

LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS



**A MONTHLY NEWSLETTER BY
CORPORATE LAW TEAM**

JANUARY 2024

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"If you don't build your dream, someone else will hire you to help them build theirs."

– Dhirubhai Ambani.





COMPANIES ACT, 2013



SECTION I- COMPANIES ACT, 2013

I. CHECKLIST

CHECKLIST FOR CONVERSION OF SECTION 8 COMPANY TO PRIVATE LIMITED COMPANY

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
Calling Board Meeting	Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.	Section 173(3) and Secretarial Standard-1	Companies Act, 2013	At least 7 days before the date of Board Meeting	NA

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
Conven e Board Meeting	Board shall: i. pass the Board resolution for conversion of section 8 company to Private Limited Company. ii. Fix the day, date, time and venue of general meeting and authorising director or any other person to send the notice for the same to the members.	Section 173 and Secretarial Standard-1	Companies Act, 2013	Within 7 days from the date of issue of notice	NA
Preparation and circulation of Draft Minutes	Draft minutes shall be prepared and circulated to all the members of the Board by Hand/- Speed Post/Registered Post/Courier/E-mail for their comments.	Clause 7.4	Secretarial Standard-1	Within 15 days from the date of Board Meeting	NA

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
Issue Notice of Extra-ordinary General Meeting	Notice of Extra-ordinary General Meeting shall be given at least clear 21 days before the actual date of a General Meeting in writing, by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means A General Meeting may be conducted at shorter notice with the consent of at least majority in number and ninety five percent of such part of the paid-up share capital of the company.	Section 101	Companies Act, 2013	Before 21 clear days from the date of General Meeting	NA

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
To whom the Notice of Extra-ordinary General Meeting to be sent	Notice will be sent to -Directors -Members -Auditors of Company and - to others who are entitled to receive the notice of the General Meeting.	Section 101	Companies Act, 2013	-	NA
Contents of Notice of Extra-ordinary General Meeting	Notice of General Meeting shall specify the following: - Date - Day - Time - Venue of Meeting - Explanatory Statement	Section 101 and 102 read with section 63	Companies Act, 2013	-	NA
Convene Extra-ordinary General Meeting	Hold the General Meeting and pass special Resolution for approval of conversion.	Rule 21	Companies (Incorporation) Rules, 2014	-	NA

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
Minutes of General Meeting	Prepare and arrange for signing of the minutes of the General Meeting.	Secretarial Standard -2	Secretarial Standard -2	Within 30 days from the Date of General Meeting	NA
Filing of Form MGT-14	File Form-MGT 14 along with copy of notice for convening the meeting with the registrar along with the requisite filing within 30 days of passing the special resolution.	Rule 21	Companies (Incorporation) Rules, 2014	Within 30 days from the date of passing the Resolution	Form MGT-14
Filing of Form INC-18	The company shall file an application in Form INC.18 with the Regional Director with fees.	Rule 21	Companies (Incorporation) Rules, 2014	-	Form INC-18
Filing of Form INC-19 (Newspaper Advertisement)	The Section 8 company shall, within a week from the date of submitting the application to the Regional	Rule 22	Companies (Incorporation) Rules, 2014	-	Form INC-19

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
	Director in form INC 18 shall publish an advertisement in Form INC 19 and a copy of the notice, as published, shall be sent forthwith to the Regional Director. Advertisement shall be published at least once in a vernacular newspaper in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district and shall also be published on the website of the company, if any.				

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
Amendment of MOA and AOA.	The Company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a private limited company after approval of RD.	Rule 22	Companies (Incorporation) Rules, 2014		
Filing of Form INC-20	- The company shall file with the Registrar- - A certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form INC 20 along with the fee.	Rule 22 and Rule 23	Companies (Incorporation) Rules, 2014		Form INC-20

**CHECKLIST FOR CONVERSION OF SECTION 8
COMPANY TO PRIVATE LIMITED COMPANY PRESCRIBED FORM**

Compliance title	Description	Section/ rule/ regulation	Name of section/rule/ regulation	Timeline	Prescribed form
	3. Amended memorandum of association and articles of association. 4. A declaration by the directors that the conditions , if any imposed by the Regional Director have been fully complied.				



III. CASE LAW

ORDER OF HON'BLE SUPREME COURT OF INDIA

DATED 14TH DECEMBER 2023

CIVIL APPEAL NO. 7107 OF 2017

In the matter of:

Shakti Yezdani & Anr.

..... Appellants

Versus

Jayanand Jayant Salgaonkar & Ors

..... Respondents

Facts of the Case

1. The appellants and respondents are the legal heirs and representatives of Jayant Shivram Salgaonkar and the family patriarch executed a will on 27.06.2011 making provisions for the devolution of his estates upon the successors.

2. Apart from the properties mentioned in the will, the testator had certain fixed deposits (FDs) for the sum of Rs. 4,14,73,994/- in respect of which the respondent nos. 2, 4 and appellant no. 2 were made nominees. Additionally, there were certain mutual fund investments (MFs) of the amount of Rs. 3,79,03,207/- in respect of which appellants and Jay Ganesh Nyas Trust (respondent no. 9) were made nominees. The testator Jayant Shivram Salgaonkar passed away on 20.08.2013.

