



WHITESPAN
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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter
November 2023

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MAA FOUNDATION ACTIVITIES



Vocational Education: Our Organisation believes in educating peoples in a way that they can get employed or self- employed and it can only be done through such vocational education thus, we aim to impart practical education and experience to our young minds so that they can March Ahead always.

MESSAGE FROM THE CHIEF EDITOR

“When I let go of what I am, I become what I might be.” – Lao Tzu

It gives us immense satisfaction to share the 79th Edition of “WINS – E-Newsletter” for November 2023, covering legal updates released during the month of October 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of November 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, and CBDT, RBI and miscellaneous Law
2. Articles
 - Enforceability and Validity of Non-compete & Non-solicitation Agreement;
 - Procedural Discrepancies in Business Entity Conversions;
3. Case Laws
4. Compliance checklist for the month of November 2023.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor’s Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at vinayshukla@whitespan.in or [+91 9810 624 262](tel:+919810624262)

With warm regards,

TEAM WINS (Whitespan Information and News Services)
October 31, 2023

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

- 1. Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
- 3. Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
- 4. Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Mr. Pushkar Garg**, Senior Associate at Whitespan Law Offices and Member of the Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
- 6. Ms. Tanya Shukla**, CS Trainee at Whitespan Law offices, and a graduate in Commerce from Kanpur University.
- 7. Ms. Sanjana Bindal**, CS Trainee at Whitespan Law offices, and a graduating from H.P. National Law University

Ministry of Corporate Affairs (MCA)

1. Amendment to Companies (Incorporation) Rules, 2014

Date of notification: October 20, 2023

Effective Date: October 21, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=uqnggXxHARXXjysr4uSRjQ%253D%253D&type=open>

MCA vide its notification dated October 20, 2023 notified the amendment in rule 30, in sub-rule (9) Companies(Incorporation) Rule 2014. As per the amendment, the word “and may include such order as to costs as it thinks proper” have been omitted from the said rules and inserted that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.

2. The stakeholders are informed that Ministry of Corporate Affairs has integrated with National Single Window System (NSWS) for the Incorporation of Companies and LLPs.

Date of notice: October 23, 2023

Effective Date: October 23, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=cr9F9%252F81GDiypPxTWd6oQw%253D%253D&type=open>

MCA vide its notice dated October 23, 2023 announced that the Ministry of Corporate Affairs has integrated with National Single Window System (NSWS) for the Incorporation of Companies and LLPs. Incorporation services can also be availed through NSWS portal.

3. Limited Liability Partnership (Third Amendment) Rules, 2023

Date of notification: October 27, 2023

Effective Date: October 27, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=174Uq4fp39PgAUh7CLq%252FxA%253D%253D&type=open>

MCA vide its notification dated October 27, 2023 amended the Limited Liability Partnership Rules, 2009. Key highlights of the amendment are:

1. Every limited liability partnership shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership.
2. A person whose name is entered in the register of partners of a Limited Liability Partnership but does not hold any beneficial interest fully or partly in contribution (hereinafter referred to as “the registered partner”), such person shall file with the Limited Liability Partnership, a declaration to that effect in Form 4B within a period of thirty days from the date on which his name is entered in the register of partners specifying the name and other particulars of the person who actually holds any beneficial interest in such contributions.

4. Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

Date of notification: October 27, 2023

Effective Date: October 27, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mids=Z5zV%252FFCPufGJB7bT%252BHHK%252FQ%253D%253D&type=open>

MCA vide its notification dated October 27, 2023 amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. Key highlights of the same are:

1. Every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall, -
 - (a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and
 - and
 - (b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialized in their account and for this purpose the company shall place a notice for

the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.

Every private company, other than a small company, shall within the period referred to in sub-rule (2) - (a) issue the securities only in dematerialized form; and (b) facilitate dematerialization of all its securities, in accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

A private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of this rule.

5. Revision in manner of achieving minimum public unitholding requirement – Infrastructure Investment Trusts (InvITs)

Date of circular: October 31, 2023

Effective Date: October 31, 2023

Link:

<https://www.sebi.gov.in/legal/circulars/oct-2023/revision-in-manner-of-achieving-minimum-public-unitholding-requirement-infrastructure-investment-trusts-invits-78561.html>

SEBI vide its circular dated October 31, 2023, in reference to circular no. SEBI/HO/DDHS/PoD2/P/CIR/2023/107 dated June 27, 2023, prescribing methods to achieve minimum public unitholding requirements for InvITs, notified issuance of units through preferential allotment as additional method for privately placed InvITs in order to achieve minimum public unit holding requirements. Further, it has been decided that S. No. 7 under para 21.2. of Chapter 21 of the Master circular for InvITs dated July 06, 2023, stands modified as under this circular.

