



WHITESPAN  
A d v i s o r y

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

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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 43<sup>rd</sup> Edition of “WINS – e-newsletter” for November, 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. Appropriate Jurisdiction of the Court for Enforcement of an Arbitration Award
  - ii. MOOWR'2019 scheme
  - iii. Share Transfer
3. Compliance checklist for the month of November 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](mailto:vinayshukla@whitespan.in)

with Warm Regards

**WINS (Whitespan Information and News Services)**

**October 31, 2020**

**OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS**

1. **Mr. Vinay Shukla** - Mr. Vinay Shukla, 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** - Ms. Jaya Yadav, 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** - Mr. Himanshu Gupta is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce.
3. **Ms. Trishna Choudhary** - Ms. Trishna Choudhary 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** - Ms. Divya Shukla is graduate in Law and Commerce from Christ University, Bengaluru.

<b>INDEX</b>		
<b>S. No</b>	<b>Section</b>	<b>Page No.</b>
<b>1</b>	<b>Ministry of Corporate Affairs (MCA)</b>	<b>5-6</b>
<b>2</b>	<b>Securities Exchange Board of India (SEBI)</b>	<b>7-20</b>
<b>3</b>	<b>Reserve Bank of India (RBI)</b>	<b>21-23</b>
<b>4</b>	<b>Central Board of Excise and Customs (CBEC)</b>	<b>24-30</b>
<b>5</b>	<b>Central Board of Direct Taxes (CBDT)</b>	<b>31-35</b>
<b>6</b>	<b>Miscellaneous Laws</b>	<b>36-38</b>
<b>7</b>	<b>Article on Appropriate Jurisdiction of the Court for Enforcement of an Arbitration Award</b>	<b>39-42</b>
<b>8</b>	<b>Article on Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR'2019) scheme</b>	<b>43-46</b>
<b>9</b>	<b>Article Transfer of Shares under Companies Act, 2013 and FEMA</b>	<b>47-53</b>
<b>10</b>	<b>Compliance Checklist</b>	<b>54-57</b>

# Ministry of Corporate Affairs (MCA)

## **1. The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020**

**Date of notification: October 16, 2020**

**Effective date: October 16, 2020**

**Link:** [http://mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules\\_16102020.pdf](http://mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules_16102020.pdf)

MCA vide its notification dated October 16, 2020 has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 amending the Companies (Prospectus and Allotment of Securities) Rules, 2014.

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 14, in sub-rule (1), after third proviso, the following proviso shall be inserted:-

**“Provided also that in case of offer or invitation of any securities to qualified institutional buyer, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.”**

Rule 14 deals with private placement in which a company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form PAS-4. A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of Section 42. Through this amendment the proviso has been inserted under Rule 14 to provide that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.



# **Securities Exchange Board of India (SEBI)**

## 1. RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS

**Date of Circular : October 01, 2020**

**Effective Date : October 01, 2020**

**Link:** [https://www.sebi.gov.in/legal/circulars/oct-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements\\_47778.html](https://www.sebi.gov.in/legal/circulars/oct-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_47778.html)

SEBI vide its circular dated October 01, 2020 has further extended the timelines for compliance with the regulatory requirements by the trading members / clearing members, mentioned in the SEBI circulars, as under:

<b>Compliance requirements for which timelines were extended vide SEBI Circular SEBI/HO/MIRSD/ DOP/CIR /P/2020/ 61 dated April 16, 2020.</b>	<b>S. No. for which timeline is extended</b>	<b>Extended timeline / Period of exclusion</b>
Maintaining call recordings of orders/instructions received from clients.	XI	December 31, 2020
<b>Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/ 62 dated April 16, 2020</b>	<b>S. No. for which timeline is extended</b>	<b>Extended timeline / Period of exclusion</b>
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days	III	Period of exclusion shall be from March 23, 2020 till December 31, 2020.
<b>Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/141 dated July 29, 2020</b>	<b>S. No. for which timeline is extended</b>	<b>Extended timeline / Period of exclusion</b>
Cyber Security & Cyber Resilience Audit for the year ended March 31, 2020	-	December 31,2020



## **2. STANDARDIZATION OF TIMELINE FOR LISTING OF SECURITIES ISSUED ON A PRIVATE PLACEMENT BASIS UNDER :**

- i. [SEBI \(Issue and Listing of Debt Securities\) Regulations, 2008 \(SEBI ILDS\).](#)
- ii. [SEBI \(Issue and Listing of Non-Convertible Redeemable Preference Shares\) Regulations, 2013 \(SEBI NCRPS\).](#)
- iii. [SEBI \(Public Offer and Listing of Securitised Debt Instruments and Security Receipts\) Regulations, 2008 \(SEBI SDI\) and](#)
- iv. [SEBI \(Issue and Listing of Municipal Debt Securities\) Regulations, 2015 \(SEBI ILDM\).](#)

**Date of Circular : October 05, 2020**

**Effective Date :December 01, 2020**

**Link:** [https://www.sebi.gov.in/legal/circulars/oct-2020/standardization-of-timeline-for-listing-of-securities-issued-on-a-private-placement-basis\\_47790.html](https://www.sebi.gov.in/legal/circulars/oct-2020/standardization-of-timeline-for-listing-of-securities-issued-on-a-private-placement-basis_47790.html)

SEBI vide its circular dated October 05, 2020 has prescribed following timelines for listing of securities issued on private placement basis:

S.No.	Details of activities	Due date
1	Closure of issue	T day
2	Receipt of funds	To be completed by T+2 trading day
3	Allotment of securities	
4	Issuer to make listing application to Stock Exchange(s)	To be completed by T+4 trading day
5	Listing permission from Stock Exchange(s)	

In case of delay in listing of securities issued on privately placement basis beyond the timelines specified above, the issuer shall be liable to;

- Pay penal interest of 1% p.a. over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing)
- be permitted to utilise the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from Stock Exchanges.

