



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 47<sup>th</sup> Edition of “WINS – e-newsletter” for March, 2021. 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. **Conversion of a Sole Proprietorship Firm into a Private Limited Company**
  - ii. **Nature of Law and Applicability of vicarious liability**
  - iii. **Summary of Latest Judgements under the Income Tax Act**
3. Compliance checklist for the month of March 2021.

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 is 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)**

**February 28, 2021**

**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.
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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. The Companies (Specification of Definitions Details) Amendment Rules, 2021**

**Date of Circular- February 01, 2021**

**Effective Date – April 01, 2021**

**Link :** [http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf)

MCA vide its circular dated February 01, 2021 notified the Companies (Specification of Definitions Details) Amendment Rules, 2021.

The amendments are carried out to extend the scope of the term 'Small Companies'. The amendment provides that from now on, companies with paid-up capital and turnover not exceeding rupees two crores and rupees twenty crores respectively shall be considered as small companies.

## **2. The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021**

**Date of Circular- February 01, 2021**

**Effective Date – Date of Publication in the Official Gazette**

**Link :** [http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf)

MCA vide its notification dated 1<sup>st</sup> February 2021 notified the Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2021 by amending the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

Key highlights of the amendment are:

- A scheme of merger or amalgamation under section 233 of the Act may be entered into between two or more start-up companies or one or more start-up company with one or more small company.
- Further, the “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with the notification number G.S.R. 127 (E), dated February 19, 2019 issued by the Department for Promotion of Industry and Internal Trade.”



### 3. MCA Initiates Process of De-Criminalisation of Compoundable Offences under Limited Liability Act, 2008

**Date of Press release- February 03, 2021**

**Link :** <https://pib.gov.in/PressReleasePage.aspx?PRID=1694837>

With the object of unleashing the entrepreneurial spirits of our youth and to remove the fear of criminal prosecutions for non- substantive minor and procedural omissions and commissions in the normal course of their business transactions, the Government of India in the Ministry of Corporate Affairs (MCA) decided to initiate the process of decriminalization of compoundable offences under the limited liability partnership (LLP) Act, 2008, for greater ease of doing business for law abiding LLPs. MCA has adopted 3 Principles for Decriminalization of Compoundable Offences, which includes Offences that relate to minor/ less serious compliance issues, involving predominantly objective determinations are proposed to be shifted to the In-house Adjudication Mechanism (IAM) framework instead of being treated as a criminal offences.

Offences that are more appropriate to be dealt with under other laws, are proposed to be omitted from the LLP Act, 2008 and For non-Compoundable offences that are very serious violations entailing an element of fraud, intent to deceive and caused injury to the public interest or non-compliance of the order of statutory authorities impinging on effective regulation, Status Quo would be maintained.

In all, twelve (12) offences are proposed to be decriminalized and one (1) provision (Section 73) entailing criminal liability is proposed to be omitted. The 12 de-criminalized offences would then get shifted to IAM thereby de-clogging the criminal courts from routine cases. Further, it is proposed to create a class of LLP called as “**Small LLP**” in line with the concept of Small Companies.

Such Small LLPs would be subject to lesser compliances, lesser fee or additional fee and lesser penalties in the event of default. Thus, lower cost of compliance would incentivize unincorporated micro and small partnerships to convert into the organized structure of an LLP and derive its benefits.



#### **4. The Companies (Share Capital and Debentures) Rules 2014**

**Date of Notification- February 11, 2021**

**Effective Date – April 01, 2021**

**Link : [http://www.mca.gov.in/Ministry/pdf/AmendmentRules\\_12022021.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentRules_12022021.pdf)**

MCA Vide its notification dated 11th February 2021 notified the Companies (Share Capital and Debentures) Amendment Rules, 2021 by amending the Companies (Share Capital and Debentures) Rules, 2014.

The amendment brings in a new rule 12A which provides that for the purposes of sub-clause (i) of clause (a) of sub-section (1) of section 62, the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer.

Section 62 deals with Further Issue of Share Capital.

## **5. The Producer Companies Rules, 2021.**

**Date of Notification- February 11, 2021**

**Effective Date –Date of publication in the official gazette**

**Link :** [http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules\\_12022021.pdf](http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules_12022021.pdf)

MCA vide its notification dated 11<sup>th</sup> February 2021 notified the Producer Companies Rules, 2021. These Rules shall be applicable to all producer company as referred in clause (l) of Section 378A.

A Producer Company shall make investments from and out of its general reserves in approved securities, fixed deposits, units, and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or with any other scheduled bank; or in any of the securities specified in section 20 of the Indian Trusts Act, 1882.

Further, rules 27, 30, and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein, shall be applied for the purpose of change of place of the registered office of a Producer Company from one State to another.

## **6. The Companies (Specification of Definitions Details) Second Amendment Rules, 2021**

**Date of Notification- February 19, 2021**

**Effective Date –April 01, 2021**

**Link :** [http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules\\_19022021.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_19022021.pdf)

MCA vide its notification dated February 19, 2021 notified the Companies (Specification of Definition Details) Second Amendment Rules, 2021.