Securities Exchange Board of India (SEBI)

1. Centralized mechanism for reporting the demise of an investor through KYC Registration Agencies (KRAs)

Date of circular: October 03, 2023

Effective Date: January 01, 2023

Link:

https://www.sebi.gov.in/legal/circulars/oct-2023/centralized-mechanism-for-reporting-the-demise-of-an-investor-through-kras_77534.html

SEBI vide its circular dated October 03, 2023, introduced a centralized mechanism for reporting and verification in case of the demise of an investor for transmission in the securities market.

On receipt of intimation about the demise of an investor from a joint account holder(s) or nominee(s) or legal representative or family member (collectively referred to as notifier) shall obtain the death certificate along with the PAN from the notifier and verify the death certificate Online viz. the website of the issuing Government authority, or Offline through OSV ('Original Seen and Verified') process by the intermediary. Further record and retain a self-certified copy of proof of identity, relationship with the deceased, and contact details of the notifier.

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 the death of investor received; death certificate verified" and also upload the relevant documents and block all debit transactions in the account/folios of the deceased investor.

KRA, upon receipt of the 'KYC modification' request from the intermediary after validation of the death certificate, KRA, shall update the KYC record as "Blocked Permanently" in the system and intimate this updation to all linked intermediaries. 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.

Further, to ensure uniformity in operationalizing this circular, Stock Exchanges, Depositories and industry associations like the 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 (SOP).

2. Limited relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Date of circular: October 06, 2023

Effective Date: October 06, 2023

Link:

https://www.sebi.gov.in/legal/circulars/oct-2023/limited-relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_77763.html

SEBI vide its circular dated October 06, 2023, relaxed the requirements of regulation 58 (1)(b) of the SEBI Listing Regulations that provides that a listed entity shall send a hard copy of the statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not so registered upto September 30, 2024.

3. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg.

Date of circular: October 07, 2023

Effective Date: October 07, 2023

Link:

<https://www.sebi.gov.in/legal/circulars/oct-2023/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-reg-77781.html>

SEBI vide its circular dated October 07, 2023, in continuation to its Master Circular dated July 11, 2023, on compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 by listed entities (“Master Circular”) inter-alia relaxed the applicability of regulation 36(1)(b) of the LODR Regulations for Annual General Meetings (AGMs) that is the listed entity shall send the annual report to

shareholders hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) that is the listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution till September 30, 2024.

4. Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013

Date of circular: October 10, 2023

Effective Date: October 10, 2023

Link:

https://www.sebi.gov.in/legal/circulars/oct-2023/extension-in-timeline-for-compliance-with-qualification-and-experience-requirements-under-regulation-7-1-of-sebi-investment-advisers-regulations-2013_77901.html

SEBI vide its circular dated October 10, 2023, extended the date for compliance of Regulation 7 of SEBI (Investment Advisers) Regulations, 2013, as amended vide SEBI (Investment Advisers) (Amendment) Regulations, 2020. Regulation 7 specifies the qualification and experience requirements for investment advisers and provides that an individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice shall comply with the enhanced qualification and experience requirements specified in regulation 7(1). The date for the said compliance is extended from September 30, 2023, is extended to September 30, 2025.

5. Extension of timeline for verification of market rumours by listed entities.

Date of circular: October 10, 2023

Effective Date: October 10, 2023

Link:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20231010-7>

BSE vide its circular dated October 10, 2023, with reference to Securities and Exchange Board of India (SEBI) has issued circular no. SEBI/HO/CFD/CFD-PoD1/P/CIR/2023/162 dated September 30, 2023, regarding extension of timeline for verification of market rumours by listed entities the effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to February 1, 2024, and for top 250 listed entities by market capitalization, to August 1, 2024.

6. Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under

Date of circular: October 13, 2023

Effective Date: October 13, 2023

Link:

<https://www.sebi.gov.in/legal/circulars/oct-2023/amendment-to-the-guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-laund-77975.html>

SEBI vide its circular dated October 10, 2023, modified the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. Key highlights of the amendment are:

In Para 6 if the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, financial groups shall be required to apply appropriate additional measures to manage the ML/TF risks, and inform SEBI.