### **3. EXTENSION OF FACILITY FOR CONDUCTING EXTRAORDINARY MEETING(S) OF UNIT HOLDERS OF INVITS AND REITS THROUGH VIDEO CONFERENCING OR OTHER AUDIO-VISUAL MEANS (VC/OAVM)**

**Date of Circular : October 08, 2020**

**Effective Date : October 08, 2020**

**Link:** <https://www.sebi.gov.in/legal/circulars/oct-2020/extension-of-facility-for-conducting-extraordinary-meeting-s-of-unit-holders-of-invits-and-reits-through-video-conferencing-or-other-audio-visual-means-vc-oavm-47815.html>

SEBI vide its circular dated October 08, 2020 has in view of COVID-19 pandemic extended the facility for conducting extraordinary meetings of unit holders INVIT's and REIT's through video conferencing or other audio-visual means under the InvIT Regulations and REIT Regulations till December 31, 2020.

#### **4. GUIDELINES ON INTER SCHEME TRANSFERS OF SECURITIES**

**Date of Circular : October 08, 2020**

**Effective Date : January 01, 2020**

**Link:** [https://www.sebi.gov.in/legal/circulars/oct-2020/circular-on-guidelines-on-inter-scheme-transfers-of-securities\\_47817.html](https://www.sebi.gov.in/legal/circulars/oct-2020/circular-on-guidelines-on-inter-scheme-transfers-of-securities_47817.html)

SEBI vide its circular dated October 08, 2020 has issued guidelines on inter scheme transfers of securities. Presently, transfers of securities from one scheme to another scheme in the same mutual fund is allowed only if such transfers are done at the prevailing market price for quoted instruments on spot basis and the securities so transferred are in conformity with the investment objective of the scheme to which such transfer has been made.

In order to ensure that such Inter Schemes Transfers (ISTs) of securities are in conformity with the above objective, following additional safeguards have been prescribed:

1. In case of Close Ended Schemes, IST purchases would be allowed within “three” business days of allotment pursuant to New Fund Offer (NFO) and thereafter, no ISTs shall be permitted to/from Close Ended Schemes.
2. In case of Open Ended Schemes, ISTs may be allowed in the following scenarios as prescribed in the circular.

No ISTs of a security shall be allowed, if there is negative news or rumors in the mainstream media or an alert is generated about the security, based on internal credit risk assessment in terms of clause “F” of SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/104 dated October 01, 2019 during the previous four months.

Please refer: [https://www.sebi.gov.in/legal/circulars/oct-2019/review-of-investment-norms-for-mutual-funds-for-investment-in-debt-and-money-market-instruments\\_44556.html](https://www.sebi.gov.in/legal/circulars/oct-2019/review-of-investment-norms-for-mutual-funds-for-investment-in-debt-and-money-market-instruments_44556.html)

## **5. REVISED FAQ'S ON SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015**

**Date of release : October 08, 2020**

**Link:** [https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/oct-2020/revised-faqs-on-sebi-prohibition-of-insider-trading-regulations-2015\\_47816.html](https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/oct-2020/revised-faqs-on-sebi-prohibition-of-insider-trading-regulations-2015_47816.html)

SEBI on October 08, 2020 has released revised FAQ's on SEBI (Prohibition of Insider Trading) Regulation, 2015.

**Question:** Whether trading in ADRs and GDRs by employees of Indian companies who are foreign nationals is covered under provisions of PIT Regulations on code of conduct?

**Answer:** Yes, trading in ADRs and GDRs of listed companies is covered under relevant provisions of PIT Regulations. Employees of such companies, including foreign nationals, who are designated persons, shall be required to follow the code of conduct for trading in ADRs and GDRs. For such disclosures by such designated persons, a unique identifier analogous to PAN may be used

**Question:** What information should a listed Company maintain in its structured digital database under Regulation 3(5), in case the designated person is a fiduciary or intermediary?

**Answer:** The listed company should maintain structured digital database internally, which shall contain information including the following:

- (i) Details of the Unpublished Price Sensitive Information (UPSI);
- (ii) Details of persons with whom such UPSI is shared (along with their PANs/other unique identifier) and details of persons who have shared the information.

For example: The listed company (X) has appointed a Law firm or Merchant Banker (Y) in respect of fund raising activity and (A) from listed company has shared the said UPSI with (B) of Law firm or Merchant Banker.

The structured digital database of (X) should capture the nature of UPSI shared, details of (A), (Y) and (B), along with their PAN or other unique identifier (in case PAN is not available).

The Law firm or the Merchant Banker (Y) shall in turn maintain another structured digital database internally capturing the nature of UPSI received/shared, details of (X), (A) and (B) along with their PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C.]

**Question:** In case a designated person resigns, what information should be collected by the company/ intermediary/ fiduciary under PIT Regulations?

**Answer :** All information which is required to be collected from designated persons, should be collected till date of service of such employees with the company. Upon resignation from service of designated person, a company/ intermediary/ fiduciary should maintain the updated address and contact details of such designated person. The company/ intermediary/ fiduciary should make efforts to maintain updated address and contact details of such persons for one year after resignation from service. Such data should be preserved by the company/ intermediary/ fiduciary for a period of 5 years.



## **6. SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2020**

**Date of Circular : October 08, 2020**

**Effective Date: October 08, 2020**

**Link:** [https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020\\_47821.html](https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020_47821.html)

SEBI vide its circular dated October 08, 2020 has notified the SEBI (LODR) third amendment Regulations , 2020 to further amend the SEBI (LODR) Regulation 2015. Key Highlights of the Amendment are as follow:

1. In regulation 54,
  - a. sub-regulation (1) shall be substituted by the following, namely, —

“(1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred percent. asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.”
  - b. sub-regulation 3 shall be omitted.
2. In regulation 56,
  - a. in sub-regulation (1),in clause (c),the following new sub-clause shall be inserted after the existing sub-clause (iii), namely,-

“(iv)All covenants of the issue(including side letters, accelerated payment clause, etc.)”
  - b. in sub-regulation (1), the existing clause (d) along with the proviso, shall be substituted with the following, namely,-

“(d) a half-yearly certificate regarding maintenance of hundred percent asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed



non-convertible debt securities, by the statutory auditor, along with the half-yearly financial results:

Provided that the submission of half yearly certificate is not applicable where bonds are secured by a Government guarantee.”

3. In Schedule III,

a. in Part A, under the Clause A, after the existing sub-clause 16, the following new sub-clause shall be inserted, namely,-

“17. Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities:

- a) The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available;
- b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any.”