3. On 29.04.2014, the respondent no. 1 filed Suit No. 503/2014 with the prayer for

declaration that the properties of the testator may be administered under the court's supervision and seeking absolute power to administer the same and also prayed for permanent injunction restraining all other respondents and appellants from disposing, transferring, alienating, assigning and/or creating any third-party interests in respect of the properties.

4. In reply to the suit the appellants pleaded that:

- They were the sole nominee(s) to the MFs and were absolutely vested with the securities on the testator's death.
- Appellant no.2 was additionally nominated and entitled to the FDs of the testator in the IDBI Bank.

5. The Bombay High Court rejected this claim in a 2015 order, citing the Kokate judgment, which considered the nominee as the

beneficial owner and as a consequence appellant challenged the decision.

6. Appellant Contentions:

I. Scheme of nomination as provided in the Companies Act, 1956 is not analogous to nomination as provided under other legislations, the term 'vesting' & 'to the exclusion of others' along with a 'non-obstante clause' are placed together in the Companies Act, 1956 and it would be incorrect to rely on the ratio of the judgments pertaining to other legislations to interpret the provisions of Section 109A & 109B of the Companies Act, 1956 (Section 72 of the Companies Act, 2013).

II. Mr. Jayant S. Salgaonkar's Will had categorically mentioned all other properties of the deceased except the shares for which the appellants were named as nominees, the implication is naturally that the ownership rights of such shares would pass on to the nominees after the death of the testator.

III. Placed reliance on Byelaw 9.11 of the Depositories Act, 1996 which provides for transmission of securities in case of nomination within which, the presence of a non-obstante clause would reasonably imply that the effect of nomination under the said bye-law is that it would vest in the nominee a complete title of the shares notwithstanding anything contained in the testamentary disposition or nomination made under other laws dealing with securities.

7. Respondent contented that:

I. Companies Act has nothing to do with the law of succession and Section 109A & 109B merely provides for facility of nomination aiding in the process of such transfer of shares.

II. The terms 'transfer', 'transmission' and 'transmission by operation of law' are distinct and convey different meanings.

III. The term 'vest' must be understood in a limited sense and would not necessarily confer ownership, therefore nominee would deal with the company but not in the capacity as a title holder but more in the nature of a trustee holding the estate for the lawful successor and would be accountable to the successor of the estate.

Issue Involved:

1. Does nominee of deceased shareholder get absolute ownership?
2. Nomination process under Companies Act overrides Succession Laws?

Hon'ble Supreme Court held that:

1. Nomination process does not override the succession laws. Simply said, there is no third mode of succession that the scheme of the Companies Act, 1956 and Depositories Act, 1996 aims or intends to provide.

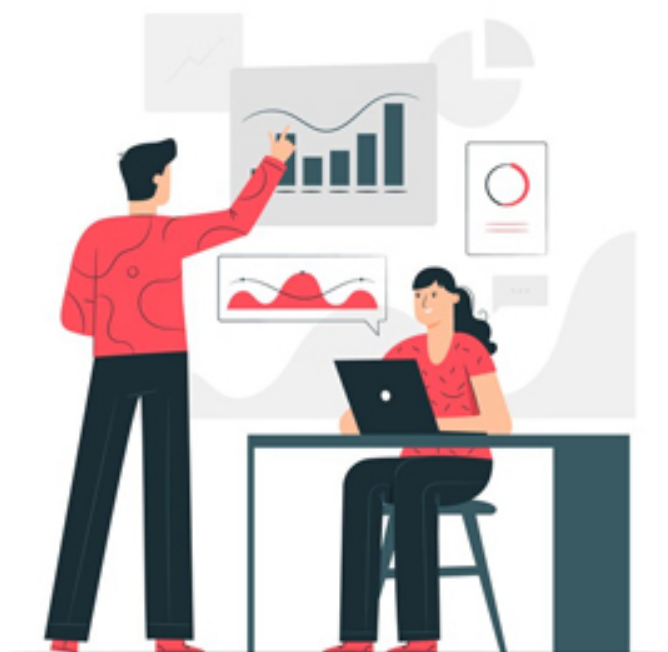
2. The vesting of securities in favour of the nominee contemplated under Section 109A of the Companies Act 1956 (Section 72 of Companies Act, 2013) & Bye-Law 9.11.1 of Depositories Act, 1996 is for a limited purpose i.e. to ensure that there exists no confusion pertaining to legal formalities that are to be undertaken upon the death of the holder.

3. The object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to provide an impetus to the investment climate and ease the

cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death.

4. It is beyond the scope of the company's affairs to facilitate succession planning of the shareholder.

5. The appeal is accordingly dismissed.



IV. SECTION ANALYSIS

CHARGES

Applicable Law:

1. Companies Act, 2013
2. Companies (Registration of Charges) Rule, 2014

Definition:

Section 2(16) defines charge as an "interest or lien created on the Property or Assets of a company or any of its undertakings or both as security and includes mortgage.

Types of Charges:

There are two type of charges which are as follows:

1. **Fixed Charge:** A fixed charge is a type of security interest that is attached to a specific asset or piece of property, such as real estate or equipment (Specific Identifiable Property).
2. **Floating Charges:** A floating charge is a type of security interest which is not against any specific identifiable property such as inventory, accounts receivable, and intellectual property.

Registration of Charge (Section 77 and Rule 3 of Companies (Registration of Charges) Rule, 2014):

Registration by Company:

1. It shall be the duty of the company creating a charge on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India to register the particulars of the charge with the Registrar along with the Instrument evidencing the creation or modification of charge, as the case may be, within the prescribed period of 30 days from the date of creation of charge.