- Financial groups shall be required to implement group wide programmes for dealing with ML/TF, which shall be applicable, and appropriate to, all branches and majority owned subsidiaries of the financial group. In case of a Trust, the reporting entity shall ensure that trustees disclose their status at the time of commencement of an account based relationship.
- Registered intermediaries shall periodically update all documents, data or information of all clients and beneficial owners collected under the CDD process such that the information or data collected under client due diligence is kept up-to-date and relevant, particularly for high risk clients.
- No transaction or account-based relationship shall be undertaken without following the CDD procedure.
- The intermediary shall specifically apply EDD measures, proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF.
- Where the registered entity does not have records of the identity of its existing clients, it shall obtain the records forthwith, failing which the registered intermediary shall close the account of the clients after giving due notice to the client.

7. Mandatory Filing of Voting Results in XBRL Mode

Date of circular: October 17, 2023

Effective Date: October 17, 2023

Link:

<https://nsearchives.nseindia.com/web/sites/default/files/inline>

NSE vide its circular dated October 17, 2023 mandated filing of voting results in XBRL mode. Regulation 44(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 requires the listed entities to submit the Voting Results within two working days of conclusion of its General Meeting in the format specified by SEBI. Currently, the listed entities are filing the Voting Results of the General Meeting both in the PDF and XBRL format. To facilitate ease of compliance for the listed entities, it has been decided to discontinue the PDF reporting format of the Voting Results submission and continue the filings in the XBRL format only.

8. Ease of doing business and development of corporate bond markets –revision in the framework for fund raising by issuance of debt securities by large corporates(LCs)

Date of circular: October 19, 2023

Effective Date: October 19, 2023

Link:

<https://www.sebi.gov.in/legal/circulars/oct-2023/ease-of-doing-business-and-development-of-corporate-bond-markets-revision-in-the-framework-for-fund-raising-by-issuance-of-debt-securities-by-large-corporates-lcs-78237.html>

SEBI vide its circular dated October 19, 2023, revised the framework for fund raising by issuance of debt securities by LCs. This framework is applicable with effect from April 01, 2024 for LCs following April-March as their financial year for all listed entities having their specified securities or debt securities or non-convertible redeemable preference shares listed, or have outstanding long term borrowings of Rs.1000 crore or above and have a credit rating of "AA"/"AA+"/AAA.

An LC shall raise not less than 25% of its qualified borrowings by way of issuance of debt securities³ in the financial years subsequent to the financial year in which it is identified as an LC. From FY 2025 onwards, the requirement of mandatory qualified borrowing by an LC in a FY shall be met over a contiguous block of three years.

The Stock Exchanges shall co-ordinate and release a uniform list of LCs for the financial year and place the same on their websites. They shall also notify listed entities so identified as LCs by email, to enable them to comply with the requirements.

Further with regards to the incentive/ dis-incentive with respect to the contribution to the core SGF, the Stock Exchanges shall share relevant information with the LPCC by May 31st for LCs following April-March as their financial year or by February 28th/29th for LCs following January-December as their financial year, as applicable.

MASTER CIRCULARS

Circular	Date	Link
Master Circular for Stock Exchanges and Clearing Corporations	October 16, 2023	https://www.sebi.gov.in/legal/master-circulars/oct-2023/master-circular-for-stock-exchanges-and-clearing-corporations_78047.html
Master Circular for Know Your Client(KYC) norms for the securities market	October 12, 2023	https://www.sebi.gov.in/legal/master-circulars/oct-2023/master-circular-on-know-your-client-kyc-norms-for-the-securities-market_77945.html
Master Circular for Depositories	October 06, 2023	https://www.sebi.gov.in/legal/master-circulars/oct-2023/master-circular-for-depositories_77789.html



