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"There are two types of people who will tell you that you cannot make a difference in this world: those who are afraid to try and those who are afraid you will succeed"
– Walt Disney





COMPANIES ACT, 2013



SECTION I- COMPANIES ACT, 2013

I. REGULATORY INSIGHTS

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
Ministry of Corporate Affairs	Clarification on holding of Annual General Meeting (AGM) and Extra-Ordinary General Meeting	General Circular No. 09/2023 dated 25.09.2023	- Through this circular, MCA has allowed Companies whose AGMs are due in the Year 2023 or 2024, to conduct their AGMs through VC or OAVM on or before 30.09.2024 in accordance with the requirements laid down in the General Circular No. 20/2020 dated 05.05.2020. - It shall not be construed as conferring any extension of statutory time for holding

Name of the Act/Rules/Regulations etc	Heading	Notification/ circular No and Date	Details
	through Video Conference (VC) or other Audio-Visual Means (OAVM)		of AGMs by the Companies under the Companies Act, 2013. Further, Companies are also allowed to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the prescribed framework up to 30.09.2024.

II. CHECKLIST

PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO LIMITED LIABILITY PARTNERSHIP (LLP)					
Compliance title	Description	Section/ rule/ regulation	Name of section/ rule/ regulation	Timeline	Prescribed form
Conditions	- There is no security interest in its assets subsisting or in force at the time of application; and - The partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.	Third Schedule	Limited Liability Partnership Act, 2008 read with Schedules	-	-

**PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO
LIMITED LIABILITY PARTNERSHIP (LLP)**

Compliance title	Description	Section/ rule/ regulation	Name of section/ rule/ regulation	Timeline	Prescribed form
	All the pending forms and returns are required to be filed upto the date with the ROC.				
Issue Notice for Board Meeting	Notice of the Board Meeting shall be circulated to all the Directors of the Company. Attachments to Notice: - Agenda and Notes to Agenda - Draft Resolution	Section 173 and Secretarial Standard-1	Companies Act, 2013	At least 7 days before the date of Board Meeting <i>*Board Meeting can be conducted on Shorter Notice with the consent of Directors</i>	NA

**PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO
LIMITED LIABILITY PARTNERSHIP (LLP)**

Compliance title	Description	Section/ rule/ regulation	Name of section/ rule/ regulation	Timeline	Prescribed form
Hold Board Meeting	Board shall meet and pass the necessary resolutions on the following matters: 1. Conversion of Private Company into LLP, 2. Authorize any Director to apply for Name of LLP. 3. Take note of written consent of all the shareholders for conversion of company into LLP.	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 to all the Directors for their comments	Secretarial Standard -1	Companies Act, 2013	Within 15 days from the date of Board Meeting	NA
Apply for name Application	File RUN LLP with ROC with following attachments: 1. Copy of Board Resolution. 2. Object Clause.	Section 16 and Rule 18	Limited Liability Partnership Act, 2008 read Limited Liability	-	RUN LLP

**PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO
LIMITED LIABILITY PARTNERSHIP (LLP)**

Compliance title	Description	Section/ rule/ regulation	Name of section/ rule/ regulation	Timeline	Prescribed form
	And obtain the name approval certificate from ROC.		Partnership Rules, 2009		
Filing Of Incorporation Documents with ROC:	Incorporation document and subscriber's statement filed by the partners along with the following Documents: 1. Individual Consent/ Statement from Shareholders. 2. Consent of designated partners 3. Proof of address of registered office of LLP 4. Latest utility bill such as electricity, mobile, telephone or gas bill. 5. Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner (if applicable).	Section 11	Limited Liability Partnership Act, 2008	-	LLP Form Fillip

**PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO
LIMITED LIABILITY PARTNERSHIP (LLP)**

Compliance title	Description	Section/ rule/ regulation	Name of section/ rule/ regulation	Timeline	Prescribed form
	6. NOC from Owner for registered office address. 7. Consent/ Statement from Creditors. 8. Copy of Board Resolutions				
Filing Of Application for Conversion with ROC	FILE E-FORM- 18 with ROC along with following Documents: 1. Income Tax Returns (Latest). 2. Declaration by shareholders. 3. Auditor Report, Profit & loss Account and Balance sheet as per Schedule III along with Notes (As on Date) not older than 30 days from filing Forms. 4. List of all the secured creditors along with their consent. And obtain certificate of registration on conversion.	Section 56 and Third Schedule	Limited Liability Partnership Act, 2008 read with Schedules	-	E- Form 18

**PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO
LIMITED LIABILITY PARTNERSHIP (LLP)**

Compliance title	Description	Section/ rule/ regulation	Name of section/ rule/ regulation	Timeline	Prescribed form
Limited Liability Partnership Agreement	Drafting Of Limited Liability Partnership Agreement, Agreement shall include: 1. Name of LLP. 2. Name of Partners & Designated Partners. 3. Form of contribution. 4. Profit Sharing ratio. 5. Rights & Duties of Partners. 6. Proposed Business 7. Rules for governing	Section 23 read with Rule 21	Limited Liability Partnership Act, 2008 read Limited Liability Partnership Rules, 2009	-	-
LLP FORM-3	Filing of LLP agreement in LLP FORM-3	Section 23 read with Rule 21	Limited Liability Partnership Act, 2008 read Limited Liability Partnership Rules, 2009	Within thirty days of the date of incorporation	LLP Form 3

III. SECTION ANALYSIS

LOANS AND INVESTMENTS BY COMPANY

Applicable law:

- I. Companies act, 2013 - Section 186
- II. Rule 11 of Companies (Meetings of Board and its Powers) Rules, 2014

Provisions:

I. As per section 186(1), investment by a company in another company not to be made through more than two layers of investment companies except:

- a. If a company acquires any company which is incorporated outside India and such company has investment subsidiaries beyond two layers as per the laws of such country.
- b. A subsidiary company from having any investment subsidiary for the purposes of meeting the requirement under any law/ rule/ regulation framed under any law for the time being in force.

Note: The above provision is not applicable on Specified IFSC Public and Specified IFSC Private company.

II. As per section 186(2), No company shall directly or indirectly, give any loan, guarantee, provide any security to a person or other body corporate or make any investment in the securities of any other body corporate, exceeding-

60% of its Paid-up Share Capital + Free reserves + Securities Premium Account;
OR
100% of its Free reserves + Securities Premium Account,

Whichever is more.

III. A Company can give loan, guarantee or provide any security or make any investment beyond the limits specified u/s 186(2), subject to prior approval of members by a special resolution passed at a general meeting as per section 186(3).

Note: The approval of members is not required where a loan or guarantee is given or security provided by a company to its wholly owned subsidiary company or a joint venture company, or an investment made by a holding company, in the securities of its wholly owned subsidiary company (Rule 11 Companies (Meetings of Board and its powers) Rules, 2014).

Disclosure Requirements:

The company shall disclose the full particulars of the loans, guarantee given or security provided or investment made and the purpose for which the loan, guarantee or security is proposed to be utilized by the recipient of the loan, guarantee or security as per section 186(4).

Cases where approval of Public Financial Institutions is required as per section 186(5):

I. The aggregate amount of loan or guarantee given, security provided or investment made exceeds the limits specified u/s 186(2); and

II. In case of any default in repayment of loan instalments or payment of interest thereon, as per the terms and conditions of such loan to the public financial institution.

Companies Registered under SEBI:

As per section 186(6), No company registered u/s 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the SEBI, shall take any intercorporate loan or deposits, in excess of the limits specified under the regulations applicable to such company, pursuant to which it has obtained certificate of registration from the SEBI (Rule 11 Companies (Meetings of Board and its powers) Rules, 2014).

Rate of Interest:

Rate of interest shall not be lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan

Loan by Defaulter Company:

A company which has defaulted in repayment of any deposits or in payment of interest thereon shall not give any loan or give any guarantee or provide any security or make an investment till such default is subsisting.

Register of Loan:

Company covered under provisions shall keep and maintain a register, in Form MBP 2, which shall contain particulars of loan or guarantee given or security provided or investment made, (either manually or in electronic form) and the same shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose, at registered office of the company.

Non- Applicability of provisions of section 186 except 186(1):

I. Where any loan, guarantee has been given or any security provided in the ordinary course of its business by-

- a. A banking company, or
- b. An insurance company, or
- c. A housing finance company,
- d. A company engaged in the business of financing of companies or of providing infra-structural facilities.

- II. to any investment –
- a. made by an investment company;
 - b. made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities;
 - c. made in respect of shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

Penalty:

If a company contravenes the provisions of section 186, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Note: Section 186 shall not apply to:

I. A Government company engaged in Defence production.

II. A Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment.





SEBI



IV. REGULATORY INSIGHT

Name of the Act/Rules/ Regulations etc	Heading	Notification/ circular No and Date	Details
Amendment in SEBI (LODR) Regulations, 2015	Listing of subsequent issuances of non-convertible debt securities	Notification No. SEBI/LAD-NR O/GN/2023/151 dated September 19, 2023	Regulation 62A has been inserted which provides for the listing of subsequent issuances of non-convertible debt securities. • A listed entity, whose non-convertible debt securities are listed shall list all non-convertible debt securities, proposed to be issued on or after January 1, 2024, on the stock exchanges. • A listed entity, whose subsequent issues of unlisted non-con

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			vertible debt securities made on or before December 31, 2023 are outstanding, may list such securities, on the stock exchange. • A listed entity that proposes to list the non-convertible debt securities on the stock exchange on or after January 1, 2024, shall list all outstanding unlisted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange within 3 months from the date of the listing of the non-convertible debt securities proposed to be listed. • Listed entity shall not be required to list the following securities: - o Bonds issued under section 54EC of the Income Tax Act, 1961; - o Non-convertible debt securities issued pursuant to an agreement entered into between the listed entity of such securities and multilateral institutions; - o Non-convertible debt securities issued pursuant to an order of

