



Tax & Regulatory Updates – Key developments of February 2023

DIRECT TAXATION:-

1. CBDT sets up offices in Delhi, Mumbai for operationalising Board for Advance Rulings:- CBDT Office Order F. No. 189/3/2022-ITA-I, dated 06.02.2023

The Indian Government has notified the setting up of offices in Delhi and Mumbai for operationalizing the Board for Advance Rulings (BAR) introduced recently as a new mechanism to provide timely certainty on cross border transactions. Two offices will be set up in Delhi: BAR-I and BAR-II and one office in Mumbai: BAR-III. Each office would comprise two Members and a Secretary. Further, it specifies that the BAR shall have such other income-tax authority, ministerial staff, executive or consultant to assist the members of BAR, who shall be provided by the concerned jurisdictional PCCIT, in consultation with CBDT.

2. CBDT notifies Scheme for Centralised Processing of Equalisation Levy Statements:- CBDT Notification No. 03/2023/F.No.370142/1/2023-TPL dated 07 February 2023

CBDT vide notification dated 07 February 2023 notifies 'Centralised Processing of Equalisation Levy Statement Scheme, 2023' which requires every assessee or e-commerce operator to furnish the Equalisation Levy Statement under Section 167(1) of the Finance Act, 2016 within the time stipulated under Rule 5(2) of Equalisation levy Rules, 2016. The Scheme provides that an assessee or e-commerce operator may: (i) Furnish the Statement or a revised Statement at any time before the expiry of two years from the end of the financial year in which the specified services was provided or e-commerce supply or services was made or provided or facilitated or (ii) Furnish a Statement in

response to notice sent by the AO under Section 167(3) in accordance with Rule 6. The CIT may declare any statement as invalid for non-compliance of the procedure or submitting incomplete information.

The Scheme further provides the manner in which the Statement is required to be processed and also the cases where the CIT(CPC) may declare a Statement as invalid. The Scheme gives discretion to the CIT(CPC) to adopt appropriate procedure for processing of Statements and to decide the order of priority for processing of the Statements based on administrative requirements. The assessee or e-commerce operator may make an application to the Assessing Officer for amending any intimation issued under section 168 of the Act, within one year from the end of the financial year in which the intimation sought to be amended was issued. The Scheme also makes it abundantly clear that no assessee or e-commerce operator shall be required to appear personally or through authorised representative before the Centre in connection with any proceedings and provides that a written or electronic communication in the specified format shall be sufficient compliance of the query received from the Centre. It will come into force with immediate effect.

3. No Angel tax on past foreign investments in startups:- News Report

The government has proposed to amend the angel tax provision (Section 56(2)(viib) of the Income tax Act) in the budget to bring foreign investors under the ambit of the angel tax applicable to Indian residents and funds not registered as Alternative Investment Funds (AIFs). However, startups registered with the Department Promotion of Industry and Internal Trade (DPIIT) will not be covered under this provision as per the government officials. Further, Indian startups raising capital from foreign investors will now have to pay angel tax in a move that could squeeze funding into the sector facing a liquidity crunch.

<https://economictimes.indiatimes.com/tech/startups/no-angel-tax-on-past-foreign-investments-in-startups/articleshow/97586882.cms>

4. Tough to find common ground on capital gains tax review, CBDT Chairman:- News Report

The Indian government is considering various options to review the capital gains tax system and make changes to it to increase revenue, but finding a consensus on the matter has proven to be challenging as per the CBDT Chairman in a recent interview. Also, the government is committed to making the tax system more equitable and increasing revenue, but finding a solution that balances these objectives with the needs of taxpayers is proving difficult. Further, this issue is complex and any review includes elements like the asset pieces, TDS, the periods of holding, etc. One is the flat regime, the other is the indexation regime and then there are different asset classes. It is very difficult to find common ground where everyone is benefitted as per him. It's very tough and may require more groundwork and data collection, which is a time-consuming process.

<https://www.financialexpress.com/money/income-tax/tough-to-find-common-ground-on-capital-gains-tax-review-says-cbd-t-chairman-nitin-gupta-interview/2971133/>

5. CBDT notifies ITRs for AY 2023-24:- CBDT vide Notification No. 04/2023, dated 10 February 2023, and Notification No. 05/2022, dated 14 February 2023

CBDT has notified new Income Tax Return (ITR) Forms in respect of Assessment Year (AY) 2023-24, i.e. ITR-1 Sahaj, ITR-2, ITR-3, ITR-4 Sugam, ITR-5, ITR-6 and ITR-7. No significant changes have been made in the new ITR Forms applicable for AY 2023-24 in comparison to the ITR Forms applicable for AY 2022-23 notified last year, in order to facilitate taxpayers and improve filing ease. There are only few changes that were required pursuant to the amendments to the Income-tax Act have been made in the new ITR forms. However, there are no changes in the manner in which these returns are filed.

Further, following are some of the key changes and new requirements in current ITR forms viz-a-viz last year's ITR Forms:

1. Return cannot be filed in ITR-1 if it's being filed due to the reason of depositing more than Rs. 1 crore in the current account.
2. Check-box for "self-occupied" omitted under Schedule HP for companies.
3. New Schedule for income from transfer of virtual digital assets.
4. Turnover from intraday trading is to be reported separately under Part A- Trading Account.
5. Transfer of TCS credit to another person.
6. Disclosure of income on which Section 89A relief was claimed in the prior year.
7. Disclosure of information if the assessee opted out from the alternative tax regime under Section 115BAC.
8. Computation of income on the applicability of Twenty-Second Proviso to Section 10(23C) or Section 13(10).
9. Reporting of investment in related concerns by Section 10(23C) approved institutions.

6. CBDT issues instruction dt. Feb 13, 2023 pursuant to CBDT Instruction No. 1/2022 dt. May 11, 2022 for disposal of cases reopened and dealt with after the decision of Supreme Court

CBDT in the earlier Instruction had stated that the information or material for initiating reassessment proceedings is required to be provided within 30 days but no notices could be issued for AYs 2013-14 to AY 2015-16 if the income escaping assessment amounts to or is likely to amount to less than Rs.50 lakh. Thus, in order to reduce the compliance burden, CBDT had instructed that the information and material may not be provided for the three AYs if the income escaping assessment amounts to or is likely to amount to less than Rs. 50 lakh. Now, CBDT directs that since data/information regarding quantum of escapement and/or relevant information would be available with the AOs/JAOs, necessary action for disposal of cases can be taken as per the law after examining the relevant facts and requests all concerned PCCIT and PDGIT to monitor and ensure that this task is completed by Mar 6, 2023. Further, it also instructs Directorate (Systems) separately to ensure that necessary procedures to be followed are available on ITBA Module.

7. Form 26AS to display only TDS/TCS data from AY 2023-24:- Traces Update

The Income Tax Department Department, on TRACES portal, stated that Form 26AS will display details of TDS/TCS related data from AY 2023-24 onwards and specifies that other details relating to advance tax, self-assessment tax, refunds, SFT transaction and turnover as per GSTR-3B etc. would be available on the AIS (Annual Information Statement) on the income tax e-filing website. CBDT further clarified that there will be no change in display of the data prior to AY 2023-24. AIS available on TRACES portal will have the following data from AY 2023-24 onwards:

- Details of Tax Deducted at Source
- Details of Tax Deducted at Source for 15G/15H
- Details of Transaction under Proviso to section 194B (TDS on winnings from lottery or crossword puzzle)/ First Proviso to sub-section(1) of section 194R (TDS on providing benefit or perquisite in respect of business or profession) / Proviso to sub-section(1) of section 194S (TDS on payment on transfer of virtual digital asset)
- Details of Tax Deducted at Source u/s 194IA/ 1941B/ 194M/ 194S (For Seller/Landlord of Property/Payee of resident contractors and professionals/Payee of Virtual Digital Asset)
- Details of Tax Collected at Source
- Details of Tax Deducted at Source u/s 194IA/ 1941B /19414 /1945 (For Buyer/Tenant of Property /Payer of resident contractors and professionals/ Payer of Virtual Digital Asset) - TDS/TCS Defaults
- TDS/TCS Refunds

Further, taxpayers may also view the AIS (Annual Information Statement) available at e-filing portal for the following details:

- Details of Tax Paid (Other than TDS or TCS)

- Details of refund
- Details of SFT Transaction
- Details of turnover as per GSTR-3B

8. CBDT calls for prompt & appropriate remedial action in audit objection cases:- CBDT vide letter F.No. 246/06/2023-A&PAC-I-79, dated 16 February 2023.

CBDT has issued a letter to PCCITs and PDGITs (Inv.) for prompt remedial action under appropriate Section in all the cases where the Revenue accepts the Audit Objection. The letter takes note of the process prescribed which requires the PCIT to decide if the order with respect to which objection is raised, warrants revision under Section 263, depending upon facts of the case. The instruction provided that it is only if the Pr.CIT decides not to invoke section 263 that the AO is required to examine the facts of the case and take suitable action by applying his mind independently.

Further, CBDT remarks that many a time Section 154 is routinely invoked even in cases where the mistake is not apparent from record or in cases where action under Section 263/147 is warranted, resulting in avoidable unfavourable judgements at the appellate stage. Thus, it requested all field authorities to ensure that the procedure prescribed is followed scrupulously and remedial action is taken under appropriate section after due application of mind.

9. CBDT notified new audit reports for Charitable or Religious Trusts, Education Institutions, Universities etc.:- CBDT Notification No. 7/2023 dated 21 February 2023

The Central Board of Direct Taxes (CBDT) notified the new Form 10B and 10BB by amending the Rules 16CC and 17B and comes into effect from 01st April 2023. Form 10B is the audit report for fund or institution or trust or any university or other educational institution or any hospital or other medical institution as required under clause (b) of tenth proviso to Section 10(23C) where during the previous year the total income without giving effect to the provisions of Section 10(23C)(iv), (v), (vi) and (via) exceeds INR 5 crores, or any foreign contribution is received, or the part of income is applied outside India.

Form 10B also applies to a trust or institution required to furnish an audit report under Section 12A(1)(b)(ii) where during the previous year the total income without giving effect to the provisions of Sections 11 and 12 exceeded INR 5 crores, any foreign contribution was received, or a part of the income was applied outside India. In all other cases, the audit report shall be furnished in Form 10BB. The new rules also clarify that "foreign contribution" shall be as defined under Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010.

10. CBDT issues corrigendum to recently notified ITRs:- CBDT Notification No. 8/2023 dated 28 February 2023

The Central Board of Direct Taxes (CBDT), vide Notification No. 8/2023 dated 28 February 2023, issues corrigendum to ITR Forms notified vide Notification No. 4/2023 dated 10 February 2023 for AY 2023-24. CBDT amends Schedule CG in ITR-2, ITR-3, ITR-5 and ITR-6 to allow disclosure of amount deemed as STCG/ LTCG (for disclosure of unutilised capital gains amount deposited in Capital Gains Accounts Scheme) on transfer of asset in previous year 2018-19. Further in Schedule BP of ITR 3, ITR 5 and ITR 6, the Board added a separate row for disclosure of expenses incurred in relation to income chargeable under Section 115BBH (Virtual Digital Asset taxation), which was omitted in the earlier notified forms. The corrigendum provides that in Schedule TDS of ITR 5 and ITR 6, details of TDS as per Form 16E (TDS on income from Virtual Digital Assets) also has to be provided and in all the ITRs and additional row in Schedule VI-A is added, for disclosing 'Any other deduction as per the e-filing utility'.

INDIRECT TAXATION

1. GST is not leviable on vouchers being in the nature of instruments:- Premier Sales Promotion (P.) Ltd. v. Union of India - [2023] 147 [taxmann.com](#) 85 (Karnataka)

The assessee was engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. It filed application for advance ruling to determine taxability of vouchers. The Authority for Advance Ruling (AAR) held that supply of vouchers would be taxable as goods. The Appellate Authority affirmed the order passed by the AAR and it filed writ petition against the same.

