



WHITESPAN
A d v i s o r y

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

FROM THE CHIEF EDITOR'S PEN

“Unless you try to do something beyond what you have already mastered, you will never grow.”

— Ronald E. Osborn

It gives us immense pleasure to share our 44th Edition of “WINS – e-newsletter” for December, 2020. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents in timely manner, month after month. Hope we not only help you to keep yourself updated but will also save your time by bringing a brief summary of the updates in the form of Editor's Quick Take.

In this issue we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
2. Articles on:
 - i. **Appearance By A Non-lawyer In Courts**
 - ii. **New updation and FAQ's about E-invoicing under GST wef 01.10.2020**
 - iii. **Credit Guarantee Fund For Micro Units- Overview & Alterations By Management Committee**
3. Compliance checklist for the month of December 2020.

We hope all these would be of your interest and use.

We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

Your candid feedback are valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at vinayshukla@whitespan.in

with Warm Regards

WINS (Whitespan Information and News Services)

November 30, 2020

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

1. **Mr. Vinay Shukla** - Vinay is a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
1. **Ms. Jaya Yadav** - Jaya is a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
2. **Mr. Himanshu Gupta** - Himanshu is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce.
3. **Ms. Trishna Choudhary** - Trishna is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Commerce from Delhi University.
4. **Ms. Divya Shukla** - Divya is a graduate in Law and Commerce from Christ University, Bengaluru.

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Ministry of Corporate Affairs (MCA)

1. Extension of LLP Settlement Scheme, 2020

Date of notification: November 09, 2020

Effective date: November 09, 2020

Link : http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf

MCA vide its circular dated November 09, 2020 has in continuation to its General Circular No. 13/2020 dated 30.03.2020 and in the General Circular No. 31/2020 dated 28.09.2020 has extended the due date for filling of belated documents by defaulting LLP for documents due for filing till 30th November 2020.

If a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of financial year but not later than November 30, 2020, the same shall not be deemed as non-compliance.



Securities Exchange Board of India (SEBI)

1. Schemes of Arrangement by Listed Entities and (ii) Relaxation under Subrule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957

Date of Circular : November 03, 2020

Effective Date : November 17, 2020 (all the schemes filed with the stock exchanges)

Link: https://www.sebi.gov.in/legal/circulars/nov-2020/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_48064.html

The amendment indicated at Para 7 of the Annexure shall be applicable for all listed entities seeking listing and/or trading approval from the stock exchanges after November 3, 2020

SEBI vide its circular dated November 03, 2020 has amended its Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 which laid down the framework for Schemes of Arrangement by listed entities and relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957. Key highlights:

Report from the Audit Committee recommending the Draft Scheme, taking into consideration, interalia, the Valuation Report. The Valuation Report is required to be placed before the Audit Committee of the listed entity.

Report from the Committee of Independent Directors recommending the draft Scheme, taking into consideration, interalia, that the scheme is not detrimental to the shareholders of the listed entity.

All listed entities are required to submit a valuation report from a Registered Valuer

Stock Exchanges shall provide the 'No-Objection' letter to SEBI on the draft scheme; in co-ordination with each other.

SEBI shall issue Comment letter upon receipt of “No-Objection’ letter from Stock Exchanges having nationwide trading terminals. In other cases, SEBI shall issue Comment letter upon receipt of “No-Objection’ letter from the Designated Stock Exchange.

Para 7 - It shall be ensured that steps for listing of specified securities are completed and trading in securities commences within sixty days of receipt of the order of the Hon’ble High Court/NCLT, simultaneously on all the stock exchanges where the equity shares of the listed entity (or transfer entity) are/were listed. Before commencement of trading, the transferee entity in addition to disclosing the information in the form of an information document on the website of the stock exchange/s shall also give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving details as provided in the circular.

2. Creation of Security in Issuance of Listed Debt Securities and ‘Due Diligence’ by Debenture Trustee(s)

Date of Circular : November 03, 2020

Effective Date : January 01, 2021 i.e. for new issues proposed to be listed on or after January 01, 2021

Link: <https://www.sebi.gov.in/legal/circulars/nov-2020/creation-of-security-in-issuance-of-listed-debt-securities-and-due-diligence-by-debenture-trustee-s-48074.html>

SEBI vide its circular dated November 03, 2020 has issued guidelines to give effect to its regulations namely: SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“ILDS Regulations”) and SEBI (Debenture Trustees) Regulations, 1993 (“DT Regulations”).