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			any court or Tribunal or regulatory requirement as stipulated by a financial sector regulator namely, the Board, RBI, IRDAI or the Pension Fund and Regulatory Development Authority. • Non-convertible debt securities issued pursuant to an agreement entered or an order of court or tribunal or regulatory requirement by listed entity as mentioned above shall be locked in and held till maturity by the investors and shall be unencumbered. • A listed entity proposing to issue securities under sub-regulation (4) shall disclose to the stock exchanges on which its non-convertible debt securities are listed, all the key terms of such securities, including embedded options, security offered, interest rates, charges, commissions, premium, period of maturity and such other details as may be required to be disclosed by the Board from time to time.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
Securities and Exchange Board of India	Investment of Mutual Fund schemes in units of Corporate Debt Market Development Fund	Circular No. SEBI/HO/IM-D/PoD2/P/-CIR/2023/152 dated September 06, 2023	In line with SEBI Circular SEBI/HO/IMD/PoD2/P/CIR/2023/129 dated July 27, 2023 on Investment by Mutual Fund Schemes and AMCs in units of Corporate Debt Market Development Fund (CDMDF), it is clarified that for the calculation of asset allocation limits of mutual fund schemes, investment in the units of CDMDF shall be excluded from base of net assets.
Securities and Exchange Board of India	Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform	Circular No. SEBI/HO/OI-AE/IGRD/-CIR/P/2023/156 dated September 20, 2023	In order to strengthen the existing investor grievance handling mechanism, a revised framework for handling of complaints received through SCORES platform for Entities and for monitoring the complaints by designated bodies has been specified. SEBI had earlier notified the Securities and Exchange Board of India (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023 and amended the regulations provided under schedule I of the circular to help in: • Making the entire redressal process of grievances in the securities market comprehensive, • Providing a solution that makes the process more efficient,

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			- Reducing timelines and - Introducing auto-routing and auto-escalation of complaint. Annexure I to the circular provides the framework for handling of complaints received through SCORES Platform and for monitoring of complaints. Annexure II provides the other general provisions.
Securities and Exchange Board of India	Extension of timelines for nomination in eligible demat accounts and for submission of PAN, Nomination and KYC details by physical security holders; and voluntary nomination for trading accounts	Circular No. SEBI/HO/MIRSD/POD-1/P/-CIR/2023/158 dated September 26, 2023	The circular provides Extension of timelines: For Trading and demat accounts: - SEBI circular dated July 23, 2021 stipulates that trading accounts and demat account which do not have 'choice of nomination' by September 30, 2023 shall be frozen. - As a step towards ease of doing business, based on representations received, the submission of choice of nomination for trading accounts has been made voluntary and for demat accounts it has been decided to extend the last date for submission of choice of nomination to December 31, 2023.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			- For physical security holders: - SEBI circular dated March 16, 2023 stipulated that folios shall be frozen if PAN, Nomination, Contact details, Bank A/c details and Specimen signature are not submitted by the holders by September 30, 2023. - It is decided to extend the last date for submission of PAN, Nomination, Contact details, Bank A/c details and Specimen signature for their corresponding folio numbers to December 31, 2023.
Securities and Exchange Board of India	Extension of timeline for verification of market rumours by listed entities	Circular No. SEBI/HO/CFD/CFD-PoD-1 / P / - CIR/2023/162 dated September 30, 2023	The timeline for applicability of Reg. 30(11) of SEBI (LODR) Regulations, 2015 which requires the Companies to verify, confirm, deny or clarify market rumors is extended to February 1, 2024 for top 100 listed entities on the basis of Market Capitalization and to August 1, 2024 for top 250 Listed entities on the basis of market capitalization.
Securities and Exchange Board of India	Centralized mechanism for reporting the demise of an investor through KRAs	Circular No. SEBI/HO/OI-AE / OI - AE_IAD-1/P/CIR/2023/0000000163 dated October 03, 2023	This circular introduces a centralized mechanism for reporting and verification in case of the demise of an investor and thereby smoothen the process of transmission in securities market. The circular provides various obligations:

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			• Obligation of Intermediary: Verification of Death Certificate - o On receipt of intimation about the demise of an investor from a joint account holders or nominee or legal representative or family member (hereinafter, collectively referred to as notifier), the concerned intermediary shall obtain the death certificate along with the PAN from the notifier and follow the following steps: a) Verify the Death Certificate. b) Record and retain self-certified copy of proof of identity, relationship with deceased and contact details of the notifier. - o If the concerned intermediary after receiving information about the demise of the investor from the notifier or after inferring the same, does not have access to or is not in a position to obtain the death certificate, then it shall follow the following steps: □ Intimate the investor, notifier, or the nominee that the KYC status of the investor has been flagged off as "On Hold" and require them to furnish the death certificate of the concerned investor.