The High Court noted that vouchers are mere instruments accepted as consideration for supply of goods or services and do not have any inherent value of their own. Since vouchers qualify as instruments, they would be covered under definition of 'money' and money is excluded from definition of goods and service. Therefore, the tax would not be payable on vouchers as transaction shall be restricted to procurement of printed form and delivering the same to clients.

2. Recommendations of 49th GST Council Meeting:- Press Release dated February 18th, 2023

The 49th GST Council met under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi. In this regard, the press release has been issued by the Government. The key recommendations made by the GST Council in its 49th Meeting are as follows:

- a. Council has adopted the report of Group of Ministers on GST Appellate Tribunal with certain modifications
- b. GST rates to be reduced on Pencil Sharper from 18% to 12% and on Rab from 18% to 5% if sold pre-packaged and labelled otherwise exempted
- c. No compensation cess on coal rejects supplied to and by a coal washery, arising out of coal on which compensation cess has been paid
- d. No GST on National Testing Agency for conduct of entrance examination for admission to educational institutions
- e. Time limit for making an application for revocation of cancellation of registration to be increased from 30 days to 90 days
- f. Rationalisation of Late fee for Annual Return and Amnesty Scheme in respect of pending returns in FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10

3. Cancellation of registration on ground that petitioner was not present at time of spot visit is not sustainable:- Jatin Bhagwatlal Shah v. State of Gujarat - [2023] 147 [taxmann.com](#) 313

The department issued notice to cancel the registration certificate of petitioner on the ground that it had not filed the returns under the GST Act for continuous period of six months. It was also alleged that there was absence of conduct of business in principal place of business. The petitioner replied to the notice but order of cancellation was passed on the ground that he did not remain present even though he did submit the reply. The revocation application and appeal filed by the petitioner were also rejected by the department. Therefore, he filed writ petition before the Court.

The Honorable High Court noted that the petitioner had shifted to new address. The department conducted spot visit and registration was cancelled on the ground that the petitioner was absent in principal place of business at time of spot visit. However, the facts were explained by petitioner when he appeared before the authority.

The Court also noted that in absence of any intimation during the spot visit, it was difficult for petitioner to remain present. Therefore, it was held that cancellation of registration on ground that petitioner was absent at time of spot visit was not valid and cancellation of registration with retrospective date was fully impermissible. Thus, the Court set aside the order of cancellation of registration.

4. No detention of goods & vehicle for minor discrepancy in description of vehicle in e-way bill:- *Varun Beverages Ltd. v. State of U.P. - [2023] 147 taxmann.com 341 (Allahabad)*

The petitioner was engaged in the business of manufacturing and sale of aerated water, fruit juice based drinks etc. It was making a stock transfer from its unit and mobile squad intercepted the goods and detained the vehicle on the ground that wrong vehicle number was mentioned in e-way bill. The department imposed penalty and the petitioner filed appeal but the same was rejected. It filed writ petition against imposition of penalty and detention.

The Honorable High Court noted that in the instant case, wrong vehicle number was mentioned in e-way bill and the stock transfer was not disputed. Moreover, there was no intention on part of dealer to evade tax and no evidence was placed by department to prove same. The Court also noted that wrong vehicle number mentioned in e-way bill would be considered as human error and same was covered under CBIC Circular No. 41/15/2018-GST dated 13-4-2018 and 49/23/2018-GST dated 21-6-2018. Therefore, it was held that the impugned order was unsustainable in the eyes of law and liable to be set aside.

5. Online gaming services are game of skill and would not be covered as gaming of chance or gambling:- *Myteam 11 Fantasy Sports (P.) Ltd. v. Union of India - [2023] 147 taxmann.com 414 (Rajasthan)*

The petitioner-gaming company was engaged in providing online gaming services. It had been served with a show cause notice under Section 74(1) alleging that petitioner had avoided tax by misclassifying their supply as service instead of actionable claims. The petitioner filed writ petition to challenge the show cause notice but the department opposed the petition on the ground that it was not maintainable as it was only directed against a show cause notice.

The High Court noted that the issue was no longer res-integra as it was already decided by various Courts that the said online games are game of skill and would not be covered as gaming of chance or gambling. In view of the totality of the facts and circumstances of the case, the Court was of the view that games offered by the petitioners online had already been held to be games of skill then the issuance of the impugned show cause notice would be nothing but an abuse of the process of law. Therefore, the Court directed department to take any coercive measures to recover any amount from the petitioner and file counter affidavit to the writ petition within a period of one month.

6. Department have to release provisionally attached immovable property and debtors on payment of pre-deposit for appeal:- *Skylight Man Power and Hospitality Services v. Commissioner, State Taxes and Excise - [2023] 147 taxmann.com 462 (Himachal Pradesh)*

The petitioner filed statutory appeals with regard to assessment years 2019-20, 2020-21 and 2021-22. It deposited requisite pre-deposit amount as per Section 107(6) of CGST Act, 2017 but the attached property and the debtors were not released which were provisionally attached by invoking provisions

of Sections 79 and 83 of the Act. It filed writ petition for quashing the attachment order in respect of attachment of debtors and immovable property.

The department opposed the petition and submitted that the bank accounts of the petitioner had already been de-frozen and with a view to secure the remaining taxes, the property of the petitioner was liable to remain under attachment. The High Court noted that as per Section 107(7) of CGST Act, recovery proceeding for balance amount shall be deemed to be stayed if pre-deposit of amount envisaged in Section 107(6) is made. In the instant case, the petitioner had deposited the prescribed amount for filing appeal against such attachment order. Therefore, the Court found that de-freezing bank account alone would be against provisions of Section 107(7). Therefore, the Court disposed of the petition and the department was directed to release immovable property and debtors.

7. Advisory on opting for payment of tax under the forward charge mechanism by a Goods Transport Agency (GTA): GSTN

The Goods and Services Tax Network (“GSTN”) has issued an Advisory on opting for payment of tax under the forward charge mechanism (“FCM”) by a Goods Transport Agency (“GTA”). In compliance of Notification No. 03/2022-Central Tax (Rate), dated 13th July, 2022, an option is being provided on the GST portal to all the existing taxpayers providing Goods Transport Agencies Services, desirous of opting to pay tax under the forward charge mechanism to exercise their option. **They can navigate Services > User Services > Opting Forward Charge Payment by GTA (Annexure V), after login, to submit their option on the portal.**

Further, the Goods Transport Agencies (GTA) are required to submit on the portal the option in **Annexure V FORM** by every year before the commencement of the Financial Year. The Option once filed cannot be withdrawn during the year and the cut-off date for filing the Annexure V FORM is 15th March of the preceding financial year. Annexure V has been made available on the portal for GTA’s to exercise their option for the Financial Year 2023-24, which would be available till 15th March, 2023.

8. Advisory on Geocoding of Address of Principal Place of Business:- GSTN Update

The Goods and Services Tax Network (GSTN) has issued an advisory on the importance of geocoding the address of the principal place of business in the GST registration. Geocoding is the process of converting a physical address into geographic coordinates. The GSTN has stressed the importance of accurate geocoding of the principal place of business as it helps in better tax administration and enables various benefits such as mapping of taxpayers, targeted enforcement action, and analysis of data. Geocoding helps in identifying the exact location of the taxpayer's business, which is essential for tax administration purposes. Accurate geocoding helps the authorities in identifying businesses that are located in specific areas, which can help them in taking targeted enforcement action. For instance, if there is a high rate of non-compliance in a particular area, then authorities can take enforcement action against businesses located in that area.

Moreover, geocoding helps in mapping of taxpayers, which can help in identifying clusters of taxpayers in a particular area. This can help in analyzing the data to identify trends and patterns that can be used to formulate policies and strategies. For instance, if a large number of taxpayers are concentrated in a particular area, then the authorities can provide them with special facilities or incentives to encourage them to comply with the GST rules. Further, the taxpayers can update their geocoded address by logging into the GST portal and navigating to the 'Registration' tab. Under the 'My Profile' section, they can click on 'Edit' to update their geocoded address.

9. Delhi Government issued SOP for Cancellation of GST Registration & Repository of Non-genuine Taxpayers:- Circular No.F.3 (479) GST/Policy/2023/346 dated 01st March 2023, Government of Delhi

GST Authorities have detected a large number of taxpayers involved in use of fake invoices and wrongful availment/utilization of ITC. Such ITC is availed on the inward supplies shown from non-genuine taxpayers without any actual supply of goods & services. Thus, the authorities decided to issue SOP (Standard Operating Procedure) to identify and cancel such non genuine taxpayers .

The SOP aims to identify non-genuine taxpayers who are fraudulently availing Input Tax Credit (ITC) or committing other tax offenses. The GST authorities will take action against such taxpayers and cancel their GST registration. The article outlines the steps/ instructions involved in the SOP, which include identifying non-genuine taxpayers, conducting an investigation, issuing a show-cause notice, and providing an opportunity for the taxpayer to respond. The issued SOP emphasizes the importance of cancelling the registration of non-genuine taxpayers to maintain the integrity of the GST system and prevent tax evasion and also to maintain uniformity of procedure for cancellation of registration.

Detailed Circular - <http://dvatonline.gov.in/Docs/Orders/2030798.pdf>

10. Condition of making part pre-deposit of disputed amount can't be imposed for grant of anticipatory bail:- Rajesh Kumar Dudani v. State of Uttarakhand - [2023] 148 taxmann.com 88 (SC)

The appellant was accused of the offence of availing ITC on fake and forged invoices. It had filed an application for anticipatory bail but the High Court had rejected anticipatory bail application of appellant on ground of seriousness of offence. It filed an appeal against the order of the High Court and the department pleaded that appellant shall be directed to make a pre-deposit of 50% of allegedly evaded amount for considering bail. The Supreme Court observed that in case of Subhash Chouhan v. Union of India [2023] 147 taxmann.com 211 (SC), this Court had not approved pre-depositing any amount as a condition for grant of bail. The Court also noted that in that case, the learned Additional Solicitor General appearing for the Union of India had fairly stated that such a condition can't be imposed while granting bail.

Since, the facts of the present case were identical to the facts of the aforesaid case, there would be no reason to deviate from the view taken earlier. Thus, it was held that appellant would be eligible for anticipatory bail without imposing any condition of pre-deposit.

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REGULATORY

1. MCA allows additional 15-days' time for filing of 45 forms launched on V3 portal:- *General Circular No. 03/2023, Dated 7th February 2023*

Earlier on January 9, 2023, MCA allowed 15 days additional filing period for filing 45 forms which were rolled out from V2 portal to V3 portal vide General Circular No. 01/2023. After considering various representations in this regard and due to technical difficulties in operating the new portal and change in way of filing in V3 portal, MCA now permits the filing of Form PAS-03 which was closed for filing in Version-2 on January 20, 2023 and launched in V3 on January 23, 2023, and whose due dates for filing fall between January 20 and February 6, 2023, without payment of additional fees for a period of 15 days.

2. MCA permits physical filing of Forms GNL-2, MGT-14, PAS-3, SH-8 without fees:- *Circular No.05/2023 dated 22nd February 2023*

MCA received representations requesting for clarification about filing of Form GNL-2 (Filing prospectus related documents), MGT-14, PAS-3 and SH-8 during February 22, 2023 to March 31, 2023 due to process of stabilization of 45 forms launched w.e.f. January 23, 2023, and that stakeholders stated that such forms were required to be filed due to time bound activities;

Thus MCA in its General Circular notified that the companies intending to file – (i) Form GNL-2 (ii) MGT-14 (Filing of Resolutions relating to prospectus related documents, private placement), (iii) PAS-3 (Allotment of Shares), (iv) SH-8 (Letter of offer for buyback of own shares or other securities), (v) SH-9 (Declaration of Solvency) and (vi) SH-11 (Return in respect of buy-back of securities) from February 22, 2023 to March 31, 2023 on the MCA-21 Portal, may file the relevant Form in physical mode with the concerned Registrar without payment of fee but after signing off the relevant forms by the persons concerned as per requirements, along with filing of a copy thereof in electronic media.

