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The Evolution of Corporate Social Responsibility (CSR) Mandates in India: A Comprehensive Analysis

Introduction:

Corporate Social Responsibility (CSR) has emerged as a pivotal component of business strategy worldwide, reflecting a paradigm shift towards sustainable and ethical practices. In India, the journey towards mandating CSR as a legal requirement has been marked by a series of deliberations and policy interventions aimed at aligning corporate objectives with societal welfare. This article delves into the factors that led to the Indian government's decision to enact CSR legislation, superseding the earlier "comply or explain" approach.

Historical Context:



Mandatory provisions of CSR under section 135 of the Companies act, 2013 became effective from 01.04.2014.

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Prior to the formalization of CSR regulations, India followed a voluntary framework wherein companies were encouraged to undertake socially responsible initiatives on a discretionary basis since CSR has always been imbibed in Indian companies for over a decade.

The "comply or explain" principle, introduced urged companies to disclose their CSR activities in annual reports or provide explanations for their non-compliance. While this approach fostered awareness and encouraged corporate engagement, it lacked enforceability and failed to drive widespread adoption of CSR practices.

Understanding the CSR dictum

The concept of Corporate Social Responsibility (CSR) extends far beyond mere legal compliance or as a tool solely aimed at enhancing business performance. Instead, it encompasses a broader commitment to stakeholders and the greater community. A significant debate arose back in time regarding whether CSR should be voluntary or mandatory.

Traditionally, it has been viewed as a set of voluntary practices adopted by firms to demonstrate their commitment to stakeholders beyond shareholders. However, contemporary perspectives

advocate for a more profound understanding of CSR, emphasizing its role in promoting sustainable development. This entails integrating social, environmental, and economic considerations into corporate decision-making processes.

In recent years, there has been a push for CSR to transcend voluntary initiatives and become a fundamental aspect of corporate strategy. This shift reflects a growing recognition of the interconnectedness between business operations and broader societal and environmental challenges.

India's Companies Act of 2013 marked a significant departure from voluntary CSR practices by introducing a mandatory CSR regime. Under this framework, certain qualifying companies are required to allocate a portion of their profits towards CSR activities. This legislative intervention underscores the government's commitment to leveraging corporate resources for the social good and fostering inclusive development.

The transition towards a mandatory CSR regime represents a significant step towards ensuring that businesses actively contribute to addressing social and environmental challenges. However, ongoing discussions and evaluations are essential to refine and optimize the effectiveness of mandatory CSR initiatives, ensuring they align with broader sustainable development goals.

Legislative Framework:

CSR has long been ingrained in the fabric of certain Indian companies, with some corporate groups actively engaging in charitable and societal initiatives for well over a century. Recognizing the importance of formalizing CSR practices, the Indian government introduced voluntary guidelines in 2009. These guidelines mandated companies to develop CSR policies, allocate specific funds for CSR activities, and disclose relevant information to stakeholders.

The government's intention was for these guidelines to operate on a "comply or explain" basis, allowing companies to either adhere to the requirements or provide reasons for non-compliance. Despite this flexible approach, the uptake of the voluntary CSR guidelines remained relatively low.

Many companies opted not to fully embrace the voluntary CSR requirements, citing various reasons for their reluctance. This hesitance may stem from concerns about financial implications, operational challenges, or differing perceptions of CSR priorities.

While some companies continued their longstanding tradition of philanthropy and community engagement, others were hesitant to formalize their CSR commitments under the voluntary guidelines. As a result, the impact of the voluntary CSR framework was limited, with many companies choosing not to fully integrate CSR into their business strategies.

This highlights the complex dynamics surrounding CSR implementation in India and underscores the need for continued dialogue and collaboration between government, businesses, and civil society to foster a more comprehensive and effective approach to CSR.

The momentum behind recognizing Corporate Social Responsibility (CSR) and stakeholder interests gained significant traction through the efforts of the Parliamentary Standing Committee on Finance. Their advocacy led to the formulation of the Companies Bill in 2011, eventually culminating in the enactment of the Companies Act in 2013. Notably, the 2013 Act explicitly mandates companies to consider the interests of stakeholders, as outlined in Section 166(2) which emphasizes directors' responsibility towards certain stakeholder interests. This provision can be seen as a precursor to the introduction of Section 135 of the Act.

The Companies Act, 2013 marked a significant milestone in India's CSR journey by institutionalizing CSR mandates for eligible companies. Under Section 135 of the Act, companies meeting specified criteria are required to spend a minimum percentage of their average net profits on CSR activities. Furthermore, they are mandated to establish a CSR committee, formulate a CSR policy, and report on their CSR initiatives in annual reports.

Section 135 of the 2013 Act, along with Schedule VII and the accompanying Companies (Corporate Social Responsibility Policy) Rules of 2014, regulates CSR activities in Indian companies. The applicability of Section 135 is based not on the nature of the company (public, private, listed) but rather on its financial strength. Any company with a net worth of Rs 500 crore, a turnover of Rs 1000 crore, or a net profit of Rs 5 crore is mandated to establish a Corporate Social Responsibility Committee comprising three or more directors, including at least one independent director. This committee is tasked with ensuring that the company allocates at least 2 percent of the average net profit of the past three financial years towards specified CSR activities annually. Failure to meet this obligation invites serious consequences that include penalties, loss of reputation and more.

Additionally, the Companies (Corporate Social Responsibility Policy) Rules of 2014 outline procedural aspects of CSR requirements. They stipulate that CSR activities should not be undertaken as part of the company's normal business operations and ideally should align with the activities listed in Schedule VII of the 2013 Act. These activities encompass a wide range of initiatives, including eradicating hunger, promoting preventive healthcare, advancing education and livelihood enhancement projects, and contributing to socio-economic development funds established by the Central Government, among others. While Schedule VII serves as a guide, it's important to interpret its entries liberally to capture the essence of the subjects.

This legislative framework underscores the government's commitment to promoting CSR as a fundamental aspect of corporate governance and social responsibility, emphasizing the role of businesses in contributing to societal well-being and sustainable development.

Implications – Section 135

Despite the "comply or explain" nature of the CSR provision, compliance was primarily contingent on individual companies. Early data released by the Government of India revealed that in the initial year of implementation, out of 10,475 eligible companies, approximately 70% had reported on CSR activities by January 31, 2016. However, among these reporting companies, only around 30% had actually incurred any CSR expenditureⁱ.

This disparity is evident in the fact that out of the total prescribed CSR spending amounting to Rs 118.83 billion by these 3139 companies, only Rs 88.03 billion (or approximately 74%) was actually utilized. Despite a significant number of companies reporting on CSR activities, a substantial proportion fell short of actual expenditure, highlighting a gap between intention and action in fulfilling CSR obligations. Given this scenario, there is a recognized need for significant changes to ensure more rigorous enforcement of CSR provisions.

These findings underscore the need for greater scrutiny and accountability in CSR reporting and implementation. The landscape of CSR enforcement in India then witnessed a significant shift with the 2019 amendment to the Companies Act, 2013. This amendment marks a departure from the previous "comply or explain" approach.

Report of the High-Level Committee on Corporate Social Responsibilityⁱⁱⁱ

The Report of the High-Level Committee on CSR played a crucial role in raising awareness about CSR practices among companies in India and spurred them to take CSR more seriously. By

highlighting the importance of CSR alignment with national development priorities and sustainable development goals, the report emphasized the transformative potential of CSR initiatives in addressing societal challenges. Moreover, the report's recommendations for strengthening CSR governance, monitoring mechanisms, and reporting frameworks fostered a culture of transparency and accountability in CSR activities. As a result, companies became more cognizant of their social responsibilities and began to prioritize CSR initiatives as integral components of their corporate agendas. This shift led to increased investments in CSR projects and initiatives, ultimately contributing to positive social impact and sustainable development across various sectors.

The Companies (Amendment) Act, 2019

The amendment to the Companies Act, notified on July 31, 2019^{iv}, has once again thrust CSR issues into the spotlight. Section 21 of the Companies (Amendment) Act 2019 introduces several significant changes to the CSR provision, which will profoundly impact how companies allocate two percent of their net profits toward corporate social responsibility.

The primary change is the shift from a largely "comply or explain" basis to a mandatory requirement for CSR in India. Previously, CSR compliance was more flexible, allowing companies to explain non-compliance. However, the amendment now mandates that companies must allocate two percent of their profits within a three-year period. Furthermore, any unspent funds must be transferred. Additionally, the amendment imposes stringent penalties for companies that fail to meet the two percent spending requirement or transfer the allocated funds to the designated funds^v.

