

# MMJCINSIGHTS

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## Importance of ESG Reporting for Organizations: Driving Sustainable Success

### Introduction:

In today's rapidly evolving business landscape, Environmental, Social, and Governance (ESG) reporting has emerged as a critical factor for organizations striving for long-term sustainability and success. ESG reporting not only enhances transparency and accountability but also aligns corporate strategies with the broader goals of social responsibility and environmental stewardship. By integrating ESG considerations into their operations, organizations can drive positive change, foster stakeholder trust, and unlock new opportunities for growth.

### What is ESG Reporting?

ESG Reporting, which stands for Environmental, Social, and Governance Reporting, is a framework used by organizations to disclose their performance and impact in these three critical areas. Environmental reporting focuses on how a company manages its ecological footprint, addressing issues such as carbon emissions, waste management, and resource usage. Social reporting examines the company's impact on society, including labour practices, community engagement, and human rights. Governance reporting involves the internal systems, controls, and procedures a company employs to govern itself, including board structure, executive compensation, and shareholder rights. ESG reporting is increasingly important as investors, customers, and regulators seek transparency and accountability regarding corporate sustainability and ethical practices. It helps stakeholders make informed decisions by providing a comprehensive view of a company's non-financial performance.

### SEBI mandated disclosure for listed entities in India<sup>i</sup>

From FY 2023 -2024, the top 1000 listed entities (by market capitalization) shall make disclosures as per the updated BRSR format, as part of their Annual Reports.

Listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the glide path specified in the following table:

Financial Year	Applicability of BRSR Core to top listed entities (by market capitalization)
2023-24	Top 150 listed entities
2024-25	Top 250 listed entities
2025-26	Top 500 listed entities
2026-27	Top 1000 listed entities

### Why is ESG reporting the need of the hour?

ESG reporting is the need of the hour due to the growing awareness and demand for corporate responsibility and sustainable practices. As environmental challenges like climate change intensify, and social issues such as inequality and labour rights gain prominence, stakeholders are increasingly looking to companies to demonstrate their commitment to addressing these concerns. Investors are prioritizing ESG criteria to mitigate risks and identify long-term opportunities, while consumers prefer brands that align with their values. Moreover, regulatory

bodies are tightening disclosure requirements, making transparent ESG practices essential for compliance. Ultimately, ESG reporting is vital for building trust, enhancing reputation, and ensuring sustainable growth in a rapidly changing world. Some reasons include: -

### **1. Enhancing Transparency and Accountability:**

ESG reporting offers a structured framework for organizations to disclose their environmental, social, and governance practices. This transparency is essential for building trust with stakeholders, including investors, customers, employees, and regulators. Clear and consistent ESG reporting allows stakeholders to evaluate an organization's commitment to sustainability, ethical practices, and corporate governance. It provides a holistic view of how a company manages risks and opportunities related to ESG factors, promoting a culture of accountability.

### **2. Driving Operational Efficiency and Innovation:**

Organizations that prioritize ESG reporting often find themselves better positioned to identify inefficiencies and innovate solutions that drive operational improvements. For instance, by monitoring and reporting on energy consumption, waste management, and resource utilization, companies can implement measures to reduce their environmental footprint. This not only lowers operational costs but also enhances the organization's reputation as a responsible corporate citizen.

### **3. Attracting and Retaining Investors:**

Investors are increasingly considering ESG factors when making investment decisions. ESG reporting provides valuable insights into an organization's long-term viability and resilience. Companies with robust ESG practices are perceived as lower-risk investments, as they are better equipped to navigate regulatory changes, social expectations, and environmental challenges. By demonstrating a commitment to ESG principles, organizations can attract and retain investors who prioritize sustainable and responsible investment.

### **4. Fostering Employee Engagement and Retention:**

Employees are increasingly drawn to organizations that prioritize ESG values. ESG reporting signals to current and potential employees that the company is committed to ethical practices, social responsibility, and environmental sustainability. This fosters a sense of pride and purpose among employees, leading to higher engagement, job satisfaction, and retention. Companies that actively address social issues, promote diversity and inclusion, and support employee well-being create a positive work environment that attracts top talent.

### **5. Building Stronger Customer Relationships:**

Consumers are becoming more conscious of the social and environmental impact of their purchasing decisions. ESG reporting helps organizations communicate their commitment to sustainability and ethical practices, building stronger relationships with socially responsible consumers. Companies that demonstrate transparency in their ESG efforts are more likely to earn customer loyalty and differentiate themselves in the market.

## **Eye-Opening Examples of Positive Impact Through ESG Reporting**

### **1. Unilever's Sustainable Living Plan<sup>ii</sup>:**

Unilever's Sustainable Living Plan is a prime example of how ESG reporting can drive positive impact. By setting ambitious targets for reducing its environmental footprint and improving social outcomes, Unilever has enhanced its brand reputation and operational efficiency. The



company's commitment to sustainability has resulted in significant cost savings, reduced waste, and increased consumer trust. Unilever's success demonstrates that integrating ESG principles into business strategies can lead to both financial and societal benefits.

## 2. Reliance Industries Limited (RIL)<sup>iii</sup>:

Through its ESG reporting, RIL has committed to becoming net carbon zero by 2035, demonstrating a strong dedication to environmental sustainability and community development. This ambitious goal is supported by significant investments in renewable energy, such as the development of the Dhirubhai Ambani Green Energy Giga Complex<sup>iv</sup> in Jamnagar, which aims to be one of the world's largest integrated renewable energy manufacturing facilities. It is also advancing its waste management practices by implementing cutting-edge technologies to reduce, recycle, and reuse waste materials, thereby minimizing its environmental footprint.

## 3. IKEA's People & Planet Positive Strategy<sup>v</sup>:

IKEA's People & Planet Positive strategy showcases the transformative power of ESG reporting. The company has set ambitious goals to become climate positive, promote sustainable sourcing, and support social initiatives. By regularly reporting on its progress, IKEA has enhanced its credibility and demonstrated its commitment to making a positive impact. The strategy has led to innovations in product design, supply chain management, and customer engagement, positioning IKEA as a leader in sustainability.

