WHITESPAN
Advisory

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

August-2024

INDEX

MAA FOUNDATION ACTIVITIES

MAA Foundation organizes regular skill development workshops and training programs to enhance women's professional and vocational skills. During the month of July 2024, MAA Foundation organized various POSH awareness sessions and also imparted vocational skills training to young girls under the "SUIDHAGAPROJECT"..

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 87th Edition of "WINS – E-Newsletter" for July 2024, covering legal updates released during the month of July 2024, articles shared by respected professionals, Case Laws and compliance calendar for the month of August 2024.

In this issue, we have covered the following:

1. Corporate Updates from SEBI, RBI, CBIC, CBDT and other miscellaneous Laws
2. Articles when Likes turn to Law Suits: Social Media Mishaps, Mythos of Lex Mercatoria, Understanding the concept of Significant beneficial Owner.
3. Case Laws
4. Compliance checklist for the month of August 2024.

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**

With warm regards,

TEAM WINS (Whitespan Information and News Services)
July 31, 2024

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. **Mr. Anuj Pathak,** Cleared CS Professional Exam and a graduate in Commerce from Lucknow University.
7. **Ms. Geetanjali Arya**, CS Professional Student and pursuing LLB from Choudhary Charan Singh University, Meerut and graduate from Maharishi Dayanand University, Rohtak.

WHITESPAN Advisory

Ministry of Corporate Affairs (MCA)

1. Extension of filing of PAS-7

Date of General Circular: July 06, 2024

Effective Date : July 06, 2024

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=IgNr5fS0LgEkFxBs9EOWCg%253D%253D&type=open

MCA vide its general circular dated July 06, 2024 extended the time for Filing of PAS-7 from to August 05, 2024.

ln accordance with Rule 9(2)(a) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, every public company which had issued share warrants prior to commencement of the Companies Act, 2013 and not converted such warrants into shares should have informed the Registrar about the details of such share warrants in Form PAS-7 within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 . The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 were effective from October 27, 2023. In terms of the said rule, Ministry of Corporate Affairs has prescribed Web-form PAS-7 for submitting the details of share warrants to the Registrar.

2. The Specified Companies (Furnishing of Information about payment to micro and small enterprise suppliers) Amendment Order, 2024.

Date of Notification: July 15, 2024

Effective Date : Date of publication in Official Gazette

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=LNC1bxj5jUf0Cxk6hVY6uQ%253D%253D&type=open

MCA vide its notification dated July 15, 2024, notified the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Amendment Order, 2024 and amended the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.

Para 3 of the above order shall now be read as:

"Every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March.

Provided that only those specified companies which are having payments pending to any micro or small enterprises for more than 45 days from the date of acceptance or the date of deemed acceptance of the goods or services under section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 shall furnish the information in MSME Form-1."

Form MSME I has also been substituted vide above mentioned notification.

3. The Companies (Management and Administration) Amendment Rules, 2024.

Date of Notification: July 15, 2024

Effective Date : Date of publication in Official Gazette

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=ndpHuCJc6fIyAOxUho1U2A%253D%253D&type=open

MCA vide its notification dated July 15, 2024 notified the Companies (Management and Administration) Amendment Rules, 2024 and amended the Companies (Management and Administration) Rules, 2014 by substituting form MGT 6- Return to the Registrar in respect of declaration under section 89 received by the company [Pursuant to section 89(6) of The Companies Act, 2013 and pursuant to rule 9(3) of The Companies (Management and Administration) Rules, 2014].

4. The Companies (Significant Beneficial Owners) Amendment Rules, 2024

Date of Notification: July 15, 2024

Effective Date : Date of publication in Official Gazette

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=S3dBrxv6fJnMAAq504cuag%253D%253D&type=open

MCA vide its notification dated July 15, 2024 notified the Companies (Significant Beneficial Owners) Amendment Rules, 2024 and amended the Companies (Significant Beneficial Owners) Rules, 2018 by substituting form BEN 2 - Return to the Registrar in respect of declaration under section 90 [Pursuant to section 90(4) of the Companies Act, 2013 and rule 4 and rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018].

5. Filings under Section 124 and Section 125 of the Companies Act, 2013 read with IEPFA (Accounting, Audit, Transfer and Refund) Rules, 2016 in view if the transition from MCA 21 Version 2 to Version 3.

Date of Notification: July 16, 2024

Effective Date : July 16, 2024

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=u%252BMHQ4dhvMRwpAEapkpHzg%253D%253D&type=open

MCA vide its general circular dated July 16, 2024 waived off the additional fee on filling of various e-forms) IEPF 1, IEPF 1A, IEPF 2 and IEPF 4) and e-verification of claims filed in e-form IEPF 5 till August 16, 2024.

6. Merger of forms IEPF 3 with IEPF 4 and IEPF 7 with IEPF 1 along with change in payment process thereof in MCA version 3.

Date of General Circular: July 17, 2024

Effective Date : July 17, 2024

Link:

https://www.mca.gov.in/bin/dms/getdocument?mds=HUMO%252BJ649ilkfBF%252Bb%252FTxoQ%253D%253D&type=open

MCA vide its general circular dated July 17, 2024 to ease compliance burden and simplify fillings have merged Forms IEPF 3 with IEPF 4 and IEPF 7 with IEPF 1 along with change in payment process thereof in MCA version 3. The revised forms will be made Straight Through Process (STP).

Also, in suppression of general circular 12/ 2017, the amount required to be transferred to the IEPF will be required to be transferred through MCA 21 through “Pay Miscellaneous Fee” services after selecting option “Investor Education and Protection Fund”.