The Ministry also added that such filing will also be accompanied by an undertaking from the company that it shall also file the relevant Form in electronic form on MCA-21 portal along with fee payable as per Companies (Registration Offices and Fees) Rules and as clarified by General circular Number 04/2023 dated 21.02.2023 no additional fees will be levied as referred in the said circular.

3. Time limit for filing 45 forms launched on V3-portal extended till March 31:- *MCA General Circular No.4/2023 dated February 21, 2023*

MCA extends time for filing of 45 company e-Forms in MCA 21 Version 3.0 ('V3'), which are due for filing between February 7, 2023 and February 28, 2023, without additional fees, till March 31, 2023. The extension is granted in light of change in way of filing in Version-3, including fresh process of registration of users on MCA-21 and process of stabilization of 45 forms launched w.e.f. January 23, 2023. Further, MCA informs that Form PAS-03 which was closed for filing in Version-2 on January 20, 2023 and launched in Version-3 on January 23, 2023, and whose due dates for filing fall between January 20, 2023 and February 28, 2023, can also be filed without payment of additional fees till March 31, 2023. Moreover, it permits extension of the reservation period for the names which are reserved u/s 4(5) of the Companies Act, 2013, by a further period of 20 days, as also the re-submission period under Rule 9 of the Companies (Incorporation) Rules, 2014 falling between January 23, 2023 and February 28, 2023, by 15 days.

4. MHA amends the list of Punishable Offences under FCRA that can be compounded:- NOTIFICATION S.O. 778(E) [F.NO.II/21022/23(0004)/2021-FCRA-III], dated 20th February 2023

The Ministry of Home affairs has vide Notification No. S.O. 778(E) has made a few amendments in its earlier Notification No. S.O. 3025(E) dated 01st July 2022, in exercise of the powers conferred by section 41(1) of the Foreign Contribution (Regulation) Act.

In the said notification, following amendments were made in the Table of Part II of Section 3(ii):

(1) In serial number 4, –

(a) In Column (2), after the word "accepting", the words "or utilising" shall be inserted. i.e, rephrasing it to "Offence punishable under section 35 for accepting [or utilising] foreign contribution in contravention of section 11 of the Act".

(b) In Column (3), after the words "foreign contribution received", the words "or utilised, as the case may be" shall be inserted. i.e, rephrasing it to "One lakh rupees or thirty per cent. of the foreign contribution received [or utilised, as the case may be], whichever is higher".

(2) In serial number 6, –

In Column (3), for the words "the foreign contribution received during the period of non submission", the words and figures "such foreign contribution for which intimation under section 18 of the Act is not furnished" shall be substituted. i.e, rephrasing it to "One lakh rupees or five per cent. of [such foreign contribution for which intimation under section 18 of the Act is not furnished], whichever is higher".

(3) In serial number 7, –

(a) In Column (2) for the words "foreign contribution received and manner of its utilisation as required", the words "each foreign contribution received and manner of its utilisation as required under" shall be substituted i.e, rephrasing it to "Offence punishable under section 37 for not maintaining the account and records of [each foreign contribution received and manner of its utilisation as required under] section 19 of the Act".

(b) In Column (3), for the words "the foreign contribution during the relevant period of non-maintenance of accounts", the words and figures "such foreign contribution for which accounts and records of foreign contribution are not maintained under section 19 of the Act" shall be substituted i.e, rephrasing it to "One lakh rupees or five per cent. of [such foreign contribution for which accounts and records of foreign contribution are not maintained under section 19 of the Act], whichever is higher".

Such changes shall be applicable for pending cases and prospective cases only & the cases which have already been disposed of before publication of this notification shall not be reopened.

https://fcraonline.nic.in/home/PDF_Doc/fc_notice_22022023.pdf

5. Undertakings of ICADR to vest with India International Arbitration Centre:- Ministry of Law and Justice F.No. A-60011/24/2022-IIAC/Part-1 dated 22 February 2023

The Ministry of Law and Justice directed that undertakings and the rights, titles, and interests of International Centre for Alternative Dispute Resolution (ICADR) in relation to such undertakings, which had vested in the Central Government under Section 7 of the India International Arbitration

Centre Act, shall vest in the India International Arbitration Centre. It also apprises that Section 7 lays down that on the specified date, so much of the undertakings of the ICADR as form part of, or are relatable to the Society (viz. ICADR, registered as such under the Societies Registration Act), and right, title, and interest of Society in relation to such undertakings were transferred to, and vested in, the Central Government.

6. Government issues order to implement "Vivad se Vishwas-I" for MSMEs:- Ministry of Finance Office memorandum dated 06 February 2023

The Finance Ministry issues order for implementation of Vivad Se Vishwas -I scheme for MSMEs, envisaging refund of the forfeited amount for not fulfilling contract obligations during the period of Covid-19, however, no interest shall be paid on such refunded amount. The order is issued pursuant to the announcement made in Union Budget-2023 by the Hon'ble FM. The order prescribes two criterias to claim the relief provided under the scheme: (i) Registration as Medium, Small or Micro Enterprise with Ministry of MSME as on March 31, 2022, (ii) original delivery period/completion period was between February 19, 2020 to March 31, 2022. Further, the order specifies the following reliefs under the scheme;

- (i). Refund of 95% of the performance security forfeited,
- (ii). Refund of 95% of the Bid security (Earnest Money Deposit), if any, forfeited from MSME in tenders between the said date,
- (iii). Refund of 95% of liquidated damages deducted.

The order apprises that where MSME has been debarred for default in execution of such contracts entered with the Ministry/Department/Attached or subordinate office/autonomous body/Central Public Sector Enterprise/Public Sector Financial Institution etc, same would be revoked by issuing an appropriate order by the procuring entity. It further makes provisions for the Government E-Marketplace (GeM) to provide for an online portal for implementation of the order whose broad functionality would be regarding registration of MSMEs, listing out applicable contracts by the registered contractors, intimating through e-mail to nodal officers of each procuring entity, tracking pendency in each procuring entity etc.

7. Government floats draft "Vivad se Vishwas-II" Scheme for quick settlement of contractual disputes:- Ministry of Finance Office memorandum dated 08 February 2023

The Finance Ministry circulates a draft scheme "Vivad se Vishwas II (Contractual Disputes)", for consultation with stakeholders, which is aimed at bringing quick finality to certain contractual disputes in which Government of India or its agencies is a litigant. The Ministry apprises that the draft scheme has been framed in accordance with the announcement made by the FM in the Union Budget 2023-24, wherein the FM had announced that a voluntary settlement scheme with standardized terms would be introduced to settle contractual disputes of Government and Government undertakings, where arbitral award was under challenge in a court, which would be done by offering graded settlement terms depending on pendency level of the dispute. While emphasizing that the Government has acknowledged that special efforts are required to clear the backlog of old disputes and litigation as such cases not only hold back fresh investment but are also reduce the ease of doing business with the Government, The Finance Ministry highlights that the Government intends to bring one time settlement scheme called "Vivad se Vishwas II (Contractual Disputes)" to effectively settle pending disputes. The salient features of the scheme include:

- (i). The scheme will apply to disputes where one of the parties is either the Government of India or its following bodies *i.e.* all Autonomous Bodies of the Government, Public sector banks and public sector financial institutions,
- (ii). Disputes having only financial claims against the procuring entities will be settled through this scheme,
- (iii). The scheme proposes a graded settlement terms depending on pendency level of the dispute,

(iv). The scheme will be implemented through Government e-Marketplace (GeM), which shall provide an online functionality for the same, while mentioning that the draft scheme document also provides a broad functionality that the GeM portal shall provide to implement the scheme.

8. ICAI issues framework for social audit standards which elucidates objectives of social audit:- ICAI Framework dated 06 February 2023

ICAI has issued a Framework for Social Audit Standards to define and describe the elements and objectives of a social audit performed by social auditors. This framework provides a frame of reference for social auditors when performing social audits, i.e., social impact assessments of projects and programmes executed by social enterprises, and for the responsible party, the engaging party, if any, and other stakeholders who are the intended users of the social audit report. In addition to this, it also provides basic principles and elements in relation to the social audit of projects, programs, and project-based activities of a social enterprise registered or listed on the Social Stock Exchange, or any other organization, and related guidance on matters relating to the preparation of a social audit report, in accordance with the social auditor's findings based on the procedures performed and evidence obtained.

This framework applies to social audits to be conducted by social auditors using the principles given in SASs and may also be applied to any other engagement(s) conducted by a social auditor, e.g., impact assessments [as required under the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021] or any other similar assignment. It also focused on providing guidance to social auditors for conducting an assessment of the social impact that the project or program has created in the field. It does not cover any elements of a financial audit or review, which may be covered by relevant auditing or review standards.

The social auditors and the responsible party may agree to apply the principles of this framework to an engagement when there are no intended users other than the responsible party. In such situations, the social auditor's report includes a statement restricting the use of the report to the responsible party. Social audit engagements involve three separate parties: a social auditor, a responsible party, and intended users. Social auditor means an individual registered with a self-regulatory organisation (SRO) under the ICAI or such other agency as may be specified by the SEBI who has qualified for a certification programme conducted by the National Institution of Securities Market (NISM) and holds a valid certificate. The responsible party is the person who is responsible for the subject matter. Generally, social enterprise is the responsible party. The intended users are the person, or class of persons for whom the social auditor prepares the social audit report.

9. Exposure Draft of Guidance Note on Financial Statements of Limited Liability Partnerships and Non-Corporate Entities for comments issued by ICAI:- ICAI Announcements, dated 07th February 2023

The Accounting Standards Board (ASB) of the ICAI in June 2022 had issued Technical Guides on "Financial Statements of Limited Liability Partnerships" and "Financial Statements of Limited Liability Partnerships" to deal with applicability of Accounting Standards and recommending formats of the financial statements to these entities. Now the ASB proposed to prescribe the formats for presentation of financial statements of these entities in the form of Guidance Note. The objective of the proposed Guidance Note is to ensure standardisation in their Financial statements and enhance the quality of the financial reporting by these entities.

The last date of comments on the Exposure drafts of guidance notes March 8, 2023.

Comments on the abovementioned 'Exposure Draft' may be submitted through any of the following modes:

1. Electronically: <http://www.icai.org/comments/asb/>

2. Email: commentsasb@icai.in

3. Postal: Secretary, Accounting Standards Board, The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi 110002.

Detailed Guidance Note: <https://www.icaai.org/post/exposure-drafts-of-guidance-note-on-fsnce-and-fsllp>

10. ICAI Compiles Various Audit Opinions, KAMs, EOMs, IFC Qualifications, CARO 2020 Matters from 450+ Annual Reports for FY 2022: ICAI

The Centre for Audit Quality (CAQ) of the ICAI releases the first issue of the compilation “Significant Audit Matters” containing the various modified audit opinions namely Qualified opinions, Adverse opinions, Disclaimer of opinions; and significant matters like Key Audit Matters (KAM), Emphasis of Matter (EOM), Material Uncertainty relating to Going Concern, Internal Financial Control (IFC) & Other Matters reported by the auditors including reporting as per CARO 2020.

It states that the compilation has been prepared from annual reports of 450+ listed companies (selected on a random basis) for the year ended 31st March 2022, and covers varied industries for standalone as well as the consolidated financial statements. The publication has been divided into two sections: Section A & B, wherein Section A covers the matters in the main audit report of the companies (further categorized based on Modified opinions, the KAM/EOM/IFC Qualification and Other Matters in the audit report) and Section B covers the reporting under the clauses of CARO, 2020.

Further, the e - publication has the search facility enabled on the key words for the ease of tracing the concerned issue and industry at ease stating that the compilation would be helpful when the members as auditors face a similar issue during the audit and need a reference to check the ways in which the other auditor(s) have dealt with a similar situation. The Compilation has been prepared purely for the reference of the members and to be applied at their own discretion to adopt the reporting followed by the other auditor in respect of a similar issue covered in the publication or decide a different course on a similar issue.