A new Rule 2A has been inserted which excludes following companies from the definition of 'listed company':

Public companies which have not listed their equity shares on recognized stock exchange but have listed their:

- i. NCDS issued on private placement basis in terms of SEBI (Issue and Listing Debt Securities) Regulations, 2008;
- ii. NCRPS issued on private placement basis in terms of SEBI (issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;
- iii. Both categories of (i) and (ii) above;
- iv. Private companies with listed NCDS in terms of SEBI (Issue and Listing Debt Securities) Regulations, 2008;
- v. Public companies which have not listed their equity shares on recognized stock exchanges but whose equity shares are listed on a stock exchange in a jurisdiction as specified under Section 23(3) of Companies Act, 2013.

## 7. The Companies (Incorporation) Second Amendment Rules, 2021

**Date of Notification- February 11, 2021**

**Effective Date – February 11, 2021**

**Link :** <http://ebook.mca.gov.in/Default.aspx?page=notification>

MCA vide its notification dated February 11, 2021 notified the commencement of following sections of the Companies (Amendment) Act, 2020.

S.NO.	Section No.	Section Head
1	52	Application of Premiums Received on Issue of Shares
2	66	Reduction of Share Capital.



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

## **1. Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds**

**Date of Circular- February 02, 2021**

**Effective Date - February 02, 2021**

**Link:** [https://www.sebi.gov.in/legal/circulars/feb-2021/setting-up-of-limited-purpose-clearing-corporation-lpcc-by-asset-management-companies-amcs-of-mutual-funds\\_48982.html](https://www.sebi.gov.in/legal/circulars/feb-2021/setting-up-of-limited-purpose-clearing-corporation-lpcc-by-asset-management-companies-amcs-of-mutual-funds_48982.html)

SEBI Vide its circular dated February 02, 2021 announced that AMCs shall contribute INR 150 Cr. towards share capital of LPCC in proportion to the Asset Under Management (AUM) of open ended debt oriented mutual fund schemes (excluding overnight, gilt fund and gilt fund with 10 year constant duration but including conservative hybrid schemes) managed by them.

The setting up of LPCC and making the aforesaid contribution shall be in compliance with the networth requirements, other conditions and timelines, if any, as per SECC Regulations and circulars issued there under from time to time

AMCs shall ensure that the networth as prescribed under Regulation 21(f) of SEBI (Mutual Funds) Regulations, 1996 shall be maintained over and above the contribution made towards setting up of the LPCC.



## **2. Revised Disclosure Formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015**

**Date of Circular : February 09, 2021**

**Effective Date : February 09, 2021**

**Link:**[https://www.sebi.gov.in/legal/circulars/feb-2021/revised-disclosure-formats-under-regulation-7-of-sebi-prohibition-of-insider-trading-regulations-2015\\_49068.html](https://www.sebi.gov.in/legal/circulars/feb-2021/revised-disclosure-formats-under-regulation-7-of-sebi-prohibition-of-insider-trading-regulations-2015_49068.html)

SEBI vide its circular dated February 09, 2021, in light of amendments to the PIT Regulations effecting the inclusion of member of the promoter group, and designated person in place of employee, in Regulation 7 of PIT Regulations; revised the disclosure formats (Forms B to D).

The updated/revised formats are annexed to the aforesaid.

### **3. Extension of facility for conducting meeting(s) of unitholders of REITs and InvITs through Video Conferencing (VC) or through other audio-visual means (OAVM)**

**Date of Circular : February 26, 2021**

**Effective Date : February 26, 2021**

**Link:**<https://www.sebi.gov.in/legal/circulars/feb-2021/extension-of-facility-for-conducting-meeting-s-of-unitholders-of-reits-and-invits-through-video-conferencing-vc-or-through-other-audio-visual-means-oavm-49307.html>

RBI vide its circular dated February 26, 2021 has been decided to extend the facility to conduct meetings of unitholders , through VC or OAVM for REITs/ InvITs, as under:

- a. Annual meetings of unitholders in terms of Regulation 22(3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 and Regulation 22(3)(a) of SEBI (Infrastructure Investment Trusts) Regulations, 2014, (which becomes due in the calendar year 2021) to be conducted till December 31, 2021.
- b. For meetings other than annual meeting of unitholders till June 30, 2021.

REITs/ InvITs shall comply with the procedure prescribed in Annexure-I of SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22, 2020.



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

## **1. Loans and Advances to Directors, Their Relatives and Firms / Concerns in Which They are Interested**

**Date of Circular- February 05, 2021**

**Effective Date – Quarter ended 31<sup>st</sup> March 2021**

**Link:** [https://www.rbi.org.in/Scripts/BS\\_CircularIndexDisplay.aspx?Id=12019](https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12019)

RBI vide its circular dated February 05, 2021 revised the directions issued to Primary (Urban) Co-operative Banks (**UCBs**) on September 29, 2020. As per the revised directions UCBs shall not make, provide or renew any loans and advances or extend any other financial accommodation to or on behalf of their directors or their relatives, or to the firms / companies / concerns in which the directors or their relatives are interested (collectively called as “director-related loans”).