The circular provides for Documents/ Consents required at the time of entering into debenture trustee agreement
Due diligence by debenture trustee for creation of security

Disclosures in the offer document or private placement memorandum/ information memorandum and filing of OD or PPM/ IM by the Issuer

3. Investor Grievance Redressal Mechanism

Date of Circular : November 06, 2020

Effective Date :January 01, 2020

Link: https://www.sebi.gov.in/legal/circulars/nov-2020/investor-grievance-redressal-mechanism_48105.html

SEBI vide its circular dated November 06, 2020 has with a view to strengthen the Investor Grievance Redressal Mechanism issued the following clarification:

- i. Stock Exchange shall ensure that the investor complaints shall be resolved within 15 working days from the date of receipt of the complaint.
- ii. Stock Exchange shall ensure that the investor complaints shall be resolved within 15 working days from the date of receipt of the complaint. The circular also provides for procedure of Handling of complaints by IGRC.
- iii. A complainant/member, who is not satisfied with the recommendation of the IGRC, may avail the arbitration mechanism of the Stock Exchange for settlement of complaints within six months from the date of IGRC recommendation.

4. Introduction of “Flexi Cap Fund” as a New Category under Equity Schemes

Date of Circular: November 06, 2020

Effective Date: November 06, 2020

Link: https://www.sebi.gov.in/legal/circulars/nov-2020/circular-on-introduction-of-flexi-cap-fund-as-a-new-category-under-equity-schemes_48108.html

SEBI vide its circular dated November 06, 2020 has issued a new category named “Flexi Cap Fund” under Equity Schemes:

Scheme Characteristics - A new category named “Flexi Cap Fund” under Equity Schemes

Type of scheme (uniform description of scheme) - An open ended dynamic equity scheme investing across large cap, mid cap, small cap stocks.

Mutual Funds have the option to convert an existing scheme into a Flexi Cap Fund subject to compliance with the requirement for change in fundamental attributes of the scheme in terms of Regulation 18(15A) of SEBI (Mutual Funds) Regulations, 1996.

5. Monitoring and Disclosures by Debenture Trustee(s)

Date of Circular : November 12, 2020

Effective Date: November 06, 2020

Link: <https://www.sebi.gov.in/legal/circulars/nov-2020/monitoring-and-disclosures-by-debenture-trustee-s-48159.html>

SEBI vide its circular dated November 12, 2020 has mandated issuers to submit information/ documents to Debenture Trustee(s). In order to enable debenture trustee(s) to discharge its obligations in respect of listed debt securities, the debenture trustee(s) to undertake independent periodical assessment of the compliance with covenants or terms of the issue of listed debt securities including for 'security created'.

The circular provides for:

- i. Monitoring of 'security created' / 'assets on which charge is created
- ii. Action to be taken in case of breach of covenants or terms of issue
- iii. Disclosure on website by debenture trustee
- iv. Reporting of regulatory compliance

The circular also provides for the format of certificate for asset cover by debenture trustee in respect of listed debt securities of the listed entity and compliance certificate for the half year ended september / march 20.....

6. Non-compliance with Provisions related to Continuous Disclosures

Date of Circular : November 13, 2020

Effective Date: Period ending on or after December 31, 2020

Link: https://www.sebi.gov.in/legal/circulars/nov-2020/non-compliance-with-provisions-related-to-continuous-disclosures_48171.html

SEBI vide its circular dated November 13, 2020 has order to ensure effective enforcement of continuous disclosure obligations by issuers of listed Non-Convertible Debt Securities or NCRPS or Commercial Papers, it has decided to lay down a similar uniform structure for imposing fines for non-compliance with continuous disclosure requirements after discussion with market participants.

In view of the above, in the interests of investors and the securities market, the Stock Exchanges shall levy fine and take action in case of non-compliances with continuous disclosure requirements by issuers of listed Non-Convertible Debt Securities and/ or NCRPS and/ or Commercial Papers as specified in Annexure I and Annexure II of circular respectively.