11. RBI: Permits UPI access to foreign nationals, NRIs visiting India:- Press release dated 10 Feb 2023

The Reserve Bank on Friday issued instructions permitting travellers from G20 nations to use the mobile-based Unified Payments Interface (UPI) to make payments while in India. To start with, the facility will be extended to travellers from the G20 countries at select international airports for their merchant payments (P2M) while they are in the country. Later, it will be enabled across all entry points in the country. Banks/ Non-banks permitted to issue PPIs can issue INR denominated full-KYC PPIs to foreign nationals / NRIs visiting India (to start with, this facility will be extended to travellers from the G-20 countries, arriving at select international airports). Such prepaid payment instruments (PPIs) can also be issued in co-branding arrangement with entities authorised to deal in Foreign Exchange under FEMA and the said PPIs would be issued after physical verification of passport and visa of the customers at the point of issuance.

12. RBI releases detailed FAQs on Digital Lending Guidelines:- RBI FAQs dated 15 February 2023

RBI issues a set of FAQs pertaining to the Guidelines on Digital Lending, which improve transparency, promote responsible practices, and boost growth of the sector by prescribing strict upfront disclosure norms with regard to recovery processes and also clarifying the definitions of "digital lending" and "lending service provider" (LSP). The largely seamless use of digital technologies has been used in the definition of "digital lending" to accord operational flexibility to regulated entities (REs). The RBI lays down that even if some physical interface with the customer is present, the lending will still fall under the definition of "digital lending."

RBI specifies that the service provider facilitating such lending be designated as an LSP and clarifies

that only those LSPs that have an interface with the borrowers would need to appoint a nodal grievance redressal officer, while reiterating that the RE shall remain responsible for ensuring resolution of complaints arising out of the actions of all LSPs engaged by them. RBI is apprised that the principle underlying the Digital Lending Guidelines is that a LSP should not be involved in the handling of funds flowing from the lender to the borrower or vice versa, and accordingly stipulates that entities offering only PA services shall remain out of the ambit of the Guidelines on Digital Lending; any PA also performing the role of an LSP must comply with the Digital Lending Guidelines.

13. RBI governor pushes for sustainable finance, enables UPI access for inbound travellers to India:- RBI Governor Press Release dated 08 February 2023

RBI Governor Shaktikanta Das, after the MPC meeting, which was held from February 6–8, 2023, decided to increase the policy repo rate by 25 basis points to 6.50%, with immediate effect, and to remain focused on the withdrawal of accommodation to ensure that inflation remains within the target going forward while supporting growth. The Governor highlights that, in the current unsettled global environment, emerging market economies are facing sharp trade-offs between supporting economic activity and controlling inflation while preserving policy credibility. The Governor also announces certain additional measures, which include:

1. Penal charges on loans:- Regulated Entities (REs) are required to have a policy for levying penal interest on advances. The REs, however, follow divergent practices on the levying of such charges. To further enhance transparency, reasonableness, and consumer protection, draught guidelines on the levy of penal charges will be issued to obtain comments from stakeholders.

2. Climate risk and sustainable finance:- It has been decided to issue guidelines for REs on a broad framework for acceptance of green deposits, a disclosure framework for climate-related financial risks, and guidance on climate scenario analysis and stress testing.

3. Expanding the scope of the Trade Receivables Discounting System (TReDS):- It is proposed to expand the scope of TReDS by (i) providing an insurance facility for invoice financing; (ii) permitting all entities and institutions undertaking factoring business to participate as financiers in TReDS; and (iii) permitting the re-discounting of invoices. These measures are expected to improve the cash flows of MSMEs.

4. Extending UPI for inbound travellers to India:- The governor also states that UPI has become hugely popular for retail digital payments in India; Thus, it is now proposed to permit all inbound travellers to India to use UPI for their merchant payments (P2M) while they are in the country, and adds that, to begin with, this facility will be extended to travellers from G-20 countries arriving at select international airports.

5. QR code-based coin vending machine pilot project:- The Reserve Bank of India will launch a pilot project on QR code-based coin vending machines (QCVM) in 12 cities. These vending machines will dispense coins against a debit to the customer's account using UPI instead of the physical tendering of banknotes. This will enhance the ease of access to coins. Based on the lessons learned from the pilot, guidelines will be issued to banks to promote the distribution of coins using these machines.

14. IFSCA releases Consultation Paper on handling of client funds for portfolio management services: *Consultation Paper Dated 15th February 2023*

IFSCA issues a Consultation Paper on handling of client funds for portfolio management services ('PMS') under the IFSCA (Fund Management) Regulation 2022,

Accordingly, it has proposed to amend Reg. 77 (2) of the IFSCA (Fund Management) Regulations, 2022 which states "A portfolio manager shall keep the funds of all clients in a separate bank account to be maintained by it in a banking unit" to permit clients availing the PMS to maintain a bank account in IFSC, India or foreign jurisdictions and authorise the Fund Management Entity ('FME') to operate the same.

The proposed regulation 77(2) states as follows:

77(2) The funds of the clients of the portfolio management services maintained in-

- (a.) a specific account of the FME in the banking unit.
- (b.) a specific account of the clients in the banking unit, banks in India, a Foreign Jurisdiction, or
- (c.) any other manner as may be specified by the Authority.

Provided that when the funds are maintained in the bank account of a client, the FME shall insure that it is duly authorised to operate the said bank account and shall provide the details of all such accounts including transactions carried out thereunder, to the authority, whenever directed to do so.

Underscoring that maintenance of bank accounts outside IFSC may have some supervisory concerns regarding transactions in these accounts, the Authority highlights that, therefore, some additional safeguards may be warranted to ensure that IFSCA continues to have access to the information of the bank accounts, even if they are outside of IFSC. Laying down the limitation/ challenges of the present requirement for handling of client funds for PMS in IFSC, the Authority apprises that some clients, while desirous of availing PMS of an IFSC based FME, are reluctant to part with their money until an order is placed by the FME for deployment of funds. Lastly, remarks that while this reluctance has been highlighted for the institutional clients, individual clients could also be unwilling to transfer their funds to a FME's pool account for the purpose of availing PMS from the FME. seeks comments by March 8, 2023.

Detailed Consultation Paper - <https://ifsc.gov.in/Viewer/ReportandPublication/54>

15. Banks to incorporate changes in core-banking solutions for foreign-donations via NEFT, RTGS:- *Notification No. RBI/2022-23/178, Dated 16th February 2023*

The RBI on February 16, 2023 has issued notification regarding the introduction of Foreign Contribution (Regulation) Act related transaction code in NEFT and RTGS systems.

RBI advises member banks to incorporate necessary changes in their core banking/middleware solutions to capture the requisite details while forwarding the foreign donations through National Electronic Funds Transfer (NEFT) and Real-Time Gross Settlement (RTGS) systems to State Bank of India ('SBI'). Stating that in terms of extant requirements of Ministry of Home Affairs ('MHA'), the donor details such as name, address, country of origin, amount, currency, and purpose of remittance are required to be captured in such transactions and SBI is required to report the same to MHA on daily basis.

RBI apprises that "Keeping in view the above, necessary changes have been introduced in NEFT and RTGS systems, technical details of which are provided in Annex."; Accordingly, RBI highlights that the originating banks are required to select the mandatory fields namely, '6305 (in NO6 message)' and 'PmtTpInf/CtgyPurp/Cd (in Pacs.008 message)', of NEFT/RTGS systems while remitting foreign donations to the FCRA account at SBI. Lastly, the Apex Bank lays down the format of 'Sender to remitter information' (field no. 7495) of NEFT and "RmtInf" of RTGS, for originating banks to pass on donor details. The instructions shall be effective from March 15, 2023.

Detailed Notification

- <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12454&Mode=0>

16. MSME Innovative Scheme being implemented for developing, nurturing innovative ideas:- Press Release dated 13 February 2023

The Ministry of MSMEs is implementing the MSME Innovative Scheme under the MSME Champions Scheme for developing and nurturing innovative ideas, which was launched in March 2022. Under this scheme, 632 host institutes have been recognised under the Incubation component to act as business incubators since the launch of the scheme; Informing that the number of incubation centres is increasing in the country, the Minister states that, as per the information provided by NITI Aayog pertaining to Atal Incubation Centers (AICs), there has been a rise in the number of AICs from 13 in 2017 to 69 in 2022. Atal Innovation Mission (AIM) has established 56 AICs and 14 Atal Community Innovation Centers across the country.

The Minister further elaborates that the AIM initiative was established in 2016 to promote a culture of innovation and entrepreneurship in the country, and as part of its mission, AIM has been establishing world-class incubators called AICs in universities, research institutions, corporations, etc. As per the information provided by NITI Aayog, he highlights that, since inception, 3052 startups have been incubated by the 69 AICs, out of which 954 are women-led startups, and these startups have cumulatively generated 15,506 jobs across the country.

17. All Courts/Tribunals to mandatorily deposit amounts deposited with its Registry in bank:- Supreme Court

The issue before Hon'ble SC was the complainant's entitlement of interest for the complainant for the period from April 30, 2005, the date on which the builder issued the Pay Order for reimbursement, which the complainant did not cash. The developer stated that the cash was debited from its current account on that day. Citibank also noted that because the cash was deducted from the developer's account, the bank did not get any interest on that amount while the proceedings were pending.

In this regard, the Court followed the principles outlined in Order XXI of the Code of Civil Procedure, which states that if the sum is deposited or paid to the decree holder or person entitled to it, the person entitled to the amount cannot thereafter claim interest on it. The bench observed that all the courts and the judicial forums should frame guidelines in cases where amounts are deposited with the office, the registry of the court, the tribunal, that such amounts are mandatorily be deposited in a bank or some financial institution, for ensuring that no loss is caused in the future. The Court, therefore, set aside the order and dismissed the appeal preferred by the complainant. Accordingly, the Apex Court allowed the appeal filed by the developer.

18. Labour Ministry issues guidelines for employees, employers to submit joint options under Pension Scheme:- EPFO Circular No. Pension/2022/56259/16541 dated 20.02.2023

In compliance with the Supreme Court's November 4, 2022, order states that the employees who did not exercise option as contemplated in the proviso to paragraph 11(3) of the Employee Pension Scheme 2014 would be entitled to exercise joint option under erstwhile para 11(3) and existing para 11(4) within the aforesaid extended period of 4 months, the Employees' Provident Fund Organisation (EPFO) issued instructions to all its regional and zonal offices on the manner in which employees should apply for higher pensions.

The circular allows subscribers to earn more than the pensionable salary limit of Rs 15,000 per month, from which employers deduct 8.33 percent of the 'actual basic salary' for pension purposes under the Employee Pension Scheme (EPS).

The circular also included a higher pension option for eligible subscribers who either contributed on actual wages greater than Rs 5,000 or Rs 6,500 per month prevalent threshold pensionable salary, exercised their option for higher pension, or had their request for higher pension denied by EPFO authorities prior to the 2014 amendment to EPS-95. Further, eligible subscribers must apply for the enhanced benefit jointly with their employer using the commissioner's application form and all other required documents such as a joint declaration, etc.

As per the circular, an online facility will be provided for employees who continued to be EPS subscribers on or before September 1, 2014, with further details to be provided shortly. Once received, the Regional PF Commissioner will post adequate notice on the notice board and banners for the benefit of the general public.

It also stated that the office in-charge of the concerned regional provident fund office shall examine each case of joint option on higher salary and notify the applicant via e-mail/post and, later, SMS. It also provided that any grievance by the applicant can be registered on EPFiGMS (grievance portal) after submission of his joint option form and payment of due contributions, if any.

19. RBI extends UPI facility for inbound travelers from G20 countries : RBI

The Reserve Bank of India has facilitated travellers coming to India with United Payments Interface (UPI) for making payments in the country. The facility has been allowed for passengers coming to India from G20 nations at present, which will be extended to other countries in the future. However, it will only be available at selected airports - New Delhi, Mumbai and Bengaluru. Announcing the monetary policy outcome, the RBI governor had proposed to permit all inbound travellers to India to use UPI for their merchant payments (P2M) while they are in the country. Further, eligible travellers would be issued Prepaid Payment Instruments (PPI) wallets linked to UPI for making payments at merchant outlets. Delegates from G20 countries can also avail this facility at various meeting venues. The first tranche of UPI linked wallets will be issued by ICICI Bank, IDFC First Bank and two non bank PPI issuers namely Pine Labs Private Limited and Transcorp International Limited.