Further, the directors or their relatives or the firms / companies / concerns in which the directors or their relatives are interested shall also not stand as surety/guarantor to the loans and advances or any other financial accommodation sanctioned by UCBs. ‘Advances’ for the purpose shall include all types of funded / working capital limits such as cash credits, overdrafts, credit cards, etc.

The following categories of director-related loans shall, however, be excluded from “loans and advances” for the purpose of these directions:

- Regular employee-related loans to staff directors, if any, on the Boards of UCBs;
- Normal loans, as applicable to members, to the directors on the Boards of Salary Earners' UCBs;
- Normal employee-related loans to Managing Directors / Chief Executive Officers of UCBs;
- Loans to directors or their relatives against Government Securities, Fixed Deposits and Life Insurance Policies standing in their own name.

## **2.Risk-Based Internal Audit (RBIA)**

**Date of Circular- February 03, 2021**

**Effective Date – March 31,2022**

**Link:** <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12018&Mode=0>

RBI vide its circular dated February 03, 2021 notified Risk-Based Internal Audit Guidelines for selected Non-Banking Finance Companies (NBFC's), Urban Co-operative Banks (UCB's). The regulator also specified that RBIA policy shall clearly document the purpose, authority, and responsibility of the internal audit activity, with a clear demarcation of the role and expectations from risk management function and risk-based internal audit function. In order to strengthen the quality and effectiveness of the internal audit system, the Reserve Bank of India has issued guidelines on risk-based internal audit (RBIA). The entities have to implement the RBIA framework by March 31, 2022 and have been asked to constitute a committee of senior executives, to be entrusted with the responsibility of formulating a suitable action plan. The new framework will be for all deposit-taking NBFCs, irrespective of their sizes, all non-deposit taking NBFCs (including core investment companies) with an asset size of Rs. 5,000 crore and also for all UCBs, having an asset size of Rs. 500 crore and above. The NBFCs and UCBs face risks similar to the ones faced by scheduled commercial banks, which require an alignment of processes.



### **3.Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021**

**Date of Master Direction- February 17, 2021**

**Effective Date – February 17, 2021**

**Link: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD10007CE48ADE2FB4BF981444FE1349E3B71.PDF>**

RBI vide master direction dated February 17, 2021 came out with a slew of directions related to maintenance of liquidity coverage ratio, risk management, asset classification and loan-to-value ratio, among others, for housing finance companies.

"All non-deposit taking HFCs with asset size of Rs 100 crore and above and all deposit taking HFCs (irrespective of asset size) shall pursue liquidity risk management, which inter alia should cover adherence to gap limits, making use of liquidity risk monitoring tools and adoption of stock approach to liquidity risk,"

As per the definition, an HFC is an NBFC whose financial assets, in the business of providing finance for housing, constitute at least 60 per cent of its total assets.

The RBI said HFCs shall maintain a liquidity buffer in terms of liquidity coverage ratio, which will promote their resilience to potential liquidity disruptions by ensuring that they have sufficient high-quality liquid asset to survive any acute liquidity stress scenario lasting for 30 days. All non-deposit taking HFCs with an asset size of Rs 10,000 crore and above, and all deposit-taking HFCs irrespective of their asset size will have to achieve a minimum liquidity coverage of 50% By Dec. 1, 2021 and gradually to 100% by Dec. 1, 2025.



#### **4. Investment by Foreign Portfolio Investors (FPI) in Defaulted Bonds - Relaxations**

**Date of Notification- February 26, 2021**

**Effective Date – February 26, 2021**

**Link: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12037&Mode=0>**

RBI vide its circular dated February 26, 2021 in respect to FPI investments in corporate bonds are subject to a minimum residual maturity requirement, short-term investment limit (paragraph 4 (b)(ii)) and the investor limit (paragraph 4(f)(i)) in terms of the Directions. However, FPI investments in security receipts and debt instruments issued by Asset Reconstruction Companies and debt instruments issued by an entity under the Corporate Insolvency Resolution Process as per the resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 are exempt from these requirements.

It has now been decided to exempt investments by FPI in NCDs/bonds which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of amortising bond from the aforesaid requirements.



# **Central Board of Excise and Customs (CBEC)**

## **1. Instructions/Guidelines Regarding Procedures to be Followed During Search Operation**

**Instruction dated: February 02, 2021**

**Link: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/Instructions%20%2001-2020-21.pdf>**

CBIC vide its instruction dated 2<sup>nd</sup> February 2021 Instructions on Procedures to be followed during Search Operation. On the basis of the discrepancies noticed by the CBIC, wherein proper procedures have apparently not been followed during search proceedings and the Panchnamas statements have not been recorded as per extant guidelines and instructions. Such discrepancies weaken the judicial scrutiny of the case at a later stage.