7. Introduction of Unified Payments Interface (UPI) mechanism and Application through Online interface and Streamlining the process of Public issues of securities under: • SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations), • SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (NCRPS Regulations), • SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (SDI Regulations) and • SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (ILDM Regulations)

Date of Circular : November 23, 2020

Effective Date: Public issue of securities under the captioned Regulations which opens on or after January 01, 2021

Link: https://www.sebi.gov.in/legal/circulars/nov-2020/introduction-of-unified-payments-interface-upi-mechanism-and-application-through-online-interface-and-streamlining-the-process-of-public-issues-of-securities-under-sebi-issue-and-listing-of-debt-_48235.html

SEBI vide its circular dated November 23, 2020 introduced additional modes payment for applications in public issue of debt securities through the facility of ASBA under the ASBA Circular. The circular also provides for the process flow for applying through online interface of stock exchanges or intermediaries and availing the option of blocking funds through UPI mechanism. The details of investor viz. PAN, DP ID / Client ID, entered on the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis



Reserve Bank of India (RBI)

1. Discontinuation of Returns/Reports under Foreign Exchange Management Act, 1999

Date of Notification: November 13, 2020

Effective Date :November 13, 2020

Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11994&Mode=0>

RBI vide its notification dated November 13, 2020 has with a view to improve the ease of doing business and reduce the cost of compliance, the existing forms and reports prescribed under FEMA, 1999, discontinued 17 returns/reports as listed in the annexure to the circular with immediate effect.

2. Foreign Exchange Management Act, 1999 (FEMA)- Compounding of Contraventions under FEMA, 1999

Date of Notification: November 17, 2020

Effective Date : November 17, 2020

Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11995&Mode=0>

RBI vide its notification dated November 17, 2020 has announced that the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 i.e. [Notification No. FEMA.395/2019-RB](#), both notified on October 17, 2019, by Government of India and Reserve Bank of India respectively have since superseded the earlier [Notification No. FEMA 20\(R\)/2017-RB](#). Accordingly, the compounding powers stand delegated to the Regional Offices/ Sub Offices of the Reserve Bank to compound the following contraventions:

FEMA (Non –Debt Instruments) Rules, 2019 dated October 17, 2019

1. Rule 2(k) read with Rule 5
2. Rule 21
3. Paragraph 3 (b) of Schedule I (Issue of shares without approval of RBI or Government, wherever required)
4. Rule 4 (Receiving investment in India from non-resident or taking on record transfer of shares by Investee Company)
5. Rule 9(4) and Rule 13(3)

FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations dated October 17, 2019

1. Regulation 3.1(I)(A)
2. Regulation 4(1), (2), (3), (6), (7), (11)

3. Non-Applicability of Provisions of the RBI Act to a NBFC

Date of Notification: November 18, 2020

Effective Date : November 18, 2020

Link: <http://www.egazette.nic.in/WriteReadData/2020/223173.pdf>

RBI vide its notification dated November 18, 2020 has notified that that the provisions of Sections 45-IA, 45-IB and 45-IC of the Reserve Bank of India Act, 1934 (2 of 1934) shall not apply to a non-banking financial company which is a Housing Finance Institution as defined in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987).

4. Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms

Date of Notification: November 23, 2020

Effective Date : November 23, 2020

Link: https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11997

RBI vide its notification dated November 23, 2020 has notified that no fresh permissions/ renewal of permission shall be granted by the Reserve Bank/AD Category-I banks to any foreign law firm for opening of Liaison Office in India, till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession.



Central Board of Excise and Customs (CBEC)

1. Manufacture and Other Operations in Customs Warehouse

Central Board of Indirect Taxes and Customs (CBIC) has launched a revamped and streamlined program to attract investments into India and strengthen Make in India. This program is based upon Section 65 of the Customs Act, 1962, which enables conduct of manufacture and other operations in a Customs bonded warehouse. The program has been introduced vide the Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019, (hereinafter referred to as MOOWR, 2019) and explained through Circular-34/2019- Customs dated 01st October, 2019. Under this program a unit can import goods (both inputs and capital goods) under customs duty deferment with no interest liability. There is no investment threshold or export obligation. The duties are fully remitted if the goods resulting from such operations are exported. Import duty is payable only if the resulting goods or imported goods are cleared in the domestic market (ex-bonding). CBIC through trade consultation has launched a few FAQ's on the same, available at the link below:

[FAQs manufacture inbond scheme\(MOOWR2019\).pdf \(cbic.gov.in\)](#)





Central Board of Direct Taxes (CBDT)

1. Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 10BB for Assessment Year 2016-17 and subsequent years - Reg.