20. RBI notifies instructions for recognition of unrealised management fee by ARCs:- RBI Notification No. RBI/2022-23/182 dated February 20, 2023

RBI issues a Circular w.r.t 'Unrealised Management Fee' which shall be applicable to all Asset Reconstruction Companies (ARCs) preparing their financial statements as per Indian Accounting Standards (Ind AS), on observing that some ARCs have been recognising management fees even though the said fee had not been realised for more than 180 days. RBI directs that ARCs preparing their financial statements as per Ind AS, shall reduce the following amounts from their net owned funds while calculating the Capital Adequacy Ratio and the amount available for payment of dividend:

- (a) management fee recognised during the planning period that remains unrealised beyond 180 days from the date of expiry of planning period,
- (b) management fee recognised after the expiry of the planning period that remains unrealised beyond 180 days of such recognition, and
- (c) any unrealised management fees, notwithstanding the period for which it has remained unrealised, where the net asset value of the Security Receipts has fallen below 50% of the face value

Further, RBI apprises that the amount reduced from net owned funds and amount available for payment of dividend shall be net of any specific expected credit loss allowances held on unrealised management fee referred to above and the tax implications thereon, if any. Also, adds that the Audit Committee of the Board shall review the extent of unrealised management fee and satisfy itself on the recoverability of the same while finalising the financial statements and also specifies the format for disclosing information on the ageing of the unrealised management fee as part of the Notes to Accounts in the annual financial statements.

21. IFSCA clarifications in relation to Family Investments Funds:- IFSCA Circular No. 333/IFSCA/FIF/2022-23, dated 01 March 2023

IFSCA has issued clarifications in relation to Family Investment Funds (FIF) stating that a FIF shall not seek money from individuals or entities outside of the single family. However, a FIF may share economic interest with its employees, directors, FME or other persons providing services to the FIF, as per its internal policy to reward the persons providing services to the FIF or to align the interest of such persons with those of the FIF. In this regard, wherever required, the FIF may accept contributions from the aforementioned persons for the limited purpose of granting economic interest to them, which in no case shall exceed an aggregate of twenty percent of FIF's profits. Further, a FIF may set-up additional investment vehicles subject to prior approval of the Authority and payment of fee as applicable to a FIF. Such additional vehicles, in the form of companies, limited liability partnerships, trusts or any other form as may be specified by the Authority, shall also be considered as part of the FIF for the purpose of meeting the requirements specified in the Regulations.

22. Clarifications in relation to Fund Management Entities and Schemes set up in IFSCs by Sovereign Wealth Funds:- IFSCA Circular F.No. 333/IFSCA/SWF/2022-23 dated 01st March 2023

The International Financial Services Centers Authority (IFSCA) has issued a circular providing clarifications in relation to fund management entities and schemes operating in International Financial Services Centers (IFSCs) and Sovereign Wealth Funds (SWFs) in India. Sovereign wealth funds represent the interests of a state and benefit a country's economy and its citizens. In order to remove certain difficulties faced with such funds, those desirous of setting up a fund management entity (FME) and scheme in the IFSC, in exercise of the powers conferred by Sections 12 and 13 of the IFSCA Act, 2019, should read Regulation 146, which clarifies the following:-

- The ceiling of 10% investment from FME or its associates in the case of venture capital schemes and restricted schemes [regulations 28(1) and 40(1), respectively] shall not be applicable.
- Restriction that certain schemes can only be closed-ended in the case of venture capital schemes and Category I and II alternative investment funds shall not be applicable.
- A restricted scheme set up as an open-ended scheme by a FME of a sovereign wealth fund may comply with the provisions, as applicable to a close-ended scheme, with respect to investments in physical assets and the computation and disclosure of NAV. Further, the cap on investments in securities of unlisted companies [regulation 35(1)] shall not apply to such open-ended schemes.

23. Ceiling of 10% investment from Fund Management Entity not applicable to VC schemes:- IFSCA Circular No. 333/IFSCA/SWF/2022-23 Dated 01st March 2023

IFSCA, in order to remove certain difficulties faced by Sovereign Wealth Funds desirous of setting-up a Fund Management Entity ('FME') and schemes in IFSC, clarifies that:

- The ceiling of 10% investment from FME or its associates in case of Venture Capital ('VC') Schemes and Restricted Schemes (Reg. 28(1) and 40(1), respectively) shall not be applicable.
- The restriction that certain schemes can only be close ended in case of VC Schemes, Category I and II Alternative Investment Funds (Reg. 21 (1) and 30 (1) (a) & (c), respectively), shall not be applicable
- A restricted scheme set up as an open-ended scheme by a FME of a sovereign wealth fund may comply with the provisions, as applicable to close ended scheme, w.r.t. investments in physical assets [Reg. 34(3)], and computation and disclosure of NAV (Reg. 36(3) and 39(1), respectively), shall not be applicable

· Further, specifies that the cap on investments in securities of unlisted companies [Reg. 35(1)] shall not apply to such open-ended schemes.

24. Every stock exchange clearing corporation shall have grievance redressal panel:- SEBI Notification No. SEBI/LAD-NRO/GN/2023/124 dated 28 February 2023

SEBI amends the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations by introducing the definition of "non-independent director" as a director elected or nominated by the shareholders who are neither trading members nor clearing members, as the case may be, or their associates and agents, and also introduces a Code of Conduct for Stock Exchanges and Clearing Corporations (CC), specifying that a recognised stock exchange and a recognised CC shall adopt appropriate due diligence measures, take effective measures to ensure implementation of a risk management framework and good governance practices, take appropriate measures towards investor protection and education, etc.

SEBI inserts a new provision into the Regulations pertaining to nominees of the Board on the governing board of a recognised stock exchange or recognised clearing corporation, stipulating that the Board may appoint one or more persons, not exceeding 3 in number, as director(s) on the governing board of any recognised stock exchange or recognised clearing corporation, and such a director shall enjoy the same status and power as the other directors of the governing board. It also introduces the provisions pertaining to Grievance Redress Panels and states that every recognised stock exchange and recognised CC shall have Grievance Redressal Panels to resolve investor grievances, which shall function in the manner as may be specified by the Board.

SEBI also specifies that every recognised stock exchange and CC and the company where the recognised stock exchange or CC has invested shall lay down a framework for sharing and monitoring data, including confidential and sensitive data, and that the policy framework shall contain means and manners of data sharing, an escalation matrix for data sharing, and types of data that can be shared.

25. SEBI amends Depositories Regulations, lays down Code of Conduct for governing-board, committee members No. SEBI/LAD-NRO/GN/2023/125 dated 28.02.2023

SEBI amended the Depositories and Participants Regulations, redefining "key management personnel" to include a person higher in the hierarchy than the head of any department handling core functions in the depository, or reporting officials of key management personnel, or any person defined as "key managerial personnel" under the Companies Act, 2013. Furthermore, the SEBI adds the definition of "non-independent director" to mean a director elected or nominated by shareholders who are neither depository participants nor their associates and agents.

The Amended Regulations state that an employee of a depository shall not simultaneously be an employee of any other company in which the depository has invested, and that a director, committee member, or employee of a depository shall not receive any compensation or other financial benefit from the companies in which the depository has invested, other than fees and expenses related to governing board and committee meetings. Furthermore, the Amendment replaces the existing Code of Conduct for Directors with a comprehensive Code of Conduct for the governing board, directors, committee members, and key management personnel, stating, among other things, that the governing board of the depository shall focus on strategy, policy level issues, and important matters and may review day-to-day operational matters only in certain cases. Lastly, SEBI mandates that every depository shall identify and segregate its functions into Critical Operations, Regulatory, Compliance, Risk Management and Investor Grievances, and other functions including business development.

26. SEBI issues Informal Guidance relating to exemption from open-offer obligations during merger dated 21.09.2022

SEBI issued an Informal Guidance in respect to Scheme of Amalgamation of the promoter company, Karun Carpets Pvt. Ltd. ('KCPL') of Greaves Cotton Ltd. ('Target Company') under the Takeover Regulations. The KCPL has requested a no-action letter in pursuance to the confirmation that the transfer and vesting of shares of the Target Company into DBH Holdings (India) Pvt. Ltd. ('DHPL'), as the scheme of amalgamation of KCPL into DHPL, would be exempt from open offer obligations by virtue of Reg. 10(1)(d)(iii) of the Takeover Regulations and whether the Target Company will require to comply with the procedural compliances in terms of Reg. 29 of Takeover Regulations and under the PIT Regulations. As, SEBI notes that the proposed amalgamation scheme does not directly involve the Target Company as a transferor or transferee company, and that KCPL has confirmed that the entire consolidation to be paid for amalgamation will be discharged by the issue of shares, with no involvement of cash and cash equivalents.

Further, SEBI noted that the shareholders who are currently holding entire 100% shares and voting rights in DHPL, directly or indirectly, shall continue to hold entire 100% shares and voting rights in DHPL, directly or indirectly, and recording the submission that the conditions of Reg. 10(1)(d)(iii) of Takeover Regulations shall be complied with SEBI. Furthermore, they specify that the transfer and vesting of shares of the Target Company into DHPL would be exempt from open offer obligations, subject to NCLT approval of the scheme of amalgamation.

However, the Regulator clarifies that the exemption under the Takeover Regulations only applies to making an open offer and not to the necessary disclosure requirements. Thus, the compliances required under Regulation 29 of the Takeover Regulations needs to be complied with SEBI.

27. SEBI tweaks methods for achieving minimum public shareholding requirements:- SEBI circular no. SEBI/HO/CFD/PoD2/P/CIR/2023/18 dated 03 February 2023

The Securities and Exchange Board of India (SEBI) reviews and rationalizes few of the existing methods for achieving Minimum Public shareholding (MPS) and introduces two additional methods to facilitate listed entities to achieve MPS compliance, pursuant to receipt of representation from listed entities and other stakeholders requesting relaxation from compliance with the conditions specified in the existing methods and approval for using non-prescribed methods to achieve MPS compliance. SEBI lays down 10 methods that a listed entity shall adopt in order to achieve compliance with the MPS requirements mandated under Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules r.w. Reg. 38 of the LODR Regulations, including the 2 additional methods *i.e.*

- (i). Increase in public holding pursuant to exercise of options and allotment of shares under an employee stock option (ESOP) scheme and,
- (ii). Transfer of shares held by promoters / promoter group to an Exchange Traded Fund (ETF) managed by a SEBI-registered mutual fund

SEBI elaborates that increased public holding pursuant to exercise of options and allotment of shares under an ESOP Scheme is subject to a maximum of 2% of paid-up share capital of the listed entity, and lays down the condition that the ESOP scheme shall be in compliance with the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, and the promoters / promoters group shall not be allotted any shares. Further, SEBI delineates that transfer of shares held by promoters / promoter group to an ETF managed by a SEBI-registered mutual fund is subject to a maximum of 5% of the paid-up equity share capital of the listed entity. Lastly, Regulator directs Stock Exchanges to monitor the methods adopted by listed entities to increase their public holding and comply with MPS

requirements and specifies that non-compliance, if any, observed by the Stock Exchanges w.r.t. the methods and / or conditions prescribed therein, shall be reported to SEBI on a quarterly basis.

28. SEBI issues consultation paper on eligibility criteria for key investment team of an AIF:- SEBI Consultation Paper dated 03 February 2023

SEBI has issued a consultation paper on the review of eligibility criteria for the key investment team and prescribing qualifications for the compliance officer of the manager of an alternative investment fund (AIF). The requirement of having experience in terms of Reg. 4(g) of the AIF Regulations may act as a barrier for newer or first-generation managers who may not have the requisite experience to satisfy the regulatory requirement but have competence and expertise in fund management and generating returns for the investors.