## **7. STANDARDIZATION OF PROCEDURE TO BE FOLLOWED BY DEBENTURE TRUSTEE(S) IN CASE OF 'DEFAULT' BY ISSUERS OF LISTED DEBT SECURITIES.**

**Date of Circular : October 13, 2020**

**Effective Date: October 13, 2020**

**Link:** [https://www.sebi.gov.in/legal/circulars/oct-2020/standardisation-of-procedure-to-be-followed-by-debenture-trustee-s-in-case-of-default-by-issuers-of-listed-debt-securities\\_47855.html](https://www.sebi.gov.in/legal/circulars/oct-2020/standardisation-of-procedure-to-be-followed-by-debenture-trustee-s-in-case-of-default-by-issuers-of-listed-debt-securities_47855.html)

SEBI vide its circular dated October 13, 2020 has prescribed the process to be followed by the Debenture Trustee(s) in case of 'Default' by issuers of listed debt securities including seeking consent from the investors for enforcement of security and/or entering into an Inter-Creditor Agreement ("ICA"). Key highlights of the circular are as follows :

1. The Debenture Trustee(s) shall send a notice to the investors within 3 days of the event of default by registered post/acknowledgement due or speed post/acknowledgement due or courier or hand delivery with proof of delivery as also through email as a text or as an attachment to email with a notification including a read receipt, and proof of dispatch of such notice or email, shall be maintained.
2. The notice shall contain the following:
  - negative consent for proceeding with the enforcement of security;
  - Positive consent for signing the ICA;
  - The time period within which the consent needs to be provided, viz. consent to be given within 15 days from the date of notice; and
3. Debenture Trustee(s) shall convene the meeting of all investors within 30 days of the event of default.
4. The consent of the majority of investors shall mean the approval of not less than 75% of the investors by value of the outstanding debt and 60% of the investors by number at the ISIN level.

## **8. SEBI (ALTERNATIVE INVESTMENT FUNDS) (AMENDMENT) REGULATIONS, 2020**

**Date of Notification : October 19, 2020**

**Effective Date: October 19, 2020**

**Link:** <https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2020-47914.html>

SEBI vide its notification dated October 19, 2020 has notified the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2020. The amendment prescribes for the qualifications to the key investment team of the Manager of the Alternative Investment Fund.

- Adequate experience, with at least one key personnel having not less than five years of experience in advising or managing pools of capital or in fund or asset or wealth or portfolio management or in the business of buying, selling and dealing of securities or other financial assets;
- At least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute or any other qualification as may be specified by the Board.

The amendment also provides for constitution of an investment committee.

## **9. CONTRIBUTION BY ISSUERS OF LISTED OR PROPOSED TO BE LISTED DEBT SECURITIES TOWARDS CREATION OF “RECOVERY EXPENSE FUND”**

**Date of Circular : October 22, 2020**

**Effective Date : January 01, 2021**

**Link:** <https://www.sebi.gov.in/legal/circulars/oct-2020/contribution-by-issuers-of-listed-or-proposed-to-be-listed-debt-securities-towards-creation-of-recovery-expense-fund-47939.html>

SEBI vide its circular dated October 22, 2020 has directed that in case of ‘default’ in listed debt securities, a ‘Recovery Expense Fund’(REF) shall be created which shall be used in the manner as decided in the meeting of the holders of debt securities.

The issuer proposing to list debt securities shall deposit an amount equal to 0.01% of the issue size subject to maximum of Rs.25 lakhs per issuer towards REF with the ‘Designated Stock Exchange’, as identified and disclosed in its Offer Document/ Information Memorandum.

The existing issuers whose debt securities are already listed on Stock Exchange(s) shall be given additional time period of 90 days to comply with this circular for creation of REF.

Please refer the circular for the details regarding manner of creation and operation of REF, manner of utilization of Recovery Expense fund and Refund of Recovery Expenses fund to the issuer.

## **10. CLARIFICATION ON SEBI CIRCULAR SEBI/HO/OIAE/IGRD/CIR/P/2020/152 DATED 13 AUGUST, 2020 ON INVESTOR GRIEVANCES REDRESSAL MECHANISM –HANDLING OF SCORES COMPLAINTS BY STOCK EXCHANGES AND STANDARD OPERATING PROCEDURE FOR NON-REDRESSAL OF GRIEVANCES BY LISTED COMPANIES.**

**Date of Circular : October 22, 2020**

**Effective Date: October 22, 2020**

**Link:** <https://www.sebi.gov.in/legal/circulars/oct-2020/clarification-on-sebi-circular-sebi-ho-oiae-igrd-cir-p-2020-152-dated-13-august-2020-on-investor-grievances-redressal-mechanism-handling-of-scores-complaints-by-stock-exchanges-and-standard-operati-47953.html>

SEBI vide its circular dated October 22, 2020 has issued a clarification on its earlier Circular No. [SEBI/HO/OIAE/IGRD/CIR/P/2020/152](#) dated August 13, 2020 on Investor grievances redressal mechanism on handing of SCORES complaints by stock exchanges and Standard Operating Procedure for non-redressal of grievances by listed company. The changes are such that in respect of Paras 16, 27, 32 and Point 2c of Annexure -1 to the said circular, please read the words “promoter and promoter group” and “promoter or promoter group” as “promoter(s)” and will now be read as:-

- Para 16: In case the listed entity fails to comply with the aforesaid requirement and or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such entity as well as all other securities held in the demat account of the promoter(s).
- Para 27: In case the promoters’ shareholding is frozen by the exchange, an intimation shall be given to depositories to unfreeze the promoter(s) holdings from the date of such compliance.
- Para 32: The recognized stock exchanges are advised to bring the provisions of this Circular to the notice of listed entities and the listed entities shall in turn bring the same to the notice of their promoter(s).
- Point 2c of Annexure-1: Freezing of promoters shareholdings (i.e. entire shareholding of the promoter(s) in listed company as well as all other securities held in the demat account of the promoter(s) in demat account.