Date of Circular :November 03, 2020

Effective from :November 03, 2020

Link: https://www.incometaxindia.gov.in/communications/circular/circular_19_2020.pdf

CBDT vide its circular dated November 03, 2020 has directed that:

- i. In all the cases of belated applications in filing of Form No. 10BB for years prior to AY. 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay under section 119(2)(b) of the Act. The Commissioner while entertaining such applications regarding filing Form No. 10BB shall satisfy themselves that the applicant was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed of by 31.03.2021.
- ii. where there is delay of upto 365 days in filing Form No. 10BB for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications for condonation of delay under section 119(2) of the Income-tax Act, 1961 and decide on merits.

Miscellaneous Laws

1. Mistakes Committed by Insolvency Professionals in Conduct of Corporate Insolvency Resolution Process

Date of offer : November 13, 2020

Link: <https://ibbi.gov.in/uploads/legalframework/33ce2304913fe3f24b7bd9b22b631b37.pdf>

IBBI vide its communication dated November 13, 2020 has listed out a few such mistakes with a hope that these will not be committed by any IP, pre-empting the IBBI/IPA to initiate any disciplinary action. Few mistakes listed in the communication are:

- i. Assignment without having Authorisation
- ii. Fee payable to IP
- iii. Application for cooperation
- iv. Public announcement
- v. Updating of list of claims
- vi. Authority of CoC
- vii. Appointment of professionals
- viii. Appointment of registered valuers
- ix. Payment for professional services etc.

2. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020

Date of Notification : November 13, 2020

Effective date: Date of publication in the Official Gazette

Link: <https://ibbi.gov.in/uploads/legalframework/f659d8b67003518230543dd56825fffc.pdf>

IBBI vide its notification dated November 13, 2020 has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020.

Key highlights of the amendment are:

- i. A Financial Creditor in order to substantiate the pre occurred default, has to furnish 'evidence of the default' recorded with the information utility along with the application made under Section 7.
- ii. The Board in pursuance of this power has amended the Regulations to specify/add two 'other record' or 'evidence of default' such as Certified copy of entries in the relevant account in the bankers' book, and Order of a Court or Tribunal that has adjudicated upon the non-payment of a debt
- iii. RP to intimate each claimant the principle or formulae for payment of debts under a resolution plan, within 15 days of the order of the AA approving such resolution plan.
- iv. The IRP/RP are now required to submit the list of creditors on an electronic platform for dissemination on its website.

3. Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020

Date of Notification : November 13, 2020

Effective date: Date of publication in the Official Gazette

Link: <https://ibbi.gov.in/uploads/legalframework/1c05b4c5735edfff380a650335907d9b.pdf>

IBBI vide its notification dated November 13, 2020 has notified the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020. From now on an information utility shall disseminate every public announcement it receives or has access to, on the date of its receipt or access, as the case may be, to its registered users, who are creditors of the corporate debtor undergoing insolvency proceeding under the Code.

4. The Patents (2nd Amendment) Rules, 2020

Date of Notification : November 04, 2020

Effective Date: Date of publication in the Official Gazette

Link: <http://www.egazette.nic.in/WriteReadData/2020/222947.pdf>

Ministry Of Commerce and Industry vide its notification dated November 04, 2020 has amended rule 7 of the Patents Rules, 2003 which prescribes the fees for grant of patents.

Rule 7(3) has been substituted to provide that in case an application processed by a natural person or startup or small entity is fully or partly transferred to a person other than a natural person, startup or small entity, the difference, if any, in the scale of fees between the fees charged from the natural person, startup or small entity and the fees chargeable from the person other than a natural person, startup or small entity in the same matter, shall be paid by the new applicant with the request for transfer.

Further, an explanation after sub-rule 3 has been inserted which states that Where a startup or small entity, having filed an application for a patent, ceases to be a startup or small entity due to the lapse of the period during which it is recognized by the competent authority, or its turnover subsequently crosses the financial threshold limit as notified by the competent authority, no such difference in the scale of fees shall be payable.

5. Standard Operating Procedure (SOP) for Processing FDI Proposals

Date of release : November 09, 2020

Effective Date: Date of publication in the Official Gazette

Link: <http://www.egazette.nic.in/WriteReadData/2020/222947.pdf>

Ministry of Commerce & Industry Department for Promotion of Industry & Internal Trade vide its release dated November 09, 2020 laid down the Standard Operating Procedure (SOP) for Processing FDI Proposals.

All Proposals for foreign investment in sectors/activities requiring Government approval as per the Consolidated FDI Policy dated 15.10.2020, as amended from time to time (FDI Policy) and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 dated 17.10.2019, as amended from time to time (FEM Non-Debt Instrument Rules 2019) would be filed online through the Foreign Investment Facilitation Portal (FIFP).