It also proposed to replace the experience criteria under Reg. 4(g) of the AIF Regulations for the key investment team members of the manager of an AIF with the requirement of obtaining a relevant certification from an institution notified by SEBI, and proposed that the compliance officer of the manager of an AIF may also be required to obtain a relevant certification from an institution notified by SEBI. Further, observing that there remains ambiguity in the understanding of the applicants as to what experience suffices the eligibility condition specified under the AIF Regulations, SEBI underscores its observations to the applicant regarding the key investment team not meeting the experience criteria or calls for more information in this regard, which causes delay in the processing of the applications.

It also remarks that a need is felt to replace the existing criteria of experience of the key investment team with criteria that are specific, align with the objectives of the AIF regulations, facilitate expeditious processing of the applications, and encourage first-time managers to have the competence to manage AIFs. SEBI has sought comments from the public on the proposal latest by 18 February 2023.

29. SEBI sets forth disclosure requirements for issue of green debt securities:- SEBI Circular No. SEBI/HO/DDHS-RACPOD1/P/CIR/2023/023 dated 06 February 2023

SEBI reviews Chapter IX (Green Debt Securities) of its Operational Circular for the issue and listing of non-convertible securities, securitized debt instruments, security receipts, municipal debt securities, and commercial paper, which states that an issuer desirous of issuing green debt securities shall disclose a statement on the environmental sustainability objectives of the issue of green debt securities in the offer document for public issues or private placements. It specifies that an issuer who has listed green debt securities shall also provide disclosure related to the utilisation of the proceeds of the issue as per the tracking done by the issuer using internal processes as disclosed in the offer document, as well as the details of unutilized proceeds, including the temporary placement or utilization of unallocated and unutilized proceeds from each ISIN of green debt security issued by the issuer.

It also highlights that an issuer shall appoint a third party reviewer or certifier for a green debt security for post-issue management of the use of proceeds from the green debt security, verification of internal tracking, and impact reporting, and clarifies that the said requirement of appointing a third party reviewer or certifier is applicable on a "comply or explain" basis for a period of two years. It stipulates that an issuer of green debt securities shall maintain a decision-making process that it uses to determine the continuing eligibility of the projects and/or assets, as well as to ensure that all projects and/or assets funded by the proceeds of green debt securities meet the documented objectives of green debt securities.

30. SEBI grants 3 more weeks to Online Bond Platforms to register as Stock Brokers:- SEBI Circular No. SEBI/HO/DDHS/DDHS- RACPOD1/ P/ CIR/ 2023/ 025, dated 07.02.2023

SEBI has decided to grant an additional time period of 3 weeks commencing from Feb 09, 2023, for making an application to obtain a certificate of registration as a stock broker under the SEBI (Stock Brokers) Regulations, 1992. Accordingly, the application for registration by Online Bond Platform Providers (OBPPs) as stock brokers can be made till Mar 01, 2023. This circular is issued owing to the difficulties faced by the stakeholders due to the upgradation of the MCA V-3 portal.

31. SEBI introduces Payment Gateway for online payment of fees w.e.f. April 1, 2023:- SEBI Notification No. SEBI/LAD-NRO/GN/2023/121, dated 07.02.2023

SEBI notifies SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations to further amend various other Regulations inter alia including the Stock Brokers Regulations, Custodians Regulations, Mutual Funds Regulations, Collective Investment Schemes Regulations, Foreign Venture Capital Investor Regulations, Self-Regulatory Organisations Regulations Investor Protection and Education Fund Regulations, SAST Regulations, KYC Registration Agency Regulations, AIF Regulations etc., introduces online payment using the SEBI Payment Gateway.

Further, the amendments to the regulations generally lay down that the payment of fees is payable by way of direct credit into the bank account through NEFT/ RTGS/ IMPS or online payment using the SEBI Payment Gateway or any other mode as may be specified by the Board from time to time. As regards the Investor Protection and Education Fund Regulations, SEBI stipulates that an amount credited to the Fund shall be credited through NEFT / RTGS / IMPS or online payment using the SEBI Payment Gateway or any other mode as may be specified by the Board from time to time.

SEBI mandates that the Amendment shall come into effect on April 1, 2023.

32. SEBI: Publishes Consultation Paper on safeguarding clients' funds with Stock Brokers, Clearing Members:- SEBI's Press release dated Feb 6, 2023

The SEBI has issued a consultation paper for the public on strengthening safeguards to customer funds with various stock brokers and clearing members that proposed framework envisages that the stock brokers shall place the entire clients' funds with the CM with segment wise, Unique Client Code wise allocation of collateral and that the CM would in turn place these funds with the Clearing Corporations ('CC'), allocated against the concerned client. SEBI further proposes that, for pay-in obligations from clients, the brokers may transfer a portion of the respective clients' unutilized collateral placed (i.e. surplus funds) with CC to meet the daily pay-in, as also the broker shall ensure that any pay-out request by clients, made prior to 6 PM shall be honoured within the same day.

Further, the Market Regulator suggests that the stock broker shall perform client wise daily reconciliation, and deduct only the required respective brokerage and statutory charges prior to upstreaming of clients' funds to CC at end of the day and that the contract note sent to clients shall mention all the relevant charges levied to the client and recommended that the stock brokers will have limited and clearly designated bank accounts that are appropriately labelled and that they will, at all times, provide updated details of all their bank accounts to stock exchanges and on their websites.

33. SEBI floats Consultation Paper on direct plans for AIF schemes, trail-model for commission:- SEBI Consultation Paper, Dated 3rd February 2023

SEBI proposed mandating alternative investment funds (AIFs) to offer direct plans to investors and suggested a trail model for distribution commission to curb mis-selling in such funds (rather than upfront commission). In addition, the regulator has suggested mandating the dematerialization of units of AIFs. As part of the first phase of this mandate, all schemes of AIFs with a corpus of more than Rs 500 crore should compulsorily dematerialize their units by April 1, 2024. Seeks comments by February 18, 2023.

AIFs shall ensure that any investor approaching an AIF through an intermediary that is separately charging the investor a fee (such as advisory or portfolio management fee), invests in the AIF via the direct plan route only; SEBI also suggests that investors on-boarded via the direct plan shall be provided for an adjusted higher number of units, taking into account the lower distribution charges applicable to them versus other investors, such that all investors would continue to see the same Net Asset Value on their unit holdings.

SEBI apprises that a proposal on adopting trail model of distribution commission in AIFs was placed before the Alternative Investment Policy Advisory Committee ('AIPAC') which recommended that in case of Category-III AIFs, investors may be charged placement fee/ distribution fee on a trail basis; Thus, in addition to the above recommendation of the AIPAC, SEBI also proposes that in case of Category-I and II AIFs, investors may also be charged on trail basis, however, specifies that certain higher amount of placement/ distribution fee (viz: one-third of the present value of the total distribution fee) may be paid upfront in the first year

Detailed Report: https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-direct-plan-for-schemes-of-alternative-investment-funds-aifs-and-trail-model-for-distribution-commission-in-aifs_67820.html

34. SEBI publishes Consultation Paper on review of Corporate Governance norms for high-value debt-listed entity:- SEBI Consultation Paper, Dated 8th February 2023

SEBI proposed corporate governance norms pertaining to Related Party Transactions (RPT) for the High Value Debt Listed Entity ('HVDLE') i.e. a listed entity which has only listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of Rs. 500 cr. and above. SEBI seeks comments by February 22, 2023 on the consultation paper in this regard.

Where 90% or more shareholders in number are related parties and where a General Meeting is to be conducted, in which an agenda items relating to Related Party Transactions ('RPTs') is proposed to be placed for approval by shareholders, the company shall send a copy of such agenda item to the debenture holders holding listed non-convertible debt securities for seeking their first approval on such agenda items. The responses received from debenture holders shall be scrutinized by a Practicing Company Secretary (PCS) and obtain a certificate from PCS within 3 days of the due date for receiving said responses from debenture holders.

If objections are received from the debenture holders holding 75% or more in value, based on the number of responses received, then the Board of Directors shall ensure that the agenda item pertaining to RPT is withdrawn, and that in case where no response from any debenture holder is received, then on the basis of the certificate of the PCS, it will be presumed that debenture holders do not have any objection and the proposal of such RPTs shall be placed before the shareholders in the General meeting for approval.

Lastly, highlighting that, currently, LODR Regulations provides that corporate governance norms shall continue to apply to a HVDLE even when the outstanding amount of listed non-convertible debt securities falls below the specified threshold of Rs. 500 cr., but there is no specified period for which a HVDLE shall continue to comply with such provisions, SEBI proposes that, once the regulations become applicable to a HVDLE, they shall continue to remain applicable till such time the outstanding value of listed non-convertible debt securities of such entity reduces and remains below the specific threshold for 3 consecutive FYs.

35. Buyback Regulations amended and separate window to be created for buy-back via Exchanges:- SEBI Notification

SEBI notifies amendments to the SEBI (Buy-Back of Securities) Regulations, 2018, and inserts new Regulations 22A (Disclosures, filing requirements and timelines for public announcement), 22B (Offer procedure), 22C (Payment to holders of shares or other specified securities), 22D (Retail and Promoter participation) and 22E (Methodology of acceptance of bids), and Schedule VI providing for methodology to be adopted prior to the opening of an offer.

It states that the maximum limit of any buy-back shall be 25% or less of the aggregate of paid-up capital and free reserves of the company based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, and explains that in respect of the number of equity shares bought back in any FY, the maximum limit shall be 25% and be construed w.r.t. the total paid-up equity share capital of the company in that FY.

It further stipulates that in case of a buy-back through tender offer, the Board of Directors of the company may, till one working day prior to the record date, increase the maximum buy-back price and decrease the number of securities proposed to be bought back, such that there is no change in the aggregate size of the buy-back, adds that all the filings to the Board shall be made only in electronic mode after being digitally signed by the company secretary or the person authorized by the board of the company, for the purpose of these regulations. Moreover, the Regulator lays down that the company shall, within 2 working days from the record date, file the following in electronic mode –

- (i) a letter of offer, containing disclosures as specified in Schedule III, through a merchant banker who is not an associate of the company,
- (ii) a certificate in the form specified by the Board, issued by the merchant banker, who is not an associate of the company, certifying that the buy-back offer is in compliance of these regulations.

Lastly, underscoring that where part of the escrow account is in a form other than cash, the company shall deposit with a scheduled commercial bank, in cash, a sum of not less than 2.5% of the total amount earmarked for buy-back as specified in the resolution of the Board of Directors or the special resolution, as the case may be, as security for the fulfilment of its obligations under the regulations and specifies that for the purpose of buy-back through stock exchange, a separate window shall be created by the concerned stock exchange and such window shall remain open for the period specified in these regulations.

36. SEBI releases Master Circular for Takeover Regulations:- SEBI vide circular No. SEBI/HO/CFD/PoD-1/P/CIR/2023/31, dated 16 February 2023

SEBI issued a master circular for the Takeover Regulations in order to enable the stakeholders have access to the provisions of the applicable circulars at one place, inter alia notifies that the format of disclosure documents/reports has been updated and listed in Annexure-II of the master circular. In order to streamline capturing and dissemination of the information related to “encumbrances”, specifies that all types of encumbrances as defined under Reg. 28(3) of the Takeover Regulations shall necessarily be recorded in the depository system and that the depositories shall capture details of the ultimate lender along with name of the trustee acting on behalf of such ultimate lender such as banks, NBFCs, etc.

Further, with a view to facilitate ease of operations and convenience in terms of submission of relevant documents with SEBI including public announcement, detailed public statement, draft letter of offer, letter of offer, etc., SEBI advises all Merchant bankers to file the same through online mode only through SEBI Intermediary Portal. The Master Circular mentions that payment of fees in connection with filings made with SEBI is mandated to be made through Payment Gateway made available at SEBI Intermediary Portal, and that the shareholders holding securities in physical form are allowed to tender shares in open offers, however, such tendering shall be as per the provisions of the Regulations.