**RESERVE BANK OF
INDIA**
(RBI)

1. Amendment to the Master Direction (MD) on KYC

Date of Notification: October 17, 2023

Effective Date: October 17, 2023

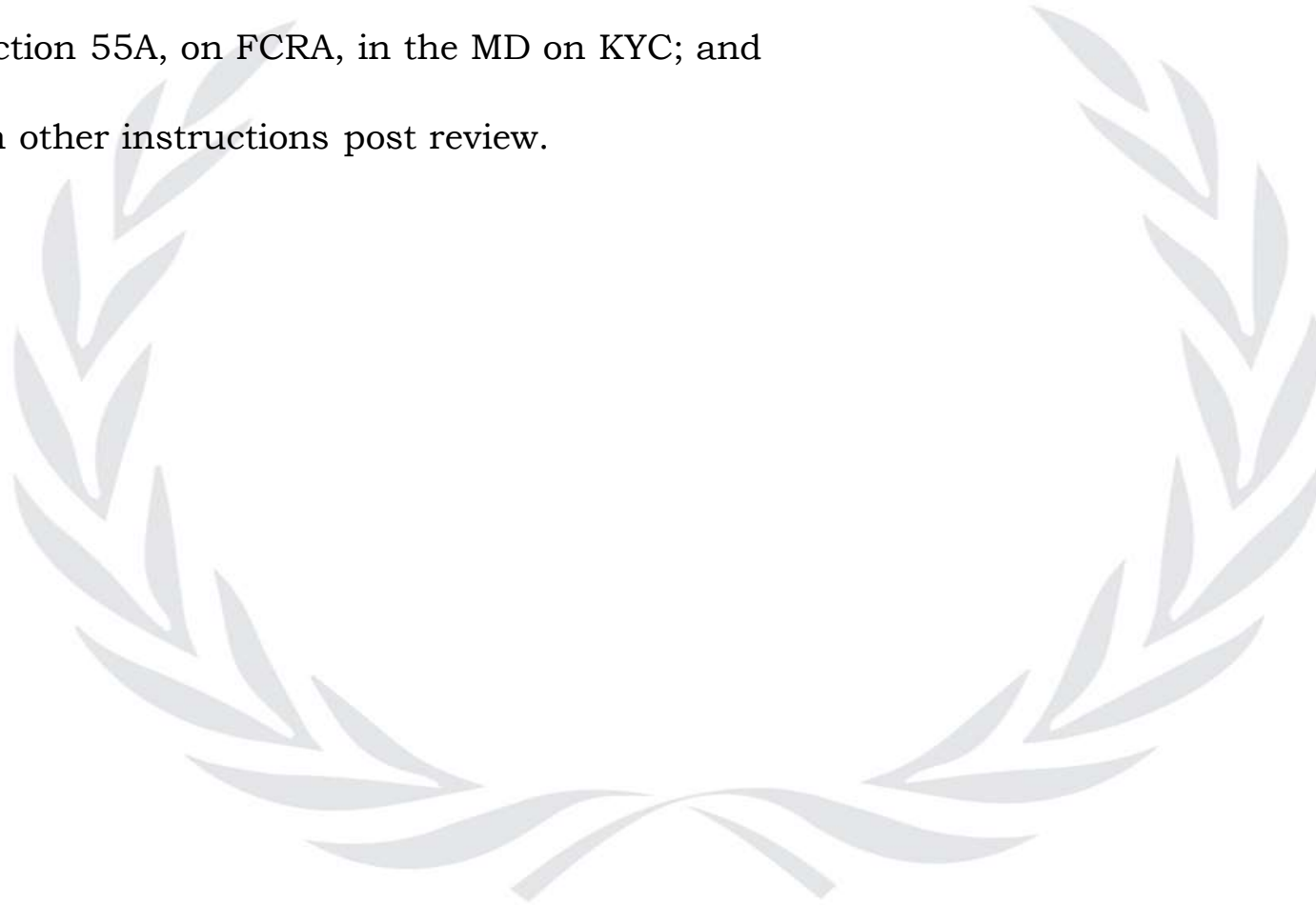
Link:

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12549&Mode=0>

RBI vide its notification dated October 17, 2023, amended the master direction on KYC. Key highlights of the same are:

- (a) Update certain instructions considering amendments to the PML Rules vide Government notifications dated September 4, 2023 and October 17, 2023;
- (b) Update Annex II of the MD considering the changes to Government of India Order related to Unlawful Activities (Prevention) Act (UAPA), 1967, vide corrigendum dated August 29, 2023
- (c) Update Annex III of the MD by replacing the Government of India Order dated January 30, 2023, related to Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMD Act, 2005) with the Government of India Order dated September 1, 2023 (which has been issued by the Government in suppression of the earlier WMD Act Order dated January 30, 2023), on the matter;

- d) Update certain instructions in accordance with the FATF Recommendations;
- (e) Add a new Section 55A, on FCRA, in the MD on KYC; and
- (f) Update certain other instructions post review.



2. Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation)

Directions, 2023

Date of Notification: October 19, 2023

Effective Date: October 19, 2023

Link:

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12550&Mode=0>

RBI vide its notification dated October 19, 2023, has issues to every NBFC, in supersession of the Non-Banking Financial Company–Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016 and Non-Banking Financial Company–Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 notified the Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023 (the Directions).

Central Board of Direct Taxes (CBDT)

1. Completes 1st week of Special Campaign 3.0

Date of Press Release: October 11, 2023

Effective Date: October 11, 2023

Link:

[PressRelease-CBDT-completes-1st-week-of-Special-Campaign-3-0-11-10-23-New.pdf](#)
[\(incometaxindia.gov.in\)](#)

CBDT vide its press released dated October 11, 2023, announced the success of Special Campaign 3.0 on Swachhata within the offices of Income tax Department located in various parts of the country. The Campaign started from 2nd October 2023 and will continue up to 31st October 2023

The Hon'ble Finance Minister Smt. Nirmala Sitharaman inaugurated a digital e-learning course, on the Grievance Redressal Mechanism in Income Tax Department, which has been uploaded on the iGOT platform of Karmayogi Bharat.