This shift represents a significant departure from the globally understood concept of CSR, which is often rooted in voluntarism. The new mandate in India takes CSR to an extreme level, emphasizing compulsory adherence rather than voluntary commitment.

The Companies Bill, 2020^{vi}

The proposed Bill introduces several significant changes, with the most notable being the reclassification of offenses, leading to the decriminalization of many. Additionally, amendments to Section 135 are proposed, particularly regarding CSR expenditure.

One of the key amendments is the treatment of lack of CSR expenditure as a civil offense. Under this provision, companies failing to meet CSR expenditure obligations would face a penalty equal to twice the required amount to be transferred to the specified Fund in Schedule VII or the Unspent Corporate Social Responsibility Account, capped at one crore rupees or whichever is lower. Furthermore, officers of the company found in default would be subject to a penalty of one-tenth of the required amount to be transferred to the specified Fund or Account, capped at two lakh rupees or whichever is lower.

Another significant relaxation is for companies whose CSR expenditure is not more than fifty lakh rupees. Such companies will no longer be required to form a separate CSR committee. Instead, the functions typically performed by the CSR committee will be undertaken by the Board of Directors.

Additionally, the Bill proposed a set-off provision, allowing companies that exceed their CSR expenditure requirements to offset the excess amount against future obligations. This provision enables companies to utilize any surplus expenditure in subsequent financial years, thereby providing flexibility and easing the compliance process under Section 135.

Having said that, the current data trend shows a significant shift where CSR Expenditure has tremendously jumped fourfold. The total number of companies who spend in CSR at the moment are 19043. The spending figure for FY 2021-22 is Rs. 26278.71 crores in comparison to Rs 26210.95 crores as in FY 2020-21^{vii} with Maharashtra topping the list for highest spending in CSR.

Rationale for Mandating CSR:

The decision to mandate CSR through legislation stemmed from various socio-economic and political considerations, reflecting a broader shift towards inclusive growth and sustainable development. Key factors influencing this decision include:

- 1. Addressing Societal Needs:** India grapples with numerous socio-economic challenges, including poverty, inequality, and environmental degradation. Mandating CSR was viewed as a means to mobilize corporate resources towards addressing these pressing societal needs, complementing government efforts, and fostering inclusive development.
- 2. Fostering Corporate Accountability:** While voluntary CSR initiatives were commendable, they often lacked accountability and transparency. By enacting CSR legislation, the government sought to institutionalize corporate responsibility, holding companies accountable for their social and environmental impacts.
- 3. Enhancing Stakeholder Trust:** Corporate scandals and ethical lapses underscored the need for greater transparency and integrity in business practices. Mandating CSR helped enhance stakeholder trust by signalling a company's commitment to ethical conduct and societal welfare, thereby enhancing its reputation and long-term viability.
- 4. Leveraging Corporate Resources:** With the private sector playing an increasingly prominent role in India's development trajectory, harnessing corporate resources for social good became imperative. CSR mandates provided a structured framework for channelling corporate funds and expertise towards impactful initiatives, thereby maximizing societal benefits.
- 5. Aligning with Global Trends:** The global trend towards responsible business practices and sustainability influenced India's decision to mandate CSR. As part of the international community, India sought to align its corporate governance norms with global best practices, fostering competitiveness and attracting foreign investment.

Impact and Challenges:

The implementation of CSR mandates has yielded tangible benefits, including increased corporate philanthropy, enhanced community engagement, and the implementation of impactful social projects. However, challenges persist, including the need for greater clarity on CSR guidelines, capacity-building among stakeholders, and effective monitoring and evaluation mechanisms to ensure accountability and transparency.



Conclusion:

The journey towards mandating CSR in India reflects a progressive stance towards corporate accountability and societal welfare. By enacting CSR legislation, the government has signalled its commitment to fostering sustainable and inclusive growth, while also empowering businesses to become agents of positive change. Moving forward, collaborative efforts between government, industry, civil society, and other stakeholders will be essential to realize the full potential of CSR in advancing India's development agenda and achieving sustainable prosperity for all.

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<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000023788/the-evolution-of-corporate-social-responsibility-csr-mandates-in-india-a-comprehensive-analysis-experts-opinion>

Ms. Hasti Vora – Research Associate – hastivora@mmjc.in

ⁱ <https://www.csr.gov.in/content/csr/global/master/home/aboutcsr/history.html>

ⁱⁱ <https://www.intechopen.com/chapters/73871>

ⁱⁱⁱ https://www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf

^{iv} https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

^v Section 135 – Companies Act, 2013

^{vi} https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

^{vii} <https://www.csr.gov.in/content/csr/global/master/home/home.html>



Harnessing the Power of CSR Funds: Transforming Environmental Challenges through an ESG Lens

In the global pursuit of sustainability, the intersection of Corporate Social Responsibility (CSR) and Environmental, Social, and Governance (ESG) principles has emerged as a critical battleground. While CSR has long been associated with charitable endeavours and community support, the integration of ESG factors brings a new level of strategic focus and accountability, particularly in addressing pressing environmental issues. Can CSR funds effectively replicate an ESG approach to overcome these challenges? Let's delve deeper into this question.

Introduction:

Corporate Social Responsibility (CSR) has evolved from being a philanthropic endeavour to a strategic imperative for businesses worldwide. In recent years, there has been a growing recognition of the role that CSR funds can play in addressing environmental challenges and promoting sustainability. By adopting an Environmental, Social, and Governance (ESG) lens, companies can leverage their CSR funds to drive meaningful impact on environmental, social and governance issues while also creating long-term value for stakeholders.

At its core, CSR involves businesses taking responsibility for the impact of their activities on society and the environment. Traditionally, this has manifested in philanthropic donations, volunteer programs, and sustainability initiatives. However, the landscape is evolving, with stakeholders increasingly demanding greater transparency, accountability, and measurable impact from corporate entities.

Enter ESG—the framework that evaluates a company's performance based on Environmental, Social, and Governance parameters. By incorporating ESG considerations into CSR strategies, companies can align their environmental efforts with broader sustainability goals, thereby maximizing their impact.

Understanding the Power of CSR Funds:

CSR funds, mandated by lawⁱ in India, represent a significant pool of resources that can be directed towards addressing environmental challenges. These funds are typically allocated towards initiatives related to education, healthcare, poverty alleviation, and environmental sustainability. While all these areas are crucial, there is an increasing realization of the importance of prioritizing environmental sustainability within CSR strategies.

Transforming Environmental Challenges through an ESG Lens:

Environmental challenges such as climate change, pollution, deforestation, and water scarcity require urgent attention and concerted efforts from all sectors of society. By adopting an ESG lens, companies can align their CSR initiatives with environmental sustainability goals, thereby maximizing their impact. This involves integrating environmental considerations into business strategies, operations, and decision-making processes.

In addition to environmental initiatives, companies can also focus on addressing social challenges such as poverty, inequality, and access to education and healthcare. CSR initiatives can support programs that promote social inclusion, diversity, and community development, thereby contributing to the well-being and empowerment of marginalized groups.

In parallel, governance issues may encompass challenges related to transparency, accountability, ethical conduct, board diversity, and compliance with regulatory requirements within companies. They involve ensuring that decision-making processes are fair, transparent, and aligned with ethical standards, while also promoting diversity and integrity at all levels of corporate leadership. The same as well can be addressed.

Let's examine how CSR funds can replicate an ESG approach to address environmental challenges:

- 1. Financial Mobilization:** One of the key advantages of integrating ESG principles into CSR is the potential for significant financial mobilization. According to the Global Sustainable Investment Alliance, global sustainable investment assets reached \$30.3 trillion in 2022, representing a 20% increase in non-US markets from 2020ⁱⁱ. By channelling CSR funds towards ESG-aligned environmental initiatives, companies can attract investment capital, enhance shareholder value, and drive positive environmental outcomes simultaneously.
- 2. Transparency and Accountability:** ESG reporting frameworks provide standardized metrics for measuring environmental performance, allowing stakeholders to track progress, evaluate outcomes, and hold companies accountable for their environmental commitments. According to a study by the Governance & Accountability Institute, 90% of S&P 500 companies published sustainability reports in 2020, compared to just 20% in 2011ⁱⁱⁱ. This trend towards greater transparency reflects a growing recognition of the importance of ESG disclosure in building trust and credibility with stakeholders.
- 3. Integrated Solutions:** By incorporating social and governance factors into CSR initiatives, companies can address interconnected environmental and social challenges more effectively. For instance, investing in renewable energy projects not only reduces carbon emissions but also creates job opportunities and promotes economic development in local communities. Similarly, enhancing corporate governance practices, such as board diversity and ethical leadership, can strengthen environmental stewardship and risk management.