### Conclusion:

The importance of ESG reporting for organizations cannot be overstated. It drives transparency, accountability, and innovation, while fostering strong relationships with stakeholders. By embracing ESG principles and regularly reporting on their progress, organizations can achieve sustainable success and contribute to a better future. The examples of Unilever, Patagonia, and IKEA illustrate that integrating ESG practices not only benefits the environment and society but also enhances business performance and resilience. As the global focus on sustainability intensifies, ESG reporting will continue to be a vital tool for organizations striving to create lasting value and positive impact.

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<sup>i</sup> [https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain\\_73854.html](https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html)

<sup>ii</sup> HUL BRSR Report FY 2022 - 2023  
<https://www.hul.co.in/files/92ui5egz/production/1ae545c2a9cedd46dbcc6ff0ff974d6093a54dd5.pdf/#page=55>

<sup>iii</sup> Reliance Industries Limited BRSR Report FY 2022 - 2023  
<https://www.ril.com/sites/default/files/2023-08/BRSR202223.pdf>

<sup>iv</sup> <https://www.ril.com/businesses/new-energy-materials>

<sup>v</sup> [https://www.ikea.com/global/en/images/IKEA\\_PPP\\_updated\\_2023\\_20231109\\_5dce3a2de5.pdf](https://www.ikea.com/global/en/images/IKEA_PPP_updated_2023_20231109_5dce3a2de5.pdf)

## Navigating the Challenges of ESG Reporting for Companies

In the contemporary corporate landscape, Environmental, Social, and Governance (ESG) reporting has emerged as a pivotal aspect of business strategy. Companies are increasingly expected to disclose their ESG performance, demonstrating their commitment to sustainability and responsible governance. However, despite its importance, ESG reporting presents a myriad of challenges for companies. This article explores these challenges and provides insights into how companies can effectively address them.

**Some regular impediments include: -**

### 1. Lack of Standardization:

One of the foremost challenges in ESG reporting is the lack of standardization. Unlike financial reporting, which is governed by universally accepted accounting standards, ESG reporting is fragmented with multiple frameworks and guidelines, such as the Global Reporting Initiative (GRI)<sup>i</sup>, Sustainability Accounting Standards Board (SASB)<sup>ii</sup>, and Task Force on Climate-related Financial Disclosures (TCFD)<sup>iii</sup>. This diversity can lead to inconsistencies and difficulties in comparing ESG performance across companies and industries.

**Solution:** To navigate this challenge, companies may identify and adopt the most relevant frameworks for their industry and stakeholders. Aligning reporting practices with widely recognized standards can enhance transparency and comparability. Additionally, companies may engage with industry peers and standard-setting bodies to advocate for greater harmonization of ESG reporting standards.

### 2. Data Collection and Quality:

Accurate and reliable data collection is a significant hurdle in ESG reporting. Companies often struggle with gathering comprehensive ESG data due to dispersed data sources, varying data quality, and the absence of robust data management systems. This can result in incomplete or inaccurate reporting, undermining stakeholder trust.

**Solution:** Investing in advanced data management systems and technologies can streamline data collection and improve accuracy. Companies may establish clear data governance policies, including regular audits and validation processes, to ensure data integrity. Training employees on the importance of accurate data collection and reporting can also enhance data quality.

### 3. Evolving Regulatory Requirements:

ESG reporting is subject to evolving regulatory landscapes, with new requirements and expectations emerging regularly. Keeping pace with these changes can be challenging, particularly for multinational companies operating in multiple jurisdictions with differing regulations.

**Solution:** Companies may establish a dedicated ESG compliance team to monitor regulatory developments and ensure timely compliance. Leveraging external expertise, such as consulting firms or legal advisors, can also help navigate complex regulatory environments. Regular training and updates for relevant employees can ensure that the company remains compliant with current and emerging requirements.

### 4. Balancing Materiality and Stakeholder Expectations:

Determining material ESG issues—those that are most relevant to the company and its stakeholders—can be complex. Companies must balance the expectations of diverse stakeholder groups, including investors, customers, employees, and regulators, each with different priorities and concerns.

**Solution:** Conducting thorough materiality assessments involving stakeholder engagement can help identify and prioritize key ESG issues. Companies may communicate clearly how they

determine materiality and address stakeholder concerns in their reporting. Continuous dialogue with stakeholders can also help align reporting practices with their evolving expectations.

### 5. Integrating ESG into Corporate Strategy:

Effective ESG reporting requires integrating ESG considerations into the core business strategy. However, many companies face challenges in embedding ESG into their strategic planning and decision-making processes, often treating it as a separate or secondary concern.

**Solution:** Companies may integrate ESG goals into their overall corporate strategy, ensuring that ESG considerations are factored into decision-making at all levels. This involves setting clear ESG targets, aligning them with business objectives, and regularly reviewing progress. Leadership commitment and fostering a culture of sustainability across the organization are crucial for successful integration.

### 6. Demonstrating Impact and Performance:

Measuring and demonstrating the impact of ESG initiatives can be challenging. Companies often struggle to quantify the benefits and performance of their ESG efforts, making it difficult to communicate their value to stakeholders.

**Solution:** Adopting clear metrics and key performance indicators (KPIs) for ESG initiatives can help measure and demonstrate impact. Companies may use both quantitative and qualitative data to provide a comprehensive view of their ESG performance. Transparency in reporting successes and areas for improvement can also build credibility and trust with stakeholders.

### 7. Addressing Greenwashing Concerns:

In the wake of increasing scrutiny, companies face the risk of being accused of greenwashing—providing misleading information about their ESG practices to appear more sustainable than they are. Greenwashing can severely damage a company's reputation and stakeholder trust.