2. The company is required to register the charge by filing E-Form CHG-01 (for other than Debentures), or CHG-09 (in case of Debentures).

3. If company fails to register the charge within 30 days from its creation, then the company can register the same within next 30 days i.e., within 60 days from the creation of charge by paying prescribed additional fees.

4. If the company fails to register the charge within 30 days of its creation and next 30 days grace period i.e., within 60 days from creation of the charge, then the company can register the charge within a further period of 60 days by paying prescribed ad valorem.

Registration by Charge-Holder:

1. If the company creating the charge fails to register the charge within the prescribed period of 30 days, the person in whose favour the charge is created can get the charge registered, along with the instruments and such

documents evidencing the creation or modification of charge, by filing form CHG-1 or CHG-9 (in case of Debentures).

2. On receipt of application from the charge-holder, the Registrar shall give a notice to the company and if no objection is received within the period of 14 days after giving the notice to the company, the Registrar allow such registration on payment of the prescribed fees.

Modification of Charge:

If there is any change or any modification in charge i.e.,

- a. change in the terms and conditions, or
- b. change in extent or operation of the charge, or
- c. change in property or asset under charge etc.

the charge should be registered by the company in accordance with section 77 of the Companies Act, 2013.

Satisfaction of Charge (Section 82 and Rule 8 of Companies (Registration of Charges) Rule, 2014):

1. Company is required to give intimation of payment or satisfaction in full of any charge earlier registered to the Registrar in the Form CHG-04.
2. The intimation needs to be given within a period of 30 days from the date of payment or satisfaction in full.

Issue of Certificate:

On creation/modification of charge:

1. When a charge or modification is duly registered by the Registrar, a certificate of Registration/Modification shall be issued by the Registrar in the Form CHG-02 and Form CHG-03 respectively.
2. The certificate so issued by the Registrar shall be the conclusive evidence that the requirements of the of the Companies Act, 2013 and the rules made thereunder as to registration of creation of charge have been complied with.

On Satisfaction of charge:

1. Registrar shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5 in case when Registrar enters a memorandum of satisfaction of charge in full.

Register of Charges:

1. With ROC (Section 81 and Rule 7 of Companies (Registration of Charges) Rule, 2014):

The ROC shall maintain a register of charges with regard to every company containing all the particulars relating to charge which shall remain open for inspection by any individual on the payment of prescribed fee.

2. With the Company (Section 85 and Rule 10 of Companies (Registration of Charges) Rule, 2014):

Every company shall maintain at its registered office, a register of charges in form CHG-07 which shall include therein all charges which shall be open for inspection during business hours by any member or creditors without any fees and by any other person on payment of prescribed fees.

2. If any person willfully furnishes:
 - a. Any false or incorrect information; or
 - b. Knowingly suppresses any material information; Which is required to be registered under section 77, he shall be liable for action under section 447 - punishment for fraud.

Penalty for Contravention (Section 81):

1. If a company is in default in complying with any provisions,
 - a. The company shall be liable to a penalty of Rs 5 lakh; and
 - b. Every officer in default shall be liable to a penalty of Rs 50,000.





SEBI



IV. REGULATORY INSIGHT

Name of the Act/Rules/ Regulations etc	Heading	Notification/ circular No and Date	Details
Securities and Exchange Board of India	Extension of timelines for providing 'choice of nomination' in eligible demat accounts and mutual fund folios	Circular No.-SE-BI/HO/MIRS-D/POD-1/P/CI R/2023/193 dated 27th December, 2023	For ease of compliance and investor convenience, SEBI extended the last date for submission of 'choice of nomination' for demat accounts and mutual fund folios to June 30, 2024. SEBI advised that Depository Participants, AMCs and RTAs shall encourage the demat account holders/ mutual fund unit holders to fulfil the requirement for nomination/opting out of nomination by sending a communication on fortnightly basis by way of emails and SMS to all such demat account holders/

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			mutual fund unit holders who are not in compliance with the requirement of nomination which shall provide guidance to provide nomination or opting out of nomination.
Securities and Exchange Board of India	Framework on Social Stock Exchange	Circular No. SEBI/HO/CF-D/PoD-1/P/-CIR/2023/196 dated 28th December, 2023	Securities and Exchange Board of India (Board) pursuant to feedback received through public consultation approved the amendments/ modifications to ICDR and LODR regulation in respect of Not-For-Profit Organization (NPO) framework which are as follows: 1. Minimum requirement to be met by a Not-for-Profit Organization (NPO) for registration with SSE in terms of Regulation 292F of the ICDR Regulations. 2. The reference of Regulation 292K (1) in the title of sub-paragraph B is substituted by "Regulation 292K". 3. Sub-paragraph B(2)(j) shall be substituted with Social Impact – which shall provide details of past social impact as per the existing practice of NPOs.