Examples of CSR Initiatives Driving Environmental Impact:

Here are examples of CSR initiatives by companies in the Indian context driving environmental, social, and governance impact:

1. Environmental Impact:

- Renewable Energy Projects:** Tata Power^{iv}, is in the process of capacity expansion of greenfield solar capacity. These include solar power pumps and roof top solar clean and sustainable energy access to communities. They also intend to achieve carbon neutrality by 2050^v.
- Waste Management Initiatives:** Hindustan Unilever Limited (HUL) has launched several waste management initiatives^{vi} under its CSR programs. These initiatives focus on recycling plastic waste, promoting sustainable waste disposal practices, and reducing the company's environmental footprint.
- Afforestation and Conservation Efforts:** ITC Limited^{vii}, through its CSR initiatives, has undertaken afforestation projects in critical biodiversity hotspots across India. These projects aim to restore degraded ecosystems, conserve biodiversity, and promote sustainable forestry practices.

2. Social Impact:

- **Education and Skill Development Programs:** Infosys Foundation^{viii}, the CSR arm of Infosys, has implemented various education and skill development programs in India. These include initiatives to improve access to quality education, provide vocational training to youth, and enhance digital literacy in rural communities.
- **Healthcare Access Initiatives:** Apollo Hospitals^{ix}, through its CSR initiatives, has launched healthcare access programs targeting underserved communities in India. These programs provide access to essential healthcare services, medical facilities, and health education, thereby improving community health outcomes.

3. Governance Impact:

- **Ethical Business Practices:** Tata Steel has implemented initiatives to promote ethical conduct, integrity, and transparency in business operations^x. The company adheres to high standards of corporate governance and compliance with regulatory requirements to uphold its reputation and mitigate risks associated with unethical behaviour.
- **Board Diversity and Inclusion Programs:** Wipro Limited^{xi} has undertaken initiatives to enhance board diversity and inclusion within the company. These include programs to promote diversity in leadership positions, mentorship opportunities for women and minorities, and initiatives to create a culture of inclusivity and equal opportunities for all employees.

However, replicating an ESG approach through CSR funds requires a strategic and holistic approach. Companies must prioritize stakeholder engagement, set ambitious sustainability targets, and allocate resources effectively to maximize impact. Additionally, collaboration and partnerships with governments, NGOs, and other stakeholders are essential to drive systemic change and address complex environmental challenges collectively.

Conclusion

CSR funds have the potential to replicate an ESG approach and make significant strides in overcoming issues. By aligning CSR initiatives with ESG principles, companies can mobilize financial resources, enhance transparency and accountability, and address interconnected environmental and social challenges more effectively. As businesses navigate the complexities of sustainability, embracing an ESG approach within CSR strategies can unlock new opportunities for innovation, growth, and positive impact on the planet.



Through strategic integration of ESG principles, CSR initiatives can evolve from mere acts of philanthropy to powerful catalysts for positive change, demonstrating that responsible business practices and stewardship that is not only compatible but essential for long-term success and prosperity.

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Ms. Hasti Vora – Research Associate – hastivora@mmjc.in

ⁱ Section 135 – Companies Act, 2013

ⁱⁱ <https://www.gsi-alliance.org/wp-content/uploads/2023/12/GSIA-Report-2022.pdf>

ⁱⁱⁱ <https://www.ga-institute.com/storage/press-releases/article/90-of-sp-500-index-companies-publish-sustainability-reports-in-2019-ga-announces-in-its-latest-a.html>

^{iv} <https://www.tatapower.com/sustainability/sustainability-tata-power/our-climate-commitment.aspx#2>

^v <https://www.tatapower.com/pdf/sustainability/tp-climate-commitment.pdf>

^{vi} <https://www.hul.co.in/planet-and-society/waste-free-world/>

^{vii} <https://www.itcportal.com/sustainability/sustainability-integrated-report-2023/ITC-Sustainability-Integrated-Report-2023.pdf>

^{viii} <https://www.infosys.org/infosys-foundation/initiatives/rural-development.html>

^{ix} https://www.apollohospitals.com/apollo_pdf/AHEL-ESG23-Full-Report.pdf

^x <https://www.tatasteel.com/investors/integrated-report-2022-23/compliance-and-ethics.html>

^{xi} <https://www.wipro.com/about-us/inclusion-and-diversity/>



Women Empowerment through CSR: Statistical Insights

Introduction

Women Empowerment in simple parlance means promoting women's self-worth, ability to determine their own choices, and their right to influence social change for themselves and others. Also, enabling them to have control over their lives, make choices and decisions, and have equal access to resources and opportunities.

Off lately, Indian Government has taken many steps towards women empowerment by making triple talaq illegal, reservation of one-third seats for women in the Lok Sabha and state legislative assemblies and giving over 70% houses under the PM A was Yojana in rural areas to women as sole or joint owners which have enhanced their dignity.

The results of the efforts can be seen in the following:

- As per Union Budget 2024, there has been 28% jump in female enrolment in higher education in the last 10 years.¹
- In STEM (Science, Technology, Engineering & Mathematics) courses, women comprise 43% of the overall enrolments which is one of the highest figures in the world.
- Finance Minister, Nirmala Sitharaman in Budget 2024 speech highlighted that out of the total 44.46 crore loans sanctioned under Pradhan Mantri Mudra Yojana (PMMY) in 2023, 69% have been sanctioned to women.
- Further under Stand-up India (SUPI), as on 24th November 2023, out of 2.09 lakh loans sanctioned, 1.77 lakh (84%) have been sanctioned to women entrepreneurs.²

As we navigate the landscape of CSR, a remarkable upswing is witnessed in initiatives dedicated to women's empowerment. Major corporations are now weaving comprehensive strategies, placing a special emphasis on initiatives tailored to uplift women.

The Companies Act of 2013(the Act) has also played a pivotal role in shaping CSR initiatives. The legal mandate requiring companies to allocate a percentage of their profits to CSR, has catalyzed a surge in initiatives with a heartfelt focus on women's welfare.

The Indian Ministry of Corporate Affairs revealed that the total CSR Spend state wise for FY 2021-2022 was Rs. 52,557.44 Crores.³

CSR Spend on the basis of Development Sector:

Development Sector	CSR Spend 2020-2021 (in crores)	CSR Spend 2021-2022 (in crores)
Women Empowerment	206	253.86
Education	6693.25	6482.72
Gender Equality	43.83	97.86
Socio-Economic Inequalities	149.81	161.72

Source: National CSR Data Portal



CSR Spend on Women Empowerment by big companies in India⁴:

Name of the Company	Name of the Initiative	Total Expenditure on the Project	Total Prescribed CSR in 2020-21	Actual CSR spent in 2020-21	Implementing Partner
Hindustan Unilever Limited	Project Shakti	57.29 Crores	161.7 Crores	165.08 Crores	Direct Implementation
Hindustan Zinc Limited	Project Sakhi	3.72 Crores	196.5 Crores	214.0305 Crores	Manjari Foundation
ITC Limited	Women Empowerment Program	3.41 Crores	352.84 Crores	365.43 Crores	Adarsh Yuva Samiti, Learning Links Foundation, Lokmitra etc
Sterlite Technologies Limited	Jeewan Jyoti Women Empowerment Program	2.80 Crores	11.60 Crores	11.64 Crores	MAVIM Rangсутra Lighthouse Communities Foundation
Godrej Consumer Products Limited	Project Saloni	2.27 Crores	28.05 Crores	34.09 Crores	Saath, Dhriti, Pratham, Vrutti, YUVA, Vision India
CCL Products India Limited	Self-employment & Skill development	1.73 Crores	4.19 Crores	4.36 Crores	Direct Implementation
Pidilite Industries Limited	Women Self Help Group	1.15 Crores	25.88 Crores	27.7 Crores	Gram Nirmansamaj Gram Vikas Yojna, Triveni Kalyan Foundation
Grasim Industries Limited	Women Empowerment	1.11 Crores	45.06 Crores	84.67 Crores	Grasim Jana Seva Trust, BCCL Jan Seva Trust, Aditya Birla Jan Seva Trust, Jan Seva Trust, Indo Gulf Jan Seva Trust
JSW Steel Limited	Women Empowerment Program	1.08 Crores	164.81 Crores	78.32 Crores	JSW Foundation
Cummins India Limited	Women's Initiative in India	1.0276 Crores	16.0848 Crores	16.0848 Crores	Cummins India Foundation

Source: https://csrbox.org/Impact/description/India_CSR_news_Large-10-Women-Empowerment-CSR-Projects-in-India-in-the-year-20-21_1548

CSR projects on Women Empowerment:

Education: Globally, corporations are becoming champions of change by investing in educational initiatives that bridge gender gaps. These initiatives extend beyond borders, with programs providing digital literacy to women in developing countries and focusing on digital education for women in rural areas.