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			□ Upon receipt of the death certificate, the intermediary shall follow the steps as mentioned above. • Obligation of Intermediary: Updation of records in the KRA (KYC Registration Agencies) system by the Intermediary o After verification of the death certificate, the concerned intermediary shall (on the same day of verification): □ Submit a 'KYC modification request' to the KRA that "information on death of investor received; death certificate verified and also upload the relevant documents. □ Block all debit transactions in the account / folios of the deceased investor. o In case the death certificate is not received, the concerned intermediary shall (by the next working day of the intimation): Submit a 'KYC modification request' in the KRA system, "information on death of investor received; confirmation awaited".

Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			Obligations of KRA: The KRA, upon receipt of 'KYC modification' request from the intermediary, follow the following steps: - Independent validation and verification by the next working day of receipt of modification request and contact other linked intermediaries also to check if they have any update in this regard and status of account maintained by them. - Upon validation of the death certificate, the KRA, shall update the KYC record as "Blocked Permanently" in the system and intimate this updation to all linked intermediaries. - For KYC modification requests received, the KRA shall flag off the KYC of the investor as "On Hold", and update this status to all linked intermediaries. - If KRA finds some errors / issues with the modification request, it shall consult with the concerned intermediary and share details of its observations and accordingly update the KYC status to "Modification Rejected and Clear i.e., Validated" or "Blocked Permanently", as the case may be, by the next working day.

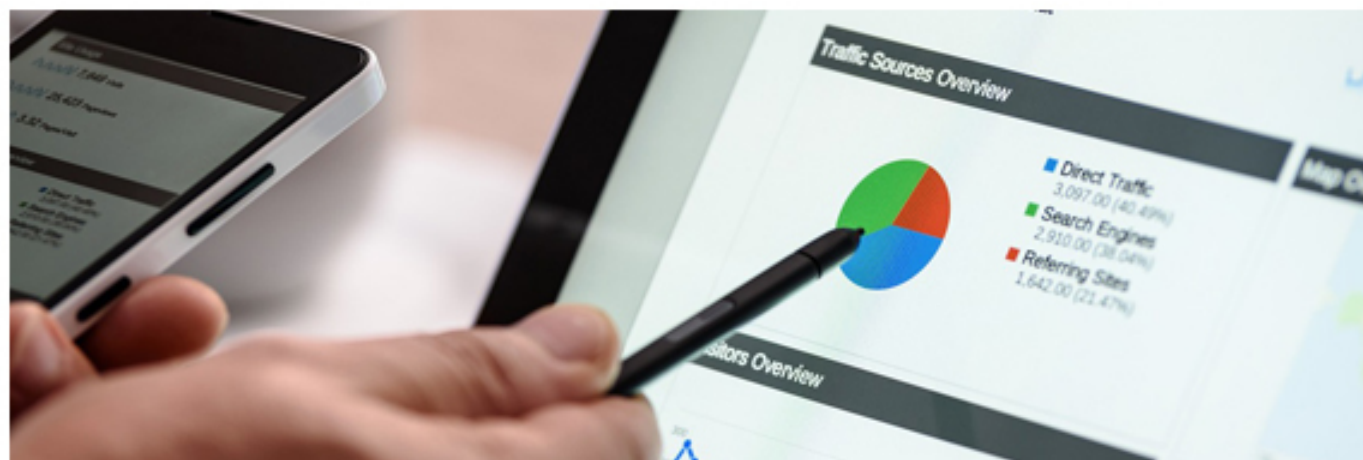
Name of the Act/Rules/Regulations etc	Heading	Notification/circular No and Date	Details
			Upon receipt of notification from KRA as "Blocked Permanently", all intermediaries shall Immediately block all debit transactions in the account / folios of the deceased investor and Intimate the notifier / nominee, within 5 days about the procedure for transmission, provide the transmission request form and the list of documents required for the transmission. If there is any transaction request received by any intermediary in the account / folio held by it, which is flagged off as "On Hold" as per, it shall allow the transaction only after conducting additional due diligence as may be appropriate, including through video call with the investor or In-Person Verification which serves to establish that the investor is alive. • Other obligation of Intermediaries: All intermediaries who have account or folios of investors whose status has been updated as deceased by the KRA, shall submit the data with respect to intimation of transmission, and its outcome thereof, to SEBI.

Name of the Act/Rules/Regulations etc	Heading	Notification/ circular No and Date	Details
			In order to have uniformity, Stock Exchanges, Depositories and industry associations like Association of Mutual Funds in India (AMFI), Registrars Association of India (RAIN) etc. in consultation with stakeholders including KRAs, may put in place common Standard Operating Procedure.





FEMA



V. FAQs

Legal Entity Identifier (LEI)

Q1. What is Legal Entity Identifier and what is its purpose?