Name of the Act/Rules/Regulations etc	Heading	Notification/ circular No and Date	Details
			4. The following are inserted relating to issuance of Zero Coupon Zero Principal Instruments by NPO: • Procedure for public issuance of Zero Coupon Zero Principal Instruments by a not-for-profit organization: - o The not-for-profit organization shall file the draft fund-raising document with the Social Stock Exchange where it is registered along with the fees and an application seeking in-principal approval for listing of its Zero Coupon Zero Principal Instruments on the Social Stock Exchange. - o The draft fund-raising document shall be made available for at least 21 days for public comments on the website of Social Stock Exchange and the Not-for-Profit Organization. - o The Social Stock Exchange shall provide its observation on the draft fund-raising document to the not-for-profit organization within a time period of 30 days from the

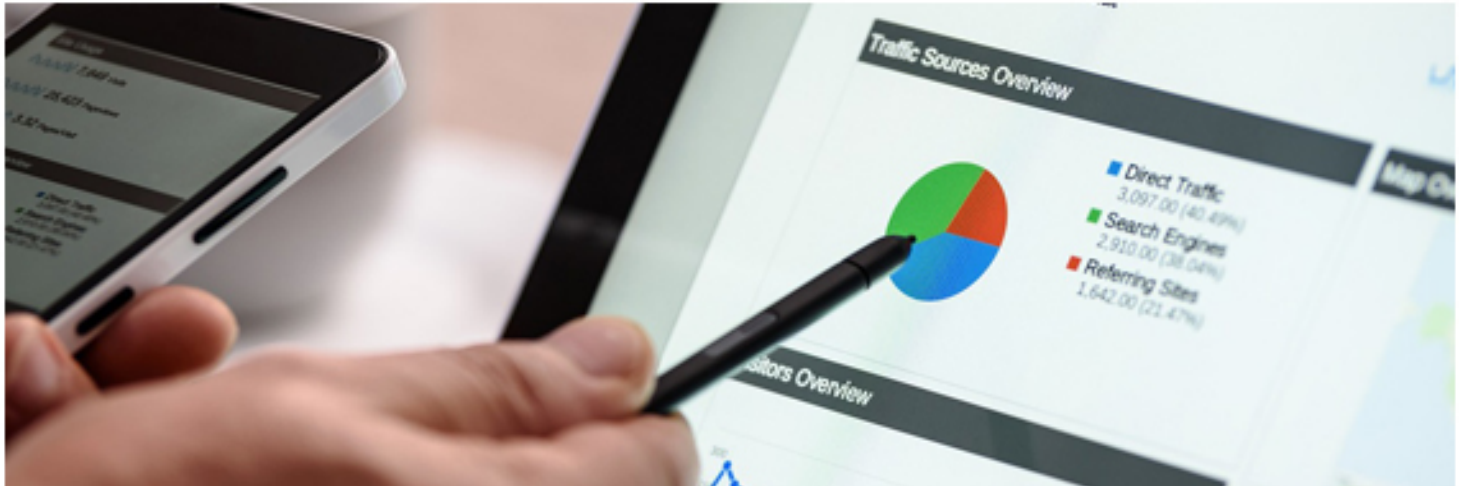
Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			filing of the draft fund-raising document or receipt of clarification, if any, sought by the Social Stock Exchange from not-for-profit organization whichever is later. o The not-for-profit organization shall incorporate the observations of the Social Stock Exchange in draft fund-raising document and file the final fund-raising document to Social Stock Exchange prior to opening the issue. • Contents of the fund-raising document: o The draft and the final fund-raising document shall contain all material disclosures which are true and adequate. o The draft fund-raising document and the final fund-raising document shall contain disclosures as may be specified by the Board from time to time.

Name of the Act/Rules/Regulations etc	Heading	Notification/ circular No and Date	Details
			Note: Social Stock Exchange may mandate additional disclosures in respect of the draft fund-raising document and the final fund-raising documents. • Other conditions relating to issuance of Zero Coupon Zero Principal Instruments: - o Shall be issued in dematerialized form only. - o shall not be transferable from the original subscriber/ holder till the expiry of the tenure of the said instrument. - o The minimum issue size shall be rupees fifty lakhs. - o The minimum application size shall be rupees ten thousand. - o The minimum subscription required to be achieved shall be 75% of the funds proposed to be raised through issuance of Zero Coupon Zero Principal Instruments.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			- o In case of any under subscription, the not-for-profit organization shall, in the fund-raising document, provide details on manner of raising balance capital and possible impact on achieving the social objective. - o The Social Stock Exchange shall maintain the details of the allotment. - o The Social Stock Exchange shall specify the additional norms in respect of issue procedure.



FEMA



V. REGULATORY INSIGHT

Name of the Act/Rules/ Regulations etc	Heading	Notification/ circular No and Date	Details
Reserve Bank of India	Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023	Notification No. FEMA 14(R)/2023-R B dated 21st December, 2023	RBI makes the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023 which provides that the following: 1. Manner of Receipt and Payment: No person resident in India shall make or receive payment from a person resident outside India, but RBI on an application made to it, permit a person resident in India to make or receive payment under the Act.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			The receipt and payment between a person resident in India and a person resident outside India shall, unless provided otherwise, be made through an Authorised Bank or Authorised Person and in the manner as specified below: • Trade Transactions: receipt/payment for export to or import from the countries given below of eligible goods and services shall be made as under: - o Nepal and Bhutan: in Indian Rupees and in case of exports from India where the importer in Nepal has been permitted by the Nepal Rashtira Bank to make payment in foreign currency, such receipts towards the amount of the export may be in foreign currency. - o Member countries of Asian Clearing Union (ACU), other than Nepal and Bhutan: Through ACU mechanism or as per the directions issued by the RBI to authorised dealer from time to time and in case of imports where the goods are