[SEBI Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2020/208]



## **11. EXTENSION OF THE SETTLEMENT SCHEME 2020**

**Date of Public Notice: October 31, 2020**

**Link:** [https://www.sebi.gov.in/media/public-notices/oct-2020/public-notice-in-respect-of-extension-of-the-sebi-settlement-scheme-2020\\_48049.html](https://www.sebi.gov.in/media/public-notices/oct-2020/public-notice-in-respect-of-extension-of-the-sebi-settlement-scheme-2020_48049.html)

SEBI vide its public notice dated October 31, 2020 extended the Settlement Scheme introduced by it, which proposes to provide a onetime settlement opportunity to those entities that have executed trade reversals in the stock options segment of BSE during the period from April 01, 2014 to September 30, 2015 and against whom enforcement proceedings have been approved by SEBI.

The period of the Scheme commenced on August 01, 2020 and was to end on October 31, 2020. In view of the large scale disruption caused by the Covid - 19 pandemic, many representations were received by SEBI, seeking extension of the period of the Scheme.

Upon consideration of the same, the competent authority has approved the extension of the period of the Scheme till December 31, 2020.





**WHITESPAN**  
Advisory

# **Reserve Bank of India (RBI)**

## **1. REVIEW OF REGULATORY FRAMEWORK FOR HOUSING FINANCE COMPANIES (HFCS DATE OF CIRCULAR : OCTOBER 12, 2020)**

**Date of Notification: October 22, 2020**

**Effective Date :October 22, 2020**

**Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11988&Mode=0>**

RBI vide its notification dated October 12, 2020 has issued a revised set of guidelines for housing finance companies.

RBI has issued revised regulatory framework for HFCs with the changes in the Principal business and housing finance i.e. definition of “Housing finance company” and “Housing Finance”; Net Owned Fund (NOF) Requirement; Applicability of directions issued by Reserve Bank and Exposure of HFCs to group companies engaged in real estate business. HFCs are exempted from section 45-IB (prescribing maintenance of percentage of assets) and section 45-IC (prescribing Reserve fund) of the Reserve Bank of India Act. Necessary Notification in this regard will be issued in due course.

## **2. CONSOLIDATED FDI POLICY, 2020**

**Date of Notification: October 15, 2020**

**Effective Date : October 15, 2020**

**Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11988&Mode=0>**

Department for Promotion of Industry and Internal Trade Ministry of Commerce and Industry Government of India, released the consolidated FDI Policy with respect to FDI in various sectors wef October 15, 2020.

Foreign Direct Investment (FDI) is considered as a major source of non-debt financial resource for the economic development. FDI flows into India have grown consistently since liberalization and are an important component of foreign capital since FDI infuses long term sustainable capital in the economy and contributes towards technology transfer, development of strategic sectors, greater innovation, competition and employment creation amongst other benefits. Therefore, it is the intent and objective of the Government of India to attract and promote FDI in order to supplement domestic capital, technology and skills for accelerated economic growth and development. FDI, as distinguished from Foreign Portfolio Investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor.

The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by the DPIIT, which were in force as on October 15, 2020 and reflects the FDI Policy as on October 15, 2020. This Circular accordingly will take effect from October 15, 2020 and will remain in force until Consolidated FDI Policy 2020 Department for Promotion of Industry and Internal Trade 6 superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.



# Central Board of Excise and Customs (CBEC)

## **1. FACELESS ASSESSMENT - MEASURES FOR TIMELY ASSESSMENT OF BILLS OF ENTRY AND CLARIFICATION ON DEFAACEMENT OF PHYSICAL DOCUMENTS - REG.**

**Date of Circular : October 12, 2020**

**Effective Date :October 12, 2020**

**Link:** <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-45-2020.pdf>

CBIC vide its circular dated October 12, 2020 has issued faceless assessment -measures for the timely assessment of bills of entry and clarification on defacement of physical documents. The CBIC has proposed various measures for faceless assessment including, to avoid delays for the export of the items which are perishable in nature, Saturdays have been made working days for faceless assessment; All the time-sensitive imports shall be monitored at the port so that there are no delays; there is a need to ensure that queries are minimized to the extent necessary for carrying out the assessment; Trade maybe asked to upload at the first instance only, supporting documents like product/technical literature and mandatory documents, certificates, which would help avoid queries and delays; Where an importer requests First Check on a regular basis, the FAG officers and the NAC must take due care that this the request is genuine and is not being routinely used to avoid self-assessment. Further, a Turant Suvidha Kendra (TSK) at the Port of Import would act as a Facilitation Helpdesk for any grievance related to clearances of the B/E filed in the port.

## **2. THE CENTRAL GOODS AND SERVICES TAX (TWELVETH AMENDMENT) RULES, 2020**

**Date of Circular : October 15,2020**

**Effective Date: October 15, 2020**

**Link:** <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-79-central-tax-english 2020. pdf;jsessionid=59526A62EF E1F813C078AA 89753BC873>

CBIC vide its circular dated October 15, 2020 has notified the Central Goods and Service Tax ( Tweleth Amendment ) Rules, 2020 to further amend the Central Good & Services Tax Rules , 2017. Key changes under the amendment are as follows :

### **67A, shall be substituted as**

“67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.- Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP-08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Explanation. - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be.”.



<p>In rule 80, in sub-rule (3), for the proviso shall be substituted as : -</p>	<p>“Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”</p>
<p>With effect from the 20th day of March, 2020, in rule 138E, after the third proviso, the proviso shall be inserted :-</p>	<p>“Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP08, as the case may be, has not been furnished for the period February, 2020 to August, 2020”.</p>

### **3. REVISE NUMBER OF DIGITS OF HARMONISED SYSTEM OF NOMENCLATURE CODE (HSN CODE)**

**Date of Notification : October 15,2020**

**Effective Date: April 01, 2020**

**Link: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-78-central-tax-english 2020.pdf ;jsessionid=804C883B4 D8D87712293 2747472CFC53>**

CBIC vide its notification dated October 15,2020 has revise the Number of Digits of Harmonised system of Nomenclature Code (HSN Code).

<b>Serial Number</b> <b>(1)</b>	<b>Aggregate Turnover in the preceding Financial Year</b> <b>(2)</b>	<b>Number of Digits of Harmonised System of Nomenclature Code (HSN Code)</b> <b>(3)</b>
<b>1</b>	Up to rupees five crores	<b>4</b>
<b>2</b>	more than rupees five crores	<b>6</b>

A registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.