Corresponding changes have also been made in the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

7. The Companies (Incorporation) Amendment Rules, 2024

Date of Notification: July 16, 2024

Effective Date : Date of Publication in Official Gazette

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=h48DSNSqlRQOiYGQ5FW8eA%253D%253D&type=open

MCA vide its notification dated July 16, 2024, notified the Companies (Incorporation) Amendment Rules, 2024.

By way of the above amendment, following changes have been made in the Companies (Incorporation) Rules, 2014:

Rule 8A - Undesirable names

1(p)-The name shall be considered undesirable, if-

(p) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual Fund', etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA, etc. have been complied with by the applicant.

Word Nidhi has been omitted from the above sub-rule.

Following illustration has also been omitted:

(v) The name Silk Wise Manufacturers Private Limited is not descriptive as it contains words other than commonly used words.

8. The Nidhi (Amendment) Rules,2024.

Date of General Circular: July 16, 2024

Effective Date : Date of Publication in Official Gazette

Link:

https://www.mca.gov.in/bin/dms/getdocument?mds=2TvNXobyeg%252FhPEeclHCqQg%253D%253D&type=open

MCA vide its notification dated July 16, 2024, notified the Nidhi (Amendment) Rules, 2024 by amending rule 4 - Incorporation and Incidental Matters of the Nidhi Rule, 2014.

Sub rule 5 of the above rule shall now be read as**:**

Every "*Nidhi*" shall have the last words 'Nidhi Limited' as part of its name.

"Provided that a company shall not use the words "Nidhi Limited" in its name unless it is declared as such under sub-section (1) of section 406 of the Act.

9. The Companies (Appointment and Qualification of Directors)(Amendment) Rules, 2024.

Date of General Circular: July 16, 2024

Effective Date : August 01, 2024

Link:

https://www.mca.gov.in/bin/dms/getdocument?mds=mC5cB95CPxV7kH2cdGeoAA%253D%253D&type=open

MCA vide its notification dated July 16, 2024, amended the Companies (Appointment and Qualification of Directors) Rules, 2014 by making following amendment to Rule 12 A:

In case an individual desires to update his personal mobile number or the e-mail address, as the case may be, one shall update the same by submitting e-form DIR-3 KYC only on or before 30th September of the financial year.

Provided also that if an individual intends to update his personal mobile number or the email address again at any time during the financial year in addition to the up-dation allowed under the third proviso, he shall update the same by submitting e-form DIR-3 KYC on payment of fees of five hundred rupees

WHITESPAN Advisory

Securities Exchange Board of India (SEBI)

1. Introduction of special call auction mechanism for price discovery of scrips of listed Investment companies (ICs) and listed Investment Holding Companies (IHCs)

Date of Notice: July 01, 2024

Effective date: October 2024

Link:

https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240701-70

BSE vide its notice dated July 01, 2024 announced that announced that special call auction for scrips of a few listed ICs and IHCs that are being traded infrequently and at a price which is significantly lower than the book value disclosed by these companies in their latest audited financial statements, shall be conducted in the month of **October 2024** based on the latest available audited financial statements of such companies.

Reference: SEBI Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/86 dated June 20, 2024, regarding introduction of a special call auction mechanism for price discovery of scrips of listed Investment Companies (ICs) and listed Investment Holding Companies (IHCs).

2. Reduction in denomination of debt securities and non-convertible redeemable preference shares

Date of Circular: July 03, 2024

Effective date: October 2024

Link:

-https://www.sebi.gov.in/legal/circulars/jul-2024/reduction-in-denomination-of-debt-securities-and-non-convertible-redeemable-preference-shares_84573.html

SEBI vide its circular dated July 03, 2024 amended Chapter V (Denomination of issuance and trading of Non-convertible Securities) of the Master Circular no. SEBI/HO/DDHS/PoD1/P/CIR/2024/54 dated May 22, 2024. With effect from the effective date of the above circular, the Issuer may issue debt security or non-convertible redeemable preference share on private placement basis at a face value of Rs. Ten Thousand, (i) Subject to the following conditions:

a) The issuer shall appoint at least one Merchant Banker. Provided that the role, responsibilities and obligations of the Merchant Banker(s) shall be same as they would be in case of public issue of debt security or non-convertible redeemable preference share.

b) Such debt security or non-convertible redeemable preference share shall be interest/ dividend bearing security paying coupon/ dividend at regular intervals with a fixed maturity without any structured obligations.

(ii) The following credit enhancements shall be permitted in the aforesaid securities:

a) Guaranteed bonds;
b) Partially guaranteed bonds;
c) Standby Letter of credit (SBLC) backed securities;
d) Debt backed by pledge of shares or other assets;
e) Guaranteed Pooled bond issuance (PBI), not through a trust;
f) Obligor/ Co-obligor structures or cross default guarantee structures; and
g) Debt backed by Payment Waterfall /Escrow, or DSRA etc., but with Full Guarantee or DSRA Replenishment Guarantee from a third part.

The provisions of this circular shall be applicable to all issues of debt securities and non-convertible redeemable preference shares, on private placement basis that are proposed to be listed from the date of issuance of this circular.

3. Information to be filed by schemes of AIFs for availing dissolution period/additional liquidation period and conditions for in specie distribution of assets of AIF.