Accordingly, the instructions contained in the Central Excise Intelligence and Investigation Manual (2004), which holds good even in the GST regime, are reiterated for compliance by DGCI or filed formations. The Board prescribed that the officer issuing authorization for search should have valid and justifiable reasons for authorizing a search, which shall be duly recorded in the file Search should be carried out only with a proper authorization issued by the Competent Authority. Further, the instructions related to the generation of DIN for each search authorization shall be scrupulously followed by the officer authorizing the search.

The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. Where a search warrant, through oversight, has been issued in the name of a person who is already dead, the authorized officer should report to the Competent Authority and get a fresh warrant issued in the names of the legal heirs and in case of a search of a residence, a lady officer shall necessarily be part of the search team.

In case any statement is recorded during the search, each page of the statement must be signed by the person whose statement is being recorded. Each page of the statement must also be signed by the officer recording the statement as before me. During the prevalent COVID-19 pandemic situation, it is imperative to take precautionary measures such as maintaining proper social distancing norms, use of masks and hand sanitizers, etc.

The search team should take all measures as contained in the guidelines of the Ministry of Home Affairs. and Ministry of Health & Family Welfare, and also the guidelines issued by the State Government from time to time.

## **2. Extension of Board's Circular No. 12/2018-Customs dated 29.05.2018 for sanction of pending IGST refund claims where the records have not been transmitted to ICEGATE due to GSTR-1 and GSTR- 3B mismatch error -reg.**

**Date of Circular : February 18, 2021**

**Effective Date : February 18, 2021**

**Link: <http://www.srtepc.org/gallery/view/105063>**

CBIC vide its notification dated February 18, 2021 examine that The IGST refunds related to the Shipping Bills filed after 31<sup>st</sup> March, 2019 having mismatch error between GSTR-1 and GSTR-3B could not be processed and are held up on above account. Having regard to the fact that a substantial number of IGST refunds are stuck due to above error as functionality to amend GSTR-3B return is not available so far, there is a need to extend the facility in respect of the Shipping Bills filed after 31.03.2019 as well.

In order to overcome the problems faced by the exporters, CBIC has decided that the solution provided in Circular 12/2018-Customs read with Circular No. 25/2019-Customs would be applicable mutatis mutandis for the Shipping Bills filed during the financial year 2019- 20 and 2020-21 (i.e. in respect of all Shipping Bills filed/ to be filed upto 31st March, 2021).

Further the corresponding CA certificate evidencing that there is no discrepancy between the IGST amount refunded on exports in terms of this Circular and the actual IGST amount paid on exports of goods for the period April 2019 to March 2020 and April. 2020 to March, 2021 shall be furnished by 31st March, 2021 and 30th October 2021, respectively.



# Central Board of Direct Taxes (CBDT)



## **1. The Faceless Assessment (1stAmendment) Scheme, 2021**

**Date of notification- February 17, 2021**

**Effective date - February 17, 2021**

**Link:** [https://www.incometaxindia.gov.in/communications/notification/notification\\_6\\_2021.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_6_2021.pdf)

CBDT vide its notification dated February 17, 2021 notified the Faceless Assessment (1stAmendment) Scheme, 2021 which seeks to **amend Faceless Assessment Scheme**, 2019, by way of substituted Procedure for **assessment**. The following procedure has been introduced in the Amendment:

- **National e-Assessment Centre** : The National e-Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143 of the Act and the assessee may, within fifteen days from the date of receipt of notice shall file his response to the National e-Assessment Centre. The National e-Assessment Centre shall intimate the assessee that assessment in his case shall be completed under this Scheme.
- **Regional e-Assessment Centre** : The National e-Assessment Centre shall assign the case selected for the purposes of e-assessment under this Scheme to a specific assessment unit in any one Regional e-Assessment Centre through an automated allocation system.
- **Automated Allocation System** : where a request for conducting of certain enquiry or verification by the verification unit or for seeking technical assistance has been made by the assessment unit, the request shall be assigned by the National e- Assessment Centre to a verification unit or a technical unit, as the case may be, in any one Regional e-Assessment Centre through an automated allocation system.

- **Draft Assessment Order :** The assessment unit shall make a draft assessment order, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to such income or sum and send a copy of such order to the National e-Assessment Centre. The National e-Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board
- **Duty of National e-Assessment Centre :** The National e-Assessment Centre shall, upon receipt of draft assessment order, finalise the assessment within the time allowed under sub-section (13) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment. The National e-Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

# Miscellaneous Laws

## **1. Providing copy of application to the Board, as mandated under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019**

**Date of Circular- February 02, 2021**

**Effective Date – February 02, 2021**

**Link: <https://ibbi.gov.in/uploads/legalframework/8d38ca4dc37264636b22daa2a3c637ba.pdf>**

IBBI vide its circular dated February 02, 2021 issued format for Providing a Copy of Application for Initiation of Insolvency Resolution Process of Personal Guarantors. The IBBI has made available a facility on its website at <https://ibbi.gov.in/intimation-applications/iaaa-personal-one> for providing a copy of the application online to the Board. The Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 mandates an applicant to provide a copy of the application filed for initiation an insolvency resolution process of a personal guarantor to a corporate debtor, inter alia, to the Board for its record. On submission of the application online, the applicant shall get an acknowledgment.