The applicant would be required to submit the proposal for foreign investment in terms of the guidelines and requirements under the FDI Policy, Standard Operating Procedure for processing FDI proposals, as amended from time to time (SOP) and FIFP.

The SOP for FDI proposals covers the following heads:

- i. Online Filing of Application, Competent Authorities for Approval/Rejection of Foreign Investment
- ii. Procedure for Processing of Applications Seeking Approval for Foreign Investment
- iii. Time limits for submission of various documents
- iv. Monitoring & Review

6. Re-constitution of NCLT Benches to attend regular hearings through video conferencing

Date of order : November 25, 2020

Effective Date: December 01, 2020

Link: [https://nclt.gov.in/sites/default/files/November/circulars/Re-constitution of all NCLT Benches order dated 25.11.2020.pdf](https://nclt.gov.in/sites/default/files/November/circulars/Re-constitution%20of%20all%20NCLT%20Benches%20order%20dated%2025.11.2020.pdf)

NCLT vide its order dated November 25, 2020 announced that the re-constitution of its benches to attend regular hearings through video conferencing. The benched shall hear matters of respective jurisdiction as were hearing before location (before 23 March 2020). All matters including pending before lockdown and filed during the lockdown shall be heard regularly on all working days. The benches shall sit as per Rule 9 of NCLT Rules, 2016.

Article 1

APPEARANCE BY A NON-LAWYER IN COURTS

While generally speaking only an Advocate can appear in court on behalf of another person (or that a person can represent his or her own case), in special circumstance, the court has a power to permit private person (who is not an Advocate) to appear before it in a particular case.

29. Advocates to be the only recognized class of persons entitled to practice law.—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates.

32. Power of Court to permit appearances in particular cases.—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

Supreme Court rules contains the following provision:

“Provided further that the court may, if thinks desirable to do so reason, permit any person to appear and address the Court in particular case.”

In **Harishankar Rastogi vs Girdhari Sharma And Anr. 1978 AIR 1019, 1978 SCR (3) 493**, Hon’ble Supreme Court has held:

A private person who is not an Advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may even after grant of permission withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship and reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission.

In **Goa Antibiotics & Pharmaceuticals Ltd. Vs. R.K. Chawla And Anr. on 4 July, 2011**, Hon'ble Supreme Court has held:

“[Section 32](#) of the Act, however, vests discretion in the court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. [Section 32](#) of the Act is not the right of a person (other than an enrolled advocate) to appear and argue before the court but it is the discretion conferred by the Act on the court to permit any one to appear in a particular case even though he is not enrolled as an advocate.”

“There is a distinction between the right to appear on behalf of someone, which is only given to enrolled lawyers, and the discretion in the Court to permit a non-lawyer to appear before it. Under [Sections 29](#) and [33](#) of the Act only those persons have a right to appear and argue before the court who are enrolled as an advocate while under [Section 32](#) of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power of attorney holder cannot, unless he is an enrolled lawyer, appear in Court on behalf of anyone, unless permitted by the Court under [Section 32](#) of the Act, though of course he may sign sale deeds, agreements etc. and do other acts on behalf of someone else, unless prohibited by law.”

In view of the above, if one is not an advocate, one can still appear on behalf of the party to a suit or other proceedings before the Court but only with the permission of the concerned court. The court has to exercise its discretion judiciously and has inherent right to ask the party to explain the reasons as to why a non-advocate should be permitted by the court to appear on the behalf of party in a particular proceeding. Further, it clarifies that the power to represent can't be delegated by way of power of attorney, as it is not an inherent right of a person, but a discretion of the court.

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.

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Article 2

NEW UPDATION AND FAQ'S ABOUT E-INVOICING UNDER GST WEF 01.10.2020

The Central Board of Indirect Taxes and Customs (CBIC) on Tuesday notified that GST e-invoicing will be mandatory for any firm whose turnover exceeds INR 100 crore from January 1, 2021. The limit set earlier was a turnover of INR 500 crore.

“In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020 namely:

In the said notification, in the first paragraph, with effect from the 1st day of January, 2021, for the words ‘five hundred crore rupees’, the words ‘one hundred crore rupees’ shall be substituted,” said the notification.

The changes will bring a large number of medium enterprises under the ambit of e-invoicing. It is expected that it will be made available to all taxpayers for B2B transactions from 1st April 2021.