Date of Circular: July 09, 2024

Effective date: July 09, 2024

Link:

https://www.sebi.gov.in/legal/circulars/jul-2024/information-to-be-filed-by-schemes-of-aifs-availing-dissolution-period-additional-liquidation-period-and-conditions-for-in-specie-distribution-of-assets-of-aifs_84676.htm

SEBI vide its circular dated July 9th, 2024 issued the following:
Regulatory Background: According to the Securities and Exchange Board of India (SEBI) (Alternative Investment Funds) (Second Amendment) Regulations, 2024, AIF schemes can now opt for a dissolution period. This allows them to handle investments that couldn't be sold due to lack of liquidity.

SEBI Circular: SEBI issued circular no. SEBI/HO/AFD/PoD1/CIR/2024/026 on April 26, 2024, which specifies the procedures for AIF schemes entering into the dissolution period.

Information Memorandum Requirement: As per Regulation 29B(2) of the SEBI (Alternative Investment Funds) Regulations, 2012, any AIF scheme entering the dissolution period must submit an information memorandum to SEBI through a merchant banker, following SEBI's specified process

Submission Details:

The information memorandum must be submitted to SEBI before the expiry of the liquidation period, or any additional period granted.

The format for this memorandum is provided in Annexure I.

A Due Diligence Certificate from the merchant banker, as per Annexure II, must accompany the memorandum.

Additional Liquidation Period: AIF schemes whose liquidation period expires or is expiring within three months of the new regulations may apply for an additional liquidation period. Details for this submission are outlined in Annexure III.

In Specie Distribution:

Regulation 29(9) of the AIF Regulations allows for in specie distribution of investments during the liquidation period.

SEBI's circulars specify conditions and procedures for both mandatory and other in specie distributions.

Investor Approval: Any in specie distribution (excluding mandatory) must be approved by at least 75% of the investors by the value of their investment in the AIF scheme.

Responsibilities: The AIF's manager, trustee, and key personnel are responsible for ensuring compliance with these regulatory provisions.

Compliance Test: The trustee or sponsor must ensure that the Compliance Test Report, prepared by the manager, includes adherence to these circulars.

Effective Date: The circular is effective immediately upon issuance.

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (SECOND AMENDMENT) REGULATIONS, 2024

S.No.	Regulation no. and name	Prior to amendment	Post amendment
1.	Regulation 5(2)-Trading Plans	An insider is entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan. Such trading plans shall not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan. Note *It is intended that to get the benefit of a trading plan, a cool-off period of six months is necessary. Such a period is considered reasonably long for unpublished price sensitive information that is in possession of the insider when formulating the trading plan, to become generally available. It is also considered to be a reasonable period for a time lag in which new unpublished price sensitive information may come into being without adversely affecting the trading plan formulated earlier. In any case, it should be remembered that this is only a statutory cool-off period and would not grant immunity from action if the insider were to be in possession of the same unpublished price sensitive information both at the time of*	not entail commencement of trading on behalf of the insider earlier than one hundred and twenty days from the public disclosure of the plan. Note *It is intended that to get the benefit of a trading plan, a cool-off period of six months is necessary. Companies declare their results quarterly and there exists a trading restriction, in terms of these Regulations, from quarter end to two days after declaration of quarterly result, which, it is seen, is generally a period of around one month for most companies. Thus, one hundred and twenty calendar days period is considered reasonably ong for unpublished price sensitive information that is in possession of the insider when formulating the trading plan, to become generally available. It is also considered to be a reasonable period for a time lag in which new unpublished price sensitive information may come into being without adversely affecting the trading plan formulated earlier.*

S.No.	Regulation no. and name	Prior to amendment	Post amendment
		formulation of the plan and implementation of the same.	*. In any case, it should be remembered that this is only a statutory cool-off period and would not grant immunity from action if the insider were to be in possession of the same unpublished price sensitive information both at the ime of formulation of the plan and implementation of the same.*
2.	Regulation 5(2)(ii)	Such trading plan shall not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results. **NOTE**: Since the trading plan is envisaged to be an exception to the general rule prohibiting trading by insiders when in possession of unpublished price sensitive information, it is important that the trading plan does not entail trading for a reasonable period around the declaration of financial results as that would generate unpublished price sensitive information	omitted

S.No.	Regulation no. and name	Prior to amendment	Post amendment
3.	Regulation 5(2)(iii)	Such trading plan shall entail trading for a period of not less than twelve months. **NOTE**: It is intended that it would be undesirable to have frequent announcements of trading plans for short periods of time, rendering meaningless the defence of a reasonable time gap between the decision to trade and the actual trade. Hence it is felt that a reasonable time would be twelve months.	omitted
4	Regulation 5(2)(v)	Such trading plan shall set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and ***NOTE**: It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan i.e. acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan*	Such trading plan shall set out following parameters for each trade to be executed: (i) either the value of trade to be effected or the number of securities to be traded; (ii) nature of the trade; (iii) either specific date or time period not exceeding five consecutive trading days; (iv) price limit, that is an upper price limit for a buy trade and a lower price limit for a sell trade, subject to the range as specified below:

S.No.	Regulation no. and name	Prior to amendment	Post amendment
4.	Regulation 5(2)(v)	Such trading plan shall set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and ***NOTE**: It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan i.e. acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan*	a. for a buy trade: the upper price limit shall be between the closing price on the day before submission of the trading plan and upto twenty percent higher than such closing price; b. for a sell trade: the lower price limit shall be between the closing price on the day before submission of the trading plan and upto twenty per cent lower than such closing price. **Explanation:** (i) While the parameters in sub-clauses (i), (ii) and (iii) shall be mandatorily mentioned for each trade, the parameter in sub-clause (iv) shall be optional. (ii) The price limit in sub-clause (iv) shall be rounded off to the nearest numeral. (iii) Insider may make adjustments, with the approval of the compliance officer, in the number of securities and price limit in the event of corporate actions related to bonus issue and stock split occurring after the approval of trading plan and the same shall be notified on the stock exchanges on which securities are listed. Specific dates or specific time period may be set out in the plan.

