstwhile criteria as on December 31, 2020/ March 31, 2021, December 31, 2021 / March 31, 2022, and December 31, 2022 / March 31, 2023, need not disclose the details of incremental borrowing done during the financial year within 45 days after the end of the financial year [clause 3.1(b) of NCS Master Circular]

3. LCs that were identified based on erstwhile criteria as on December 31, 2020 / March 31, 2021, December 31, 2021 / March 31, 2022 and December 31, 2022 / March 31, 2023 shall endeavour to comply with requirement of raising 25% of their incremental borrowings done during FY 2022, FY 2023, and FY 2024 respectively by way of issuance of debt securities till March 31, 2024, failing which such LCs shall provide a one-time explanation in their annual report.

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Data Fiduciaries – Ways to amend its Contracts or Agreements to remain compliant with Data Protection Law in India

The new personal data protection regime is in India with the enactment of the Digital Personal Data Protection Act, 2023 ["**Act**"].

The Act is applicable to all the entities who are in possession of or in control of an individual's personal digital data irrespective of any sector or the legal structure such entity carries with it.

This Articles visualizes the impact that all the business organisations need to be prepared for in this data protection era and explores options to stay in compliance with the Act.

Introduction:

The Act, though not in force yet, needs to be implemented by all the Companies or business entities in their commercial and business documentation.

As per Section 2(n) of the Act, digital personal data means *personal data in digital form*. Section 2(t) of the Act defines *personal data as any data through which an individual can be identified*. Examples of such personal data, in general parlance, could be mobile number, landline telephone number, residential and office address, Aadhar Card Number, Permanent Account Number, email address to name a few.

Applicability of the Act:

This Act applies to a wide range of entities including companies, limited liability partnerships, irrespective of its size and segment, non-governmental / non-profit organisations, schools and educational institutions.

This means that any entity who is in possession of or in control of any digital personal data of an individual will come under the purview of this Act. Such an entity is termed as Data Fiduciary under the Act.

Section 2(i) defines Data Fiduciary *as any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data*.

This definition is important in the sense that it covers within its purview all entities, whether public or private, government or non-government. The criteria that define a Data Fiduciary is the purpose and means of processing of personal data.

Compliance of the Act:

The First and foremost thing that a Data Fiduciary need to do is to identify personal data about its customers, vendors, suppliers, distributors or agents.

Following are the steps Data Fiduciary should take to comply with the Act -

1. **Data Protection Clause:**
   Contracts that involve data processing of individuals should include clauses specifying the security measures that will be taken to safeguard the data. Some of these security measures could include data encryption, access controls, data security audits, data protection impact assessments, appointment of data protection officer, employee training and sensitisation of data protections to its internal and external stakeholders.

2. **Consent Clause:**
   The consent clause in the Agreements or Contracts can state the specific purposes for which the personal data can be shared and also seek specific consent from the Data Principal (i.e., individual related to the underlying information) for such specific purposes.

3. **Deemed Consent:**
   Section 8 of the Act stipulates 'Deemed Consent' of the Data Principal. It means that the Data Principal shall be deemed to have given consent to the processing of their personal data if such processing is necessary under certain specified conditions – including in a situation where the data voluntarily provides their personal information to a data fiduciary, and it is reasonably expected that they would provide such information under such circumstances.

   The best example of this can be that of a real estate broker which is also cited in the Act. A real estate broker possesses the data of the individual who wants to sell / buy property. The real estate agent then offers allied services such as registration services, agreement services, furniture services, investment advisory services provided by his business associates, to his client. When such data is being shared to the real estate agent's business associates i.e., the personal data is shared outside then obviously the consent of the individual will be needed. However, if the same real estate agent provides the abovementioned allied services in-house, then whether he can use the Data Principal's Deemed Consent for offering its allied business activities to such Data Principal albeit with the consent of the Data Principal; this question needs to be pondered upon. This question will be pertinent for industrial groups or business conglomerates that are doing multiple businesses in India.

   This particular aspect of using the personal data of a data principal for identifying prospective businesses is very common and is prevalent almost all the sectors, both formal and informal, in the economy. One probable way to achieve this is customer engagement process which is explained below.

4. **Customer Engagement Process:**
   One way to address this issue is customer engagement. The Data Fiduciary can first ascertain their business activities or functions that require Data Principal's consent for processing of personal data and then seek permission of the Data Principal to such pre-determined business activities or functions in *one single action*. Such an engagement by the Data Fiduciary with its customers, suppliers, intermediaries or any other third party in its first interaction can also help the Data Fiduciary in its consent management process. This will also be more pertinent for the banking industry as many private banking groups offer merchant banking, broking, portfolio management services etc. under a separate corporate entity altogether.

5. **Sensitisation of data protection to other departments:**
   Firstly, data protection should not be the sole responsibility of the information technology department of any organisation. This should be a collaborative process involving each and every business function of an organisation including procurement, marketing, accounts, human resources, administration, finance, legal, corporate secretarial and such other functions who come across personal data of an individual, working in collaboration with the information technology department. These business functions need to identify the personal data of an individual, peculiar to their function, through which such an individual can be identified as has been provided u/s 2(t) of the Act.