#### **4. REVISED DUE DATE FOR THE RETURN IN FORM GSTR-3B FROM OCTOBER, 2020 TO MARCH, 2021**

**Date of Notification : October 15,2020**

**Link:** <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-76-central-tax-english2020.pdf;jsessionid=A216CF6794F209A2741A95EBDBE5F646>

CBIC vide its notification dated October 15, 2020 has revise the due date for the Return in Form GSTR-3B From October, 2020 to March 2021 are as follows:

Return in FORM GSTR-3B for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month.	<u>having an aggregate turnover of up to five crore rupees in the previous financial year</u> , whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep,
Return in <b>FORM GSTR-3B</b> for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the <b>twenty-fourth day of the month succeeding such month.</b>	<b><u>having an aggregate turnover of up to five crore rupees in the previous financial year</u></b> , whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

**Payment of taxes for discharge of tax liability as per FORM GSTR-3B.**

Every registered person furnishing the return in **FORM GSTR-3B** shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax by debiting the electronic cash ledger or electronic credit ledger, as the case may be and his liability towards interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return



# Central Board of Direct Taxes (CBDT)

**1. ORDER UNDER SECTION 119 OF THE INCOME TAX ACT, 1961 FOR EXERCISING POWER OF INTRUSIVE OR COERCIVE ACTION FOR RECOVERY OF TAX DEMAND BY ASSESSING OR TAX RECOVERY OFFICERS.**

**Date of Circular :October 16, 2020**

**Effective from :October 16,2020**

**Link:**[https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/422/Order\\_US119\\_ITA\\_for\\_exercising\\_power\\_intrusive\\_coercive\\_action\\_16\\_10\\_20.pdf](https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/422/Order_US119_ITA_for_exercising_power_intrusive_coercive_action_16_10_20.pdf)

CBDT vide its order dated October 16,2020 has restricted the coercive or intrusive powers of tax officers in case of tax recoveries, with immediate effect. Recovery surveys should be resorted only in cases where the taxpayer or defaulter is not responding to the notices. Further, such powers should be exercised only as a last resort after other means of recovery have been exhausted. It may be noted that as per amended Section u/s 133A, the Surveys can be conducted only by the officers of Investigation and TDS wings. With respect to the attachment of movable or immovable property, the extant procedure in the Income-tax Act, Rules, Manuals and guidelines may be followed. TROs should strictly follow provisions of the Second Schedule of the Income-tax Act, 1961 subject to above guidelines mentioned in sub-para A and B above. Before attachment of movable and immovable property, the AO or TRO shall take prior approval of Pr. CIT/Pr. DIT/CIT/DIT concerned.



## **2. TOLERANCE/VARIATION LIMIT BETWEEN ARM'S LENGTH PRICE U/S 92C.**

**Date of Notification :October 19, 2020**

**Effective from :October 19,2020**

**Above Notification is available at the following link:**

**[https://www.incometaxindia.gov.in/communications/notification/notification\\_83\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_83_2020.pdf)**

CBDT vide its notification dated October 19, 2020 has notified the tolerance/variation limit between arm's length price u/s 92C and the actual price for international/specified domestic transactions for AY 2020-2021. Further, the price at which the international transaction or specifies domestic transaction that has happened and has not exceeded the one percent of the latter in respect of wholesale trading shall be deemed as an arms-length price for the assessment year 2020-21.

***Explanation:-*** For the purposes of this notification, “wholesale trading” means an international transaction or specified domestic transaction of trading in goods, which fulfills the following conditions, namely:-

- (i) purchase cost of finished goods is eighty percent. or more of the total cost pertaining to such trading activities; and
- (ii) the average monthly closing inventory of such goods is ten percent. or less of sales pertaining to such trading activities.

### **3. EXTENSION OF DUE DATE OF FURNISHING OF INCOME TAX RETURNS AND AUDIT REPORTS**

**Date of Press Release :October 24, 2020**

**Link:**[https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/864/PressRelease\\_Extension\\_of\\_due\\_date\\_of\\_furnishing\\_of IITR and Audit Reports 24 10 20.pdf](https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/864/PressRelease_Extension_of_due_date_of_furnishing_of_IITR_and_Audit_Reports_24_10_20.pdf)

**CBDT vide its notification dated October 24, 2020 has Extended the due date for all Income Tax return for the FY 2019-20 (AY 2020-21) to 30<sup>th</sup> November 2020.** , it has been decided to further extend the due date for furnishing of Income-Tax Returns as under:

<b>Particulars</b>	<b>Extended Date</b>
The due date for furnishing of Income Tax Returns for the taxpayers (including their partners) who are required to get their accounts audited [for whom the due date (i.e. before the extension by the said notification) as per the Act is 31st October, 2020.	31st January, 2021
The due date for furnishing of Income Tax Returns for the taxpayers who are required to furnish report in respect of international/specified domestic transactions [for whom the due date (i.e. before the extension by the said notification) as per the Act is 30th November, 2020.	31st January, 2021
The due date for furnishing of Income Tax Returns for the other taxpayers [for whom the due date (i.e. before the extension by the said notification) as per the Act was 31st July, 2020.	31st December, 2020

Particulars	Extended Date
date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction	31st December, 2020.
in order to provide relief to small and middle class taxpayers, the said notification dated 24th June, 2020 had also extended the due date for payment of self-assessment tax for the taxpayers whose self-assessment tax liability is up to Rs. 1 lakh. Accordingly, the due date for payment of self-assessment tax for the taxpayers who are not required to get their accounts audited was extended from 31st July, 2020 to 30th November, 2020 and for the auditable cases	30 <sup>th</sup> November 2020
In order to provide relief for the second time to small and middle class taxpayers in the matter of payment of self-assessment tax, the due date for payment of self-assessment tax date is hereby again being extended. Accordingly, the due date for payment of self-assessment tax for taxpayers whose self-assessment tax liability is up to Rs. 1 lakh	31st January, 2021

# Miscellaneous Laws

## **1. LAUNCH OF DIRECT REMITTANCE (D-REMIT)**

**Date of Circular : October 01,2020**

**Effective Date : October 01,2020**

**Link: <https://www.pfrda.org.in/myauth/admin/showimg.cshtml?ID=1805>**

Pension fund regulatory and Development Authority vide its circular dated October 01, 2020 has launched Direct remittance where in the existing NPS subscribers under government / Non - Government / all citizen model would be able to deposit their voluntary contributions by creating a virtual ID linked to their Permanent Retirement Account Number (PRAN).