The Pr.CCIT, Northwestern Region has adopted the green practice of using residue of coffee beans used for coffee making in the cafe in Aayakar Bhawan, Chandigarh as an organic fertilizer for the flora in the building. The Department conducted 119 cleanliness campaigns, weeded out 7,058 redundant files and disposed of scrap material while earning revenue of more than Rs. 16 lakh. Further, 3,667 public grievances have been resolved and 327 public grievance appeals have been disposed of in this week.

CBDT has entered the 2nd week of the Special Campaign 3.0 and is aiming to excel in various areas while innovating and adopting best practices. The momentum of the initial phase will continue to be amplified further.

2. Order under section 119 of the Income-tax Act

Date of circular: October 20, 2023

Effective Date: October 20, 2023

Link:

<https://incometaxindia.gov.in/news/circular%2018-2023.pdf>

CBDT vide its order dated October 20, 2023, extended the due date of filing of report of the accountant as required to be filed under clause (8) of section 10AA read with clause (5) of section 10A of the Act, for Assessment Year 2023-24 from the specified date under section 44AB to 31st of December, 2023

Miscellaneous Laws

1. Invitation for suggestions for manual

Date of circular: October 15, 2023

Effective Date: October 15, 2023

DPIIT vide its circular dated October 15, 2023 with reference to public notice dated August 30, 2023, the date to submit their suggestions/comments regarding revision of existing manuals and guidelines or for issuance of fresh manuals and guidelines in respect of Patents, Designs, TradeMarks, Geographical Indications and Copyrights by 15.10.2023 to cgooffice-mh@nic.in has been extended till 15.11.2023

Article 1

ENFORCEABILITY AND VALIDITY OF NON-COMPETE & NON-SOLICITATION AGREEMENT

Two terms that are frequently used in the context of employment contracts are "non-compete" and "non-solicitation". While they share similarities and both aim to protect the interest of the employer, they serve different purposes and have distinct implications. Non-compete and non-solicitation like confidentiality and exclusivity clauses are restrictive covenants designed to protect a business's interests, client relationships, and proprietary information. In this article, we explore the intricacies of non-compete and non-solicitation clauses, shedding light on the factors that determine their effectiveness and examining the delicate balance between preserving a company's interests and upholding the rights of employees.

Non-Compete Agreement: A non-compete agreement, is a restrictive covenant, designed to prevent an employee or former employee from engaging in business activities that directly compete with the employer, typically for a specified period and within a defined geographic area. It restricts an individual from working for a competitor, starting a competing business, or engaging in any activity that directly competes with their former employer.

The Indian Contract Act, of 1872 (the "Act") is the main piece of legislation in India that addresses trade restraint agreements and their legality. Section 27 of the Act in clear and express terms declares any agreement void if such agreement restricts the practice of a lawful profession, trade, or business. It is a settled position in law that any restrictive covenant either in employment contracts or any other agreements hindering or hampering any person from practicing any profession, trade, or business including any employment, temporary or permanent, short-term or long-term, contractual or otherwise, shall not be valid.

Courts have made an effort to strike a fair balance between the constitutional right to a living and the competitive motivations ingrained in corporate practice when interpreting such sections.

In a catena of judgments, the Courts in India, have dissected the validity of this provision (Section 27) and unequivocally passed a clear verdict that the *validity of restrictive covenants post termination of agreements are in violation of Section 27 of the Indian Contract Act and such contracts are unenforceable, void and against the public policy*. However, if we apply the provision to the pre-termination of the contract or during the currency of the contract of employment the position might get changed subject to the facts and circumstances of each case, besides the test of statutory exception of reasonableness and fairness. The only statutory exception pertains to contracts when the buyer of a company's goodwill undertakes to refrain from operating a business of a comparable sort within certain, reasonable local limits. Courts have made an effort to strike a fair balance between the constitutional right to a living and the competitive motivations ingrained in corporate practice when interpreting such sections.

On pre-termination violation of a non-compete clause, the law is established: the clause is valid and enforceable. Having said that the post-termination non-compete clauses in employment contracts have consistently been ruled invalid and against public policy by Indian courts because they have the potential to rob a person of their basic right to pursue a livelihood being violative of their fundamental rights and are therefore prohibited by Section 27 of the Contract Act.