- Mahindra & Mahindra contributes in Nanhi kali (Little bud) project for educating underprivileged girls in India.
- L & T Finance Limited contributes in Digital Sakhi Program. Digital Sakhis have effectively helped empower over 11 lakh rural communities by promoting digital financial inclusion, providing impetus to 2,400 women entrepreneurs." Thus, rising up the ranks, from the confines of their homes to being change agents in their community.

Economic Opportunities: In CSR initiatives, creating economic opportunities for women takes center stage. Initiatives are empowering rural women, with organizations playing a pivotal role in supporting ventures that echo the spirit of entrepreneurship.

- Lakhpati Didi program, implemented by the Ministry of Rural Development, Government of India. The Lakhpati Didi scheme aims to catalyze economic empowerment and financial independence among women in rural areas by encouraging them to start micro-enterprises and providing training in various skills such as plumbing, LED bulb making, drone operation and repair, tailoring, and weaving. Lakhpati Didi is a Self-Help Group member who earns an annual household income of Rupees One Lakh (₹1,00,000) or more. Lakhpatididi web portal was launched on 29th February 2024

Digital Education: The digital gender gap remains a poignant global concern. CSR initiatives like 'Women Will' and 'Skill to Succeed' actively address this, providing not just skills but also a bridge to enhance employability and break digital barriers.

India Philanthropy Report 2024⁵

Women givers: *While women have historically held a smaller share of wealth due to social inequalities, GivingPi⁷ data indicates that women-led family philanthropy is gaining prominence.*

Women show greater accountability through their funding initiatives and focus on intersectional approaches incorporating gender equity, diversity, and inclusion (GEDI) to address complex societal challenges.

- **Women philanthropists as heralds in giving to underrepresented causes**
 - *While women constitute a minority of UHNI wealth and philanthropic contributions in India, emerging insights from GivingPi showcase substantial engagement—54% of the members indicate women-led family philanthropy and 70% report active women representation in their family philanthropy.*
- **Women show greater accountability through their funding initiatives**
 - *Women philanthropists lead with high involvement, preferring "own and operate" initiatives to directly impact outcomes (65% vs. 43% for men), which shapes champions, fosters collaborations, and builds institutions.*

- For example, Vidya Shah shifted from a corporate role to leading the EdelGive Foundation, which aids in shaping inclusive narratives and building institutions for supporting child education, women's empowerment, and community resilience.
- Early insights based on a limited dataset suggest women contribute more as a percentage of their net worth toward philanthropy than men. Similar trends have been captured through studies undertaken in the US.
- **Women philanthropists prioritize adopting a GEDI lens in their giving approach**
 - Women are reshaping funding narratives and institutions by adopting a GEDI lens to their giving (44% vs. 33% men).
 - The emphasis on GEDI could be correlated to women's lived experiences in the Indian landscape. It may contribute toward shifting power dynamics by addressing complex issues (social justice, caste discrimination, intersectional mental health).
 - For example, Leena Dandekar's Raintree Foundation fosters community stewardship for sustainable and resilient ecosystems. Meanwhile, Rohini Nilekani advocates for societal healing, championing empathy, creativity, and collaboration.

Conclusion:

A holistic approach to social, political, economic, and health is required to empower women and create an equitable and prejudice-free society. It is heart-warming to witness that the organisations are working on women empowerment and recently Paytm bagged CSR Sustainability Awards 2024 for 'Impactful Sustainable Business Practice in Women Empowerment' by The All-India Business & Community Foundation (AIBCF) Awards for CSR and Sustainability, for their voluntary initiative on Financial Literacy through their CSR arm Paytm Foundation. Through this programme, they bridged the gap by providing valuable knowledge and skills that empower women to make informed financial decisions, create budgets, save for the future, and build a foundation for financial independence.

Inclusive participation of women in the workplace, access to equal opportunities and resources, digital and financial education, placing them in positions of power, and encouraging gender parity are some ways CSR could contribute to women's empowerment.

Ms. Sneha Pawar – Associate – snehapawar@mmjc.in

Ms. Aarti Ahuja Jewani – Partner – artiahuja@mmjc.in

Source

1. <https://www.livemint.com/budget/news/budget-2024-live-updates-fm-nirmala-sitharaman-speech-1-feb-2024-income-tax-railway-fmcg-ev-healthcare-hra-defence-auto-11706689827986.html#:~:text=The%20Budget%20announcement%20also%20highlighted,one%20of%20the%20world's%20highest.>
2. <https://www.financialexpress.com/business/sme/over-rs-27-75-lakh-crore-of-loans-disbursed-under-mudra-loan-scheme/3430826/>
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Analysis of disclosures made relating to change in Key Managerial Personnel, Directors and Senior Management.

Introduction:

In adherence to the standards set forth by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'], listed companies are obligated to provide comprehensive disclosures to stock exchange regarding various appointments of senior management and key managerial personnel.

While we are aware that Schedule III Part A, Para A point 7 of SEBI LODR mandates listed entities to disclose change in senior management, director and key managerial personnel along with minimum data that is required to be provided while disclosing events given in Para A of schedule III of LODR regulations, we have come across various instances where certain listed entities have not provided certain data as required by law to be disclosed. On perusal of disclosures pertaining to appointment of senior management and key managerial personnel certain discrepancies have been observed.

Anomalies in disclosures given to stock exchange have been outlined concerning the appointment of key personnel:

- 1. Recommendation of nomination and remuneration committee ('NRC'):** As per regulation 19(4) read with Schedule II Part D clause A point 4 of SEBI LODR, appointment of senior management and directors is required to be done pursuant to the recommendations of nomination and remuneration committee. On perusing the disclosure it is observed that the disclosures made to stock exchanges doesn't mention about recommendations done by NRC.
- 2. Standard disclosure for appointment of Company Secretary (CS):** While disclosure of appointment of senior management and key managerial personnel is made, it is observed that the start and end time of the meeting wherein the appointment occurred is not being disclosed in some cases. National Stock Exchange ('NSE') vide its circular dt: July 14, 2023 required listed entities to take note of certain key points while filing disclosure of events/information under regulation 30 of SEBI LODR. One of the key points was that listed entities to mention start and end time of meeting of board of directors.
- 3. CFO Appointment - Disclosure Missing in XBRL format:** Disclosure of change in key managerial personnel is required to be disclosed in PDF as well as in XBRL format. In few cases it is observed that companies have failed to disclose to stock exchange CFO appointment, in XBRL format. Bombay Stock Exchange ('BSE')ⁱⁱ and NSEⁱⁱⁱ vide its notification dtd January 27,2023 had come with a notification stating that disclosure via XBRL format along with PDF format are mandatory for change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), auditor, Compliance Officer and Share transfer agent. XBRL disclosure has to be filed within 24 hours of filing of PDF disclosure.
- 4. Change in senior management and key managerial personnel at subsidiary level:** As per SEBI LODR regulation 30(9) listed companies are required to disclose events or information with respect to subsidiary company which are material for listed company. In

compliance with this it is observed that few listed companies have disclosed changes in senior management and key managerial personnel at subsidiary level to stock exchange while others have not disclosed.

5. **Disclosures of director debarment:** Pursuant to BSE^{iv} and NSE^v circular dt: June 20, 2018 listed companies while disclosing appointment of directors are required to specifically affirm that the director being appointed is not debarred from holding the office of director by virtue of any SEBI order or any other such authority. It is observed that few listed companies have failed to mention about this disclosure.
6. **Disclosure of changes pursuant to regulation 30(5):** Pursuant to regulation 30(5) of SEBI LODR, board of directors are required to authorise one or more key managerial personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosure to stock exchange. So, whenever there is a change in key managerial personnel or director who has been authorised to determine materiality and disclose same to stock exchange, there would also be a change in the disclosure to stock exchange as required as per regulation 30(5). On perusing disclosures it is observed that pursuant to change in key managerial personnel ,revised details of persons responsible for identification of materiality of events or information and disclosure of same is not given to stock exchange.