S.No.	Regulation no. and name	Prior to amendment	Post amendment
			Specific dates or specific time intervals may be set out in the plan. However, there should be an outer limit on the duration of the time period, so that while it allows the insider to split their trades across different dates, duration should not be so long that it is prone to misuse. Further, to protect the insider from unexpected price movements, he may, at the time of formulation of trading plan, provide price limits within the range specified in these Regulations
5.	Proviso to Regulation 5(3)	The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan. Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.	

S.No.	Regulation no. and name	Prior to amendment	Post amendment
6.	Proviso to Regulation 5(3)	The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan. Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan. Provided further that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan	Provided further that trading window norms and shall not be applicable for trades carried out in accordance with an approved trading plan.
7.	Regulation 5(4)	The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.	The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either 37[***] execute any trade in the securities outside the scope of the trading plan 38[or to deviate from it except due to permanent

S.No.	Regulation no. and name	Prior to amendment	Post amendment
		Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4 . ***NOTE**: It is intended that since the trading plan is an exception to the general rule that an insider should not trade when in possession of unpublished price sensitive information, changing the plan or trading outside the same would negate the intent behind the exception. Other investors in the market, too, would factor the impact of the trading plan on their own trading decisions and in price discovery. Therefore, it is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities. The proviso is intended to address the prospect that despite the six-month gap between the formulation of the trading plan and its commencement, the unpublished price sensitive information in possession of the insider is still not generally available.*	incapacity or bankruptcy or operation of law]. Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation Provided further that if the insider has set a price limit for a trade under sub-clause (iv) of clause (v) of sub-regulation 2, the insider shall execute the trade only if the execution price of the security is within such limit. If price of the security is outside the price limit set by the insider, the trade shall not be executed. Explanation: In case of non-implementation (full/partial) of trading plan due to either reasons enumerated in sub-regulation 4 or failure of execution of trade due to inadequate liquidity in the scrip, the following procedure shall be adopted:

S.No.	Regulation no. and name	Prior to amendment	Post amendment
		In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information. If the very same unpublished price sensitive information is still in the insider's possession, the commencement of execution of the trading plan ought to be deferred.	(i) The insider shall intimate non-implementation (full/partial) of trading plan to the compliance officer within two trading days of end of tenure of the trading plan with reasons thereof and supporting documents, if any (ii)Upon receipt of information from the insider, the compliance officer, shall place such information along with his recommendation to accept or reject the submissions of the insider, before the Audit Committee in the immediate next meeting. The Audit Committee shall decide whether such non-implementation (full/partial) was bona fide or not. (iii) The decision of the Audit Committee shall be notified by the compliance officer on the same day to the stock exchanges on which the securities are listed. (iv) In case the Audit Committee does not accept the submissions made by the insider, then the compliance officer shall take action as per the Code of Conduct.]

S.No.	Regulation no. and name	Prior to amendment	Post amendment
			NOTE: It is intended that since the trading plan is an exception to the general rule that an insider should not trade when in possession of unpublished price sensitive information, changing the plan or trading outside the same would negate the intent behind the exception Other investors in the market, too, would factor the impact of the trading plan on their own trading decisions and in price discovery. Therefore, it is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities 41[except in situations beyond the control of the insider]. The 42[first] proviso is intended to address the prospect that despite the 43[one hundred and twenty calendar days] gap between the formulation of the trading plan and its commencement, the unpublished price sensitive information in possession of the insider is still not generally available

S.No.	Regulation no. and name	Prior to amendment	Post amendment
		.	. In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information. If the very same unpublished price sensitive information is still in the insider's possession, the 44[execution of the trading plan should not be commenced. Therefore, it is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities 41[except in situations beyond the control of the insider]. The 42[first] proviso is intended to address the prospect that despite the 43[one hundred and twenty calendar days] gap between the formulation of the trading plan and its commencement, the unpublished price sensitive information in possession of the insider is still not generally available In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information.

S.No.	Regulation no. and name	Prior to amendment	Post amendment
			. If the very same unpublished price sensitive information is still in the insider's possession, the 44[execution of the trading plan should not be commenced 45[The second proviso is intended to address the scenario where the insider has set a price limit for a trade and due to adverse fluctuation in market prices, the price of the security is outside the price limit set by the insider, the trade shall not be executed. However, if the insider wishes to trade irrespective of the fluctuation in market price, he may not set any price limit at the time of formulation of the trading plan.]
8.	Regulation 5(5)	Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed	The compliance officer shall approve or reject the trading plan within two trading days of receipt of the trading plan and notify the approved plan to the stock exchanges on which the seecurities are listed, on the day of approval.

RESERVE BANK OF INDIA (RBI)

1. Online Submission of form A2: Removal of limits on amount of Remittance

Date of Circular: July 03, 2024

Effective date: July 03, 2024

Link:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12697&Mode=0

RBI, vide circular dated July 03, 2024, has decided to enhance ease of business by allowing all Authorized Dealers (AD Category-I banks and AD Category-II entities) to facilitate remittances through online or physical submission of Form A2 and related documents, as necessary. This decision removes the previous limit on remittance amounts via online Form A2, subject to conditions specified in Section 10(5) of FEMA 1999.