“Inclusion of dealers with turnover between INR 100-500 Cr, within the E-invoicing gamut, is another step towards formalisation of the economy. There could be some initial hiccups in implementation, albeit, in the long run the same is likely to result in more transparency, better tax administration and automation of tax compliance and filings,”

The electronic invoicing system for business to business transactions was implemented on a mandatory basis for companies with turnover above INR 500 crore from October 1.

E-invoicing mandatory for companies with revenue over Rs 100 crore from 1st January, 2021

Previously, businesses used to generate invoices through various software's, and the details of these invoices were manually uploaded in the GSTR-1 return. The invoice information was thereafter reflected in GSTR-2A for the recipients for viewing only. On the other hand, the consignor or transporters had to generate e way bill by again importing the invoices in excel or JSON manually.

The GST Council, in its 35th meeting, decided to implement a system of e-invoicing, which would be applicable to specified categories of persons. The concept of GST e-invoice generation system was taken into consideration for the reduction in GST evasion.

Q.1 What is E-invoicing?

Ans: Electronic invoicing (e-Invoicing) is the exchange of the invoice document between a supplier and a buyer in an integrated electronic format. It is a system in which all B2B invoices are electronically uploaded and authenticated by the designated portal.

Q.2 Who is required to generate E-Invoice?

Ans: The GST e-invoicing will provide multiple categories under which the taxpayer will fill the e-invoice as per the turnover and other criteria. The CBIC had notified vide Notification No. 61/2020 – Central Tax; e-invoicing for businesses with turnover above Rs. 500 Crore, increasing the threshold for mandatory issuing of electronic invoices from the earlier limit of Rs. 100 Crore turnover providing relief to small scale companies. Once registered, the taxpayer must generate e-invoice even if the turnover decreases for less than 500 Crores in the subsequent year.

E-invoice can be generated only by suppliers. The recipients and transporters cannot generate E-Invoice. E-commerce operators can generate e-invoices on behalf of the sellers on their platforms under Rule 48(4) of CGST Rules.

Q.3 Who is not required to generate E-invoice?

Ans: The following persons are excluded from issuing e-invoice vide notification No. 13/2020-CT dated 21st Mar' 2020:

- Insurance company
- Banking company
- Financial Institution
- NBFCs
- GTA
- Supplier of passenger transportation services
- Supplier of services by way of admission to the exhibition of cinematograph films in multiplex screens
- Special Economic Zones (SEZs) (Notified vide Notification No. 61/2020- CT)

This could have been done with a view to exempt those categories of suppliers where the quantum of transactions is huge or unorganized sectors, which could pose practical difficulty in issuing e-invoices.

Q.4 What are the modes for generating E-invoice?

Ans: The various modes of generating E-invoice are:

1. Web-based – Logging into the e-invoice portal and entering the invoice data manually to generate the e-invoice.
2. API/GSP based – Third-party software (Secure Folder, Excel Connector, Direct Database Access, Interface to access ERPs (Pull) and Click Button in ERP (Push))
3. Mobile app-based – Enabling generation of e-invoice through a mobile application.
4. Offline tool based – Generating e-invoice through an offline excel tool where the data can be uploaded and exported to the IRP to generate the IRN.

Q.5 What are the misconceptions in the minds of Taxpayers?

Ans:

- Switching to electronic invoicing is a lot of work for a small return:
Studies show that the switch to electronic invoicing saves 75% of the costs of processing paper invoices. It, therefore, makes real economic sense. And this is only one of the many benefits of e-Invoicing.
- An electronic invoice does not offer the same legal guarantees as a paper invoice:
Until 2010, the legal requirements for e-Invoicing were complex and controversial. But since then, this issue has been clarified in the European VAT Directive 2010/45/EU, which sets out the invoicing rules and puts electronic and paper invoices on an equal footing. This was transposed into Belgian law on 1 January 2013. To be legally valid invoices, whatever their form (paper, PDF, electronic and structured, etc.) and version (customer copy, supplier copy, intermediate version, etc.) must comply with the following principles:
 - the authenticity of origin: the identity of the supplier of goods or services must be guaranteed.
 - content integrity: the content of the invoice cannot have been modified.
 - data readability: the invoice data must be clearly legible, on paper, or on-screen, without requiring excessive study or interpretation.

These principles, provided they are respected, make E-Invoicing as legally secure as manual invoicing.

- Involves heavy cost in the installation of E-Invoicing system:
Not much cost is involved in the installation of the system of E-invoicing. Software is required which can convert the JSON and upload it to the portal. Minimal costing is required in the installation of every new setup and the same is required in the case of E-invoicing.