Name of the Act/Rules/ Regulations etc	Heading	Notification/ circular No and Date	Details
			shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU, the payment may be made in a manner as specified for countries other than member countries of ACU. - o Countries other than member countries of ACU: In Indian Rupees or in any foreign currency. • Transactions other than Trade Transactions: receipt and payment shall be made as under: - o Nepal and Bhutan: In Indian Rupees and in case of overseas investment in Bhutan, payment may also be made in foreign currency. - o Other Countries – In Indian Rupees or any foreign currency. Payment and receipt in India for any current account transaction, other than a trade transaction, between

Name of the Act/Rules/ Regulations etc	Heading	Notification/ circular No and Date	Details
			any person resident in India and a person resident outside India, who is on a visit to India, may be made only in Indian Rupees, but may also be made by debit/ credit to a bank account maintained in terms of the rules, regulations or directions issued under the Act.
Reserve Bank of India	Liberalised Remittance Scheme (LRS) for Resident Individuals- Reporting of monthly return and daily transactions	Circular No.11 RBI/2023-24/ 93 A.P. (DIR Series) dated 22 nd December, 2023	- It is decided that submission of monthly return and daily transactions by AD Category-I banks shall be done through Centralised Information Management System (CIMS), which is the Bank's new data warehouse and the practice of uploading through XBRL Site will be discontinued. - AD Category-I banks shall upload the LRS monthly return on or before 5th of the succeeding month commencing from the reporting month of December 2023, and LRS daily return from December 26, 2023 onwards on the next working day on CIMS portal.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.

VI. FAQs

FAQs on Acceptance of Green Deposits

1. Is it mandatory for the regulated entities (REs) to raise green deposits?

It is not mandatory but in case REs intend to raise green deposits from their customers they should follow the framework prescribed therein.

2. Is it permissible for REs to offer differential interest rates on green deposits? Whether there is any bearing on the interest rate payable by REs to depositors, if the funds raised under the framework remain unallocated/ unutilized towards the green activities or projects? Is there any restriction on premature withdrawal of green deposits?

(a) The extant guidelines as detailed below do not permit REs to offer differential rate of interest on green deposits:

- **Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016 dated March 03, 2016;**
- **Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 dated August 25, 2016; and**
- **Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021 dated February 17, 2021.**

(b) The REs shall pay interest on green deposits to their customers as per agreed terms and conditions and aforesaid directions

irrespective of allocation/ utilisation of proceeds.

(c) There is no restriction on premature withdrawal of green deposits, however, the REs, shall adhere to the extant guidelines referred to above. Further, premature withdrawal would not have any bearing on the activities/ projects undertaken using the proceeds of green deposits.

3. As per the framework, unallocated proceeds of green deposits can be invested in liquid instruments with maturity up to one year only. What are these "liquid instruments"? Is there a requirement that temporary allocation of proceeds is only for a period of one year? Will there be any penalty if the REs are not able to allocate the proceeds of green deposits?

a. The liquid instruments are Level 1 High Quality Liquid Assets as per the extant guidelines.

b. The REs can temporarily park proceeds of green deposits, pending allocation towards green activities/ projects, in liquid instruments with maximum maturity upto one year (This will have to be specified under the Financing Framework).

c. The framework does not envisage any penalty for non-allocation of proceeds towards green activities/ projects; however, it shall be subject to supervisory review.

4. Are the green deposits raised prior to release of framework covered under it? Whether the REs can finance green activities/ projects first and then later raise green deposits?

a. The framework is applicable for green deposits raised by REs on or after June 01, 2023.

b. REs cannot finance green activities/ projects first and raise green deposits thereafter.

5. Is it permissible to classify the green activities/ projects financed under the framework under priority sector? Are investments made by REs in Sovereign Green Bonds covered under the framework?

a. Yes, the green activities/ projects financed under the framework can be classified under priority sector if they meet the requirements laid down in priority sector lending (PSL) guidelines of RBI **[Master Directions FIDD.- CO.Plan.BC.5/04.09.01/2020-21 dated September 04, 2020]** as amended from time to time.

b. As the activities/ projects listed in the framework are the same as indicated in Sovereign Green Bonds (SGrBs) framework, investment by REs in SGrBs are covered under the framework.

6. Can banks allow overdraft facility to customers against Green Deposits?

Banks are allowed to offer overdraft facility to customers against Green Deposits subject to the instructions contained in the **Consolidated Circular on Opening of Current Accounts and CC/OD Accounts by Banks dated April 19, 2022**, as amended from time to time.

7. Are the deposits raised under the above framework covered by Deposit Insurance and Credit Guarantee Corporation (DICGC)?

The deposits raised under the framework are covered by DICGC in accordance with the Deposit Insurance and Credit Guarantee Corporation Act, 1961 and the regulations framed thereunder, as amended from time to time.

8. Is there any eligibility criteria for engagement of entities for external review of the Financing Framework, Third-party Verification/ Assurance and Impact Assessment of the green activities/ projects?

REs can engage with any appropriate and reputed domestic/ international agency for external review of the Financing Framework, Third-party Verification/ Assurance and Impact Assessment of the green activities/ projects.

9. Whether the RE implementing the green deposit framework is required to

publish two copies of the Financing Framework (FF) on its website, one prior to external review and another after the external review?