Ans. The Legal Entity Identifier (LEI) is a 20-character alpha-numeric code used to uniquely identify parties to financial transactions worldwide. It has been implemented to improve the quality and accuracy of financial data reporting systems for better risk management. It is used to create a global reference data system that uniquely identifies every legal entity in any jurisdiction that is party to a financial transaction. It can be obtained from any of the Local Operating Units (LOUs) accredited by the Global Legal Entity Identifier Foundation (GLEIF), the body tasked to support the implementation and use of LEI. In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL)(<https://www.ccilindia-lei.co.in/>), which is also recognized as an issuer of LEI by the Reserve Bank of India (RBI).

Q.2 Which transactions should include LEI information?

Ans. All single payment transactions of ₹50 crore and above undertaken by entities (non-individuals) should include remitter and beneficiary LEI information. This is applicable to transactions undertaken through the NEFT and RTGS payment systems.

In case of RTGS, both customer payment and inter-bank transactions meeting the above criterion should include LEI information.

Q.3 Is LEI required for Central Government or State Governments or Departments and Ministries thereunder?

Ans. It is not necessary for Governments or their Departments / Ministries to obtain LEI or mention LEI number for payment transactions in NEFT and RTGS. However, Corporations / Undertakings, including those fully owned by the Government, shall need to obtain LEI. All single payment transactions of ₹50 crore and above of Government Undertakings and Corporations, through NEFT / RTGS, shall include remitter and beneficiary LEI information.

Q.4 Is LEI required for individual customer transactions?

Ans. No, LEI is not required for customer transactions where both remitter and beneficiary are individuals. For transactions, where either or both parties are non-individual/s, LEI will be required.

Q.5 What are the technical guidelines for populating LEI in NEFT and RTGS and messages by member institutions?

Ans. i. In NEFT payment messages, the field 7495 is a free format optional field consisting of 6 lines with 35 characters each with alpha-numeric options. The first two lines of this field shall be used for capturing sender and beneficiary customer LEI information, in that order, where applicable and available. When LEI information is captured, narration, remarks, etc., shall be part of last 4 lines of the field. The sender and beneficiary information shall be captured in following format:

7495: line 1 -> SL/20 digit sender LEI/
line 2 -> BL/20 digit beneficiary LEI/

ii. In RTGS customer payment and inter-bank messages, the optional field "<-RmtInf->" has 4 repeat tags with each having 140 characters. The first two loops of this field shall be used for capturing sender and beneficiary customer LEI information, in that order, where applicable and available. When LEI information is captured, narration, remarks, etc., shall be part of last two repeating loops of the field. The sender and beneficiary information shall be captured in following format:

<-RmtInf-> loop 1 -> /SL/20 digit sender LEI/
loop 2 -> /BL/20 digit beneficiary LEI/

Q.6 What are the types of accounts for which LEI should be recorded?

Ans. LEI shall be recorded for all non-individual NEFT / RTGS messages /transactions. An indicative list of entity types is given by LEIL at <https://www.ccilindia-lei.co.in/Documents/FAQs.pdf>.

Q7. Is it required to capture counter-party LEI information i.e., Remitter in case of inward and Beneficiary in case of outward transactions by banks?

Ans. The remitting bank should ensure that LEI information for both sender and beneficiary is captured. Any inward transaction with inappropriate or no LEI should not be rejected by beneficiary bank. However, post-credit, both remitting and beneficiary banks should maintain valid and verified LEI information for all payment transactions of ₹50 crore and above.

Q8. Whether day to day operational transactions of ₹50 crore and above carried out by financial institutions like sub-member banks / banks / BCs /WLAs, etc., are excluded from the purview of the guidelines?

Ans. Response to Q.No.2 may be referred to for the applicable types of transactions

Q9. Whether LEI would be applicable for transactions initiated by banks for their internal payments, loan disbursement to their corporates, term deposits, maturity proceedings, account closure proceedings, etc.

Ans. Response to Q. No. 2 may be referred to for the applicable types of transactions.

Q10. Is this change in format applicable for WEB-API messages?

Ans. The LEI instructions are applicable to all the channels being used for connecting to RTGS viz. thick-client, Web-API (through INFINET or any other approved network) and Payment Originator (PO) module.

(Source: Reserve Bank of India - FAQs (rbi.org.in))

VI. CASE LAW

ORDER OF HON'BLE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION DATED 21ST SEPTEMBER 2023 CRIMINAL APPEAL NO. 2151 OF 2011

In the matter of

First Global Stockbroking Pvt. Ltd. & Ors.

.... Appellant

Vs.

Anil Rishiraj & Anr.

.... Respondent

Facts of the Case:

1. The Foreign Exchange Management Act, 1999 (FEMA) was brought into force with effect from 1st June 2000. By virtue of subsection (1) of Section 49 of FEMA, the Foreign Exchange Regulation Act, 1973 (FERA) stood repealed.