Lastly, SEBI sets out the conditions for grant of exemption on application for cases involving Trust as Acquirer, inter alia clarifies that the Trustees will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves.

37. SEBI tweaks provisions pertaining to appointment of auditor under InvIT, REIT:- SEBI notification no. SEBI/LAD-NRO/GN/2023/122 & 123, dated 14 February 2023

The SEBI has made new changes in the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014. The various key highlights of the amendments are listed in detail below –

- i. SEBI widens the scope of definition of "Change in Control" for various entities. The 'change in control' means in the case of a body corporate If the shares are listed on any recognised stock exchange, shall be construed with reference to the definition as provided in the regulations framed u/s 11(2)(h) of the SEBI Act, 1992.
- ii. SEBI has introduced two new clauses defining 'Independent Director' wherein, it has been defined that the BOD of the Manager, is a person of integrity and possesses relevant expertise and experience, who is not related to the InvIT / REIT, its holding company and/or SPV, parties to the InvIT / REIT, its holding company, the subsidiary or associate or their promoters or directors.
- iii. The SEBI mandates the manager/investment manager of REIT/InvIT to appoint an individual or a firm as the auditor, who shall hold office from the date of conclusion of the annual meeting in which the auditor is appointed till the conclusion of the 6th annual meeting of the unitholders.
- iv. Revising the provision for an appointment of an auditor, the manager/investment manager of REIT/InvIT shall not appoint or re-appoint an individual as an auditor for more than one term of 5 consecutive years; and an audit firm as the auditor for more than two terms of 5 consecutive years.
- v. As per the Regulation 13, now the auditor to undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of REIT/InvIT as per the Indian Accounting Standards and any addendum as defined in Rule 2 (1) (a) of the Companies (Indian Accounting Standards) Rules, 2015.
- vi. The SEBI has introduced new requirements for managers/investment managers in the form of a new chapter i.e., chapter VI A/VI B under regulation 26 called as 'Obligations of the Managers/Investment Managers' that mandates the BOD of the manager/investment manager of REITs/InvITs shall comprise of not less than 6 directors, including at least 1 women independent director. Additionally, the quorum for every meeting of the BODs of the manager/investment manager shall be 1/3rd of its total strength or three directors, whichever is higher, including at least 1 independent director.
- vii. Now, the managers/investment managers of REIT/InvIT have to mandatorily submit a secretarial compliance report given by a practising CS to the stock exchanges in a form as specified within 60 days from the end of each FY.
- viii. Further, the managers/investment managers of REIT/InvIT now have to submit a quarterly compliance report on corporate governance in the format as may be specified by the Board to the recognized stock exchange within a period of 21 days from the end of each quarter.
- ix. SEBI also inserts a schedule regarding governance norms, whereunder, Part A specifies the minimum information to be placed before BOD of the investment manager/ manager, which shall include, annual operating plans and budgets and any updates, capital budgets and any updates, quarterly results for the investment manager / REIT and its operating divisions or business segments.

38. SEBI mandates stock brokers, depository participants to maintain designated websites:- SEBI Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/30 dated 15 February 2023

SEBI directs all stock brokers (SB) and depository participants (DP) to mandatorily maintain a designated website, considering the advancement of technology and the need to provide better services to investors. A designated website brings in transparency and helps investors to keep themselves well informed about various activities of the SB/ DP. The websites shall mandatorily display the following information: basic details of the SB/ DP such as registration number, registered address of head office and branches, names and contact details such as email ids, etc., of all key managerial personnel (KMPs), including the compliance officer, step-by-step procedures for opening

an account, filing a complaint on a designated email id, finding out the status of the complaint, etc., and details of authorised persons.

SEBI also directed stock exchanges and depositories to bring the provisions of this circular to the notice of stock brokers and depository participants and to make amendments to the relevant bye-laws, rules, and regulations for the implementation of the above provisions. The URL to the website of a SB/ DP shall be reported to the stock exchanges or depositories within a week of this circular coming into effect, and modifications, if any, to the URL shall be reported within three days of the changes. The provisions of the circular shall come into effect on August 16, 2023.

39. SEBI plans forensic audit of all mutual funds:- News Report 11th February 2023

Due to unfortunate events at Franklin Templeton India Mutual Fund and Axis Mutual Fund in the last 2-3 years Securities and Exchange Board of India (SEBI) is planning a forensic audit of all 44 mutual fund to focus on MFs' due diligence with respect to investments in illiquid securities, management of various risks including concentration, downgrades, early warning signals and liquidity issues of the securities in the portfolio, besides valuation practices and investment strategy of various schemes.

In the aforesaid cases, Senior officials of Franklin Templeton MF and its asset management company came under regulatory scrutiny in 2020 for redeeming their personal investments from the beleaguered six debt schemes based on 'confidential and non-public information. Also last year, SEBI initiated a probe into the case involving alleged front-running by two fund managers of Axis MF. These fund managers-cum-traders of the fund house allegedly placed orders at a value much higher or lower than the prevailing market price and received kick-backs from certain brokers for indulging in such unethical trading practice. After the Franklin Templeton MF and Axis MF disaster SEBI is believed to have raided a couple of MFs and the regulator may be conducting this audit to ensure that investors' money is safe.

Over the past decade, the mutual fund industry has grown five-fold with assets under management touching ₹40-lakh crore last December from ₹8-lakh crore in November 2012. From ₹10-lakh crore in May 2014, mutual funds' Assets Under Management (AUM) rose to ₹20-lakh crore in a span of just three years in August 2017 and then crossed ₹30-lakh crore in November 2020.

SEBI in its consultation paper put greater emphasis on the role of Trustees' in protecting unit-holders & assumes even greater significance to ensure that AMCs act in the best interests of the unit-holders. SEBI observed that in a significant number of folios either the bank account details are not available or the bank account number provided is less than 15- or 16-digit account numbers exposing such Folios to fraudulent transactions thus thrusting more responsibilities on Trustees. SEBI also proposed AMCs to set up a "Unit Holder Protection Committee" across all products and services which will independently review AMC decisions from unit-holders' interest perspective.

Detailed Information - <https://www.thehindubusinessline.com/markets/sebi-plans-forensic-audit-of-all-mutual-funds/article66496911.ece>

40. SEBI releases Consultation Paper on regulatory framework for ESG disclosure, ratings & investment:- SEBI

SEBI issues a Consultation Paper on the regulatory framework of Environmental, Social And Governance ('ESG') disclosures by listed entities, ESG ratings in the securities market and ESG investing by mutual funds in order to facilitate balance between transparency, simplification and ease of doing business in an evolving domain and invites public comments by March 6, 2023.

The consultation paper emphasizes that assurance of sustainability reports is key to bringing credibility and maintaining investor confidence and SEBI recommends that the comprehensive Business Responsibility and Sustainability Reporting ('BRSR') shall be updated to incorporate Key Performance Indicators ('KPIs') proposed in the BRSR Core that are currently not present in the comprehensive BRSR. Considering that a number of supply chain partners may be small, unlisted

firms, it may be difficult for such companies to track and report on a large number of ESG metrics, as also for certain companies, especially in the manufacturing sector, there may be multiple tiers of suppliers within their supply chains, it proposes to introduce a limited set of ESG disclosures i.e. BRSR Core in a gradual manner and on a “comply-or-explain” basis.

It further suggests that AMCs need to provide better clarity on “in favour” or “against” votes cast on resolutions in a year by disclosing if the resolution has or has not been supported due to any environmental, social or governance reason, and adds that as the MFs may have holdings in the same investee companies under non-ESG funds also, in cases where the voting approach for ESG and non-ESG schemes is same, the reporting may be made on a fund house level on “in favour” or “against” votes and for mitigating green washing at scheme level, SEBI proposes that an ESG scheme shall invest at least 65% of its AUM in companies which are reporting on comprehensive BRSR and are also providing assurance on BRSR Core disclosures, however, considering that BRSR Core is proposed to be effective from FY 2023-24, SEBI specifies that the aforementioned investment norms is proposed to be made effective from October 1, 2024 onwards, and the schemes which are not compliant with above mentioned criteria as on October 1, 2024 may be provided a time period of one year i.e. till September 30, 2025 for compliance.

41. SEBI issues advisory for Regulated Entities on cybersecurity best practices:- SEBI

SEBI has issued an advisory for SEBI Regulated Entities (‘REs’) regarding cybersecurity best practices highlighting that an efficient and effective response to and recovery from a cyber-incident by REs are essential to limit any related financial stability risks. In light of financial sector organizations, stock exchanges, depositories, mutual funds and other financial entities that have been experiencing cyber incidents which are rapidly growing in frequency and sophistication, regulator emphasizes that it is important to recognize that many traditional approaches to risk management and governance that worked in the past may not be comprehensive enough to address the rapid changes in the threat environment and the pace of technological change that is redefining public and private enterprise.

Further, SEBI advises REs to define roles and responsibilities of Chief Information Security Officer (CISO) and other senior personnel. Reporting and compliance requirements shall also be clearly specified in the security policy. In addition, the compliance of the advisory shall be provided by the REs along with their cybersecurity audit report and shall be submitted as per the existing reporting mechanism and frequency of the respective cybersecurity audit.

Furthermore, it requires the REs to proactively monitor the cyberspace to identify phishing websites in respect to REs domain and report the same to Computer Security Incident Response Team (CSIRT-Fin) or Indian Computer Emergency Response Team (CERT-In) for taking appropriate action.

42. SEBI floats paper on strengthening corporate governance at listed entities, proposes amendments to LODR: SEBI

SEBI has issued a consultation paper on "Strengthening Corporate Governance at Listed Entities" by empowering Shareholders. The consultation paper aims to introduce amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The proposed amendments are listed as below:

a. Appointment of Independent Directors: The consultation paper proposes to mandate that at least one-third of the board of directors of a listed entity be comprised of independent directors. It also proposes that the independent directors be appointed for a minimum term of five years, and that their reappointment be subject to shareholder approval.

b. Appointment of Key Managerial Personnel (KMP): The paper proposes that the appointment of KMPs be subject to the approval of shareholders. This will ensure that the appointment of KMPs is aligned with the interests of shareholders, and that their compensation is linked to the performance of the listed entity.

c. Enhanced Role of Audit Committees: The consultation paper proposes to enhance the role of audit committees by requiring them to review the financial statements of the listed entity on a quarterly basis. It also proposes to mandate that the audit committee approve all related party transactions and review the use of funds raised through qualified institutional placements (QIPs).

d. Voting by Institutional Investors: The paper proposes to require institutional investors to disclose their voting patterns on the website of the listed entity, as well as on the website of the stock exchange. This will provide greater transparency and accountability in the voting process, and will enable shareholders to make more informed decisions.

e. Enhanced Disclosures: The consultation paper proposes to enhance the disclosures made by listed entities on various matters, including related party transactions, the qualifications of auditors, and the use of funds raised through QIPs. It also proposes to make it mandatory for the listed entity to disclose the names of shareholders who hold more than a certain percentage of the share capital.

f. Protection of Minority Shareholders: The paper proposes to introduce measures to protect the interests of minority shareholders, including the right to receive dividends and participate in share buybacks. It also proposes to make it mandatory for the listed entity to provide a platform for minority shareholders to communicate their concerns to the board of directors.

The proposed amendments to the SEBI (LODR) Regulations, 2015 are expected to significantly enhance corporate governance at listed entities by empowering shareholders. The changes will provide greater transparency, accountability, and protection to minority shareholders, and will enhance the overall efficiency and effectiveness of the securities market.

43. SEBI mulls review of ICDR regulations to increase transparency, streamline processes:- *SEBI Consultation Paper dated 23 February 2023*

SEBI released a consultation paper on certain amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) with the objective of increasing transparency and streamlining certain processes. The proposals relate to underwriting for public issues (IPO and FPO), a precondition for announcing a bonus issue by a listed entity and issuance of bonus issues in dematerialized form, the inclusion of pension funds sponsored by entities that are associates of the lead manager to participate in the anchor investor category in a public issue, and the inclusion of certain requirements with respect to disclosures made in the offer document.