**Solution:** To avoid greenwashing, companies may ensure that their ESG reporting is accurate, honest, and substantiated by credible data. Independent verification and third-party assurance of ESG reports can enhance credibility. Companies may also be transparent about the challenges and limitations they face in their ESG journey, demonstrating a genuine commitment to continuous improvement.

### Conclusion -

While ESG reporting presents numerous challenges, companies that proactively address these issues can enhance their sustainability performance and build stronger relationships with stakeholders. By standardizing reporting practices, improving data quality, staying compliant with regulations, balancing materiality, integrating ESG into strategy, demonstrating impact, and avoiding greenwashing, companies can navigate the complexities of ESG reporting and contribute to a more sustainable and responsible business environment.

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<sup>i</sup> <https://www.globalreporting.org/standards/>

<sup>ii</sup> <https://sasb.ifrs.org/>

<sup>iii</sup> <https://www.fsb-tcfd.org/>

## Disclosure of senior management - Annual report 23-24.

Securities and Exchange Board of India vide its amendment notification dt: June 15, 2023, notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), (Second Amendment) Regulations, 2023. Vide this amendment SEBI provides that listed companies will now have to disclose particulars of senior management including the changes therein since the close of the previous financial year in the 'Corporate governance Report as per Schedule V of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations 2015 ['SEBI LODR']'. This provision was introduced with effect from July 15, 2023. Disclosures pursuant to this would be required to be made in the annual report for financial year 2023-24. This article highlights anomalies in disclosures to be made in this regard.

### Applicability

Particulars of senior management and change therein is required to be given only by listed companies to whom provisions of corporate governance as per SEBI LODR are applicable. So accordingly, companies listed on SME platform, only debt listed companies, main board listed companies to whom corporate governance provisions are not applicable would not be required to give details of senior management and change therein. Main board listed companies to whom corporate governance provisions are applicable and high value debt listed companies would be required to give this disclosure.

### Anamolies

#### Particulars of senior management for entire year or from July 15, 2023?

SEBI LODR second amendment brought the disclosure requirement of particulars of senior management including changes therein in Part C of Schedule V of SEBI LODR. This amendment was effective from July 15, 2023. So, the question arises is whether the disclosures relating to details of senior management including changes therein shall be given from July 15, 2023, onwards only or details of senior management prior to this date shall also be given in the annual report as per Schedule V of SEBI LODR?

Exact wordings of Point 5B<sup>1</sup> state that particulars of senior management and change therein for the previous financial year shall be given. The wordings of provision are clear that details of senior management for the entire preceding financial year (i.e., FY 23-24) shall be given. Hence in the annual report for FY 23-24 particulars of senior management and change therein for the entire financial year shall be given.

#### Disclosure of change in senior management to stock exchange

Regulation 30 read with Schedule III, Part A, Para A, point 7 provides for disclosure of changes in senior management to the stock exchange. Companies have been disclosing to stock exchange the change in senior management pursuant to this. These disclosures to stock exchange shall now be mapped while making disclosures of change in senior management in corporate governance report as per schedule V of SEBI LODR. It needs to be ensured that disclosures made to stock exchange regarding change in senior management post July 15, 2023, are also captured in

<sup>1</sup> Particulars of senior management including the changes therein since the close of the previous financial year



corporate governance report as per schedule V of SEBI LODR. Any change in senior management prior to July 15, 2023, shall also require disclosure in corporate governance report section of annual report.

### **Change in senior management.**

What would be covered under the term '**change in senior management**' is not enumerated in detail in SEBI LODR. MMJC had written an article highlighting different practices being followed by market participants in intimating change in senior management. The article can be accessed at given link: <https://www.mmjc.in/wp-content/uploads/2024/02/MMJC-insights-31.01.24.pdf> - Title of the article "SEBI Compliance Unveiled: Non- Standard disclosures of KMP Resignation amid SEBI's Regulatory Framework". This article highlights that listed entities have inter-alia considered following also as 'change in senior management' and have given disclosures **a.** change in designation of listed entity and its subsidiary, **b.** change in scope of work of listed entity and its subsidiary, **c.** promotion or transfer of an individual being part of senior management etc. So, the term 'change' has wide import. Accordingly, if companies have disclosed these changes in senior management to stock exchange, they need to be made part of the annual report of listed company for FY 23-24.

### **Conclusion**

Accurate disclosure to market participants strengthens the trust investors have in the company. Senior management personnel are an important part of the corporate hierarchy. Disclosure of changes in senior management would help investors have an idea about the management of the company. Hence disclosures of change in senior management shall be disclosed correctly.

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## Appointment of Executive directors and approval of their remuneration - Proxy advisory perspective

Proxy advisors are intermediaries registered with Securities and Exchange Board of India ('SEBI') who provide guidance to shareholders for voting on resolutions proposed by listed companies. Guidance on voting to shareholders is based on proxy advisory voting guidelines. Resolutions proposed by companies are assessed on these parameters and then guidance is provided to shareholders. These voting parameters are technical (i.e. legal) and governance based. These parameters are different for different types of resolutions. These voting guidelines are made available in public domain by proxy advisors.

In this article we are listing down the various reasons given by proxy advisors based on their voting guidelines while making against recommendation on resolutions relating to appointment /re-appointment and remuneration of executive directors. Proxy advisors recommend voting 'Against' citing following reasons:

### A. Re-appointment of Executive director:

#### 1. Retirement by rotation:

- a. In terms of section 152 of companies act 2013 at least 2/3<sup>rd</sup> of the directors shall be liable to retire by rotation unless the articles provide otherwise. If the board of directors is compliant with number of directors liable to retire by rotation and if a new director is being appointed who is not liable to retire by rotation, then this might lead to change in composition of board of directors. This change in composition would result in violation of relevant provisions of companies act and relevant SEBI regulations. Considering this proxy advisors recommend voting against the resolution citing legal concerns.
- b. Sometimes in the resolution there is an inadvertent lapse in mentioning whether the director proposed to be appointed is liable to retire by rotation or not? This might lead to confusion in the minds of shareholders as to whether the appointment of director is for a perpetual period? Proxy advisors highlight companies to mention whether the directors proposed to be appointed are liable to retire by rotation and recommend voting against the resolution if the director is not liable to retire by rotation?