*In **Pepsi Foods Ltd. and Ors. v. Bharat Coca-Cola Holdings Pvt. Ltd. and Ors.**, the Delhi High Court observed that a covenant restraining an employee from undertaking employment in a similar or competing business, for 12 months post termination of the employment contract, is in restraint of trade. The court held that ‘it is a well settled position that validity of restrictive covenants post termination of agreements, are in violation of Section 27 of the Indian Contract Act and such contracts are unenforceable, void and against the public policy’.*

Every citizen of India has the freedom to engage in any profession, trade, or business, according to Article 19(g) of the Indian Constitution. The courts have always been wary of upholding such restrictions and have kept the interpretation of this provision flexible to ensure that the principles of justice, morality, and fairness are aptly applied, depending on the facts and circumstances of each case. This is not an absolute right and reasonable restrictions can be placed on this right in the interest of the public.

*In the case of **Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan and Anr.**, the Apex Court observed, “Under Section 27 of the Contract Act (a) a restrictive covenant extending beyond the term of the contract is void and not enforceable. (b) The doctrine of restraint of trade does not apply during the continuance of the contract for employment and it applied only when the contract comes to an end. (c) As held by this Court in *Gujarat Bottling v. Coca Cola* (supra), this doctrine is not confined only to contracts of employment but is also applicable to all other contracts.”*

Therefore, a non-compete clause in an Indian employment agreement is unenforceable post-termination of the employment contract.

Non-Solicitation clause: A non-solicitation clause aims to prevent a departing employee or former employee from soliciting a company's customers, clients, or employees for a competing business or other purposes. It focuses on preserving existing business relationships and human resources.

It limits an individual from directly or indirectly enticing the company's clients or employees away for a competing enterprise or from interfering with existing contractual relationships. Courts often evaluate whether the agreement is reasonable and protects legitimate business interests without unduly limiting an individual's right to earn a living.

Courts in India have viewed the non-solicitation clauses in a manner consistent with their approach to non-compete clauses and in most of the cases have held them void and unenforceable. In **Wipro Limited v. Beckman Coulter International SA, the Delhi High Court** explained that when restraints on employment cannot be placed directly, indirect restraints would also not be permissible and laid down the following guiding principles for ascertaining the validity of restrictive covenants:

“1. Negative covenants during the subsistence of a contract, irrespective of the nature of the contract, would not normally be regarded as being in restraint of trade, business of profession unless the same are unconscionable or wholly one-sided.

2. *Post-termination negative covenants in employment contracts, which restrict an employee's right to seek employment and/or to do business in the same field as the employer would be in restraint of trade and void to that extent.*
3. *While determining whether a negative covenant is in restraint of trade, business or profession or not, the courts take a stricter view in employment contracts than in other commercial contracts, since in an employment contract, the balance of convenience lies in favour of the employer whereas in commercial contracts, the parties are, more or less, on an equal footing.*
4. *The question of reasonableness and also the question of whether the restraint is partial or complete is not required to be considered at all whenever an issue arises as to whether a particular term of a contract is or is not in restraint of trade, business or profession."*

In ruling on the case of FL Smidth Pvt. Ltd. v. M/s. Secan Invescast (India) Pvt. Ltd., the Madras High Court determined that in order to establish solicitation, the appellants must demonstrate that the respondent approached their clients and that it was only as a result of this solicitation that the clients placed orders with the respondent. The court further decided that if reasonable limitations are placed, then such a clause might be enforceable. It summed up the reasonable restriction as follows:

1. Reasonable restrictions can be imposed on employees in relation to reasonable distance to practice the same profession within that distance.
2. A reasonable period to not practice such a profession or trade can also be valid.
3. Reasonable restrictions can be imposed on letting out trade secrets.

It is clear from the above judicial precedents that the non-solicitation clause is upheld only in cases where the clause is reasonable, just, and fair in the given facts and circumstances of the case.

In India, a non-compete or non-solicitation agreement, or a clause therein, is only enforceable if it meets three requirements: it must be reasonable, promote trade and commerce rather than act as a barrier to it, and not restrict an employee's fundamental right to trade, commerce, and means of subsistence. However, they can be enforced to stop the infringement, transfer, or exposure of an employer's intellectual, secret, or sensitive information, particularly to rival businesses. It can also be used more successfully in the interactions between distributors, business partners, and other parties.