The issuer shall, prior to filing the prospectus, enter into underwriting agreement with lead managers and syndicate members, indicating therein the maximum number of specified securities which they shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price to the extent of rejection of valid bids procured by the lead managers or their respective syndicate members, SEBI also recommends that Bonus Issuance to shareholders shall be made in the dematerialized form only. Considering the existing regulatory supervision of the Pension Fund Regulatory and Development Authority and the exception available to pension funds promoted by entities that are associates of the lead manager for participation as an anchor investor in a public issue of a real estate investment trust, it is proposed that clause 10(k) of Schedule XIII be amended to allow pension funds of entities that are associates of the lead manager to participate as an anchor investor in a public issue.

SEBI also proposed to amend the ICDR Regulations to include the following requirements with respect to disclosures made in the offer document: providing access to material contracts and material documents for inspection through online means apart from inspection at the registered office; providing a complete industry report as part of material documents for inspection both through offline and online modes; and hosting draught offer documents and offer documents on the website of the issuer company. SEBI has sought comments from the public on the said proposal latest by 08th March 2023.

44. SEBI proposes to streamline disclosures by listed entities, strengthen compliance with LODR norms *SEBI Consultation paper dated 23 February 2023*

The Securities and Exchange Board of India (SEBI) issued a consultation paper on streamlining disclosure rules for publicly traded companies. The markets regulator has requested public feedback on the proposals until 06.03.2023.

The paper requests public feedback on proposed amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations" or "LODR") to address the following issues:

- i. Newly listed companies must submit their first financial results.
- ii. Timeline for filling director, Compliance Officer, Chief Executive Officer (CEO), and Chief Financial Officer (CFO) vacancies in listed companies.
- iii. Freezing of the demat accounts of a listed entity's Managing Director(s), Whole-time Director(s), and Chief Executive Officer(s) for continued non-compliance with the LODR Regulations and/or non-payment of penalties by a listed entity.

SEBI proposes to grant newly-listed entities adequate time to reveal their first financial results after listing, it is preferable to allow at least 15 days from the date of listing for such disclosures. Further SEBI stated that listed entity, post listing, shall submit its first financial results, quarterly or annually as the case may be, immediately succeeding to the periods for which financial statements were disclosed in its offer document for the initial public offer, as per the timeline indicated as applicable, or within 15 days from the date of listing, whichever is later.

45. SEBI releases Consultation Paper to review norms for holding of Sponsors in REITs, InvITs:- *SEBI Consultation paper dated 23 February 2023*

The Securities and Exchange Board of India (SEBI) has proposed tightening the norms for sponsors of real estate investment trusts and infrastructure investment trusts in order to ensure alignment of interest between the Sponsors and unit holders, solicits public comments by March 8, 2023. In a consultation paper issued by the regulator, it has made a proposal to require sponsors to hold a minimum level of investment in REITs or InvITs, and not be allowed to dilute it completely after the mandatory three-year lock-in period.

The paper also suggests a new clause that would prohibit sponsors from encumbering the mandatory portion of their unit holding. Another significant proposal seeks to guarantee that REITs and InvITs are not left without sponsors. As stated in the paper, a new sponsor should be inducted if an existing one is permitted to declassify after three years on the list. SEBI now wants sponsors to retain 5% of minimum unit-holdings for three to five years, 3% for five to ten years, 2% for ten to twenty years, and 1% after twenty years.

Furthermore, SEBI proposes that in the case of REITs, the Sponsors collectively have a net worth of not less than Rs. 100 crore, and each Sponsor has a net worth of not less than Rs. 20 crore, and in the case of InvITs, each Sponsor has a net worth of not less than Rs. 100 crore if it is a body corporate or a company, or net tangible assets of not less than Rs. 100 crore if it is a limited liability partnership.

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CROSS BORDER

1. Singapore to implement Pillar 2 of BEPS 2.0 tax recommendations from 2025:- News Report

Singapore's corporate tax system will reflect recommendations from the second pillar of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS 2.0) from 2025, Singapore's Finance Minister Lawrence Wong said on Tuesday in his Budget speech. Pillar 2 of BEPS 2.0 introduces a minimum effective tax rate of 15 percent for multinational enterprise (MNE) groups with annual group revenues of at least **750 million euros**. This will be implemented in Singapore on or after Jan 1, 2025. The change is part of a broader international move to align minimum global corporate tax rates for large MNE groups, Wong said. "At the same time, we will review and update our broader suite of industry development schemes to ensure that Singapore remains competitive in attracting and retaining investments," Wong said. The government will also continue to engage companies here and give them sufficient notice ahead of any changes to Singapore's tax rules or schemes, Wong added.

<https://www.businesstimes.com.sg/singapore/budget-2023-singapore-implement-pillar-2-beps-20-tax-recommendations-2025>

2. Sri Lanka tax agency issues circular clarifying application of withholding tax, advance income tax:- Sri Lanka Inland Revenue Department Circular No. SEC/2023/01 dated 14 February 2023

The Sri Lankan Inland Revenue Department clarifies the application of withholding tax (WHT) and advance income tax to specific services, which include:-

- 1.** Individual independent service providers for whom withholding agents are required to withhold 5% on aggregate service fees exceeding 100,000 Sri Lankan rupees per month.
- 2.** Service payments for security services, janitorial services, manpower services, sub-contract payments, catering services, construction services, management services, transport services, etc. are not subject to WHT deduction.
- 3.** Service payments for transport services are not subject to WHT deduction, when the ability to control the utilisation of a vehicle is vested with the owner (service provider) and considered that the owner is giving transport service.
- 4.** While the renting out of vehicles are subject to WHT deduction, when the ability to control the utilisation of a vehicle is vested with the user (service provider) and considered that the owner has rented out the vehicle. The withholding requirement for aggregate vehicle rental payments exceeding 100,000 Sri Lankan rupees per month.
- 5.** Rental payments under the finance lease agreement are considered as repayment of loan installments and are not subject to WHT deduction. However, the payment under the operating lease agreement constitutes a rent payment for which WHT is applicable.
- 6.** Rental payments to non-residents are subject to WHT at 14% without having any threshold. However, a lower rate of WHT may be applicable as per the provisions of the DTAA between Sri Lanka and other countries.
- 7.** If the rent agreement has been entered into with co-owners, the attributable portion of each co-owner's rent payment should be considered for WHT deduction separately.
- 8.** A person provides space for storage of goods or material and deriving a payment for such service could not be considered as rent for deduction of WHT.

3. Japan's 2023 Tax Reform Starts to Implement Global Minimum Tax:- News Report

The Japanese government submitted the 2023 tax reform package to the Diet, the national legislature, which includes draft legislation to implement one of the three components of the OECD's global

minimum tax proposal in Japan. The global minimum tax is an Organization for Economic Cooperation and Development project to introduce a mechanism, the Global Anti-Base Erosion Rules, in a critical mass of jurisdictions to ensure that multinational enterprise groups are taxed at an effective tax rate of at least 15%. The GloBE rules allow relevant jurisdictions to impose an additional tax, or top-up tax, if the effective tax rate in the low-tax jurisdiction for any multinational enterprise group is less than 15%. The rules establish the following order regarding which relevant jurisdictions may impose the top-up tax amount: First, the highest priority is given to top-up taxation imposed by the lowest-tax jurisdiction on the constituent entities of the group. Second, the income inclusion rule (IIR) is given second priority, and third, the under-taxed profits rule (UTPR) is given third priority.

The Japanese 2023 Tax Reform Bill only includes the IIR out of the three components of the GloBE rules, and the other two, the QDMTT and UTPR which remain postponed for future legislation. Japan is taking a wait-and-see approach as long as possible, expecting the OECD to release additional guidance. However, this doesn't mean that Japan is passive in implementing the rules, as the ruling coalition demanded that the Japanese government take the lead in implementing the outcome of international tax negotiations. The draught legislation isn't a word-for-word translation of the model rules, but it restructures and restates them uniquely. It only establishes the general principles and basic structure of the IIR, leaving most of the substantive details of regulations to be issued by the government.

The law only provides non-exhaustive definitions for most of the terminology, and the forthcoming regulations would define it more precisely. The bill proposes to insert IIR-related provisions into the Corporate Tax Act. It clarifies that the taxation under the IIR would be classified as part of the corporate income tax imposed on domestic corporations, creating a space where general rules that now apply to corporate income tax may also apply to the IIR. The IIR will be effective for fiscal years beginning on or after April 1, 2024, and multinational enterprise groups operating in Japan will have to review the forthcoming regulations providing the substantive details of the IIR and keep a close eye on the progress of QDMTT and UTPR implementation in Japan. The 2024 tax reform package will likely pass before April 2024, allowing Japan to reflect developments in the OECD in Japanese IIR legislation before its launch.

<https://news.bloombergtax.com/daily-tax-report-international/japans-2023-tax-reform-starts-to-implement-global-minimum-tax>

4. France says tax on tech giants 'blocked' in global talks:- News Report

International talks aimed at taxing global tech giants that only declare profits in a few jurisdictions have hit a standstill due to opposition from countries including the US and India, France's finance minister said on Monday. The talks covered taxing multinationals where they make their profits in a bid to reduce tax avoidance, and come ahead of a meeting of the G20 group of large economies in India this week. "As of today things are blocked, in particular by the United States, Saudi Arabia and India" and "chances of success are slim," Bruno Le Maire stated. He said France had always argued that if G20 countries were unable to get agreement on the issue, a "European solution" should be sought instead. "I think we're at that point now," he said. The Organisation for Economic Cooperation and Development (OECD), has spearheaded talks on the tax which primarily targets digital giants. A separate agreement calling for a global minimum 15 percent tax rate on multinational businesses, also coordinated by the OECD, has had more success, and is to be implemented in the "coming months", Le Maire added.

<https://www.moneycontrol.com/news/business/tax-on-tech-giants-blocked-at-global-level-french-govt-10128761.html>

5. G20 aims for global deal on MNC taxing rights in 2023 first half:- *News Report*

World leaders are aiming to sign a multilateral legal agreement on the fairer re-allocation of taxation rights over the largest multinational enterprises, including digital economy firms, in the first half of 2023. The G20 Chair's summary and outcome document issued after the meeting said that world leaders will continue their cooperation for a globally fair, sustainable, and modern international tax system fit for purpose in 21st century.

The OECD/G20 framework to finalise Pillar 1 of the proposed global tax treaty, including the remaining issues, so that the multilateral convention, or treaty, can be signed in 2023. According to the OECD, pillar one will ensure a fairer distribution of profits and taxing rights among countries with respect to the largest multinational enterprises (MNEs), including digital companies, and will re-allocate some taxing rights over MNEs from their home countries to the markets where they have business activities and earn profits, regardless of whether firms there have a physical presence there, as per information available from the OECD. Under pillar one, taxing rights on more than \$125 billion of profit are expected to be reallocated to market jurisdictions each year.

The second pillar seeks to put a floor on competition over corporate income tax through the introduction of a global minimum corporate tax rate that countries can use to protect their tax bases. The global minimum corporate income tax under pillar two with a minimum rate of 15% is estimated to generate around \$150 billion in additional global tax revenues annually.

<https://www.livemint.com/news/world/g20-aims-for-global-deal-on-mnc-taxing-rights-in-2023-first-half-11677423881428.html>

Contact Us: -

Rahul Garg

Partner

Corporate Tax & Regulatory

garg.rahul@asire.in

+91 9891091307

Tax | Regulatory | M&A

www.asire.in

Office Addresses: -

Indian Offices

Gurgaon

529, Fifth Floor, Tower

B-4, Spaze i-Tech Park,

Sector-49 Sohna Road,

Gurgaon 122018,

Haryana

Delhi

R-89, Greater Kailash-1

New Delhi-110048

Bangalore

FF1, Nasco Olives

Nagayanapalya

Maruthi Sevenagar-560033

Overseas Offices:

United Kingdom

The Minister Building

21 Mincing Lane, London

EC3R 7AG