In response, Authorized Dealers must develop suitable guidelines approved by their Board, aligning with existing statutory and regulatory frameworks. They are required to adhere to FEMA 1999 and RBI's 'Master Direction – Know Your Customer (KYC) Direction, 2016,' ensuring compliance in all transactions. Additionally, reporting transactions through FETERS by Authorized Dealer banks remains mandatory, maintaining continuity in transaction oversight and reporting procedures

WHITESPAN Advisory

Central Board of Direct Taxes (CBDT)

CBDT Updates

Date of Press Release: July 11, 2024

CBDT introduced ***Excel Utility*** for preparation of ITR-7* and creation of Json file for further submission on Income tax portal for filing ITR. ***Offline Utility*** is already available from 21.06.2024, on Income Tax portal. SO, the respective Taxpayers can use any of the Utility as per their convenience.

**Please note that ITR-7 is applicable for Trusts.*

WHITESPAN Advisory

CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS (CBIC)

1. Advisory for Form GSTR-1A

Date of Press Release: July 26, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read

Introduction The Government introduced FORM GSTR-1A (Notification No. 12/2024 – Central Tax dated 10.07.2024), an optional form to add or amend supply details for the current tax period before filing GSTR-3B**.**

Key Features

1.Optional Filing: FORM GSTR-1A is optional and can be filed once per tax period**.**

2.Liability Adjustment: Changes in FORM GSTR-1A will reflect in GSTR-3B for the same period.

3.ITC Update: Amended supplies will be available in FORM GSTR-2B for the next tax period.

Monthly Filing Taxpayers

- **Availability:** From the due or actual filing date of FORM GSTR-1 until the filing of FORM GSTR-3B.
- **Liability**: Changes in GSTR-1A will auto-populate in GSTR-3B.

QRMP Taxpayers (Quarterly Filing)

- **Availability:** After the due or actual filing date of FORM GSTR-1 (Quarterly) until filing GSTR-3B.
- **Amendments**: Includes IFF for M1 and M2. No separate amendments for IFF during M1 and M2.
- **Liability:** Changes in GSTR-1A will auto-populate in GSTR-3B (Quarterly).

GSTIN Amendments Changes in GSTIN for supplies reported can be rectified in FORM GSTR-1 for the subsequent tax period only.

2. Advisory on Increased Document Upload size for Business Registration and Amendments

Date of Press Release: July 9, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read

For new registrations and amendments, the document upload size for Principal and Additional Places of Business has been increased from 100 KB to 500 KB. This applies to documents like the Municipal Khata Copy, Electricity Bill, Consent Letter, and Property Tax Receipt, which can now be uploaded in JPEG or PDF format.

3. Advisory on Refund of Additional IGST Paid.

Date of Press Release: July 14, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read

Now Exporters can claim refunds for additional IGST paid due to upward price revisions after exports. Until a new category is available in FORM GST RFD-01, please file under “Any other” with remarks stating “Refund of additional IGST paid on account of increase in price subsequent to export of goods” and upload Statements 9A & 9B along with relevant documents.

WHITESPAN Advisory

Miscellaneous Laws

DGFT

1. Export of Non- Basmati White Rice under ITC(HS) code 10063090 to Namibia through National Cooperative Exports Limited (NCEL)

Date of Order: July 29, 2024

Link:
https://www.dgft.gov.in/CP/?opt=notification

Pursuant to the authority granted under Section 3, read with Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, and in accordance with Para 1.02 and 2.01 of the Foreign Trade Policy 2023 (as amended), and in alignment with Para 2(iv) of Notification 20/2023 dated 20.07.2023, the Central Government authorizes the export of 1,000 Metric Tons (MT) of Non-Basmati White Rice, classified under ITC(HS) code 10063090, to Namibia through National Cooperative Exports Limited (NCEL).

Effect of the Notification: The export of 1,000 MT of Non-Basmati White Rice, under ITC(HS) code 10063090, to Namibia is now authorized via National Cooperative Exports Limited (NCEL).

2. Amendment to Policy Conditions of Sl. No. 55& 57, Chapter 10, Schedule -2, ITC(HS) Export Policy, 2018

Date of Press Notification: July 5, 2024

Link:
https://www.dgft.gov.in/CP/?opt=notification

In exercise of the powers conferred by Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 (Act No. 22 of 1992), in conjunction with Para 1.02 and 2.01 of the Foreign Trade Policy 2023, as amended, the Central Government hereby amends Notification No. 52/2023 dated 12.12.2023. This amendment, effective immediately, updates the policy conditions at Sl. No. 55 and 57, Chapter 10, Schedule-2 of the ITC (HS) Export Policy, 2018, concerning the export of rice (both Basmati and Non-Basmati).

1. Amendment Details:

Sl. No. 55:

HS Code: 1006 30

Description: Non-Basmati Rice (1006 3010, 1006 3090)

Current Policy Condition: Export to EU Member States and European countries, including the United Kingdom, Iceland, Liechtenstein, Norway, and Switzerland, is permitted subject to the issuance of a Certificate of Inspection by the Export Inspection Council (EIC) or an Export Inspection Agency (EIA).

Revised Policy Condition: The requirement for a Certificate of Inspection by the EIC/EIA will not be mandatory for exports to other European countries, effective from the date of this notification, for a period of six months.