#### 2. Profile:

- a. **Excessive time commitments:** Re-appointment of executive directors holding two full time positions within the same group are recommended to be voted against citing governance concern. Companies act, 2013 allows holding of two full time positions by an executive director<sup>1</sup> but proxy advisors have a view that by holding two full time positions directors would not be able to devote time for each business even if the businesses are same and within the same group.
- b. **Holding position as Chairman and Executive Director:** Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'] allows holding of position of chairman and managing director by one and same person<sup>2</sup>. Further companies act 2013 also allows to hold same positions by

one person<sup>3</sup>. Proxy advisors raise concern on this aspect. Proxy advisors are of view that if one person holds position as a chairman and managing director then this may lead to excessive concentration of power in the hands of a person. Hence reappointment of an executive director who is also the chairpersons is recommended to be voted against.

- c. **Dual positions in different business:** Re-appointment of executive director is recommended to be voted against if the director holds full time positions in two businesses that are unrelated as this might lead to director not able to devote time for each business.
- d. **Integrity:** Appointment or re-appointment of director who has been penalized by any regulatory authority for any violation in his individual capacity or professional capacity or if a director is already holding full time positions in another company and concerns are raised by regulators or government over the functioning of the company then resolution is recommended to be voted against. Also, shareholders are advised to seek details from the company for recommending such directors.
- e. **Attendance:** Proxy advisors assess the interest taken by executive directors in running the affairs of business. This is assessed by the attendance of the executive directors at the board meetings, committee meetings and general meetings. If the director has not been attending general meetings or board meetings very frequently then his re-appointment is recommended against.

## B. Remuneration of executive director

1. **Components of remuneration:** Remuneration of directors generally comprises of two components (i.e. fixed salary and variable salary). If the resolution proposes a higher fixed salary component, then concerns are raised by proxy advisors. Fixed component salary is considered equivalent to work without performance. With respect to the variable component proxy advisors check whether there is cap on variable pay. If there is no cap in variable pay then concerns are raised as such pay structure might lead to payment of excessive remuneration to executive directors. Pay structure of directors needs to be balanced with fixed and variable pay otherwise proxy advisors recommend voting against these resolutions.
2. **Remuneration of executive director vs board of directors as a whole:** Remuneration paid to executive director if it is more than remuneration paid to other executive directors forming part of the board then concerns are raised on such diverse remuneration practices. Disparity in remuneration within executive directors with similar qualification, experience and role/ charge is recommended to be voted against. Shareholders are also advised to question the company on such practices.
3. **Increase in remuneration not in sync with company performance:** If the company has grown by 10% and increase in remuneration is proposed to be done by 70% then questions are raised as to what is the rationale for such an increase in remuneration being proposed? If adequate rationale is not seen then resolution for such an increase in remuneration is recommended to be voted against
4. **Increase in remuneration vs performance of executive director during the term:** Variable pay component of executive directors' compensation is linked with performance targets set. Proxy advisors assess performance of company against these

targets set. If it is seen that the performance targets set are not achieved then performance pay is questioned. Also, companies are now linking pay packages of directors with ESG targets. So, if company has not made progress with respect to ESG parameters then variable pay is questioned. In such scenarios proxy advisors recommend voting against the resolutions.

5. **Skewed remuneration in case of promoter director:** In few cases it was seen that executive directors belonging to promoter category were drawing more remuneration than the directors in non-promoter capacity. On analysis it was also seen that the qualification, remuneration, experience of non-promoter director was more than that of the promoter directors. In spite of this fact the remuneration increase proposed for promoter director was hefty as compared to a more competent person on board. In such scenarios resolutions are recommended to be voted against and shareholders are asked to seek clarity from company on such remuneration policy.

## Conclusion

Proxy advisory recommendations on resolutions to be passed by companies play a crucial role. Shareholders base their decision considering opinions by proxy advisors. Above pointers need to be kept in mind while drafting resolutions in order for them to withstand the proxy test.

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

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000024046/appointment-of-executive-directors-and-approval-of-their-remuneration-a-proxy-advisory-perspective-experts-opinion>

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## The Compliance Officer's Role: Upholding the Code of Conduct under PIT

### Introduction:

Compliance Officer under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ['PIT Regulations'] is responsible for administering the code of conduct and other requirements under these regulations<sup>i</sup>. The Model Code of conduct as per PIT Regulations states that compliance officer would be responsible for closure of trading window, granting pre-clearance, relaxing provisions relating to contra trade, tracking of trades etc. This article highlights cases where compliance officer is held liable by SEBI for not administering the compliance with code of conduct and various other requirements under PIT Regulations and cases where he has been left without penalty.

### Failure to administer code of conduct:

SEBI investigates suspicious trading activities in the scrips of any listed company and identifies trades undertaken in the scrip by designated persons, suspicious trade etc. On identifying the trading activities SEBI investigates whether all possible compliances pertaining to the suspicious trading activity were done or not viz. whether pre-clearance was granted, whether there was a contra trade, whether name was entered in SDD etc. In this regard following are cases where SEBI has held the compliance officer liable for failure to administer the code of conduct.