## **2. IRDAI advises all Insurance Companies for Issuance of Digital Insurance Policies via DigiLocker**

**Date of press release- February 12, 2021**

**Link: <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1697372>**

IRDAI vide its Circular dated February 09, 2021, has advised all Insurance companies for issuance of Digital Insurance Policies via DigiLocker. The Circular states, "in order to promote the adoption of Digilocker in the insurance sector, the Authority advises all insurers to enable their IT systems to interact with Digilocker facility to enable policyholders to use digilocker for preserving all their policy documents."

The circular also mentions that the insurers should inform their retail policyholders about Digilocker and how to use it. Insurers are also advised to enable the process by which the policyholders can place their policies in the digilocker. Digilocker team in NeGD (National e-Governance Division) under Ministry of Electronics and Information Technology will provide necessary technical guidance and logistic support to facilitate adoption of Digilocker.

Digilocker is an initiative under the Digital India program by the Ministry of Electronics & Information Technology (MeitY) Government of India where citizens can get authentic documents/ certificate in digital format from original issuers of these certificates. It aims at eliminating or minimising the use of physical documents and will enhance effectiveness of service delivery, making these hassle free and friendly for the citizens.

# Article 1



## **CONVERSION OF A SOLE PROPRIETORSHIP FIRM INTO A PRIVATE LIMITED COMPANY**

A Sole Proprietorship firm can't be converted into a Private Limited Company as Sole Proprietorship firm is nothing but the Proprietor himself or herself.

However, business of the Proprietorship firm can be sold to a Private Limited Company by a way of Slump Sale or otherwise.

We are covering the following points in this note, namely:

1. Procedure
2. Taxability on conversion process
3. Other Implications

### **Procedure of conversion of a Sole Proprietorship firm into a Private Limited Company:**

As mentioned above, the only way to convert a Sole Proprietorship firm into a Private Limited Company, is that the business of a Sole Proprietorship firm is sold to a Private Limited Company by the way of slump sale.

Slump sale is defined under Section 2(42C) of Income Tax Act, 1961 as transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. Further "undertaking" under aforementioned section includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

With the execution of the slump sale agreement between a Sole Proprietorship firm and a Private Limited Company, the Sole Proprietorship firm will cease to exist and will stand converted into a Private Limited Company.

**Tax aspect on the conversion process:**

Our taxation system is divided into two categories:

**(i) Direct Tax**

Direct tax or Income tax is a tax that governments impose on income generated by businesses and individuals within their jurisdiction.

Section 50B of Income Tax Act, 1961 provides any profits or gains arising from the slump sale effected in the previous year is chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and profits or gains arising from the slump sale, if any deemed to be the income of the previous year in which the transfer took place.

For the purpose of slump sale of business of Sole Proprietorship firm, “net worth” of the firm is to be calculated and net worth for this purpose is deemed to be aggregate value of total assets of the firm as reduced by the value of liabilities of the firm as appearing in its books of account.

It is to be noted that conversion of a Sole Proprietorship into a Private Limited Company entails a “transfer” within the meaning of the Income Tax Act, 1961. That is, the assets of the sole proprietorship concern are considered transferred to the newly formed company, which makes the sole proprietor liable to pay tax for any capital gains calculated on such transfer.

However, there is a provision under Section 47(xiv) of the Income Tax Act, 1961 which lays down exemption for a sole proprietary concern when succeeded by a Company in the business carried on by it as a result of which the Sole Proprietary concern sells or otherwise transfers any capital asset or intangible asset to the Company from any capital gains.

**Provided that—**

- (a) All the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

- (b) The shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and
- (c) The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;

## **(ii) Indirect Tax**

Indirect tax or Goods and Services tax is a tax levied on goods and services rather than on income or profits.

Section 22(3) of Central Goods and Service Tax, 2017 provides, with the conversion of Sole Proprietorship firm into a Private limited Company, where a business carried on by a taxable firm registered is transferred, the transferee or the successor would be liable to be registered with effect from such transfer or succession and the Company will have to obtain a fresh registration with effect from the date of such transfer or succession.

## **Transfer of Input Tax Credit**

A registered taxpayer can apply for transfer of matched input tax credit that is available in the Electronic Ledger to another business organization in case of transfer of business by way of sale of business/ merger/ demerger by the filing of ITC declaration in Form GST ITC – 02.

## **GST ITC-02 Filing**

**GST ITC-02** can be filed for transfer or matched input tax credit in case of the following circumstances:

- In case any registered institution undergoes sale, merger, de-merger, amalgamation, lease or transfer, the institution or organization must file an ITC declaration for transfer of ITC in the Form GST ITC-02.

- The acquired/transferor institution should have matched Input Tax Credit available in the Electronic Credit Ledger, that is effective from the date of merger/ acquisition/amalgamation/lease/transfer.
- The transferee and the transferor should have GST registration.
- it is mandatory for the transferor to file all GST returns in the past periods.
- All the pending transactions for the action of merging should either be accepted, rejected or modified and all liabilities of the returns filed by the transferor must be paid.
- The transfer of business has to be with an accurate provision of transfer of liabilities which will be the stayed demands of tax, or with any litigation /recovery cases. It has to be accompanied by the certificate that is issued by the Chartered Accountant or Cost Accountant.