Post authorization of virtual ID, Subscriber can log-in to their Net Banking and add Virtual ID generated as above as a beneficiary, with IFSC UTIB0CCH274, to transfer their Voluntary contributions.

The CRA links for generating virtual IDs are as under:

A. <https://cra-nsdl.com/CRAOnline/VirtualIdCreation.html>.

B. <https://enps.kfintech.com/dremit/preloginderemit/>



## **2. MEETINGS OF THE DISCIPLINARY COMMITTEE AND APPELLATE PANEL OF THE RVOS**

**Date of Release : October 09,2020**

**Effective Date : October 09, 2020**

**Link:** <https://ibbi.gov.in/uploads/legalframwork/cf9ad8a8390be1d25f9443da720c11c5.pdf>

IBBI vide its circular dated October 09,2020 has standardised meeting norms of the Disciplinary Committee and Appellate Panel of RVOs. The guidelines prescribe that meeting of the Disciplinary Committee (DC) and Appellate Panel (AP) should be held only if there is an agenda for the meeting. Meetings to be held preferably, through Video Conferencing (VC) facility, keeping in view the current pandemic. The quorum of the conferences must be as offered within the Bye Legal guidelines of the RVO however must be a minimum of two members together with the Chairperson. Additionally, if a member of the committee is expounded to the particular person in opposition to whom the motion is proposed by the DC or AP, or there's every other subject of the battle of curiosity, the member must recuse himself/herself from the proceedings. Additionally, the tenure of the IBBI's nominee shall, usually, be for 2 years from the date of appointment, until determined in any other case by IBBI.

# Article 1

## **APPROPRIATE JURISDICTION OF THE COURT FOR ENFORCEMENT OF AN ARBITRATION AWARD**

In case titled “**Sundaram Finance Vs. Abdul Samad & Anr. (Civil Appeal No 1650 of 2018)**” decided on **15.02.2018**, the Hon'ble Supreme Court of India has clarified the anomaly with regard to the appropriate jurisdiction for enforcement of an arbitral award. The Hon'ble Supreme Court has held that enforcement of an Arbitral Award under the Arbitration and Conciliation Act, 1996 may be filed in any jurisdiction in the country, for execution, where such decree is capable of being executed.

### **Facts:**

The Appellant in the present case initiated arbitration proceedings against Respondents for breach of a loan agreement. An *ex-parte* award was passed in favour of the Appellant. When the Award was filed for execution before the District Court, Morena, Madhya Pradesh, the Respondents sought to contest the proceedings inter alia on the ground that the vehicle against which the loan was obtained was stolen, but the District Court, Morena rejected the execution proceedings on the ground that it lacked jurisdiction. The District Court, Morena took the view that the Appellant was required to file the execution proceedings first before the court of competent jurisdiction in Tamil Nadu, obtain a transfer of the decree and only then could the proceedings be filed in the District Court at Morena. This view adopted by the District Court, Morena was in turn based on the judgment of the Madhya Pradesh High Court and the opinion of the Karnataka High Court while it is pleaded that the view of the Rajasthan High Court and the Delhi High Court were to the contrary. The Appellant filed a Special Leave Petition and preferred an appeal directly to the Hon'ble Supreme Court due to the divergence in the views of the Madhya Pradesh High Court and Himachal Pradesh High Court from some of the other High Courts, while dealing with the issue of jurisdiction for enforcement of arbitral awards.

### **Issue:**

Whether an arbitral award can be filed only in the court, within whose jurisdiction the arbitration proceedings were carried out or whether the arbitral award could be directly executed in the jurisdiction where the assets of the judgement debtor are located?

## **Divergence in Views:**

### **1. Enforcement of an arbitral award after obtaining a transfer decree for enforcement of the arbitral award where the assets are located.**

The Madhya Pradesh High Court was of the view that as per Section 42 read with Section 2(e) of the Act, the award would be enforceable, as per the provisions of the Code of Civil Procedure, 1908 (CPC), in the same manner as if it were a decree of the Court. Since Section 35 along with Section 39 of the CPC defines 'Court', a transfer of the decree was mandatory for execution of the arbitral award in the jurisdiction where the assets are located. The High Court of Himachal Pradesh has adopted a similar view while dealing with this issue.

### **2. Enforcement of the Arbitral Award directly in the jurisdiction where assets are located.**

The Delhi High Court has stated that Section 42 of the Act was not applicable during proceedings under Section 34 of the Act. The Kerala High Court has adopted a similar view and held that a Court cannot insist on a decree to receive an execution application and thus there was no question of a transfer of decree. The Madras High Court ruled that as per Section 39 and 41 of the CPC, a decree may be passed to the executing court on its own motion. The Rajasthan High Court, Allahabad High Court, Punjab & Haryana High Court and Karnataka High Court have taken a similar view.

### **Order:**

The Supreme Court clarified the confusion regarding the jurisdiction for enforcement of an arbitral award and held that the execution of an arbitral award can be filed anywhere in the country where such decree was capable of being executed and there is no requirement of obtaining a transfer of the decree from the court, which would have jurisdiction over the arbitral proceedings. The Supreme Court analyzed **Section 46** of the CPC, 1908, which defines 'precepts' and stated that the application of the decree holder is made to the court which passed the decree and which issues the precepts to any other court of competent jurisdiction to enforce it. However, in the case of an arbitral award, there is no decree passed, but the arbitral award is itself executed as a decree, by fiction. Further Order XXI of the CPC, 1908 deals with execution of decrees and orders which states that details like number of suit, appeal against the decree, etc. have no relevance to the fiction of an arbitral award for it to be treated as a decree, for the purposes of execution

The Supreme Court observed that while an award passed by the arbitral tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed should be taken to be the Court, which passed the decree. The Arbitration and Conciliation Act, 1996 actually transcends all territorial barriers.