Conclusion:

In conclusion, the observed anomalies and non-compliances in disclosures pertaining to the appointment of key personnel underscore the importance of stringent adherence to SEBI LODR regulations. It is imperative for listed companies to prioritize transparency, accuracy, and completeness in their disclosures to uphold investor confidence and regulatory integrity in the Indian capital markets. Robust internal processes and diligent oversight to prevent recurrence of such discrepancies is the need of the hour for the listed companies.

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Ms. Ruchira Pawase - Research Associate - ruchirapawase@mmjc.in

Mr. Vallabh M Joshi - Senior Manager - vallabhjoshi@mmjc.in

ⁱ https://nsearchives.nseindia.com/web/sites/default/files/inline-files/Guidance%20on%20filing%20Announcements%20on%20NSE%20Electronic%20Application%20Processing%20System%20%28NEAPS%29%20platform%20pursuant%20to%20the%20SEBI%20%28Listing%20Obligation%20and%20Disclosure%20Requirement%29%20%28Second%20Amendment%29%20Regulati_0.pdf

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Deciphering the start date of UPSI: Navigating the variations

Introduction

Securities and Exchange Board of India (Prohibition of Insider Trading), Regulations 2015 ['PIT 2015'] defines 'Unpublished Price Sensitive Information (UPSI)' as follows: Unpublished Price Sensitive Information means any information relating to company or its securities that is not generally available which upon becoming generally available is likely to materially affect the price of securities and shall, ordinarily including but not restricted to, information relating to the following: (i) financial results; (ii) dividends; (iii) change in capital structure; (iv) mergers, demergers, acquisitions, delisting, disposals and expansion of business and such other transactions; (v) changes in key managerial personnel.

Corporate actions leading to change in capital structure is considered as UPSI unless otherwise proved. As per Reg. 3(5) of PIT 2015 board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a Structured Digital Database ('SDD') is maintained providing nature of UPSI, date of sharing of UPSI and name of persons with whom it is shared. Bombay Stock Exchange ('BSE') and National Stock Exchange ('NSE') vide their circulars dt: January 29, 2023, had asked listed companies to intimate events or information as required under regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'] in XBRL form and specify the 'start date' of UPSI for events or information for which prior intimation is being given. So, the question now arises as to when it can be considered that UPSI relating to any corporate action has started? In this article we would understand through various Securities and Exchange Board of India ('SEBI') adjudication orders as to when is generally UPSI considered to have been started.

Commencement of UPSI for various corporate actions

A piece of information may germinate in any department in the organization or at factory level employees in the organization but not all these pieces of information would be UPSI. Also, some information may not be UPSI at the very beginning. Hence it becomes necessary identify as to when an information became UPSI. Ascertaining the start date of UPSI is always a contentious issue. Start date of UPSI would differ on a case-to-case basis.

SEBI has in its adjudication orders dealt with the issue relating to the start date of UPSI. We would now have a look at adjudication orders where SEBI concluded on start date of UPSI for stock split, bonus issue and buyback.

a. Start date of UPSI in case of declaration of stock split:

In the matter relating to Infibeam Avenues Ltdⁱ dt: April 27, 2021, SEBI was posed with a question as to when would the UPSI relating to decision of stock split by the board of directors of the company be considered to have started? In this case Infibeam Avenues Ltd announced the decision of the board of directors to go ahead with a stock split on July 13, 2017, to stock exchanges. Prior to this disclosure there were a few entities who had traded in shares of Infibeam Avenues Ltd. So, the question had arisen whether UPSI relating to stock split was in existence during this period? On investigation SEBI found that on October 22, 2016, Chief Financial Officer of Infibeam Avenues Ltd for the first time had introduced this proposal and an understanding of stock split concept was given with advantages and disadvantages and real-life examples. The chronology of events posts this date depicted that planning was being done towards materializing the event of stock split. The board of directors in their held-on July 13, 2017, approved the stock split. SEBI in this regard concluded that the consensus amongst management to do a stock split had been done on October 22, 2016. Post these steps were being taken to ensure that stock split is done. Hence the date of presentation by CFO about stock split is considered as 'start date of UPSI.'

b. Start date of UPSI in case of declaration of bonus issue:

In SEBI adjudication order dt: April 26, 2021, in the matter of Tulsi Extrusions Ltdⁱⁱ "Issue of bonus shares to the existing shareholders of the company" was UPSI. In this case SEBI had alleged violation of code of conduct framed for prevention of insider trading by certain employees, promoters, and directors. On investigation and going through the chronology of events SEBI understood that the proposal to do a bonus issue was floated on October 16, 2010, when Mr. Pradip Mundhra, Managing Director ideated the concept of bonus issue for improving liquidity in the market. Further on October 18, 2010, discussion happened between Mr. Sanjay Taparia ('CEO') and Mr. Sudarshan Taparia ('CFO and Compliance Officer') with respect to bonus issue. Post this board meeting agenda was circulated for considering bonus issue. Tulsi Extrusions on November 18, 2010, intimated the stock exchanges about approval of bonus issue by board of directors. So, the question was as to when was the start date of UPSI for bonus issue? In this case even if idea of going for a bonus issue was made by Mr. Pradip Mundhra, Managing Director on October 16, 2010, but the start date of UPSI was considered as October 18, 2010, the date on which discussion happened and consensus was reached between MD, CEO and CFO. Also, it is seen only post this discussion agenda circulated to the board of directors for

consideration of bonus issue. Hence October 18, 2010, was considered as the start date of UPSI.

c. Start date of UPSI in case of buyback:

SEBI adjudicated on the point relating to start date of UPSI in case of buyback in its adjudication order in the matter of ADF Foods Ltdⁱⁱⁱ dt: June 23, 2022. In this case ADF Foods gave prior intimation to the stock exchange on May 23, 2016, stating that board of directors are going to consider buyback in its board meeting going to be held on May 27, 2016. SEBI on investigation also found that few entities had done insider trading in the shares of ADF Foods Ltd. SEBI then investigated to ascertain as to when was the UPSI relating to buyback of shares had started. On investigation SEBI found that the proposal for buyback of equity shares of ADF Foods Ltd was first discussed on May 21, 2016, amongst Mr. Girish Nadkarni (representative of Motilal Oswal), Noticee 6 / Mr. Bhavesh R. Thakkar (Executive Director) and Mr. Mishal A. Thakkar (Senior Manager of the company). Post this company secretary was asked to initiate preparation for undertaking buyback of shares and share board meeting agenda papers for considering proposal of buyback of shares. ADF Foods Ltd argued that UPSI relating to buyback came into existence on May 23, 2016, when board meeting agenda for discussion of buyback was circulated. In this regard SEBI held that, *“the argument cannot be accepted that, the UPSI came into existence on May 23, 2016 (when agenda was circulated) and ceased to exist on May 27, 2016, just because the decision on the proposal was deferred to next Board meeting, and the same PSI again revived as an UPSI before the next Board meeting. I note that, the decision on the proposed buyback was merely deferred to next Board meeting and no conclusive decision was taken by the Board on the issue till its next meeting held on July 27, 2016, the argument of the Noticees that the UPSI ceases to exist as soon as the Board meeting was over on May 27, 2016, is without and merit and hence rejected. In this regard, it is established that the proposed range of buyback is an UPSI along with the first proposal to make buyback offer per se mooted by the Company and internally decided on May 21, 2016”*. In view of the above, the UPSI pertaining to the buy-back offer not only came into existence on May 21, 2016, but also continued till July 27, 2016, when the Company made a public disclosure about the Board's approval of the proposed buy-back of the Company (with a proposed range of offer size and offer price). Thus, in the context of the proceeding, the period of UPSI was from May 21, 2016, to July 27, 2016. A similar view was taken by SEBI in its adjudication order dt: May 11, 2021, in the matter of PC Jeweller Ltd^{iv}. Question in this case was similar as to when UPSI related to buyback would be considered to have been started. SEBI while concluding in this matter held that, *“preliminary discussion among MD, ED, COO and CFO in relation to the proposal for buyback of fully paid-up equity shares of the Company took*

place on April 25, 2018. Therefore, I find that UPSI-I came into existence on April 25, 2018.'