- a. **SEBI Adjudication order in the matter of Marksons Pharma Ltd:** In this case SEBI had penalized compliance officer for failure to track the benpos received from Registrar and Transfer agent leading to trades by designated persons went scotfree. Compliance officer stated that the benpos received from registrar and transfer agent has lot of entries and due to shortage of manpower it is always not possible to scrutinize entire benpos. Hence the compliance officer stated he tracked selected trades of KMPs, directors etc. SEBI did not accept this argument and stated that compliance officer should have found out a way to track benpos. Reason that it is bulky enough to scrutinize cannot be an argument.<sup>ii</sup>
- b. **Settlement order in the matter of Mannapuram Finance Ltd:** In this case SEBI penalized the compliance officer for failure to administer the code of conduct due to which there was leak of UPSI and insider trading instances within the company. In this case the CFO inadvertently during an investor call stated that the company is expecting a loss in the upcoming quarter due to change in the RBI policy on gold loans. This information then got leaked in the market. In this regard the compliance officer was held responsible for failure to disclose the leaked information to market immediately and further administer the code of conduct<sup>iii</sup>.
- c. **Settlement order in the matter of DCB Bank Ltd:** In this case DCB Bank had planned to open branches at a pace more than the average annual rate at which branches are being opened by that bank every year. As branches were going to be opened at a higher pace this information was considered as UPSI. This information of opening of branches was available with certain designated persons who traded in the shares of company. Compliance officer had given pre-clearance for same. SEBI penalized the compliance

officer for not being diligent while giving pre-clearance as to whether the persons proposing to trade had access to UPSI or not?<sup>iv</sup>

- d. **SEBI Adjudication order in the matter of Radico Khaitan Ltd:** In this case it was seen that non-compliances under PIT Regulations of the erstwhile compliance officer were highlighted by the newly appointed compliance officer. The newly appointed compliance officer informed the management about various non-compliances, incorrect practices being followed with respect to administering the code of conduct, non-tracking of trades etc. by the company till now under the erstwhile compliance officer tenure. On investigation by SEBI in this regard the management and newly appointed compliance officer stated that all these lapses were under the tenure of erstwhile compliance officer. The erstwhile compliance officer deposed before SEBI that these lapses and non-compliances were due to lack of domain knowledge of PIT Regulations. Pursuant to this SEBI penalized the erstwhile compliance officer for not tracking trades, failure to administer code of conduct by not levying penalties for violation of code of conduct, not bringing to the notice of audit committee repeated non-compliances by designated persons etc.<sup>v</sup>
- e. **SEBI adjudication order in the matter of Tulsi Extrusions Ltd:** In this case SEBI questioned the pre-clearances given by compliance officer to managing director of the company for dealing in shares of company that resulted in contra trade. In this case the compliance officer argued that while seeking pre-clearance managing director mentioned that “he is going to deal in shares of company”. Hence pre-clearance was given under the genuine belief that he is going to purchase shares of company. There was no intention to permit him to enter into opposite transaction. Further it was never known that managing director would be squaring off the transaction on the same day. Compliance officer accepted that due to work exigencies he could not scan the post transaction confirmation by managing director. In this regard SEBI stated that compliance officer should have been diligent while granting pre-clearances and strict adherence to rules and regulations is necessary to maintain integrity of securities market<sup>vi</sup>.
- f. **SEBI Adjudication order in the matter of Kwaliti Ltd:** SEBI in this case held the compliance officer liable for not being diligent in implementing the code of conduct. In this case compliance officer placed details of violation of code of conduct under PIT Regulations before the managing director of the company and not before the board of directors. In this regard SEBI held that, “... *The Noticee has not placed on records, any communication wherein the Noticee brought the non-compliance by all the erring entities to the notice of Board of Directors... The Company's Code of conduct also requires the Compliance Officer to report on insider trading to the Board of Directors of the Company and in particular, provide reports to the Chairman of the Audit Committee or to the Chairman of the Board of Directors. The Noticee has contended that all details of transactions, responses in respect of the non-compliances were duly communicated to his reporting officer, Mr. Sanjay Dhingra, the then Managing Director of the Company. In this regard, I note that reporting of the non-compliances to Managing Director of the Company, is not equivalent to reporting the same to Board of Directors, especially given the fact that the said MD himself indulged in such non-compliances...*”<sup>vii</sup>. SEBI penalised the compliance officer for not being diligent in implementing the code of conduct.

**Cases where compliance officer is not held liable for failure to administer the code of conduct.**

- a. **SEBI Adjudication order in the matter of Infibeam Avenues Ltd:** There have been cases where SEBI has not held compliance officers liable as they were not part of the transaction or were not made aware of any such transactions. In this case, it is seen that despite being aware of violation being undertaken under PIT Regulations the compliance officer had not taken immediate action or the actions taken were not appropriate. In one of the cases the compliance officer had given pre-clearance to the chief financial officer when there were discussions going on for stock split. SEBI on investigation held that, *“Noticee granted the said pre-clearance on November 22, 2016, I.e., on the same day that the UPSI came into existence. However, there is no evidence on record to show that when Noticee gave the preclearance to CFO, which was on the same day as the start date of UPSI, Noticee was aware of any such meeting being held on that day or even if Noticee was aware of such a meeting, there is no evidence to show that Noticee was aware of the participants in the meetings or even what transpired in the meeting. In absence of any justifiable grounds brought on record to establish that Noticee was aware of Mr. Hiren Padhya’s access to UPSI, I am inclined to accept the contentions put forth by Noticee in this regard...”*<sup>viii</sup>. In this case SEBI had left the compliance officer as he could prove that he was not aware of UPSI or was not part of the UPSI discussion.
- b. **SEBI Adjudication order in the matter of Dynamatic Technologies Ltd:** In this case the compliance officer was left without penalty as he demonstrated that there were systems in place to administer the code of conduct. Compliance officer demonstrated to SEBI various efforts taken in administering the code of conduct under PIT viz. Confidentiality undertakings by all employees and sharing information on "Need to Know" basis, separate audit staff, Trainings and sensitization programs, Physical demarcation of secretarial & finance team, Restriction on sensitive documents, Chinese walls concept of ring fence UPSI etc.<sup>ix</sup> These efforts highlighted to SEBI that the compliance officer had taken best possible efforts to ensure compliance with PIT Regulations.

### Conclusion:

These cases make us understand that whenever compliance officer had failed to demonstrate his efforts in compliance with PIT Regulations or was complacent towards the acts undertaken within the organisation by designated persons SEBI has held compliance officers liable. But where the compliance officers could demonstrate their efforts in ensuring compliance with PIT Regulations SEBI has not levied penalties.