### **Other Implications of conversion:**

#### **Transfer of existing agreements**

General provision of Indian Contract Act, 1872 is parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

As with the conversion of Sole Proprietorship firm into a Private Limited Company, the core management and party (on one side of contract) remains same and if motive of the business remains same, then the Private Limited Company will become liable under Contract entered by the Sole Proprietorship firm, unless & until some contrary provision is defined in the agreement itself.

In general probability, the agreements entered by the Sole Proprietorship firm will be transferred to converted Private Limited Company and the Private Limited Company will be liable under Indian Contract Act, 1872.

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# Article 2



## **Nature of Law and Applicability of vicarious liability**

Whenever a person commits an act which is unlawful, that person is held liable for violating the law and thus he is punished accordingly. This is a general rule of torts but in some situations, a person can be made liable even if, he has not done any wrong, if it is done by some other person with whom he shares a certain relation, such as master- servant, principal -agent, Partners in a Partnership Firm, Company and its directors, owner and independent contractor etc. In these cases, the liability is called vicarious liability.

### **In Civil Law**

Civil Law is a general law which solves disputes between two organizations or individuals. It deals with property, money, housing divorce etc. Civil Law is initiated by the aggrieved individual or organization, known as 'plaintiff'. The objective of Civil Law is to protect the rights of an individual or organization and make sure that the aggrieved party receives compensation for the wrongs that they have suffered. The powers of the court is to pass judgement or injunction to compensate for damage caused to the aggrieved party.

In the Tort Law or Civil Law, there should be some or other relationship between the wrong doer and the person who gave the order and there should be ratification.

### **In Criminal Law**

Criminal Law deals with offences that are committed against the society. It deals with serious crimes such as murder, rapes, arson, robbery, assault etc. As per the Criminal Law, the procedure to start a case, a complaint should be registered with the police and the crime needs to be investigated by the police. The Government generally files the petition. The purpose of law is to punish the wrongdoers and protect society, maintain law and order. The punishment is meted out as per seriousness of the criminal offence committed. The powers of the Court are charging a fine, imprisonment to the guilty of a crime, or discharge of the defendant.

A person can be criminally liable for the acts of another, if they are a party to offence. The powers of court are charging a fine, imprisonment to the guilty of a crime, or discharge the defendant. The responsibility or the liability of the directors of the company for the offence committed by the company will arise not by their position or status as directors, but by their participation in the conduct of the business of the company or participating in the day to day affairs of the company.. The provision of vicarious liability is not applicable in criminal matters. *In Ramakrishna Raja v. Registrar of Companies, Equivalent citations:2005123 Comp Cas319 Mad, Madras High Court Date of Decision 29th March, 2004.* The court held that the offence, if any committed by the agent cannot be passed on to the principal because such vicarious liability under criminal law does not arise between the agent and principal. *In Gagan Aero Space Ltd v/s State of Telangana Rep by P.P., Criminal Petition Nos.24634 and 24655 of 2017, Hon'ble High Court Telangana Date of Decision 3/4/2019.* The Court observed that as regards vicarious liability, *in R.Kalyani v. Janak C.Mehta* 25, it was held that vicarious liability can be fastened only by reason of a conferment by a statute and not otherwise, and for the said purpose a legal fiction has to be created. Reliance is placed *in Keki Hormusji Gharda V. Mehervan Rustom Irani*, wherein the Managing Director or the Directors of the company, thus cannot be said to have committed an offence only because they are holders of offices.

As *against*, during the course of time, the inclination of vicarious liability has changed. The court is inclined to fasten more liability on the person who controls the company, organisation. *In Sunil Bharti Mittal vs. Central Bureau of Investigation, Criminal Appeal No.34/2015( Criminal Appellate Jurisdiction) [arising out of SLP (Crl.) No.2961 of 2013], Date of Decision 9<sup>th</sup> January, 2015.* As per the FIR, the accused public servants entered into a criminal conspiracy with the accused beneficiary companies in taking the decision regarding allocation of 2G licenses, which caused undue cumulative pecuniary advantage to the beneficiary companies. The Hon'ble Court observed that (i) Managing Director/ Director/persons were prima facie in control of affairs of the companies, (ii) Because of their controlling position, they represent the directing mind and will of each company; (iii) state of mind of these persons is the state of mind of the companies.

Thus, they are/were described as alter ego of their respective companies. In this situation, the acts of the companies are to be attributed and imputed to them, there are enough material on record to proceed against them and directed to issue summons.

The Court held it is satisfied that the allegations levelled by the complainant, fully incorporate all the basic facts which are necessary to make out the offences . *In Shiv Kumar Jatia vs. State of NCT of Delhi*, [CrIA.@SLP\(CrL.\) No.8008/18 etc and CrI Appeal No. 1265-1267 of 2019.](#), Supreme Court of India Date of Decision 23 August, 2019; *Bindu vijay Nambiar vs. The State of Maharashtra (1907) Appl. No.11342016*, Bombay High Court date of decision 15<sup>th</sup> January, 2020.