In this case also SEBI had a similar view that the date when discussion relating to buyback had initiated would be considered as a start date of UPSI.

Conclusion

Understanding the intricacies of the start date of Unpublished Price Sensitive Information (UPSI) is pivotal in effectively implementing and enforcing the regulations outlined in the Prevention of Insider Trading (PIT) 2015 guidelines. The determination of this date is not standardized but rather contingent upon several factors, particularly the nature of the UPSI and the organizational structure in question.

In the context of corporate actions pinpointing the start date of UPSI is paramount. This date is identified as the moment when a consensus is reached within the company's management to proceed with the proposed action. It signifies the stage where all subsequent actions and decisions are directed towards the implementation of the proposed corporate action. Importantly, even if the decision regarding the corporate action is deferred at a board meeting for further deliberation, the initial date of consensus among management is recognized as the start date of UPSI.

This distinction is critical as it sets the baseline for compliance with insider trading regulations and helps in determining the appropriate disclosure timelines. By recognizing the start date of UPSI accurately, organizations can ensure transparency, uphold regulatory standards, and mitigate the risks associated with insider trading allegations.

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Mr. Vallabh M Joshi – Senior Manager – vallabhjoshi@mmjc.in

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Upholding Integrity: The Evolving Role of Regulators in IPOs

Introduction

In the dynamic landscape of Initial Public Offerings (IPOs), regulators play a pivotal role in ensuring transparency, fairness, and investor protection. Over the years, regulatory scrutiny has intensified, with regulators worldwide adopting increasingly stringent measures to safeguard the integrity of the IPO process. In this article, we delve into the multifaceted role of regulators in IPOs, examining their evolving approach and the growing emphasis on compliance enforcement.

A bird eye's view

IPOs represent a significant milestone for companies seeking to access capital markets and fuel growth. However, the journey from private to public ownership entails complex regulatory requirements and rigorous scrutiny to safeguard investor interests. Regulators act as guardians of market integrity, overseeing every aspect of the IPO process to maintain trust and confidence in the capital markets.

One of the key responsibilities of regulators in the IPO process is to ensure full and accurate disclosure of information to prospective investors. This entails meticulous review and scrutiny of the IPO prospectus, which serves as a comprehensive document detailing the company's business, financial performance, risks, and future prospects and more importantly usage of IPO proceeds. Regulators meticulously examine the prospectus to verify the intent, accuracy, and completeness of information, ensuring that investors are equipped to make informed investment decisions.

In recent years, regulators have adopted more proactive stance towards compliance enforcement in the IPO ecosystem. Recognizing the critical importance of upholding regulatory standards, regulators have intensified their scrutiny of merchant bankers and other intermediaries involved in the IPO process. Stringent penalties are imposed on merchant bankers found guilty of non-compliance or lapses in due diligence, underscoring the regulator's unwavering commitment to market integrity. The latest addition falling prey to SEBI adjudicationⁱ is First Overseas Capital Limited (Merchant Banker) was penalized for violations of Issue of Capital and Disclosure Requirements (ICDR) Regulations. In past the ones who fell to prey are Inventure Merchant Banker Services Private Limitedⁱⁱ, SMC Capitals Limitedⁱⁱⁱ.

Regulatory oversight does not stop with the examination of the IPO prospectus; it extends its reach into every facet of the offering process. This includes a meticulous review of strategies, the equitable distribution of shares, and post-listing commitments. Regulators maintain a vigilant watch over pricing methodologies, actively thwarting any attempts at under-pricing or manipulation that could harm investors or erode market trust. Furthermore, they scrutinize the allocation of shares to guarantee impartiality and forestall any favouritism towards specific investors. Mandatory approvals for an Initial Public Offering (IPO) typically include clearance from the Securities and Exchange Board of India (SEBI), authorization from the Stock Exchange where the company plans to list its shares, compliance with Companies Act, 2013 and, in special cases, approval from the Reserve Bank of India (RBI). These regulatory clearances are essential steps in ensuring compliance with legal and financial regulations governing the IPO process.

In addition to pre-listing scrutiny, regulators remain vigilant in monitoring post-listing activities to detect any irregularities or violations of regulatory norms. This includes monitoring compliance with listing obligations, timely disclosure of material information, and adherence to

corporate governance standards. Any deviations from regulatory requirements are met with swift regulatory action, including fines, penalties, or even suspension of trading.

The evolving role of regulators in IPOs reflects a broader trend towards enhanced regulatory oversight and enforcement in capital markets. In an era marked by increasing globalization and technological innovation, regulators face the formidable challenge of staying ahead of emerging risks and market developments. This requires a robust regulatory framework, supported by advanced surveillance tools, data analytics, and collaboration with international counterparts.

Regulators tend to be stringent with companies going for an IPO for several reasons:

1. **Investor Protection:** Regulators aim to safeguard the interests of investors, ensuring they have access to accurate and comprehensive information about the company before making investment decisions. Stringent regulations help prevent fraud, misrepresentation, or inadequate disclosure that could harm investors.
2. **Market Integrity:** Maintaining the integrity and stability of the financial markets is crucial for investor confidence and overall market health. Regulators impose strict rules to prevent market manipulation, insider trading, or other forms of misconduct that could undermine market integrity.
3. **Transparency and Disclosure:** Regulators prioritize transparency and require companies to provide detailed disclosures about their business operations, financial performance, risks, and governance structure. This transparency helps investors make informed decisions and fosters trust in the IPO process.
4. **Fairness and Equal Access:** Regulators strive to ensure fairness in the IPO process, including the allocation of shares and access to information. They aim to prevent preferential treatment of certain investors or practices that could disadvantage retail investors.
5. **Compliance with Legal and Regulatory Standards:** Companies seeking to go public must comply with a myriad of legal and regulatory requirements, spanning from securities laws to corporate governance standards. Regulators enforce these standards to uphold the rule of law and maintain a level playing field for all market participants.
6. **Systemic Risk Management:** Regulators are mindful of potential systemic risks that could arise from IPO activities, such as market bubbles or excessive speculation. Stringent regulations help mitigate these risks and promote stability in the financial system.
7. **Public Interest:** Regulators act in the public interest, aiming to balance the needs of various stakeholders, including investors, issuers, and the broader economy. They seek to promote sustainable growth while minimizing risks and protecting the long-term interests of all parties involved.

Regulatory stringency in the IPO process serves to enhance market confidence, protect investors, and uphold the integrity of the financial system. By imposing rigorous standards and oversight, regulators strive to facilitate fair, transparent, and efficient capital markets.

Conclusion

The role of regulators in IPOs is indispensable in safeguarding investor interests, maintaining market integrity, and fostering confidence in the capital markets. With regulators adopting a more stringent approach towards compliance enforcement, merchant bankers and market participants are held to higher standards of accountability and transparency. As IPO activity continues to thrive

globally, regulators must remain vigilant and proactive in upholding regulatory standards to ensure the integrity and resilience of capital markets.

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Ms. Madhura Godbole – Senior Manager – madhuragodbole@mmjc.in

Ms. Hasti Vora – Research Associate – hastivora@mmjc.in

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Understanding Shareholder Control: De Jure and De Facto Elements in under the Companies Act 2013

Introduction.

As far as the corporate structure of business is concerned, the most important feature is that the company is owned by shareholders and is managed by the board of directors appointed by the shareholders. Even though the board manages the company, the owners of the company, that is, shareholders have control over the company through their voting rights.

There are some situations under the Companies Act 2013 ('the Act') like appointment of directors, auditors etc. where the shareholders can exercise their control through voting rights. In this article, we shall deliberate upon the types of controls available with shareholders by the virtue of the Act through which they can control the company.

Meaning of control under the Act.

Section 2 clause 27 of the Act defines the term 'control' as, "(27) 'control' shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;".

This definition is an inclusive definition and elaborates multiple manners in which control can be exercised by the members on the company.

Effect of Inclusive definition

Generally, the word 'include' is used in any definition to enlarge the meaning of the words used in that definition. The use of the word 'include' widens the scope of the definition. Use of word 'include' should be construed to mean that there can be more possibilities than enumerated in the definition.

The definition of control under the Act uses the word 'control' twice. Once where it lists the ways of exercising control and second where it lists the ways of obtaining management rights. The use of word 'includes' at first place indicates that, there can be more possible ways to control the company which are not listed here. Whereas the use of 'include' at second place implies that there can be more possible ways to obtain management rights. This shows that the definition of control is very much open ended.