Conclusion

In many countries around 3 years-time was usually provided for implementation of E-Invoicing after the final format or scheme was made available in the public domain. However, in India, the final scheme was only provided on 30th July 2020 and therefore taxpayers were only given 2 months-time in the middle of a pandemic crisis for preparation and implementation. This fact alone puts a big question on the readiness of the taxpayers. It is expected to create an additional workload on taxpayers initially, but the real challenges will unfold only when it is rolled out on a real-time basis. However, there are still some clarifications that are required from the Government on the process and legal validations of e-invoice. E-invoicing could eventually help in improving GST compliance and curbing tax evasion in long run. The e-invoice system will help to curb the actions of unscrupulous taxpayers and reduce the number of fraud cases as the tax authorities will have access to data in real-time.

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Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.

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Article 3

CREDIT GUARANTEE FUND FOR MICRO UNITS- OVERVIEW & ALTERATIONS BY MANAGEMENT COMMITTEE

What is a credit guarantee fund?

Credit guarantee fund is a type of fund which backs up the loan taken by the beneficiaries as a form of collateral. This assures the lending agencies including banks, financial institutions to readily supply loans.

Who is eligible for Cgtmse?

CGTMSE Scheme Eligibility Criteria: Under the scheme, the member lending institution which can be an NBFC also, who lend to the SME and MSME sector are eligible for a maximum credit cap of Rs. 2 crores, which in any case is meant to cover a large proportion of the loan amount.

What is Cgfm fee?

“Fund” means the Credit Guarantee Fund for Micro Units (CGFMU) set up by Government of India with the purpose of guaranteeing payment against default in micro loans extended to eligible borrowers by Banks/NBFCs/MFIs/Other financial intermediaries, managed by the Board of NCGTC as the trustee of the Fund.

How do I apply for Cgtmse scheme?

CGTMSE Scheme-Process of Loan Application

Step 1 – Form the Business Organization. Forgetting the fund for a new business, you have to form the business organization first. ... Step 2 – Prepare the Project Report or Business Plan. ...

Step 3 – Apply for the sanction of Bank Loan. ...

Step 4 – Get Coverage under CGTMSE Scheme.

What is lock in period in Cgtmse?

Prior to lender (also referred to as MLI) preferring any claim on the Trust, there shall be a lock-in-period of 18 months from either the date of last disbursement of loan to the borrower or the date of the guarantee cover coming into force in respect of the particular credit facility, whichever is later.

Further, MINISTRY OF FINANCE (Department of Financial Services) NOTIFICATION New Delhi, dated 18th April 2016 S.O. 1443(E) appearing in the Gazette of India: EXTRAORDINARY PART II—Section 3—Sub-section (ii) publishing the Credit Guarantee Fund for Micro Units (CGFMU), the following changes/alterations (given in italics & underlined) have been introduced by the Management Committee of CGFMU vide its minutes of the meeting held on March 31, 2020:

- (i) Paragraph at Serial No. 2 x in Chapter I shall read as "Collateral security" means the security provided in addition to primary security / personal obligation of borrower/co-borrower. **Primary security in respect of a credit facility shall mean the assets created out of the credit facility so extended and/or existing unencumbered assets which are directly associated with the project or business for which the credit facility has been extended (personal assets to be excluded).**
- (ii) Paragraph at Serial No. 2 xiii in Chapter I shall read as "Guarantee Cover" means maximum cover available per portfolio, based on the amount in default, in respect of the credit facility extended by the lending institution. The first 3% of the amount in default will be borne by the eligible lending institution. The amount in default over and above 3% (if applicable) will be settled by the fund to the extent of 75% on pro-rata basis, subject to the receipt of an Auditors' certificate confirming eligible claim amount.
- (iii) Following paragraph at Serial No. 2 xix in Chapter I shall be inserted

"Self Help Groups (SHGs)"– As may be defined from time to time and including, but not limited to, SHGs as defined by NABARD under two schemes of GoI – Deendayal Antodaya Yojana National Rural Livelihood Mission or DAYNRLM/SRLM and National Urban Livelihood Mission or NULM.