### **Corporate Criminal Liability**

Corporate Criminal Liability is governed by the norms of vicarious liability, as distinct from the scenarios in which the statutory offence specifically makes the company liable for that particular offence. Whether a corporate being an artificial person is capable of committing a crime and whether a corporation is criminally liable for the said offence (criminal act). Traditionally, it was held that corporation cannot do a crime as the main test of a criminal activities lies in the intent. As against, Supreme Court, first time in the case of *Irdium India Telecom Limited vs. Motorola incorporated & ors* held that, it can be said that corporate criminal liability has been recognized as one of the corporate liability in India under Companies Act as well as under criminal laws.

### **Corporate Criminal Liability under Companies Act, 2013.**

Corporate Criminal liability is recognized under various sections inter-alia section 447 of the Companies Act, 2013.

### **Models of Corporate Criminal Liability**

**A) Derivative Model:-** The liability of an organization is a derived liability. The liability of a corporation is derived from the actions on an individual who has been employed or connected with the organization and commits a wrongful act. The derivative model of the corporate criminal liability is further sub-divided into two categories, i.e.

**1. Vicarious Liability-** The vicarious liability is the concept which is generally applicable in the case of civil liability but the Courts have said that because a corporation is an artificial person and a separate legal entity thus it is necessary to bring the applicability of vicarious liability in the case of corporate criminal liability.

*In the matter of Maksud Saiyed vs. State of Gujarat & Ors., Case No. Appeal (Crl.)1248 of 2007[Arising out of SLP (Crl.) No.923 of 2006, Supreme Court of India Date of Decision 18.09.2007.* The bank floated a public issue. Prospectus was published for the purpose of public issue and therein some false and misleading information had been given with regard to sanction limits, the dues and export bills of the company. It was alleged that the company had committed an offence punishable under Section 120B, 425, 191, 192, 177, 181 and 500 of the Indian Penal Code and criminal complaint was filed. The Id. Chief judicial Magistrate directed the police authorities to investigate the complaint. The order was quashed under section 482 Cr.P.C. Thereafter, appeal was filed in the Hon'ble Supreme Court. It was pleaded on the part of Respondent that Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company, even if a complaint given face value and taken to be correct its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is body corporate. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. The Hon'ble Supreme Court observed that the complainant failed to bring charges home to the accused and held that there is no merit in this appeal and dismissed accordingly.

**2. Identification Doctrine:** It is an English Law Doctrine which tries to identify certain key persons of a corporation who acts in its behalf, and whose conduct and state of mind can be attributed to that of the corporation. It was held in *Moore vs. Brisler* that the persons who are identified with the corporations must be acting within the scope of the employment of authority. The conduct must occur within an assigned area of operation even though particulars may be unauthorized.



**B) Organizational Model:** The model of corporate criminal liability focuses on the model of the organization while defining the corporate liability of an organization in criminal cases. A crime is said to be committed when there is a presence of men's rea (intent to commit a crime) and actus reus (commission of criminal act). The culture of the corporate may help for commission of an offence requiring mental state by, first providing the environment or necessary encouragement. Secondly, it is quite possible that the corporation created an environment which led to commission of crime. Thus, it was the corporation and its working culture that left the offence committed.

### **Factors required to considered a Corporate Criminal Liability**

The following factors are required to consider Corporate Criminal Liability:-

1) **Act in the scope of employment:** The employee has committed the criminal act is necessary that such action has to be committed in the scope of his employment. Thus, act been done during performing his official duties which has been authorized by the company. Thus, by invoking the agent-principal relationship, the corporate criminal liability is established.

2) **The benefit to corporation:** It is not necessary that complete benefit should have enjoyed to the company but some benefit of the criminal act must have been given to the company. It means that the illegal or unlawful act of the employee is not contrary to the organization.

### **Lifting the Corporate veil**

The principle of lifting the corporate veil as an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislations.

It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc. Reliance is placed in *Commissioners of Income Tax v. Sri Meenakshi Mills Ltd* AIR 1967 SC 819; *Life Insurance Corporation of India vs. Escorts Ltd* (1986) a SCC 264 and *New Horizons Ltd and Anr. Union of India & Ors.* 1995 (1) SCC 478, *State of Rajasthan vs. Gotan Lime Stone Khanji Udyog (P) Ltd* 2016 (4) SCC 469; *In Vijay Kumar Sharma vs. Vijay Kumar Kapoor And Ors., Co. App.* 50/2013 & C.M.Nos 11516/2013 & 11518/2013, Delhi High Court Date of Decision 16<sup>th</sup> March, 2017; *In Surender Singh Marwah & Anr. Vs. Aeren Entertainment Zone Private Ltd & Anr., Co. Application No. 10/2019, CM Appls. 18455/2019, 37262/2019, 37487/2019 & 39863-39864/2019, Delhi High Court Date of Decision 16<sup>th</sup> December, 2019.*