Sl. No. 57:

HS Code: 1006 30 20

Description: Basmati Rice (Dehusked (Brown), semi-milled, or milled, whether parboiled or raw)

Current Policy Condition: Export to EU Member States and European countries, including the United Kingdom, Iceland, Liechtenstein, Norway, and Switzerland, is permitted subject to the issuance of a Certificate of Inspection by the EIC or an EIA.

Revised Policy Condition: The requirement for a Certificate of Inspection by the EIC/EIA will not be mandatory for exports to other European countries, effective from the date of this notification, for a period of six months.

2. Effect of Notification:

This amendment modifies Notification No. 52/2023 dated 12.12.2023 to the extent that only exports of rice (Basmati and Non-Basmati) to EU Member States and the specified European countries (United Kingdom, Iceland, Liechtenstein, Norway, and Switzerland) will require a Certificate of Inspection from the EIC/EIA. Exports to other European countries will be exempt from this requirement for a period of six months from the date of this notification.

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3. Amendment to Import Policy Conditions for Items under ITC (HS) Code 07019000, Chapter 07, ITC (HS) 2022, Schedule-1 (Import Policy)

Date of Press Notification: July 5, 2024

Link:
https://www.dgft.gov.in/CP/?opt=notification

In exercise of the powers conferred by Section 3 and Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, and in accordance with Paragraph 1.02 and 2.01 of the Foreign Trade Policy 2023, as amended, the Central Government hereby revises the policy conditions for the item under Chapter 07 of ITC (HS) 2022, Schedule I (Import Policy), as follows:

ITC (HS) Code: 07019000

Item Description: Potatoes, fresh or chilled (other)

Existing Condition: Import of potatoes from Bhutan is permitted freely without any license up to 30th June 2024.

Revised Condition: Import of potatoes from Bhutan is permitted freely without any license up to 30th June 2027.

Effect of the Notification: The revised policy allows the import of potatoes under ITC (HS) code 07019000 from Bhutan without the need for an Import Licence, extending the validity period to 30th June 2027.

Article 1

When Likes Turn to Lawsuits: Social Media Mishaps and POSH Law

The rise of social media has blurred the lines between personal and professional lives. While a funny meme might seem harmless, a careless post can have serious legal consequences, both for the employee and the employer. This is where the Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013 (commonly known as POSH Act) comes in, aiming to create safe workplaces free from sexual harassment.

The Inappropriate Comment- A Case Study

Rahul, a boisterous sales associate at a prominent Mumbai fashion brand, was known for his outgoing personality and tendency to crack jokes. Scrolling through his Instagram feed one evening, he came across a meme featuring a scantily clad woman with a suggestive caption. Rahul, used to playful banter with his colleagues, chuckled and impulsively tagged his co-worker, Isha, a talented but reserved designer, in the post.

The next morning, Isha arrived at work visibly flustered. As Rahul approached her with a friendly greeting, Isha avoided eye contact and rushed to her desk. Rahul, confused, shrugged it off.

Later that week, Rahul received a notice from the Internal Committee formed under POSH Act. Isha had seen the tagged meme and felt harassed. The meme, in her view, was inappropriate and sexualized her, creating a hostile work environment.

Rahul was stunned. He never intended to make Isha feel uncomfortable and simply found the meme funny in a light-hearted way. However, he finally understood the impact it had. The situation highlighted a crucial lesson: Social media interactions with colleagues, even seemingly casual ones, can have unintended consequences in a professional setting, potentially violating the POSH Act.

Implications under POSH Act:

Rahul's comment could be seen as contributing to a hostile work environment for Isha. Here's why:

1. **Sexual Harassment Through Social Media**: POSH Law recognizes that harassment can extend beyond the physical workplace and includes online interactions. Tagging Isha in a sexually suggestive meme could be interpreted as unwelcome sexual advances or creating an offensive work environment.
2. **Power Dynamics**: The power dynamic between colleagues can influence the interpretation of online behavior. In this case, Rahul's position as a sales associate tagging a designer (Isha) could be seen as an inappropriate power play.

The Outcome:

Rahul apologized sincerely to Isha, assuring her it wasn't his intention to offend. The HR mediated the situation, reminding everyone of the company's social media policy and POSH Act. Rahul attended a sensitivity training program to understand the potential impact of online behavior and the importance of maintaining professional boundaries.
This incident served as a wake-up call for the entire company, prompting discussions on responsible social media use and fostering a more respectful work environment.

Looking for support with POSH compliance or training? *I'm here to help! Contact me at* ***pooja@whitespan.in*** *to learn more about the services and programs designed to make understanding POSH a breeze. Please note that this Article is not a replacement for formal or legal guidance.*

Author:

Pooja Vohra
LLM; BA LLB
Certified POSH Trainer | IC External Member

Article 2

Mythos of the Lex Mercatoria

Introduction

This essay aims to provide a comprehensive understanding of Lex Mercatoria by defining and elucidating its concept. The creation of Lex Mercatoria will be explored, followed by a discussion on its evolution and a critical examination of its significance in the development of Commercial Law. Furthermore, an in-depth look into the existence of a contemporary version of Lex Mercatoria will be conducted. Lastly, the relationship between this term and Global Arbitration will be scrutinised, culminating in a summary.

Definition and Explanation

“Lex mercatoria, often referred to as the body of rules governing international commerce, has been shaped by customs in the field of commerce and validated by national courts. This concept was cited in the deliberations of the International Court of Arbitration in Paris during the resolution of case number 9246 on March 8, 1996. The term lex mercatoria originates from Latin and translates to "merchant law." It was utilised by European merchants during mediaeval times to denote the set of laws governing commercial activities.”