Types of control.

Control can be bifurcated in to two main types. They are, (a) de facto control and (b) **De-jure control**. As per **Blacks law dictionary**, **De-jure means** - As a matter of law, existing by right or according to law. Whereas de-facto means actual/existing in fact, having effect even though not formally or legally recognised.

As per these dictionary meanings, 'de-jure control' refers to that control, which is given by law. For example, the right to appoint directors is given to shareholders by law. On the other hand, 'de-facto control' refers to that control which is not given by law but exists due to any other reason.

For example, the right to participate in policy decisions is given to shareholder not by law but through shareholder agreement.

Element of de-jure control.

As discussed above, 'de-jure control' refers to that control which is granted to any person by the virtue of provisions of law. The definition of control says that a person who has the right to appoint majority directors on the board has control over the company. This right to appoint directors is given to shareholders by the Act through the provision of section 152 sub-section (2). As per this provision, the shareholders can appoint directors through voting at the general meeting. That means, the shareholder having majority voting rights has power to appoint directors. Since all this process of appointment is as per procedure of law, the control through appointment of directors is an example of de-jure control.

Element of de facto control.

De facto control, as mentioned above, arises not out of provisions of law but by virtue of any contractual or any other right. If we look at the second type of control in the definition, it talks about the control through participation in policy decisions by the virtue of any kind of shareholder agreement or any other agreement. Even though this type of contract is not an outcome of a legal provision but still does exist and is enforceable. Therefore, this kind of control can be classified as de facto control.

Judicial pronouncements on de facto and de-jure control.

Hon 'able Supreme Court of India has accepted the existence of elements of de-facto and de-jure control in the definition of control. The Hon 'able Supreme Court of India in its judgment dated 4th October 2018 in the matter of ArcelorMittal India Private Limited V. Satish Kumar Gupta & Ors, while analysing the definition of control held that, "47. **The expression "control" is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be "in control."** A management decision is a decision to be taken as to how the corporate body is to be run in its day-to-day affairs. A policy decision would be a decision that would be beyond running day to day affairs, i.e., long term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist."

Conclusion.

In conclusion, the concept of control within the corporate structure of businesses, as defined under the Act, encompasses both 'de jure' and 'de facto' elements. 'De jure' control pertains to rights granted by law, such as the ability to appoint directors through shareholder voting, while 'de facto control' stems from contractual or agreement-based arrangements that influence management or policy decisions. The inclusive definition of control under the Act signifies that control is not limited to specific scenarios but extends to various mechanisms through which shareholders can wield influence over company affairs.

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Ms. Rutuja Umadikar – Research Associate – rutujaumadikar@mmjc.in

Processing of Data under the Digital Personal Data Protection Act, 2023

Introduction –

One of the very important aspects of the Digital Personal Data Protection Act, 2023 (“DPDPA” or “Act”) is processing of data. The DPDPA is applicable to digital form of data and not otherwise. To make the data digitally available, the Data needs to be converted to or processed into digital form. Considering the all-pervasive effect of this law across sectors and geographies, the lawmakers showed the foresight to define the terms “processing” and “automated” in the Act. Had it not for these definitions, these terms, howsoever generic it may seem, has the potential to create chaos in successful implementation of the Act.

This write up deep dives in these two definitions “processing” and “automated” under the Act.

Deciphering the definitions –

Before we attempt to understand the words “processing”, the author is of the view that it is necessary to also understand the definition “automated” as defined in the Act. Section 2 (b) of the Act defines the term “automated” as under –

(b) “automated” means any digital process capable of operating automatically in response to instructions given or otherwise for the purpose of processing data.

However, the European Union’s General Data Protection Regulations does not explicitly define the word automation but is included in the definition “processing” which can be read as under –

‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

GDPR requires automated decision making, including profiling in Article 22 and 35 of the GDPR rules. These rules require that certain types of automated processing, which have a significant impact on individuals, must adhere to transparency requirements, grant individuals the right to human intervention, and necessitate the completion of impact assessments.

The Oxford Dictionary defines the word “automation” as a machine that moves without human control. It also defines the word “automate” as to use machines and computers instead of people to do a job or task.

From the above, we can decipher that automation can be any established process or set of instructions given to any mechanical or electronic device to perform or not to perform any act without any human intervention. It can also be said that *automation is where the mechanical or electronic device uses its own system intellect to perform the acts or a set of instructions as feed into it without any human interference.*

Now we move on to the next definition which is “processing”

The definition “processing” is defined in Section 2 (x) of the Act as under –

(x) “processing” in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction;

The definition Processing as defined in the Act can be divided into two parts. The first part of the definition mentions about wholly or partly automated operations or set of operations performed in digital personal data and the second part is an inclusive one that covers the acts such as collection, recording, organisation, structuring, storage, adaptation, retrieval etc.

The definition Processing includes the word ‘automated’.

The term ‘partly automated’ can be interpreted as updation of selected fields in an automated system that auto-reads only certain fields of data and rest of fields needs to be manually entered by the user. This can be best illustrated by an individual who is searching for a job. The job-seeker needs to create his login address by mentioning his name, address, cell phone number and email address. When the job seeker logs in his account the system pre-fills his data used in login details but has to manually fill other data like his education details, work experience, achievements on the job portal. Another example of the same is when a job-seeker applies for openings on www.Linkedin.com, the website shows a list of his resumes that the user has recently applied for and the user has to choose from the same. If the user wants to submit a different resume, he then has to upload a different resume. The user then has to manually fill in his name, date of birth, experience in years, current salary and expected salary.

The term ‘wholly automated’ can be interpreted as updation of all fields in an automated system that auto-reads a text document. Continuing with the above illustration, in the career page of many big corporations, once the user uploads his resume, the portal asks if it can autofill the data using the user’s resume and if the user consents to it, all the fields of the user relating to his experience, education, skills are pre-filled in the respective fields of the portal. The user has to review the data, make the necessary edits, if so required, and submit it.

Similarly, we can also cite examples of filling in data on matrimonial portals wherein the user has to manually fill his personal data and upload his photo.

The word ‘operation’ or a ‘set of operations’ can be referred to as acts of copy, storage, scanning, transfer, retrieval of digital data. Thus, the words ‘wholly or partly automated operation or set of operations’ performed on digital personal data can mean conversion of the hard data into digitised form and then reproduction of the same in an automated system either in full or in part.

The second part of the definition of “processing” includes various forms of collection and retrieval of electronic data such as *collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction*;

We can further bifurcate these acts in three categories -

1. storage of data – this includes collection, recording, organisation, storage, adaptation or alteration, retrieval.
2. usage of data – this can be used for disclosure, distribution or broadcasting or otherwise making available the information to the user or the individual seeking information.

3. erasure of data – this includes erasure, destruction, deletion of data. This is very common in Confidentiality and Non-disclosure Agreements where the receiver has to either return all the confidential information received from the disclosing party and give a certificate that it has returned all the confidential information or delete any data that it receives from the disclosing party.

Not even scanning or forwarding of any data but even a slight change say, alignment or reproduction of a handwritten text in a word format in a system will come within the purview of processing and automation under the Act.

Conclusion –

Thus, from the above, it is necessary for any user of digital data to thoroughly understand as to what all will constitute digital data and how such data will be processed. Actions as simple as scanning and forwarding of such scanned personal data will amount to processing and automation of digital personal data. This processing is then applicable to information sent outside India as well and the user will then be subject to the Act and has to comply with the provisions of the Act.