This makes us understand that it is necessary for compliance officer under PIT Regulations to have processes for following:

- a. Identification of UPSI
- b. Processes for tracking of trades by designated persons on weekly basis
- c. Processes for giving pre-clearance to designated persons within the organisation.
- d. Set processes to demarcate between UPSI and material information under SEBI LODR that would also be helpful in closure of trading window.
- e. Procedure for demarcation of teams handling UPSI and standard procedures on sharing of UPSI.

Standard Operating Procedures ['SOP'] would bring in certainty and clarity throughout the organisation in the procedure for compliance with PIT Regulations. SOP would also act as a defense while deposing before enforcement authorities to demonstrate that there was no arbitrariness in complying with PIT Regulations.

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

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000024040/the-compliance-officers-role-upholding-the-code-of-conduct%C2%A0under%C2%A0insider-trading-norms-experts-opinion>

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<sup>i</sup> Reg. 9(3): Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

<sup>ii</sup> [https://www.sebi.gov.in/enforcement/orders/mar-2021/order-in-the-matter-of-marksans-pharma-limited-\\_49413.html](https://www.sebi.gov.in/enforcement/orders/mar-2021/order-in-the-matter-of-marksans-pharma-limited-_49413.html)

<sup>iii</sup> [https://www.sebi.gov.in/enforcement/orders/jun-2020/settlement-order-in-respect-of-priyanka-jain-in-the-matter-of-manappuram-finance-limited\\_46944.html](https://www.sebi.gov.in/enforcement/orders/jun-2020/settlement-order-in-respect-of-priyanka-jain-in-the-matter-of-manappuram-finance-limited_46944.html)

<sup>iv</sup> [https://www.sebi.gov.in/enforcement/orders/mar-2021/settlement-order-in-respect-of-mr-hemant-v-barve-in-the-matter-of-dcb-bank-limited\\_49551.html](https://www.sebi.gov.in/enforcement/orders/mar-2021/settlement-order-in-respect-of-mr-hemant-v-barve-in-the-matter-of-dcb-bank-limited_49551.html)

<sup>v</sup> [https://www.sebi.gov.in/enforcement/orders/mar-2024/adjudication-order-in-the-matter-of-radico-khaitan-limited\\_82427.html](https://www.sebi.gov.in/enforcement/orders/mar-2024/adjudication-order-in-the-matter-of-radico-khaitan-limited_82427.html)

<sup>vi</sup> [https://www.sebi.gov.in/enforcement/orders/apr-2021/adjudication-order-in-respect-of-pradip-jasraj-mundhera-kiran-pradip-mundhera-sunil-taparia-sanajay-taparia-and-sudarshan-taparia-in-the-matter-of-tulsi-extrusions-limited\\_49944.html](https://www.sebi.gov.in/enforcement/orders/apr-2021/adjudication-order-in-respect-of-pradip-jasraj-mundhera-kiran-pradip-mundhera-sunil-taparia-sanajay-taparia-and-sudarshan-taparia-in-the-matter-of-tulsi-extrusions-limited_49944.html)

<sup>vii</sup> [https://www.sebi.gov.in/enforcement/orders/jan-2024/adjudication-order-against-pradeep-k-srivastava-in-the-matter-of-kwality-limited\\_80552.html](https://www.sebi.gov.in/enforcement/orders/jan-2024/adjudication-order-against-pradeep-k-srivastava-in-the-matter-of-kwality-limited_80552.html)

<sup>viii</sup> [https://www.sebi.gov.in/enforcement/orders/dec-2021/adjudication-order-in-the-matter-of-infibeam-avenues-limited\\_55130.html](https://www.sebi.gov.in/enforcement/orders/dec-2021/adjudication-order-in-the-matter-of-infibeam-avenues-limited_55130.html)

<sup>ix</sup> [https://www.sebi.gov.in/enforcement/orders/may-2021/adjudication-order-in-respect-of-naveen-chandra-in-the-matter-of-dynamic-technologies-ltd\\_50054.html](https://www.sebi.gov.in/enforcement/orders/may-2021/adjudication-order-in-respect-of-naveen-chandra-in-the-matter-of-dynamic-technologies-ltd_50054.html)





## Reporting of Outstanding dues to Medium enterprises through form MSME-1?

### Introduction:

With a view to enhance the cashflow management and financial growth of Micro, Small and Medium enterprises (MSMEs), section 15 of Micro Small and Medium Enterprises Development Act 2006 (MSMED Act 2006) mandates all the businesses who buy goods and services from MSMEs to make payment to such MSMEs within 45 days from date of acceptance or deemed acceptance.

If such business is a company incorporated under Companies Act, then there is a additional requirement to notify half yearly to Registrar of Companies (ROC) if it has dealt with any MSME and has not made payment within 45 days. In this article we shall deliberate upon this requirement and try to clear a general misunderstanding in this behalf.

### Background:

On 2<sup>nd</sup> November 2018, the Ministry of Micro Small and Medium Enterprises issued a notification under section 9 of MSMED Act 2006. As per this notification, whichever company receives supply of goods or services from micro or small enterprises and the payment to be made to such enterprises is outstanding for more than 45 days, then the company should inform to central government about such outstanding payment along with the reasons for the delay.

In continuation to this circular, MCA issued an order under section 405 of Companies Act 2013. This order dated 22<sup>nd</sup> January 2019 prescribes that, all specified companies (that is, such companies who receive supplies from micro and small enterprises and fail to pay them within 45 days) should inform to ROC about the amount outstanding towards MSMEs in form MSME-1. This form has to be filed within 30 days from end of each half year.

### Who are micro and small enterprises:

Section 7 of MSMED Act 2006 provides criteria for classifying enterprises in to micro small and medium enterprises. As per this section, if an enterprise is involved in manufacturing activity, then it is a micro enterprise if its investment in plant and equipment is less than 25 lakhs and if it is involved in service providing then it is micro enterprise if its investment in equipment is less Rs. then 10 lakhs.