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Article 2

PROCEDURAL DISCREPANCIES IN BUSINESS ENTITY CONVERSIONS

INTRODUCTION

In recent times, a significant procedural discrepancy has come to light in the process of converting business entities. This case, which revolves around the conversion of an entity initially registered as a Limited Liability Partnership (LLP) into a Private Limited Company, raises a crucial procedural question. The central point of contention lies in the issuance of a Certificate of Incorporation (COI) instead of the legally mandated Certificate of Registration under Section 367 of the Companies Act 2013. This article undertakes a comprehensive examination of the grounds underlying this matter, shedding light on the legal complexities and potential implications.

A LEGAL CONUNDRUM: COI VS. CERTIFICATE OF REGISTRATION

At the heart of this legal conundrum lies a fundamental procedural query. Section 366 of the Companies Act 2013 affords entities registered under various laws the right to convert into a company under the framework of the Companies Act. This provision allows for conversion without extinguishing the entity's prior existence. The essence of the procedural discrepancy hinges on the issuance of a COI, rather than the statutorily prescribed Certificate of Registration as outlined in Section 367.

LEGISLATIVE INTENT: A CRUCIAL PERSPECTIVE

The introduction of Chapter XXI – Part I in the Companies Act 2013 represents a pivotal moment in legislative history. This addition to the legal framework signifies a significant milestone, introducing a registration facility for entities previously registered under various laws. A crucial distinction lies in the fact that this provision was conspicuously absent in the preceding Companies Act of 1956. The term "company" as defined in Section 366 carries a broader scope than the definition outlined in Section 2(20) of the Act. This all-encompassing definition serves as the foundational principle for entities seeking conversion under this provision.

UNRAVELING DISCREPANCIES: A CALL FOR CLARITY

A pivotal concern in this matter centres around the apparent inconsistency in treatment when conversion between a Private Limited Company and an LLP. While the LLP Act prescribes the issuance of a Certificate of Registration, the Companies Act 2013 mandates the issuance of a COI. This discrepancy underscores the importance of understanding the legislative intent behind these provisions, seeking alignment and clarity in procedural application.

PRESERVING HISTORICAL EXISTENCE: A MATTER OF SIGNIFICANCE

One of the core contentions lies in the perceived dismissal of the entity's entire pre-existence. This perceived oversight contradicts the essence of the conversion process, which is designed to acknowledge the entity's prior existence and provide for a seamless transition. Preserving this historical continuity is paramount in ensuring procedural integrity.

UNINTENDED CONSEQUENCES: EVALUATING IMPACT

A thought-provoking concern pertains to the unintended consequences of the COI issuance policy. It potentially incentivizes conversions from Private Limited Companies to LLPs, as it appears to undervalue the existing entity. This unforeseen implication could significantly influence the decision-making process for entities contemplating conversion, potentially reshaping the landscape of business entity structures.

IN-DEPTH EXAMINATION OF LEGISLATIVE PROVISIONS

Delving further into the legislative framework, Section 366 of the Companies Act 2013 emerges as the linchpin for entities seeking conversion. This section confers the right upon entities initially registered under diverse laws to register under the Companies Act. The significance of this provision cannot be overstated, as it enables a seamless transition while acknowledging the entity's prior existence.

Additionally, the introduction of Chapter XXI – Part I represents a paradigm shift in the legal landscape. This chapter introduces a registration facility for entities previously governed by various laws, a provision conspicuously absent in the preceding Companies Act of 1956. The expansive definition of "company" in Section 366 further solidifies the legislative intent to facilitate such conversions.

PRESERVING HISTORICAL CONTINUITY: A PREREQUISITE FOR PROCEDURAL INTEGRITY

A critical aspect that cannot be overlooked is the preservation of historical continuity. The conversion process, at its core, is designed to recognize the entity's existence from its inception. The issuance of a Certificate of Incorporation, as opposed to the legally mandated Certificate of Registration, disrupts this continuity. This oversight fundamentally contradicts the essence of the conversion process.

UNINTENDED RAMIFICATIONS: IMPLICATIONS OF COI ISSUANCE POLICY

The unintended consequences of the COI issuance policy warrant meticulous consideration. By seemingly undervaluing the existing entity, this policy potentially tilts the scales in favor of conversions from Private Limited Companies to LLPs. This unforeseen implication carries the potential to exert a substantial influence on the decision-making process for entities contemplating conversion. Consequently, it could usher in a paradigm shift in the landscape of business entity structures.

CONCLUSION: NAVIGATING THE COMPLEXITIES

In conclusion, the procedural discrepancy surrounding the conversion process of business entities demands rigorous scrutiny. The underlying concerns highlight the significance of comprehending the legislative intent behind Chapter XXI – Part I of the Companies Act 2013. As this matter evolves, it is anticipated that it will shape

the procedural landscape for businesses undergoing similar conversions, providing much-needed clarity and coherence in the legal framework governing such conversions.