History and Evolution

“The origins of lex mercatoria can be traced back to ancient times, particularly in regions such as Greece, Egypt, Phoenicia, and notably Rome, where a distinct legal system known as ius gentium was established. This legal framework was developed due to the expansion of the Roman Empire, which necessitated new regulations to address the evolving complexities of trade relationships. Initially applied to interactions between foreigners and Roman citizens, ius gentium eventually extended to encompass legal matters among Roman citizens before gradually fading into obscurity as Rome underwent significant societal changes

Despite its decline in practice, ius gentium continued to be recognized as part of the legal structure alongside ius civile."

"Ius gentium was characterised by its adaptable nature, accommodating various business customs and regulations. Following the collapse of the Roman Empire, individual states began formulating their own legal systems based on the principle of territoriality, asserting their sovereignty over matters within their borders. This shift led to the proliferation of diverse legal frameworks, with each state enforcing its own set of laws. The legal principles of the Roman Empire, combined with commercial practices, were later adopted by the Byzantine Empire and certain Arabic nations."

"During the mediaeval period, lex mercatoria underwent significant transformations influenced by various factors, including the waning influence of the Arabic Empire.

in the Mediterranean, the rise of port cities, the impact of crusades, the resurgence of trade in Europe, and the migration of merchants who brought their own trade practices and rights. Additionally, the emergence of a new social class, the middle class, played a crucial role in shaping the development of commercial law. The feudal legal system of the mediaeval era was ill-equipped to address the complexities of international trade, leading to the need for a more specialised legal framework to govern commercial transactions."

"During the 12th and 13th centuries, specialised courts were established in regions where markets were held in France, Italy, and England to address trade disputes and enforce lex mercatoria. These courts were presided over by esteemed individuals within the trading community to ensure that cases were adjudicated based on established customs and traditions, thereby applying lex mercatoria within a defined jurisdiction. The involvement of respected figures from the aforementioned countries underscored the legitimacy of the arbitration process."

“In instances where breaches of law were identified, monetary penalties were imposed as a form of redress. Merchants typically opted to pay fines in order to safeguard their reputation, which held significant value during that era. Failure to comply could result in the loss of business partners or, more severely, expulsion from the protective community. This emphasis on reputation management highlights the importance of upholding ethical standards in commercial dealings. Lex mercatoria represented a distinct legal framework that governed specific aspects of law, particularly pertaining to trade relationships. Its scope differed from feudal or canonical law, which encompassed broader legal domains.”

“Recent studies conducted by legal historians cast doubt on the alleged existence of a distinct and independent legal system known as the mediaeval lex mercatoria, separate from the authority of the state. These studies challenge the notion that the merchants participating in the fairs of St. Ives, who are often credited with creating the law merchant, operated under a uniform set of rules. Instead, they were primarily governed by local official laws. Similarly, Dutch and Belgian merchants during the Middle Ages and early modern times relied on a combination of private and public legal institutions, rather than exclusively resorting to arbitration or quasi-private tribunals. ”

“Multiple analyses have made it highly unlikely to argue for the historical existence of an autonomous non-state lex mercatoria. Even the historical sources that mention the lex mercatoria present ambiguity regarding its relationship with the state. For example, the Little Red Book of Bristol, one of the earliest texts on the lex mercatoria (circa 1280), suggests that merchant law originates from the market but also recognizes the common law as the foundation of mercantile law. Similarly, Gerard Malynes, the author of a renowned English book on lex mercatoria, presents conflicting views. While he emphasises that the lex mercatoria is not established by any sovereign, he also states that it is a customary law approved by the authority of all kingdoms and commonwealths. ”

“Furthermore, Stracca's De Mercatura, often regarded as an exposition of the lex mercatoria, primarily focuses on ius commune (common law) and applies a combination of official laws and the received ratio scripta of Roman law to commerce. The authors of these texts did not perceive a contradiction in combining market law and state law. The lex mercatoria, similar to the ius gentium (law of nations) and general principles of law, was considered the law applicable to all states and, therefore, not tied to any specific state. ”

“Nevertheless, the absence of a separate and independent lex mercatoria should not be misconstrued. Although the term and concept were widely recognized, it remained intertwined with official legal systems. Lex mercatoria comprised a fusion of official legislations, established commercial practices and institutions, as well as a combination of official courts and quasi-private local tribunals. It encompassed both public privileges and private practices, incorporating public statutes and private customs that pertained to a specific form of supra-local trade and the merchants involved in it. Essentially, lex mercatoria represented a confluence of state and non-state regulations and procedures, unified by its emphasis on merchants as the central actors. ”

The ‘New’ Lex Mercatoria

“The New Lex Mercatoria is a transnational body of legal principles and rules that has emerged from the activities of the international business community and international formulating agencies in the field of international trade and finance. Berthold Goldman and Clive Schmitthoff had differing views on the concept, with Goldman seeing it as a third, autonomous legal system alongside domestic laws and public international law, while Schmitthoff believed it existed within the principle of party autonomy as a principle of domestic law.

“Despite their differing perspectives, both Goldman and Schmitthoff acknowledged the gradual emergence of a transnational body of legal principles and rules from the activities of the international business community and harmonisation efforts. Goldman's view influenced his academic pupils in various areas of international business law, while Schmitthoff played a crucial role in the conceptualization of the United Nations Commission on International Trade Law (UNCITRAL).”