**Conclusion:**

The Hon'ble Supreme Court with this decision has not only provided clarity on enforcement of Arbitral Award but also has removed another hindrance experienced by the parties while adopting Arbitration as a mean for dispute resolution. It is clear that enforcement of an Arbitral Award under the Arbitration and Conciliation Act, 1996 may be filed in any jurisdiction in the country, for execution, where such decree is capable of being executed and there is no requirement of obtaining a transfer of the decree from the court which has jurisdiction over the arbitration proceedings.

**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

## **MANUFACTURE AND OTHER OPERATIONS IN WAREHOUSE REGULATIONS, 2019 (MOOWR'2019) AND AUTHORISED ECONOMIC OPERATOR (AEO)**

In this context, it would be pertinent to mention that the WTO has held Indian Schemes like MEIS, EOU, EHTP, BTP, EPCG, SEZ etc. being violative of the WTO Agreement on Subsidies and Countervailing Measures ('SCM' Agreement). Considering this, the Government of India is now looking to substitute / amend the existing schemes with appropriate WTO compatible schemes / provisions.

As part of the initiative, it seems to have introduced a new Customs scheme for manufacturers who are importing raw material and/or capital goods, called as **"Manufacture and Other Operations in Warehouse Regulations, 2019" (MOOWR'2019)**, vide Notification Number 69/2019 (N.T) dated 01 October 2019 ('the Notification') and procedures thereunder vide Circular Number 34/2019-Customs, dated 01 October 2019.

**This scheme encouragingly happens to be the answer to the WORKING CAPITAL issues emerged within the companies due to COVID-19 & lockdown as it allows deferment of import duty on raw material and capital goods through manufacturing from certified private bonded warehouses.**

**Generally, Customs duty is payable at the time of import of goods into India. However, MOOWR, 2019 provides for duty deferment in case of imports, subject to various compliances and procedures. Furthermore, waiver of interest on warehoused goods used for manufacture under Section 65 makes MOOWR, 2019 a great scheme of import duty exemption without a requirement of conditional export and Foreign Exchange realization.**

We have attached a slide deck covering the features, benefits and eligibility details of the proposed scheme in detail. Also, we have provided below a brief on the key features of MOOWR'2019 scheme, for your ease perusal:

- Duty deferment / waiver on import of Capital Goods as well as inputs
- No fixed Export Obligation
- No limit on sharing of FG to domestic market
- No Custom Duty if goods are directly exported from private warehouse
- Duty drawback can be availed by the existing units availing MOOWR benefits
- No geographical restriction and can be availed by any unit
- Permission once granted will remain valid unless it is cancelled or surrendered

### **Authorised Economic Operator (AEO)**

The Authorised Economic Operator (AEO) programme is a global trade facilitation programme which aims to enhance internationally supply chain security and facilitate movement of legitimate goods that provides businesses with an internationally recognized quality mark. AEO includes manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses and distributors"

Depending upon the eligibility criteria, the applicant importer/ exporter is awarded an AEO status ranging from Tier – I to Tier III. While the benefits vary depending on the Tier, broadly some of the key benefits are:

Provision of deferred payment of duties – delinking duty payment and customs clearance

Fast tracking of adjudications and refunds including IGST refunds and disbursement of drawback.

Higher level of facilitation in imports and export of consignments, thereby ensuring shorter cargo release time

Facility of Direct Port Delivery of import containers and Direct Port Entry of containers

Refund/Rebate of Customs/Goods and service tax would be granted within 45 days of the submission of complete documents etc

No regular Post Clearance Audit (PCA), instead onsite PCA will be conducted once in two/ three years (depends on TIER)

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

**Authors:**



**Mr. Mrattunjay Varshney**

Fellow Member of the ICAI

M.COM and Bachelor degree of Law

# Article 3



## **TRANSFER OF SHARES UNDER COMPANIES ACT, 2013 AND FEMA**

Share transfer means transfer of ownership rights in shares from one person to another. Though the securities or other interest of any member in a public company shall be freely transferable, such transfer mandatorily involves the Compliance of Companies Act, 2013 and the Indian Stamp Act. The applicability of the Foreign Exchange Management Act, 1999 on share transfer depends upon the residential status of the Parties involved.

### **Scope**

This article aims to cover various aspects relating to different compliances required to be done by a transferor and a transferee in accordance with the Companies Act, Indian Stamp Act, Foreign Exchange Management Act as the case may be. We further aim to cover the aspects relating to transfer of shares in the form of a gift and transfer of partly paid shares.

### **Companies Act, 2013**

Section 56, 57, 58 of Companies Act, 2013

Rule 11 - The Companies (Share Capital and Debentures) Rules, 2014

### **Conditions for Transfer of Shares**

- i. Execution of an instrument of transfer between the transferor and the transferee
- ii. Transfer instrument (SH4) to be duly stamped, dated and executed
- iii. Articles of Association of a Company should not restrict such transfer of shares
- iv. Instrument to be delivered to the company within 60 days of execution

### **Enclosures with the Transfer Instrument i.e. SH4**

Certificate of shares or debentures or other securities

If no certificate is issued, letter of allotment.

### **TIME FRAME TO REGISTER THE TRANSFER**

Within one month from the date of receipt of instrument of transfer by the Company.

In case of a deceased shareholder – Transfer by his/ her legal representative shall be deemed to be valid.

### **PENALTY**

PARTY INVOLVED	FINE
Company	Fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees
Officer of the company who is in default	Fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

### **Refusal of Registration and Appeal Against Refusal**

If a Company refuses to register the transfer of any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer was delivered to the company, send notice of the refusal to the transferor and the transferee giving reasons for such refusal. A subsequent appeal can be made to the Tribunal by the Transferee in this regard.

### **Indian Stamp Act, 1899**

#### **Section 11 and 12 of the Indian Stamp Act, 1899**

The Transferor has to pay the stamp duty at the rate of Rs 0.25 for every Rs. 100 worth of shares. For stamping purpose in case of transfer of shares special adhesive stamps known as share transfer stamps are used. Such adhesive stamps are required to be cancelled once they are affixed on the transfer instrument. Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall so far as such stamp is concerned, be deemed to be unstamped.

## **FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

Incase of transfer of capital instruments of an Indian Company by or to a person resident outside India Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 are required to be complied with.