Similarly, if an enterprise is involved in manufacturing activity, then it will be called small enterprise if its investment in plant and machinery is between Rs 25 lakhs and 5 crores. Whereas, if it is involved in the service industry, then it is small enterprise if its investment in equipment is between Rs.10 lakhs and 2 crores.

### Applicability to which companies:

As per circular dated 2<sup>nd</sup> November 2018, this information is to be filed by companies who receive supply of, both goods, and services from micro and small enterprises. That means, the applicability of filing this form is dependent upon the fact that who are the suppliers of that company and not on the legal status of the company.

**Reporting about which MSMEs:**

Section 15 of MSMED Act 2006 *“Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance”*. Whereas both the above-mentioned circulars talk specifically about micro and small enterprises. Therefore, there arises a question that, whether the companies are required to disclose the amount outstanding to words medium enterprises as well or only that which is outstanding to words micro and small enterprises as mentioned in the circulars?

If we read section 15 of MSMED Act, it says that the buyer should pay the supplier within 45 days from date of acceptance or deemed acceptance. This section does not talk about reporting about delayed payments. Therefore, as far as making of payments within 45 days is concerned, that provision will be applicable to all enterprises including micro, small and medium. However, this is not the case with respect to reporting of delayed payments.

The requirement of reporting about the outstanding amount payable to micro and small enterprises comes from circulars dated 2<sup>nd</sup> November 2018 and 22<sup>nd</sup> January 2019. Both these circulars specifically use words ‘micro and small enterprises.’ Which means that these circulars are not applicable to medium enterprises. Therefore, the companies are not required to report about the amount outstanding to medium enterprises.

**Conclusion:**

Recently, the MCA has shifted the form MSME-1 from v2 portal of MCA website to V3 portal and therefore, this e-form shall now be a web based form. other then that, the contents of the form are also modified so as to include therein additional details like payment made to MSMEs within period of 45 days etc. due to this change, more number of companies will have to file this form after end of each half year.

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

<https://taxguru.in/company-law/reporting-outstanding-dues-medium-enterprises-form-msme-1.html>

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**NEWS UPDATES/AMENDMENTS FOR THE MONTH OF JULY 2024:**

Sr. No.	News Updates/Amendments	Link & Brief Summary
	<b>NEWS</b>	
1	SEBI mulls new asset class to fill gap between mutual funds and PMS	<p><a href="https://upstox.com/news/business-news/latest-updates/sebi-mulls-new-asset-class-to-fill-gap-between-mutual-funds-and-pms/article-102420/">https://upstox.com/news/business-news/latest-updates/sebi-mulls-new-asset-class-to-fill-gap-between-mutual-funds-and-pms/article-102420/</a></p> <p>On minimum investment, SEBI has proposed that the minimum amount for investment under the new asset class should be ₹10 lakh per investor. The proposed new asset class is aimed at curbing the proliferation of unregistered and unauthorised investment products.</p>
2	Govt plans to launch new portal for all MSMEs queries	<p><a href="https://www.business-standard.com/industry/news/govt-plans-to-launch-new-portal-for-msmes-124070900944_1.html">https://www.business-standard.com/industry/news/govt-plans-to-launch-new-portal-for-msmes-124070900944_1.html</a></p> <p>The central government is working on a web portal, Udyami Bharat, where entrepreneurs of MSMEs can access details of all schemes related to the sector run by different ministries</p>
3	Govt should look into fault lines in IBC: SBI economic research	<p><a href="https://www.thehindubusinessline.com/money-and-banking/government-should-look-into-the-fault-lines-in-the-ibc-sbi/article68385139.ece">https://www.thehindubusinessline.com/money-and-banking/government-should-look-into-the-fault-lines-in-the-ibc-sbi/article68385139.ece</a></p> <p>The Government should look into the fault lines in the IBC (Insolvency and Bankruptcy Code, 2016) set-up to reduce the time taken for the corporate insolvency resolution process, according to a report by State Bank of India's economic research department (ERD).</p>
4	M&A deals in FMCG space to accelerate in coming years, Rothschild & Co's MD says	<p><a href="https://www.livemint.com/industry/ma-deals-in-fmcg-space-to-accelerate-in-coming-years-rothschild-cos-md-says-11720610992798.html">https://www.livemint.com/industry/ma-deals-in-fmcg-space-to-accelerate-in-coming-years-rothschild-cos-md-says-11720610992798.html</a></p> <p>India's market for packaged consumer goods is expected to reach \$220 billion in 2025, up from the \$167 billion in 2023. The size is expected to grow further to \$192 billion by the end of 2024, according to a report by TeamLease Services released earlier this year.</p>
5	Space industry seeks Boost from govt to target global markets	<p><a href="https://www.livemint.com/industry/space-industry-seeks-boost-from-govt-to-target-global-markets-11720614591907.html">https://www.livemint.com/industry/space-industry-seeks-boost-from-govt-to-target-global-markets-11720614591907.html</a></p> <p>The sector has asked for budget allocations to boost creation for domestic demand and capacity -for the private sector to quadruple india's global space economy share to 8%.</p>