The RE needs to publish the FF along with opinion of external reviewer on the FF (before implementation of FF) on its website. There is no requirement of publishing FF twice, i.e., one before and another after external review.

10. Does the disclosure of the amount of deposits raised and utilized as specified in Annexure 2 of the framework refer to the amount outstanding or the actual amount raised during the year?

The actual amount of green deposits raised during the year and use of such funds have to be disclosed as per the Annexure 2 of the framework.

11. Whether foreign banks can have a single global policy on green deposits?

Foreign banks can have a common global policy on green deposits, without prejudice to the provisions of the framework for green deposits raised in India after June 01, 2023.

12. Can the green deposits be denominated in foreign currency?

No. The current framework permits green deposits to be denominated in Indian Rupees only.

Source: www.rbi.org.in



Non-Banking Financial Institutions (NBFC)



VII. NON-BANKING FINANCIAL COMPANY (NBFC)

Mortgage Guarantee Company

Mortgage Guarantee Company means a company registered with the Bank as mortgage guarantee company which primarily transacts the business of providing mortgage guarantee.

Mortgage guarantee means a guarantee provided by a mortgage guarantee company for the repayment of an outstanding housing loan and interest accrued thereon up to the guaranteed amount to a creditor institution, on the occurrence of a trigger event.

Registration with Reserve Bank:

A mortgage guarantee company shall commence the business of providing mortgage guarantee after –

1. Obtaining a certificate of registration from the Reserve Bank; and

2. Having a net owned fund of one hundred crore rupees or such other higher amount, as the Reserve Bank may, by notification, specify.

Conditions to be fulfilled for grant of registration by RBI:

1. Mortgage guarantee company shall primarily transact the business of providing mortgage guarantee. A mortgage guarantee company shall be deemed to comply with the above when at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is from mortgage guarantee business (which includes the income derived from reinvesting the income generated from mortgage guarantee business).

2. Mortgage guarantee company is or shall be in a position to pay its liabilities arising from the contracts of guarantee it may enter into.

3. Mortgage guarantee company has adequate capital structure and adequate earning prospects from mortgage guarantee business.

4. The general character of the management or the proposed management of the mortgage guarantee company shall not be prejudicial to the public interest.

5. Board of Directors of such mortgage guarantee company does not consist of more than half of its total number of directors who are either nominees of any shareholder with substantial interest or associated in any manner with the shareholder with substantial interest or any of the subsidiaries of the shareholder with substantial interest if such a shareholder is a company.

6. Mortgage guarantee company shall not be a subsidiary of any other company including a company registered or incorporated under any law in force outside India.

7. No individual, association or body of individuals whether incorporated or not, partnership firm, company or company registered or incorporated under any law in force outside India shall, directly or indirectly, have any controlling interest in mortgage guarantee company.

8. Foreign Direct Investment (FDI) Policy as notified from time to time by the Reserve Bank of India, shall apply to Mortgage Guarantee Companies.

9. Investments in mortgage guarantee company from FATF non-compliant jurisdictions shall not be treated at par with that from the compliant jurisdictions.

10. Investors in existing mortgage guarantee company holding their investments prior to the classification of the source or intermediate jurisdiction/s as FATF non-compliant, may continue with the investments or bring in additional investments as per extant regulations so as to support continuity of business in India.

11. Grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country.

Circumstances under which registration is cancelled by RBI:

If Mortgage Guarantee Company:

1. Ceases to carry on the business of providing mortgage guarantee in India; or

2. Has failed to comply with any condition subject to which the certificate of registration has been issued to it; or

3. Has failed to honor, in a timely manner, the claims arising from the contract of guarantee it has entered into or may enter into; or

4. At any time fails to fulfill any of the conditions prescribed by RBI for Grant of Registration or

5. Fails to -

a. Comply with any direction issued by the Reserve Bank; or

b. Maintain accounts, publish and disclose its financial position in accordance with the requirements of any law or any direction or order issued by the Reserve Bank; or

c. Submit or offer for inspection its books of account or other relevant documents when so demanded by the RBI.

Minimum Capital requirement:

A mortgage guarantee company shall have a minimum net owned fund of Rs.100 crore at the time of commencement of business, which shall be reviewed for enhancement after 3 years.

Capital Adequacy:

1. A mortgage guarantee company shall maintain a capital adequacy ratio consisting of Tier I and Tier II capital which shall not be less than ten percent (10%) of its aggregate risk weighted assets of on balance

sheet and of risk adjusted value of off balance sheet items or any other percentage that may be prescribed by the Reserve Bank for the purpose, from time to time.

2. A mortgage guarantee company shall maintain at least six percent (6%) of its aggregate risk weighted assets of on balance sheet and of risk adjusted value of off balance sheet items as Tier I capital.

3. The total of Tier II capital, at any point of time, shall not exceed one hundred per cent of Tier I capital.

Accounting Year:

1. Every mortgage guarantee company shall prepare its balance sheet and profit and loss account as on March 31 every year. Whenever a mortgage guarantee company intends to extend the date of its balance sheet as per provisions of the Companies Act, 1956 or Companies Act, 2013, it should take prior approval of the Reserve Bank before approaching the Registrar of Companies for this purpose.

2. In cases where the Reserve Bank and the Registrar of Companies grant extension of time, the mortgage guarantee company shall furnish to the Reserve Bank a proforma balance sheet (unaudited) as on March 31 of the year and the statutory returns due on the said date.