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Case Laws

1. In **Union Bank of India V. Rajat Infrastructure Pvt. Ltd. & Ors**, the Supreme Court recently held that the inherent powers of the Supreme Court under Article 142 of the Constitution of India though wide in its amplitude, cannot be exercised to supplant the substantive law applicable to the case or to the cause under consideration of the court. It observed that “It cannot be gainsaid that the court in exercise of powers under Article 142 cannot ignore any substantive statutory provision dealing with the subject. The plenary powers of the Supreme Court under Article 142 are inherent in nature and are complementary to those powers which are specifically conferred on the court by various statutes. These powers though are of a very wide amplitude to do complete justice between the parties, cannot be used to supplant the substantive law applicable to the case or to the cause under consideration of the court”
2. In **Karnataka State Electronics Development Corporation Ltd. v Kumaon Entertainment and Hospitalities Pvt. Ltd**, the Supreme Court has held that any loss caused to an undertaking or corporation which is fully owned by the State, is a loss caused to the Public Exchequer. It observed *“There is no denying the fact that the appellant is a fully owned Undertaking/ Corporation of the State of Karnataka. Any loss suffered by it would be a loss to the Public Exchequer. The respondent, on the other hand, has shifted its purpose of setting up an IT related industry to a Hospitality sector to set up a hotel. If the amount for such conversion of usage is not legally recovered from the respondent, as a result, loss being suffered by the appellant, would not be in public interest.”*

3. In **Pankaj Bansal v. Union of India, Basant Bansal v. Union of India**, the Supreme Court has ruled that a person cannot be arrested by the Directorate of Enforcement for mere non-cooperation in response to a summons issued under Section 50 of the Prevention of Money Laundering Act 2002. It held "*Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19*",
4. In **State Bank of India & Ors v. P Zandenga**, the Supreme Court recently ruled that an acquittal in connected criminal proceedings does not entail any benefit in the surviving proceedings and thus does not automatically result in a corresponding discharge in disciplinary proceedings pending against an employee.
5. In **Vishal Chelani and others v. Debashis Nanda**, the Supreme Court has held that homebuyers cannot be treated differently from other "financial creditors" under the Insolvency and Bankruptcy Code (IBC) 2016 just because they have secured orders from the authority under the Real Estate (Regulation and Development) Act 2016.
6. In **Mrs. Kalyani Rajan v. Indraprastha Apollo Hospital & Ors**,, the Supreme Court while deciding a case of medical negligence held that principles of Res Ipsa Locutor ("the thing speaks for itself") get attracted where circumstances strongly suggest partaking in negligent behaviour by the person against whom an accusation of negligence is made.
7. In **Infrastructure Leasing and Financial Services Ltd. v Hdfc Bank Ltd. & Anr.**, the Supreme Court held that the rents receivable by a borrower can be assigned to a lender as an "actionable claim" as per the Transfer of Property Act,1882.

Compliance Checklist

COMPLIANCE CALENDAR FOR NOVEMBER 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Income Tax Related Compliance

	<ul style="list-style-type: none"> • ITR Return • Challan No. ITNS-281
	<ul style="list-style-type: none"> • TDS Challan-cum-statement • Form No. 3CEAA • Form No. 64 • Form No. 3CEFA • Form No. 3CEFB • Form No. 64A • Form No. 64D • Form No. 9A • Form No. 10 • Form No. 3CEJ • TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Oct 2023
	<ul style="list-style-type: none"> • Form 24G by Government officer • ESI Challan • Form No. 3BB • Electronic Challan cum Return (ECR) (PF) • Issue of TDS Certificates in Form 16A for July to Sep 2023
	<ul style="list-style-type: none"> • TDS Certificate

Company Annual Filing	
	<ul style="list-style-type: none"> • Form MGT-7A
	<ul style="list-style-type: none"> • Form MGT 7
	<ul style="list-style-type: none"> • Form PAS-6
GST Related Compliance	
	<ul style="list-style-type: none"> • GSTR 1
	<ul style="list-style-type: none"> • GSTR 5 & 5A • GSTR 3B
	<ul style="list-style-type: none"> • GSTR 1 (IEE)
	<ul style="list-style-type: none"> • GSTR 6
	<ul style="list-style-type: none"> • GSTR 7 • Professional Tax on Salaries • GSTR 8
	GST Challan Payment
Provident Fund Related Compliance	
	<ul style="list-style-type: none"> • Provident Fund (PF) & ESI Returns and Payment for Oct 2023
	<ul style="list-style-type: none"> • Labour Licence renewal for Calendar Year 2024 (Jan to Dec 2024)

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