(iv) Title at Serial No. 4 in Chapter II shall read as Micro loans and **SHG loans** eligible under the Scheme and the following paragraph shall be added under it

Loans sanctioned to Self Help Groups (SHGs) between Rs.10 lakh and Rs. 20 lakh during FY 2020-21 and thereafter would also be eligible for coverage under CGFMU, irrespective of the availability of group guarantee of SHG members, from the date of this notification. In respect of this category, first loss guarantee shall be Nil and second loss guarantee shall be 75%. The Guarantee Fee for this group shall be 0.25% p.a. during first year and 0.5% p.a. in subsequent years. The guarantee fee shall be charged on outstanding balance at the time of sanction (on pro rata basis) and thereafter on annual basis for renewals. Credit facility to SHGs being covered here should not be backed by any collateral.

Explanation: For the purposes of this Section, the loan sanctioned to an SHG for any amount between Rs. 10 lakh and Rs. 20 lakh (say Rs. 11 lakh), the entire loan (irrespective of the loan outstanding, even if it goes below Rs.10 lakh) would be eligible for coverage under this guarantee.

(v) The following paragraphs shall be inserted under Guarantee Fee at Serial No. 8i of Chapter III

(c) Guarantee fee for SHG -The Guarantee fee would be charged at 0.25% p.a. during first year and 0.50% p.a.in subsequent years. The guarantee fee will be charged on outstanding balance at the time of sanction (on pro rata basis) and thereafter on annual basis for renewals.

d) Guarantee fee for Micro units in Aspirational Districts - The Guarantee fee would be charged against guarantee cover for micro loans located in the Aspirational Districts at lower fees of 0.5% p.a. (on prorata basis for first year) for guarantees availed on the portfolios of FY 2020-21 & FY 2021-22. This shall be reviewed at the end of two years.

(vi) Paragraph at Serial No. 9 i of Chapter IV under Extent of Guarantee shall read as :

iii. In the nature of „First Loss Portfolio Guarantee“, wherein first loss to the extent of 3% of the amount in default, will be borne by the MLI and therefore, will be excluded for the claim. Out of the balance portion, the „extent of guarantee“ will be to a maximum extent of 75% of „Amount in Default“ in the portfolio or such other percentage as may be specified by the Fund from time to time on a pro-rata basis.

Extent of Guarantee Cover in respect of SHGs- First loss Portfolio Guarantee to be borne by MLIs shall be Nil and extent of guarantee will be 75% of amount in default.

(vii) Serial No. 11. ii. under Subrogation of rights and recoveries on account of claims paid of Chapter V shall read as iv. Every amount recovered and due to be paid to the Fund shall be paid without delay, and if any amount due to the Fund remains unpaid beyond a period of 30 days from the end of FY in which it was recovered, interest shall be payable to the Fund by the lending institution at 2% over and above the prevailing repo rate for the period for which payment remains outstanding after the expiry of the said period of 30 days.

(viii) The paragraph under Appropriation of amount realized by the lending institution in respect of a credit facility after the guarantee has been invoked at Serial No. 1 of Chapter VII shall be replaced by

- a) The Lending institution shall report the recovery amount with the annual Update File and at the time of lodgement of each Claim File.
- b) The recoveries made post final claim settlement, in excess of legal costs, shall be shared on the same percentage on which final claim amount was settled i.e. Final Claim amount paid / Final Amount in Default for each MLI for each guaranteed Portfolio.
- c) Such recoveries shall be passed on an Annual basis for three years beyond the life time of the Portfolio, within 30 days of each financial year end i.e. by April 30th of Year 5 Year 6 and Year 7. At the end of Year 7, the Portfolio shall be marked as finally closed.

Other contents of the notification shall remain unchanged

Link: <http://egazette.nic.in/WriteReadData/2020/219063.pdf>

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Compliance Checklist

Compliance Calendar for December 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of November, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
 - Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2020 has been paid without the production of a challan*
 - Third instalment of advance tax for the assessment year 2021-22
 - Issue of TDS certificate for tax deducted under section 194-IA ,194-IB and 194M in the month of October, 2020*
 - Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of November, 2020*
 - Due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21*.
- Note: The due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction has been extended to December 31, 2020 vide Press Release, dated 24-10-2020.

FEMA Related Compliances

Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market
- Monthly Return on Important Financial Parameters
- Monthly statement of short term dynamic liquidity in Form ALM-I

Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS))

- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers

- Payment of ESI Contribution for the month of July

GST Related Compliance

- GSTR 1(Monthly) for October

- GSTR 3B for October 2020

- GST Annual Return Filing

Companies Act Related Compliance

- Last Due date to avail CFSS Scheme.
- Last date conduct AGM for the FY 2019-20
- Last due date for DIR-3 KYC
- Registration of Independent Director

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