6	MSMEs urge RBI to allow P2P lending, crowdfunding to overcome credit gaps	<p><a href="https://www.business-standard.com/industry/news/msmes-urge-rbi-to-allow-p2p-lending-crowdfunding-to-overcome-credit-gaps-124071601014_1.html">https://www.business-standard.com/industry/news/msmes-urge-rbi-to-allow-p2p-lending-crowdfunding-to-overcome-credit-gaps-124071601014_1.html</a></p> <p>MSME have urged the Reserve Bank of India (RBI) to develop a regulatory framework for peer lending and crowdfunding to overcome credit gaps, according to an industry insider who was part of a meeting with central bank officials in Mumbai last week.</p>
7	New asset class to foster innovation, raise competition, say experts	<p><a href="https://www.business-standard.com/markets/news/new-asset-class-to-foster-innovation-raise-competition-say-experts-124071700884_1.html">https://www.business-standard.com/markets/news/new-asset-class-to-foster-innovation-raise-competition-say-experts-124071700884_1.html</a></p> <p>Industry experts believe it may eat into some of the existing assets of MFs, PMS</p>
8	Stock exchanges, MIIs to face independent evaluation on eight parameters	<p><a href="https://www.business-standard.com/markets/stock-market-news/stock-exchanges-miis-to-face-independent-evaluation-on-eight-parameters-124071600974_1.html">https://www.business-standard.com/markets/stock-market-news/stock-exchanges-miis-to-face-independent-evaluation-on-eight-parameters-124071600974_1.html</a></p> <p>Stock exchanges and other market infrastructure institutions (MIIs) — considered the backbone of the stock market ecosystem — will soon be tested on eight broad parameters by an independent reviewer. Based on how they stack up, a rating could be assigned to them.</p>
9	Auditer's role must transcend from verification to accessing material risks: RBI DG Rao	<p><a href="https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/auditors-role-must-transcend-from-verification-to-assessing-material-risks-rbi-dg-rao/111615738?action=profile_completion&amp;dt=2024-07-10&amp;em=aGFzdGl2b3JhQG1tamMuaW4=">https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/auditors-role-must-transcend-from-verification-to-assessing-material-risks-rbi-dg-rao/111615738?action=profile_completion&amp;dt=2024-07-10&amp;em=aGFzdGl2b3JhQG1tamMuaW4=</a></p> <p>RBI's Deputy general M Rajeshwar Rao said that the role of Auditor must transcend from just verifying financial statements to holistically access material risks being posed by the business operations and business models pursued by entity.</p>
10	Insolvency law fosters healthy credit culture: NFRA chief Pandey	<p><a href="https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/insolvency-law-fosters-healthy-credit-culture-nfra-chief-pandey/111622233?action=profile_completion&amp;dt=2024-07-10&amp;em=aGFzdGl2b3JhQG1tamMuaW4=">https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/insolvency-law-fosters-healthy-credit-culture-nfra-chief-pandey/111622233?action=profile_completion&amp;dt=2024-07-10&amp;em=aGFzdGl2b3JhQG1tamMuaW4=</a></p> <p>Ajay Bhushan Pandey, Chairman of NFRA emphasized the importance of insolvency law for a healthy credit culture and its role in unlocking capital from unviable business for productive use through the resolution of bankrupt firms' stress. He highlighted the IBC has a significant role in</p>

		strengthening the economy beyond just enabling lenders to recover dues from corporate debtors.
11	Budget 2024: Govt. may relax 45 day payment rule for MSMEs	<p><a href="https://cfo.economictimes.indiatimes.com/news/policy/budget-2024-govt-may-relax-45-day-payment-rule-for-msmes/111622208?action=profile_completion&amp;dt=2024-07-10&amp;em=aGFzdGl2b3JhQG1tamMuaW4=">https://cfo.economictimes.indiatimes.com/news/policy/budget-2024-govt-may-relax-45-day-payment-rule-for-msmes/111622208?action=profile_completion&amp;dt=2024-07-10&amp;em=aGFzdGl2b3JhQG1tamMuaW4=</a></p> <p>The Government is considering relaxing the 45 day payment requirement to MSMEs to prevent large corporations from seeking other sourcing options. (Potential change to Section 43B(h) of income tax act to be announced in upcoming budget.)</p>
12	Compliances cut, MCA gets tough on flouting companies law	<p><a href="https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/compliances-cut-mca-gets-tough-on-flouting-companies-law/111593871?action=profile_completion&amp;dt=2024-07-09&amp;em=aGFzdGl2b3JhQG1tamMuaW4=">https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/compliances-cut-mca-gets-tough-on-flouting-companies-law/111593871?action=profile_completion&amp;dt=2024-07-09&amp;em=aGFzdGl2b3JhQG1tamMuaW4=</a></p> <p>Arms of MCA have stepped up enforcement action in recent quarter to ensure stricter conformity to rules even as the government reduced the compliance burden of India Inc.</p>
13	F&O volumes a macro concern, says Sebi chairperson Madhabi Puri Buch	<p><a href="https://www.business-standard.com/markets/news/f-o-volumes-now-macro-concern-says-sebi-chief-madhabi-puri-buch-124071901283_1.html">https://www.business-standard.com/markets/news/f-o-volumes-now-macro-concern-says-sebi-chief-madhabi-puri-buch-124071901283_1.html</a></p> <p>The rising volumes in the derivatives segment have now become a macro-economic issue instead of being a risk concentrated to only a few individual investors, said Madhabi Puri Buch, chairperson of the SEBI. daily turnover of FnO segment has shot up to nearly Rs 400-trillion in notional terms.</p>
14	India, Japan plan joint carbon crediting mechanism	<p><a href="https://www.thehindubusinessline.com/companies/india-japan-plan-joint-carbon-crediting-mechanism/article68420920.ece">https://www.thehindubusinessline.com/companies/india-japan-plan-joint-carbon-crediting-mechanism/article68420920.ece</a></p> <p>Carbon credits will be allocated through a structured process and there will be a registry to track these credits'</p>
	AMENDMENTS / CIRCULARS /CONSULTATION PAPERS	
1	BSE Circular	<p><a href="https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240715-7">https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240715-7</a></p> <p>Reduction in denomination of debt securities and non-convertible redeemable preference shares in denomination of debt securities and non-convertible redeemable preference shares</p>



2	BSE Circular	<a href="https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240715-9">https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240715-9</a>  Securities and Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2024
3	SEBI Amendment	<a href="https://www.sebi.gov.in/legal/regulations/jul-2024/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-amendment-regulations-2024_84775.html">https://www.sebi.gov.in/legal/regulations/jul-2024/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-amendment-regulations-2024_84775.html</a>  Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2024