Insolvency and Bankruptcy Code, 2016



VIII. CASE LAW

ORDER OF HON'BLE NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI DATED 06TH DECEMBER 2023 COMPANY APPEAL (AT)(INSOLVENCY) NO. 542 OF 2023

**IN THE MATTER OF
ANSAL HOUSING LIMITED
(ERSTWHILE ANSAL HOUSING &
CONSTRUCTION LIMITED)**

.....APPELLANT

**VERSUS
SAMYAK PROJECTS PVT. LTD.**

.....RESPONDENTS

Facts of the Case:

1. Ansal Housing Limited ('Appellant') and Samyak Projects Pvt. Ltd. ('Corporate Debtor') entered into JVs to develop four real estate projects as per which the Appellant was to be the Developer of the real estate project while the Corporate Debtor had to provide the land for the project and they were to enjoy a sharing ratio of 67.5% and 32.5% respectively from the sales receivable.
2. The Corporate Debtor took a loan of Rs. 25 crores from Appellants for purchasing the

land for one of these projects. An Inter-Corporate loan with a 24% interest rate compounded monthly and returnable within 24 months was extended and documented in an ICD dated 27.03.2014.

3. It provided the Appellant the right to cover the loan via the sale of receivables of the Corporate Debtor in case of failure to repay.

4. On 31.07.2018, a sum of Rs. 35.64 crore was due and payable and the date of default was 15.05.2015.

5. The Appellant filed a Corporate Insolvency Resolution Petition ('CIRP') against the Corporate Debtor under Section 7 of IBC, however, the same was dismissed by NCLT Delhi's Order dated 28.02.2023 since the Appellant was not a Financial Creditor and the liability under the ICD was not a financial debt. Thus, the Appellant has preferred an appeal against the said order.

Appellant Contentions:

1. The Appellant stated that both the Appellant and the Respondent were jointly developing four real estate projects for which separate Joint Venture Agreements ("JVA") were executed between them for each such project. According to the terms of the collaboration, the Appellant was to be the Devel-

oper and the Respondent was to provide the land for the project and they were to enjoy a sharing ratio of 67.5% and 32.5% respectively from the sales receivable.

2. Further, against purchase of land for one of the real estate projects, the Respondent had sought financial assistance of Rs.25 crores from the Appellant. The assistance was extended through an inter corporate loan of Rs.25 crores under an Inter Corporate Deposit Agreement ("ICD") dated 27.03.2014.

3. In terms of the Agreement, the loan facility carried an interest of 24% p.a., compounded monthly and returnable within 24 months along with the right to recover the liability of Rs.25 crores from the sales receivable of the Respondent in case the Respondent failed to repay the debt.

4. It was submitted that as on 31.07.2018, an amount of Rs. 35,64,03,784/-had become due and payable, the default having occurred on 15.05.2015. The Respondent having failed to make the payments towards its liability towards the ICD, the Appellant filed a Section 7 application against the Respondent.

5. The Adjudicating Authority however dismissed the application on the ground that the Appellant was not a Financial Creditor

and that the liability of the Respondent was not a financial debt.

6. Aggrieved by the dismissal of Section 7 application, appeal was preferred.

Respondent Contentions:

1. The Respondent contended that the ICD and JVA were not independent agreements but inter-dependent agreements. It was highlighted that JVAs dated 18.04.2011, 24.05.2013, 12.04.2013 and 24.06.2013 were collaborative agreements for the development of four residential/commercial projects between the Appellant and the Respondent.

2. It was further submitted that while the JVAs were already in existence, the ICD was signed subsequently on 27.04.2014 between them by virtue of which the Appellant had provided Rs.25 crores to the Respondent to make payments towards purchase of land for one of these projects.

3. Further, the financial assistance of Rs.25 crores by the Respondent to the Appellant for which the ICD had been entered into was in the nature of making an investment for profit and therefore not a financial debt.

4. Further, the ICD stipulated the repayment of Rs.25 crores to be secured from the

receivables of the four projects for which the two parties had entered into JVA shows the inter dependence between the JV A s and the ICD.

5. Submission was also made that against the loan amount of Rs.25 crores, the Respondent had already made a payment of Rs.25,41,08,000/-. Thus not only was the debt discharged before the expiry of 24 months but it was paid in excess.

6. Further adding that 15 post-dated cheques had been issued by the Respondent to the Appellant of which 8 cheques remained un-encashed, it was contended that it is incomprehensible as to why the Appellant did not encash these cheques if there was a debt in existence.

7. The Respondent had unconditionally assigned its share of receivables from the four projects in favour of the Appellant and hence it remains unexplained as to why this right went unexercised by the Appellant.

8. The Respondent placed Reliance on the decision of this Tribunal in **Jagbasera Infra-tech Pvt. Ltd. v. Rawal Variety Construction Ltd.** wherein it has been held that an amount invested in the joint venture project by any party in their capacity as a promoter/- investor does not fall within the ambit of definition of Section 5(8) of the Code.

9. It was further added that this Tribunal in ***Vipul Ltd. V. Solitaire Buildmart Pvt. Ltd.*** has held that a Joint Development Agreement is a contract of reciprocal rights and obligations and for any breach of terms of contract, Section 7 is not maintainable as the amount cannot be construed as financial debt.

Hon'ble NCLAT held that:

1. The Appellate Tribunal noted that as per the Supreme Court's decision in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India***, it is settled law that for any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money.