2. First Respondent who was an Enforcement Officer appointed under clause (e) of Section 3 of FERA, filed a complaint in the Court of the learned Chief Metropolitan Magistrate, Esplanade, Mumbai, against the Appellants for various offences punishable

under FERA and Section 120B of the Indian Penal Code.

3. Cognizance was taken by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, on the said complaint on 11th February 2002 by passing an order of issue of process.

4. The Appellants made separate applications for discharge, but the learned Additional Chief Metropolitan Magistrate rejected the applications and a revision application was preferred against the order of rejection which was also dismissed.

5. Being aggrieved by the said order, an application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) was filed by the Appellants which has been dismissed by the impugned judgment dated 3rd February, 2010 by the learned Single Judge of the High Court of Bombay.

Appellant contentions:

1. Under Section 61(2)(ii) of FERA, cognizance of the offence punishable under Sections 56 and 57 could be taken by a Court only on a complaint in writing made by an officer specified under Section 61(2)(ii)(a) to 61(2)(ii)(c) of FERA.

2. Section 3 of FERA provided for the appointment of different classes/categories of officers of Enforcement and appointment of officers made under Section 3 of FERA has not been saved by Section 49, which is a saving and repealing provision under FEMA.

3. Enforcement Officer, First Respondent was appointed under clause (e) of Section 3 of FERA and thus, with effect from 1st June 2000, the said officer is not empowered to exercise powers of an Enforcement Officer under FERA as the said powers have not been saved. Therefore, the Court was powerless to take cognizance of the complaint which was filed by an officer who was not authorised.

Respondent Contentions:

Section 49(4) of FEMA is a complete answer to the submissions made by the Appellants. The Enforcement Officer appointed under FERA continued to have the authority or competence to file a complaint for the offences punishable under FERA before the expiry of the sunset period provided in Section 49(3) of FEMA.

The Hon'ble Supreme court dismissed the appeal on the following grounds:

1. As per notification dated 24th September 1993 issued under Section 61(2)(ii)(b) of FERA, various officers, including all the enforcement officers were authorised to file a complaint in respect of the offences punishable under Sections 56 and 57 of FERA.

2. In the present case, the complaint has been filed by the first respondent, who was, at the relevant time, an Enforcement Officer appointed under clause (e) of Section 3 of FERA.

3. Section 49(4) of FEMA, provides that subject to the provisions of subsection (3), all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

4. Section 49 (3) saves the prosecution for the offences punishable under Sections 56 and 57, which have been committed prior to the repeal of FERA, provided the competent Court takes its cognizance within two years from the date of coming into force of FEMA.

5. In view of Section 49(4), for the purposes of the prosecution of offences punishable under Sections 56 and 57 of FERA, by a legal fiction, the provisions of the repeal Act will continue to apply. However, the same will continue to apply only for the purposes of prosecution of the offences which are saved by subsection (3) of Section 49 of FEMA.

6. That is how the complaint filed by the Enforcement Officer, duly authorised under Section 61(2)(ii), will continue to be valid, inasmuch as by virtue of the legal fiction incorporated in Section 49(4), the prosecution will continue to be governed by the provisions of FERA as if the same had not been repealed.

7. Therefore, during the sunset period, the authorization of the Enforcement Officers to file the complaints continues to be valid for the limited purposes of Section 49(3) of FEMA.





Non-Banking Financial Institutions (NBFC)



VII. Non-Banking Financial Company (NBFC)

As per section 45I(f) of RBI Act, 1934 Non-banking financial company means:

I. A financial institution which is a company,

II. A non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

III. Such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

Financial Institution means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:–

I. The financing, whether by way of making loans or advances or otherwise, of any activity other than its own,

II. The acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature.

III. Letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972.

IV. The carrying on of any class of insurance business.

V. Managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

VI. Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which carries on as its principal business,

- a) Agricultural operations or
- b) Industrial activity; or
- c) The purchase or sale of any goods (other than securities) or the providing of any services; or
- d) The purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons.

Do Banks and NBFC are the same?

NBFCs lend and make investments and hence their activities are similar to that of banks; however, there are a few differences as given below:

- I. NBFC cannot accept demand deposits;
- II. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;

III. Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

Is it necessary that every NBFC should be registered with RBI?

No non-banking financial company shall commence or carry on the business of a non-banking financial institution without–

- Obtaining a certificate of registration issued under this Chapter; and
- Having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding hundred crore rupees, as the Bank may, by notification in the Official Gazette, specify.

RBI may notify different amounts of net owned fund for different categories of non-banking financial companies.

Different types of NBFC?

NBFCs are categorized:

- I. In terms of the type of liabilities into Deposit and Non-Deposit accepting NBFCs,
- II. Non deposit taking NBFCs by their size into systemically important and other non-deposit holding companies (NBFC-NDSI and NBFC-ND) and
- III. By the kind of activity, they conduct.