### **Governing Regulations**

1. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017

Regulation 10 - Transfer of capital instruments of an Indian company by or to a person resident outside India

2. RBI User Manual for Single Master Form-FIRMS

### **Capital Instruments means**

<b>Equity shares</b>	<b>Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid.</b>
<b>Debentures</b>	Compulsorily and mandatorily convertible debentures
<b>Preference shares</b>	Fully, compulsorily and mandatorily convertible preference shares
<b>Share Warrants</b>	Issued by an Indian Company in accordance with the Regulations issued by the Securities and Exchange Board of India

## **TRANSFER OF CAPITAL INSTRUMENTS OF AN INDIAN COMPANY BY OR TO A PERSON RESIDENT OUTSIDE INDIA**

<u>Transferor</u>	<u>Nature of transfer</u>	<u>Transferee</u>	<u>Remarks</u>
<b>A person resident outside India, not being a non-resident Indian or an overseas citizen of India or an erstwhile overseas corporate body</b>	Capital instruments of an Indian company or units held by him by way of sale or gift	Any person resident outside India	Prior govt. approval required for companies engaged in such sectors where the person resident outside India is an FPI and the acquisition of capital instruments made under Schedule 2 of these regulations has resulted in a breach of the applicable aggregate FPI limits or sectoral limits, the FPI shall sell such capital instruments to a person resident in India eligible to hold such instruments within the time stipulated by Reserve Bank in consultation with the Central Government.
<b>NRI or an OCI</b>	Capital instruments of an Indian company or units on repatriation basis by way of sale or gift;	Person resident outside India	
<b>A person resident outside India</b>	Capital instruments of an Indian company or units in accordance with these Regulations by way of sale/ gift or may sell the same on a recognised stock exchange in India in the manner prescribed by Securities and Exchange Board of India;	Person resident in India	To comply with pricing guidelines (Not to apply if capital instruments are held on non repatriable basis)
<b>A person resident in India holding capital instruments of an Indian company or units, or an NRI or an OCI or an eligible investor under Schedule 4 of these Regulations</b>	Capital instruments of an Indian company or units on a non-repatriation basis by way of sale	Person resident outside India	Adherence to entry routes, sectoral caps/ investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by Reserve Bank from time to time;
	Capital instruments of an Indian company or units on a non-repatriation basis by way of a gift	Person resident outside India	prior approval of the Reserve Bank
<b>An NRI or an OCI or an eligible investor under Schedule 4</b>	Capital instruments of an Indian company or units on a non-repatriation basis, may transfer the same by way of gift	NRI or an OCI or an eligible investor under Schedule 4 of these Regulations	To be held on non-repatriable basis

*A person resident outside India holding capital instruments of an Indian company containing an optionality clause in accordance with these Regulations and exercising the option/ right, may exit without any assured return, subject to the pricing guidelines prescribed in these Regulations and a minimum lock-in period of one year or minimum lock-in period as prescribed in these Regulations, whichever is higher.*

### **REMITTANCE OF SALE PROCEEDS**

An authorized dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India only if such security was held by the seller on repatriation basis.

### **REPORTING REQUIREMENTS**

Name of the Form	Event				Time line
Form Foreign Currency-Transfer of Shares (FC-TRS)	Transfer of capital instruments of an India Company between a resident and non-resident and vice versa*				Form Foreign Currency-Transfer of Shares (Form FCTRS) is required to be filed with the authorized Dealer bank within sixty days of transfer of capital instruments or receipts/ remittance of funds whichever is earlier. The onus of reporting is on the resident transferor / transferee or the person resident outside India holding capital instrument on a non- repatriable basis, as the case may be.
	TRANSFEROR	TRANFEREE	APPLICABILITY OF FC-TRS	REMARKS	
	PROI Repatriable	PROI Non Repatriable	Yes	In case the transfer involves any funds received on non re-patriation basis from a PROI, same is not required to be reported in form FCTRS.	
	PROI Repatriable	PRII	Yes		
	PROI Non Repatriable	PRII	No.	In case the transfer involves any funds received on non re-patriation basis from a PROI, same is not required to be reported in form FCTRS.	
PROI- Person Resident outside India (includes NRI and OCI) PRII- Person Resident in India  To be filed for every tranche of payment. The onus of reporting shall be on the resident transferor/ Transferee					



**List of documents to be attached along with form FC-TRS - For Transfer by way of Gift**

1. Relevant regulatory approvals, wherever applicable, to be attached as “other attachment”.
2. Consent letter: Consent letter between donor and donee for the transfer to be attached as other attachment.
3. Non-resident declaration
4. FCGPR Approval proof towards the allotment of shares being gifted.
5. Delay letter in case form is being submitted after the prescribed time.

**List of documents to be attached along with form FC-TRS - For Transfer by way of sale:**

1. Transfer agreement: relevant extracts of the transfer agreement along with the consent letter between buyer and seller. For sale/ purchase on stock exchange, the contract note may be attached, at “Transfer agreement/ Valuation certificate”
2. Valuation Certificate: valuation certificate as per FEMA 20 (R) to be attached at “Transfer agreement/ Valuation certificate”.

***The valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Securities and Exchange Board of India registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.***

3. Non-resident declaration: As per the format provided in RBI User Manual, to be attached as “other attachments”
4. In case of sale by a non-resident, acknowledgement of FC-GPR/ FC-TRS as applicable for the capital instruments being sold, to be attached as “other attachment”.
5. FIRC /Outward remittance certificate and KYC to be attached at the specified attachment
6. Board resolution for transfer of shares
7. Delay letter in case form is being filed after the prescribed time.

***For Whitespan Advisory***

***Team Periwinkles'  
FCS Jaya Yadav & CS Anishi Sharda***



# Compliance Checklist

## Compliance Calendar for November 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					

### Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of October, 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
  - Issue of TDS certificate for tax deducted under section 194-IA ,194-IB and 194M in the month of September, 2020\*
  - Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 2020 has been paid without the production of a challan\*
  - 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 October, 2020\*
  - Annual return of income for the assessment year 2019-20 for all assessee
- The due date for filing of return of income under section 139 for the assessment year 2019-20 has been extended to November 30, 2020 vide Order under section 119(2)(a), dated 30-09-2020.

### 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

- GSTR-7 For October 2020
- GSTR-8 For October 2020

## FOR FURTHER INFORMATION PLEASE CONTACT:

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