2. Further, as per Anuj Jain, Interim Resolution Professional ***for Jaypee Infratech Ltd. V. Axis Bank Limited & Ors.***, the Supreme Court has also held that the essential condition of financial debt is disbursement against the consideration for the time value of money.

3. In the most recent judgment in ***Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd.***, the Apex Court has laid out that financial debt also includes an interest-free loan.

4. The Hon'ble NCLAT pointed out that the JVA and ICD between the parties indicate mutual rights, obligations, and shared profits and losses in real estate projects. The collaborative and profit-sharing nature of their partnership is evident in both agreements.

5. Thus, the Hon'ble NCLT New Delhi correctly recognized the interdependence of JVA and ICD, considering them integral to each other.

6. Further, it was observed that both parties, as development partners, jointly contributed to the project, with land acquisition being a crucial aspect. The Appellant's financial assistance to the Corporate Debtor amounted to financing the joint venture's operations.

7. The shared liability for profits, defined responsibilities, and the binding nature of the JVA and ICD established a legal relationship with mutual financial obligations.

8. The Appellate Tribunal concluded that the transaction is deemed an investment for profit, not a disbursement for the time value of money, and falls outside the scope of 'financial debt' as defined in Section 5(8) of the IBC.



GENERAL



IX. CORPORATE COMPLIANCE CALENDAR

S. No.	Due Date	Statute	Particulars of Form(s)/Return to be filed	Compliance
1.	January 01, 2024 to March 31, 2024	Companies Act, 2013	NA	Every Company to hold a minimum of 4 Board meetings in a calendar year subject to the gap between 2 Board Meetings not exceeding 120 days. It is recommended to hold at least one Board Meeting in every calendar quarter.
2.	At least 2 working days before the date of Board Meeting	SEBI (LODR) Regulations, 2015	NA	Prior intimation about the Meeting of the Board of Directors considering the following events to be sent to the concerned Stock Exchange at least 2 working days before the date of the Meeting <u>excluding the date of intimation and date of Meeting</u> :

				1. Proposal for buyback of securities; 2. Proposal for voluntary delisting; 3. Fund raising by way of FPO, rights issue, ADR/GDR/FCCB, QIP, debt issue, preferential issue etc. and for determination of issue price; 4. Declaration/recommendation of dividend, issue of convertible securities; 5. Proposal for declaration of bonus securities.
3.	At least 5 days before the date of Board Meeting	SEBI (LODR) Regulations, 2015	NA	Prior intimation about the Meeting of the Board of Directors considering the quarterly and year-to-date financial results to be sent to the concerned Stock Exchange at least 5 days before the date of the Meeting <u>excluding the date of intimation and date of Meeting.</u>

4.	Within 30 minutes of closure of the Board Meeting	SEBI (LODR) Regulations, 2015	NA	Listed entity to disclose to the concerned Stock Exchange, within 30 minutes of the closure of the meeting, held to consider the following: 1. Dividends/cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched; 2. Any cancellation of dividend with reasons thereof; 3. Decision on buyback of securities; 4. Decision with respect to fund raising proposed to be undertaken; 5. Increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched; 6. Reissue of forfeited shares/securities, or issue of shares/ securities held in reserve for future issue or the creation in any form or manner of new shares/securities or any other rights, privileges or benefits to subscribe to; 7. Alterations of capital, including calls; 8. Financial results; 9. Decision on voluntary delisting
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5.	Advance notice of at least seven working days (excluding the date of intimation and the record date)	SEBI (LODR) Regulations, 2015	NA	Company to give advance notice to Stock Exchange in respect of record date or book closure specify the purpose of the same.
6.	21st January, 2024	SEBI (LODR) Regulations, 2015	Compliance Report on Corporate Governance	Compliance Report on Corporate Governance to be submitted with concerned Stock Exchange for the quarter ended 31st December, 2023
7.	21st January, 2024	SEBI (LODR) Regulations, 2015	Statement of Investor Complaints	Statement of Investor Complaints for the quarter ended 31st December, 2023 giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter to be filed with concerned Stock Exchange.
8.	21st January, 2024	SEBI (LODR) Regulations, 2015	Statement showing Shareholding pattern	Statement showing Shareholding pattern to be submitted with concerned Stock Exchange for the quarter ended 31st December, 2023.
9.	15th January, 2024	FCRA, 2010	Quarterly Return	Intimation of Quarterly Receipt of Foreign Contribution for the Quarter ended 31st December, 2023 to be made by all FCRA registered Organizations as well as by Organizations that have obtained prior permission for receipt of foreign contribution.

X. CORPORATE NEWS

Hon'ble NCLT given its approval for merger of Tinsplate with Tata Steel

1. The Tinsplate Company of India Ltd. has received approval from the National Company Law Tribunal for its merger into Tata Steel Ltd.
2. Post-merger, The Tinsplate Company will be dissolved and cease to exist as a separate company.

RBI approves IDFC-IDFC First Bank merger

1. As part of the composite scheme of amalgamation, IDFC FHCL would first merge with IDFC and then IDFC into IDFC First Bank Ltd.
2. RBI has given its nod for the reverse merger of IDFC Ltd with its banking subsidiary IDFC First Bank.
3. Under the proposed reverse merger scheme, an IDFC shareholder will get 155 shares for every 100 shares she/he holds in the bank.



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