Within this broad categorization the different types of NBFCs are as follows:

- Asset Finance Company (AFC)
- Investment Company (IC)
- Loan Company (LC)
- Infrastructure Finance Company
- Systemically Important Core Investment Company
- Infrastructure Debt Fund
- Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI)
- NBFC- Non-Operative Financial Holding Company (NOFHC)





Insolvency and Bankruptcy Code, 2016



VIII. CASE LAW

ORDER OF HON'BLE NATIONAL COMPANY LAW TRIBUNAL, DELHI DATED 18TH SEPTEMBER, 2023 COMPANY PETITION NO. (IB)- 2240(ND)/2019

In the matter of
Deutsche Bank A.G
Vs

.....Applicant

Mr. Devendra Umrao, RP of
M/s Overnite Express Limited

..... Respondent

Facts of the case:

1. **M/s Overnite Express Limited (Corporate Debtor)** was admitted into CIRP vide order of Hon'ble NCLT dated 02.03.2020 pursuant to an application filed by M/s Hi-Tech Resource Management Limited and Mr. Devendra Umrao was appointed as Resolution Professional (RP).

2. This application had been preferred by the Applicant as an objection to the Resolution Plan submitted by the RP wherein it had sought following reliefs:
a) Allow the present Application/Objections of the Applicant Bank.

- b) Reject the Resolution Plan of the Resolution Applicant in terms of the provisions of the Insolvency and Bankruptcy Code and Rules made there under;
- c) Direct the liquidation of the Corporate Debtor be initiated as per the provisions of the Insolvency and Bankruptcy Code and Rules made thereunder; and in that behalf
- d) Pass any other Order that this Hon'ble Tribunal deems it necessary in the interest of justice.

Applicant Contentions:

1. It is stated by the Applicant that it is a Secured Financial Creditor of the Corporate Debtor.
2. The total admitted claims of the Secured Financial Creditors were to the tune of Rs.10,82,08,485/- against which they were offered an amount of Rs.3,24,62,545/-, which is approximately 30% of the admitted claims.
3. Since the Applicant's claim is Rs.6,00,26,716.30/-, it will be offered a mere 30% of the admitted Claim. The said offer is without considering the valuation of the security held by the Applicant, which is valued at more than Rs.12 Crores as of date.
4. In support of its contention, the Applicant has relied upon the following Judgments:

a) The Hon'ble NCLAT in "Jet Aircraft Maintenance Engineers Welfare Assn. vs. **Jet Airways (India) Ltd.**", **2022 SCC OnLine NCLAT 418**, has held that the Secured Financial Creditor is entitled to the amount owed to them as per the value of the Security interest.

b) The Applicant is entitled to the value of its security/ Mortgage Property as held by the Hon'ble Apex Court in **Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.**, **(2022) 1 SCC 401**, and which was affirmed in **India Resurgence ARC Private Limited v. Amit Metaliks Limited**, **2021 SCC OnLine SC 409**.

5. The Resolution Plan is submitted on behalf of Mr. Om Prakash Raj Ghorla, who is a member of the Suspended Board of the Corporate Debtor claiming that the CD falls under the MSME Category and is fraudulently trying to take advantage available to MSME under section 240A of the IBC Code, 2016.

6. The Respondent/RP has not conducted any forensic or transactional audit of the Corporate Debtor in order to find whether any defrauding of the assets of the Corporate Debtor has been carried out by the Suspended Board of Directors or by any third party.

7. The Respondent has not supplied documents related to CIRP and the complete set of the Resolution plan to the Applicant.

Respondent contentions:

1. The RP has informed the members in the 5th CoC meeting held on 01.11.2021 that the legal opinion has been received regarding the registration of CD as MSME during CIRP, which emphasizes that CD can be registered as MSME and the RP can register the same during CIRP.

2. It is further stated by the RP that the Dissenting Financial Creditors, who did not vote in favour of the Resolution Plan, shall be paid the liquidation value due to them in accordance with the provision under Section 30(2) read with Section 53 of the IBC 2016.

3. Respondent relied upon judgement held in ***Govind Prasad Todi v. Satyanarayana Gudetti and Ors.*** wherein the Appellants/Promoters, who obtained the MSME certificate much after the initiation of CIRP i.e., 30.08.2020 (while the CIRP was initiated on 04.02.2020), submitted the resolution plan.

Issue Involved: Whether the MSME Certificate obtained after the commencement of CIRP is valid for making a Defaulter Promoter eligible to submit a Resolution Plan under Section 240A of IBC, 2016?

The Hon'ble NCLT held that:

1. Since, in the instant case, the MSME Certificate has been obtained post-commencement of CIRP, it would be appropriate to find out who would be interested in obtaining the MSME Certificate of the Corporate Debtor after commencement of CIRP –

a) It could be a Promoter(s) or Member(s) of the Suspended Board of Directors, who intends to be a Prospective Resolution Applicant (PRA) and who is otherwise barred under Section 29A (c) &/or (h) of IBC 2016 to submit the Resolution Plan; or

b) It could be RP/CoC to avail the business advantages available under the MSME Act such as to avail preference in the marketing of its product, price preference, or benefit in the payment terms.