This article is published in Taxmann. The link to the same is as follow: -

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000023764/processing-of-data-under-the-digital-personal-data-protection-act-2023-experts-opinion>

Mr. Nilesh Javkar – Senior Manager – nileshjavkar@mmjc.in



NEWS UPDATES/AMENDMENTS FOR THE MONTH OF JUNE 2024:

Sr. No.	News Updates/Amendments	Link & Brief Summary
NEWS		
1	NFRA gets thumbs up from SC on retrospective jurisdiction	<p>https://www.livemint.com/economy/nfra-gets-thumbs-up-from-sc-on-retrospective-jurisdiction-11716723358353.html</p> <p>NFRA has retrospective authority. It can scan balance sheets prior to 2018. SC upholds NCLAT decision. Quotes doctrine of merger for giving effect to this decision.</p>
2	NFRA to engage with some big, listed companies on audit compliance	<p>https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/nfra-to-engage-with-some-big-listed-companies-on-audit-compliance/110451689?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-27&dt=2024-05-27&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>The National Financial Reporting Authority (NFRA) is planning to directly engage a few large listed companies for the first time by June end to sensitise about accounting standards and help curb corporate frauds.</p>
3	SEBI cracks down on gaming apps involved in virtual trading	<p>https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebi-cracks-down-on-gaming-apps-involved-in-virtual-trading/110450809?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-27&dt=2024-05-27&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>The SEBI has asked exchanges and depositories not to share real time price data with third parties in a move aimed at quashing such activities.</p>
4	SEBI cracks the whip on finfluencers trying to manipulate IPOs	<p>https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebi-cracks-the-whip-on-finfluencers-trying-to-manipulate-ipos/110413022?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-25&dt=2024-05-25&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>SEBI has asked all IPO bound companies to make videos informing investors to not rely on finfluencers or financial influencers dishing out half baked ideas on social media platforms.</p>

5	SEBI asks social enterprises registered on SSE to submit annual impact report for FY24 by Oct-end	<p>https://legal.economictimes.indiatimes.com/news/regulators/sebi-asks-social-enterprises-registered-on-sse-to-submit-annual-impact-report-for-fy24-by-oct-end/110474304?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-28&dt=2024-05-28&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>Social enterprises which have registered or raised funds through SSE shall be required to submit annual impact report to SSE by oct 31,2024 for the F.Y 2023-2024</p>
6	MCA tightens scrutiny of beneficial ownership norms for foreign-owned companies	<p>https://www.moneycontrol.com/news/business/mca-tightens-scrutiny-of-beneficial-ownership-norms-for-foreign-owned-companies-12732696.html</p> <p>Several FOCCs have received notices from ROCs alleging violation of SBO rules. All these entities declared they had no SBO in their annual filings.</p>
7	Adopt regulation plus approach; comply with regulation in letter and spirit: RBI DG to ARCs	<p>https://legal.economictimes.indiatimes.com/news/regulators/adopt-regulation-plus-approach-comply-with-regulation-in-letter-and-spirit-rbi-dg-to-arcs/110529959?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-30&dt=2024-05-30&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>Reserve Bank Deputy Governor Swaminathan J has expressed concern over the increasing regulatory violations and warned Asset Reconstruction Companies (ARCs) to ensure compliance without needing the regulator to point out issues to them.</p>
8	Sebi allows privately placed InvITs to issue subordinate units	<p>https://legal.economictimes.indiatimes.com/news/regulators/sebi-allows-privately-placed-invits-to-issue-subordinate-units/110503522?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-29&dt=2024-05-29&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>Capital market regulator has notified framework for issuance of subordinate units by privately placed InvITs.</p>

9	Audit panels of companies can't escape blame by citing auditors' failure: NFRA chief	<p>https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/audit-panels-of-companies-cant-escape-blame-by-citing-auditors-failure-nfra-chief/110610084?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-01&dt=2024-06-01&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>NFRA chairman has emphasized the audit committees responsibility in ensuring accurate financial statements even if auditors fail in their duty.</p>
10	Govt urges over 100 corporates to setup incubation centers for manufacturing startups	<p>https://cfo.economictimes.indiatimes.com/news/policy/govt-urges-over-100-corporates-to-setup-incubation-centers-for-manufacturing-startups/110610106?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-01&dt=2024-06-01&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>The Govt. has urged over a hundred corporates, industry associations and unicorns to set up incubation centres for manufacturing sector startups.</p>
11	India Inc doubles down on getting the gender mix right	<p>https://cfo.economictimes.indiatimes.com/news/economy/india-inc-doubles-down-on-getting-the-gender-mix-right/110579277?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-01&dt=2024-06-01&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>Indian Inc's drive to onboard women leaders is getting stronger than ever driven by multiple factors.</p>
12	Forex remittances worth Rs 50,000 crore under ED scanner	<p>https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/forex-remittances-worth-rs-50000-crore-under-ed-scanner/110652084?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-03&dt=2024-06-03&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>ED is investigating suspected illegal remittance of foreign exchange totalling Rs.50,000 cr as part of its scrutiny transactions by fintech firms</p>
13	SEBI's rumour verification rule and its implications	<p>https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebis-rumour-verification-rule-and-its-implications/110651822?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-03&dt=2024-06-03&em=aGFzdGl2b3JhQG1tamMuaW4=</p>

		SEBI says all kinds of rumours that have a material impact on share price movement needs to be confirmed, denied or clarified as mandated for top 100 listed companies.
14	SEBI launches Saa᳚thi 2.0 mobile app on personal finance for investors	<p>https://legal.economictimes.indiatimes.com/news/regulators/sebi-launches-saathi-2-0-mobile-app-on-personal-finance-for-investors/110673251?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-06-04&dt=2024-06-04&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>App launched is on personal finance for investors with comprehensive tools aimed at simplifying complex financial concepts</p>
15	SEBI constitutes committee to review ownership, economic structure of clearing corporations	<p>https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebi-constitutes-committee-to-review-ownership-economic-structure-of-clearing-corporations/110719494?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-05&dt=2024-06-05&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>SEBI says that given the substantial growth of Indian securities markets in recent years , clearing corporations as central risk management institutions are important.</p>
16	Startups seek support, policy continuity from new govt	<p>https://cfo.economictimes.indiatimes.com/news/strategy-operations/startups-seek-support-policy-continuity-from-new-govt/110719441?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-06-05&dt=2024-06-05&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>Senior executives in the startup industry hoped for continued support for the ecosystem from the incoming government.</p>
17	IBBI issues new guidelines to streamline process of appointing IPs as resolution professionals	<p>https://legal.economictimes.indiatimes.com/news/regulators/ibbi-issues-new-guidelines-to-streamline-process-of-appointing-ips-as-resolution-professionals/110775522?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-06-07&dt=2024-06-07&em=aGFzdGl2b3JhQG1tamMuaW4=</p>

		Under the new guidelines, issued on June 5, a panel of IPs will be set up, which will be effective from July 1, 2024 to December 31, 2024.
18	Sebi asks KRAs to integrate systems with Central KYC Records Registry	<p>https://legal.economictimes.indiatimes.com/news/regulators/sebi-asks-kras-to-integrate-systems-with-central-kyc-records-registry/110774799?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-06-07&dt=2024-06-07&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>SEBI directed the LYC registration agencies to integrate their systems with Central KYC records registry and begin uploading of KYC data from August 1, 2024.</p>
19	SEBI issues financial disincentives guidelines for bourses, other MIIs for surveillance lapses	<p>https://legal.economictimes.indiatimes.com/news/regulators/sebi-issues-financial-disincentives-guidelines-for-bourses-other-miis-for-surveillance-lapses/110774825?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-06-07&dt=2024-06-07&em=aGFzdGl2b3JhQG1tamMuaW4=</p> <p>SEBI has come out with framework on financial disincentives for SE and other market infrastructure institutions for their lapses in detecting abnormal or suspicious trading activities to safeguard interest of retail investors.</p>
AMENDMENTS / CIRCULARS /CONSULTATION PAPERS		
1	SEBI Circular	<p>https://nsearchives.nseindia.com/web/sites/default/files/inline-files/1716549638692.pdf</p> <p>Audiovisual (AV) presentation of disclosures made in Public Issue Offer Documents</p>
2	NSE Circular	<p>https://nsearchives.nseindia.com/web/sites/default/files/inline-files/Intimation%20of%20credit%20of%20Dividend%20into%20attached%20bank%20accounts%20of%20notified%20parties%20under%20Special%20Court.pdf</p> <p>Circular for Intimation of credit of Dividend into attached bank accounts of notified parties under Special Court (TORTS) Act 1992</p>
3	BSE/NSE Circular	<p>https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240603-27</p> <p>https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_CML_2024_16_Rumor_verification.pdf</p>

		Verification of Market Rumours- path for submission
4	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240605-5 Timelines for disclosures by Social Enterprises on Social Stock Exchange (SSE) for FY 2023-24
5	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240605-6 Self-Regulatory Organizations for Social Impact Assessors in the context of Social Stock Exchange (SSE)
6	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240606-34 Systemic Improvements in the Bidding Process of SME Public Issues
7	SEBI Circular	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/14.06.2024.pdf Modification in Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism
8	SEBI Circular	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/Master%20Circular%20for%20Infrastructure%20Investment%20Trusts%20%28InvITs%29.pdf Master Circular for Infrastructure Investment Trusts (InvITs)