6. **No formal Contracts or Agreements:**
   The Companies or organisations will have to provide for such data protection clauses in its invoices, purchase orders where such organisations are small or medium in size and do not generally enter into a formal agreement or contract for its business. But where the organisations who do have their own terms and conditions for sale or purchase of goods or procurement of supplies, they need to amend their contracts or agreements to stay in compliance with the Act.

Conclusion

Be that as it may, the Act will have a profound impact on the way organisation's function, its entire documentation, its recruitment process, legal and corporate compliances and even corporate strategies including mergers and acquisitions. The Companies may also be required to set up a full data governance structure and full-fledged department that deals with such personal data. However, a lot will depend on the rules that will be prescribed by the Ministry of Electronics and Information Technology, Government of India. Till then, all the business organisations, be it conglomerates or small retailers, who are in possession of personal data of an individual need to buckle up to brace the impact of the Act.

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NEWS UPDATES/AMENDMENTS FOR THE MONTH OF OCTOBER:

Sr. No.	News Updates/Amendments	Link & Brief Summary
	NEWS	
1.	Market regulator Sebi slams AIF industry for circumvention of regulations	https://www.business-standard.com/markets/mutual-fund/market-regulator-sebi-slams-aif-industry-for-circumvention-of-regulations-123101201239_1.html Several entities have been found to be breaching the spirit of the law by investing in assets through AIFs that are otherwise not permitted.
2.	Sebi tweaks guidelines on anti-money laundering; partners with 10% stake to come under beneficial owners	https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebi-tweaks-guidelines-on-anti-money-laundering-partners-with-10-stake-to-come-under-beneficial-owners/104413124?utm_source=whatsapp_web&utm_medium=social&utm_campaign=socialsharebuttons In case the client is a partnership firm, the beneficial owner would be the one who has "ownership of/ entitlement to more than 10 per cent of capital or profit partnership or who exercises control through other means".
3.	India's top regulators investigating some alternate investment funds	https://www.reuters.com/world/india/indias-top-regulators-investigating-some-alternate-investment-funds-sources-2023-10-17/ India's markets regulator and its central bank are investigating about a dozen cases of alternate investment funds (AIFs) allegedly being used to circumvent regulations, including "evergreening" of stressed loans, according to three sources with direct knowledge of the matter. There are also fema violations involved.
4.	Ethical investing: Where are we now on ESG?	https://www.eco-business.com/news/ethical-investing-where-are-we-now-on-esg/ Sustainable investing is among the fastest growing areas of finance, but critics say more action is needed to tackle greenwashing and lack of transparency in the sector.

5	MCA plans to crowdsource ideas for rules update	https://economictimes.indiatimes.com/news/economy/policy/mca-plans-to-crowdsource-ideas-for-rules-update/articleshow/104477068.cms A "comprehensive review" of the dozens of rules that have so far been incorporated will be undertaken with the involvement of stakeholders. "Stakeholders will also be able to send in their inputs through the usual online mode.
6	Primary markets pick up pace in 2023	https://www.businesstoday.in/interactive/photo-essay/primary-markets-pick-up-pace-in-2023-ipos-worth-rs-80000-crore-in-pipeline-116-19-10-2023 IPOs worth Rs 80,000 crore in pipeline.
AMENDMENTS / CIRCULARS /CONSULTATION PAPERS		
1.	SEBI Circular	https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2023_77867.html SEBI LODR Fifth Amendment Regulation 2023.
2.	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20231013-43 BSE circular on corporate group repository in terms of SEBI circular dtd August 24,2023.
3.	NSE Circular	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/MANDATORY%20FILING%20OF%20VOTING%20RESULTS%20IN%20XBRL%20MODE.pdf NSE Circular on mandatory filing of voting results in XBRL mode.
4.	SEBI Circluar	https://www.sebi.gov.in/legal/circulars/oct-2023/ease-of-doing-business-and-development-of-corporate-bond-markets-revision-in-the-framework-for-fund-raising-by-issuance-of-debt-securities-by-large-corporates-lcs-_78237.html SEBI circular on Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)

5	MCA Notification Companies (Incorporation) Third Amendment Rules, 2023	https://www.mca.gov.in/bin/dms/getdocument?mds=uqnggXxHARXXjysr4uSRjQ%253D%253D&type=open 1. Power to levy cost by RD is done away with 2. Addition of proviso with respect to shifting of RO for company under new management
6	Securities and Exchange Board of India (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2023	https://egazette.gov.in/WriteReadData/2023/249655.pdf 1. The amount transferred to Investor Protection and Education fund shall not bear any interest. 2. The unclaimed or unpaid amount of a person that has been transferred to the Investor Protection and Education Fund may be claimed in such manner as may be specified by SEBI.
7	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2023	https://egazette.gov.in/WriteReadData/2023/249654.pdf IPEF amendments given corresponding effect in SEBI LODR, 2015 Regulations.

Compliance Due Dates

SR. NO.	PROVISION UNDER APPLICABLE LAWS/REGULATIONS	APPLICABILITY	FORM/DISCLOSURE	DUE DATE
	MCA COMPLIANCES			
1	Section 92(1) of the Companies Act 2013 R/W Rule 11(1) Companies (Management and Administration) Rules, 2014	All Companies	MGT-7 / MGT 7A	60 days from the date of AGM
2	Rule 9A sub rule 8 - Companies (Prospectus and Allotment of Securities) Rules, 2014	Every unlisted public company	PAS-6	60 days from end of half year