2. In case an MSME Certificate is obtained by a Promoter/ Suspended Director of a Corporate Debtor after the commencement of CIRP, the same shall be in violation of Section 17(1)(b) of IBC 2016, since on commencement of the CIRP of a Corporate Debtor, the powers of its Board of Directors or in case of an LLP, the powers of Partners of the corporate debtor shall stand suspended and can be exercised by the Interim Resolution Professional (IRP)/RP only.

3. An MSME Certificate obtained by Promoter(s)/Ex-Director(s) post-commencement of the CIRP is invalid and it will not make them eligible to submit an EOI or the Resolution Plan by taking benefit of Section 240A of IBC 2016.

4. Also, RP/CoC can obtain an MSME Certificate for the purpose of availing the business advantages available under the MSME Act, 2006 such as - to avail preference in the marketing of its product, price preference, or benefit in the payment terms, which are in the overall interest of maximizing the value of assets of the Corporate Debtor under CIRP, which is a going concern.

5. However, in the present case, MSME certificate has been obtained within "03 days" from the date of publication of Form-G on 09.11.2021. Evidently, the SRA herein, being a Defaulter Ex-Director of the Corporate Debtor, given the pre-MSME certificate status of CD being of a non-MSME, was ineligible to submit an EOI/Resolution Plan. **Thus, the RP/CoC by obtaining an MSME Certificate on their initiative, opened the doors, that were otherwise shut, to the Defaulter Promoter(s)/ Suspended Board of Director(s)/ Ex-Management just to enable them to submit EOI/Resolution Plan to regain entry and control/management over the Corporate Debtor through the backdoor.**

6. **Also, there is no recording in the minutes of the said CoC meeting that the MSME Certificate was obtained to get a business advantage by the Corporate Debtor; and (b) No formal resolution passed by the CoC authorizing the RP to obtain the MSME Certificate. Hence, it won't be wrong to say that there was "No Resolution" passed by the CoC authorizing the RP to obtain the MSME Certificate.**

7. The RP is duty-bound to invite prospective resolution applicants, who fulfill such criteria as may be laid down by him with the approval of the Committee of Creditors, to submit Resolution Plan(s). Such criteria have to be consistent with the Code and cannot be laid down by ignoring Section 29A of IBC 2016. The provisions under Section 25 of IBC 2016 nowhere authorize an RP to obtain an MSME Certificate of the CD for the purpose of opening back door entry to a defaulting Ex-Director(s)/Promoter(s)/Suspended Management.

8. The benefit of Section 240A of IBC 2016 can only be availed by a genuine MSME Enterprise, whose registration or MSME Certification is done prior to the commencement of CIRP of a Corporate Debtor.



GENERAL



IX. CORPORATE COMPLIANCE CALENDAR

S. No.	Due Date	Statute	Particulars of Form(s)/Return to be filed	Compliance
1.	01st October to 31st December, 2023	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. (if already communicated to Board).
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.	Within 30 days from the approval of Board Report and Financial Statements	Companies Act, 2013	Form MGT-14	Listed, Unlisted and Subsidiary of Public Company shall file Board Resolution passed for approval of Board report and financial statements within 30 days of passing the same.
6.	Within 21 days of being approved & adopted in the Annual General Meeting	SEBI (LODR) Regulations, 2015	NA	Submit Annual Report to the concerned Stock Exchange(s).
7.	Within 30 days from the conclusion of Annual General Meeting	Companies Act, 2013	Form MGT-15	Filing of report on Annual General Meeting with the Registrar of Companies
8.	30th October, 2023	LLP Act, 2008	Form 8	Filing of financial statements of LLP
9.	Within 30 days from the date of Annual General Meeting	Companies Act, 2013	NA	Filing of Form AOC-4 i.e. audited financial statements with the ROC.
10.	Within 60 days from the date of Annual General Meeting	Companies Act, 2013	NA	Filing of Form MGT-7 i.e. Annual Return with the ROC
11.	Within 60 days from the date of each half year	Companies Act, 2013	Form PAS-6	Every unlisted public company shall submit Form PAS-6 to the Registrar within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

X. CORPORATE NEWS

Amalgamation of Max Ventures and Industries Ltd (MVIL) into Max Estates Limited (MEL)

Max Ventures and Industries' board has approved amalgamation of the company with its wholly-owned subsidiary Max Estates Ltd as a part of group's restructuring exercise and to focus completely on real estate business.

Its board authorised the Investment and Finance Committee to explore various modalities for restructuring with Max Estates Ltd and be renamed as Max Estates after receiving the required statutory approvals.

In consideration of the amalgamation, MEL will issue its equity shares to the equity shareholders of the MVIL or transferor company. For every one equity share held in MVIL, the shareholders will be issued one share credited and fully paid-up in MEL.



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