**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

## Summary of Latest Judgements under the Income Tax Act

1. **Section 10(38) Bogus Capital Gains from Penny:** The fact that there was an astounding 4849.2% jump in the share price within two years, which is not supported by the financials, does not justify the AO's conclusion that the assessee converted unaccounted money into fictitious exempt LTCG to evade taxes. The finding is unsupported by material on record & is purely an assumption based on conjecture. The theory of human behavior and preponderance of probabilities, based on Sumati Dayal v. CIT 214 ITR 801 (SC), cannot be cited as a basis to turn a blind eye to the evidence. **PCIT vs. Smt. Krishna Devi (Delhi High Court).**
1. **Section 153D:** The approving authority (JCIT) has to give approval for "each" assessment year after applying independent mind to the material on record to see whether the cases are un-abated or abated assessments and their effect. However, the JCIT has granted common approval for all AYs. Further, he did not have the seized material nor the appraisal report or other material at the time of granting approval. Therefore, the approval granted is merely technical approval just to complete the formality and without application of mind. The approval has been granted without application of mind and is invalid, bad in Law and is liable to be quashed. **Sanjay Duggal vs. ACIT (ITAT Delhi).**
2. **Admissibility of depreciation allowance on Bombay Stock Exchange membership card:** On a question whether BSE membership card to trade in share was a "licence" or "any other business or commercial right of a similar nature" owned by the assessee and used for the business purpose in terms of section 32(1)(ii) of the Income-tax Act, the Hon'ble Supreme Court quoting extensively the provisions of the Act and the Bombay Stock Exchange Rules held that the right of membership conferred upon the member under the Bombay Stock Exchange Membership Card is a "business or commercial right" which gives a non-defaulting continuing member a right to access the Exchange and to participate therein and in that sense it is a licence or akin to licence in terms of section 32(1)(ii) of the Income-tax Act which has an economic and money value. Accordingly, held that the depreciation is allowable on cost of Bombay Stock Exchange membership card under section 32(1)(ii) of Income-tax Act.

However, the Supreme Court struck a note of caution that its decision was strictly confined to the right of membership conferred upon the member under the BSE membership card and should not be understood to mean that every business or commercial right would constitute a “licence” or a “franchise” in terms of section 32(1)(ii) of the Income-tax Act.

**Techno Shares and Stocks Limited v. Commissioner of Income Tax [2010] [327 ITR 323].**

**4. Income from other sources – Deduction of interest under section 57(iii) :** On a question whether the amount invested by the assessee in sister concerns running in loss since several years may be treated as investment or expenditure made exclusively for the purpose of making or earning such income, the Allahabad High Court held that the expenditure towards interest on loan cannot be said to have been laid out wholly and exclusively for the purpose of making earning income but was a colourable device, to utilize the funds of one company in the other sister concern and therefore, the interest on loan is not allowable deduction under section 57(iii).

Further on the principle of consistency, the High Court held that in case an assessee changes his or her stand repeatedly and does not come with a clean hand, then it shall be sufficient to depart from earlier practice and the principle of consistency shall not come in the way to assess the income on the basis of the material on record. **Commissioner of Income Tax v. Smt. Swapna Roy [2010] [233 CTR 10, Allahabad High Court].**

**5. Dividend stripping transactions :** On a question whether the loss arising in the course of dividend stripping transaction (prior to 1-4-2002) was disallowable on the ground that such loss was artificial as the dividend stripping transaction was not a business transaction. The Supreme Court while holding it was deductible held as under:

- A return on investment or a pay back is not an expenditure within the scheme of section 14A.
- For attracting section 14A there has to be a proximate cause for disallowance, which is its relationship with the tax exempt income.

- The losses arose prior to insertion of section 94(7) w.e.f 1-4-2002. Even after 1-4-2002 the losses are mitigated only to the extent of dividend received.
- Loss on sale of units could not be considered as expenditure in relation to earning dividend income exempt under section 10(33) as section 14A deals only with expenditure and not loss.
- The assessing officer erred in disallowing the loss. There was a sale, price was received and the assessee received dividend which was exempt under section 10(33). This cannot be called “Abuse of law”.
- Section 14A and section 94(7) of the Income-tax Act operates in different fields. Section 14A comes into operation when there is a claim for expenditure in earning tax free income. Whereas section 94(7) comes in when there is a claim for allowance for the loss.
- The conceptual difference between loss, expenditure, cost of acquisition, etc must be kept in mind while interpreting the scheme of the Income-tax Act.

**Commissioner of Income Tax v. Walfort Share and Stock Brokers [2010] [326 ITR 1]**

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

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# Compliance Checklist

## Compliance Calendar for March 2021

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 February 2021. 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 issue of certificate for tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of January, 2021
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2021 has been paid without the production of a challan
- Due date for Advance tax payment for January to March 2021

### 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 December

### GST Related Compliance

- GSTR 1(Monthly) for February 2021

- GSTR 3B for February 2021

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