“Some authors see the New Lex Mercatoria as a collection of rules and principles derived from party autonomy in contract law, while others view it as the sum of refined trade usages. Proponents of the more radical view, in line with Goldman's perspective, consider it as an independent, supranational legal system that supersedes even mandatory provisions of domestic law. ”

“Despite the disagreements on its legal nature, proponents of the New Lex Mercatoria agree that it is a "living law" or "law in action" that evolves rapidly. They acknowledge the challenges in codifying it due to its dynamic nature, influenced by business logic, market forces, practical needs, established practices, and international dealings. ”

“The New Lex Mercatoria, or transnational commercial law, is closely intertwined with the phenomenon of globalisation. This connection underscores the various challenges brought about by globalisation, including heightened economic interdependence and the inclination of international actors to evade domestic legal frameworks. Consequently, there has been a discernible shift towards the establishment of transnational legal principles and regulations. Over time, the conventional demarcations between national and international law, public and private law, and politics and law have gradually eroded. ”

“The role played by international arbitral tribunals in shaping transnational commercial law is pivotal. These tribunals are often regarded as "private courts," and their decisions carry substantial weight in the realm of international commerce. They frequently adopt a comparative approach and make reference to transnational rules or general principles of law .”

“Moreover, the concept of legal pluralism may be a theoretical framework that supports the development of transnational commercial law. Legal pluralism recognizes that law is not solely determined by governments or states; it acknowledges the significance of private rulemaking within the international business community. Additionally, there exist industry-specific subsystems within transnational law, such as maritime trade, construction, oil and gas, cyberspace, and international banking and finance. These subsystems are purported to possess their own distinct set of transnational legal rules.”

Lex Mercatoria and Arbitration

“The use of lex mercatoria in international trade disputes is a topic of debate. Proponents argue that lex mercatoria can provide a set of internationally accepted principles to govern such transactions, while opponents claim that it is not a true body of law. The absence of an international legislature and commercial court contributes to the scepticism surrounding lex mercatoria.”

“One of the main advantages of applying lex mercatoria is that it avoids the complications of selecting laws through conflict of laws rules. It allows for the application of a body of law specifically developed for international transactions, eliminating the need to rely solely on domestic laws. Additionally, lex mercatoria can provide a more neutral ground for dispute resolution, as neither party has an inherent advantage based on their national law. The principle of good faith is a guiding rule in lex mercatoria, ensuring fairness and preventing arbitrary outcomes.”

“Arbitration is often the preferred method for resolving international trade disputes, and the parties have the autonomy to choose the applicable law. They can explicitly select lex mercatoria or refer to general principles of law or international trade usages, effectively authorising the application of lex mercatoria by the arbitral tribunal. In cases where no choice of law is indicated, the tribunal may apply lex mercatoria as a subsidiary law if it deems it appropriate.”

“However, opponents argue that lex mercatoria should only be applied when explicitly chosen by the parties. They suggest that the absence of an explicit choice does not imply an implicit selection of lex mercatoria. They propose that in cases where no law is chosen, the tribunal should determine an applicable national law consistent with conflict of laws rules. Critics also emphasise the importance of party autonomy and argue against imposing lex mercatoria when the parties have explicitly chosen a national law.”

“An important benefit of employing lex mercatoria is its ability to circumvent the complexities associated with selecting laws through conflict of laws rules. It enables the application of a legal framework specifically tailored for international transactions, eliminating the sole reliance on domestic laws. Furthermore, lex mercatoria can establish a more impartial platform for resolving disputes, as neither party holds an inherent advantage based on their national legislation. The principle of good faith serves as a guiding principle in lex mercatoria, ensuring equity and preventing arbitrary outcomes”

“The distinction between lex mercatoria and amiable compositeur is significant. Lex mercatoria operates within mandatory rules, while amiable compositeur allows arbitrators to base decisions on equitable principles without being restricted by specific laws. Some arbitral awards have broadly interpreted amiable compositeur clauses to include lex mercatoria, giving arbitrators the authority to apply it effectively.”

“The influence of lex mercatoria can reach cases involving the application of national laws. Arbitrators may consider international trade usages and general legal principles to interpret contracts and find solutions. National courts may also apply lex mercatoria based on their own conflict of laws rules, although the extent of its application varies across countries. While national courts typically respect parties' choice of lex mercatoria, they may also draw inspiration from it in cases where it was not explicitly chosen to fill gaps in national law or avoid provisions unsuitable for international trade.”

Summary

In conclusion, the use of lex mercatoria in disputes remains a contentious issue. Ideally, it should be applied when parties explicitly choose it, and its application by national courts may differ. While lex mercatoria can offer advantages such as a neutral and globally accepted framework for dispute resolution, its status as a true body of law is still a matter of debate

Author:

Madhav Chaturvedi

Article 3

Understanding the concept of Significant Beneficial Owner: A Comprehensive Ananlysis

Introduction

The concept of Significant Beneficial Ownership (SBO) has become a pivotal element in the corporate governance landscape of India. This concept, primarily enshrined in the Companies Act, 2013, and elaborated upon in the Companies (Significant Beneficial Owners) Rules, 2018, is designed to bolster transparency in corporate ownership and control structures. It aims to address issues related to opaque ownership and mitigate the misuse of corporate entities. This analysis will dissect the intricacies of SBO, focusing on pertinent sections of the Companies Act, 2013, and the Companies (Significant Beneficial Owners) Rules, 2018, while also incorporating key case laws that elucidate the application and interpretation of these regulations.

Definition and Framework under the Companies Act, 2013

Section 2(27): Definition of Control

Section 2(27) of the Companies Act, 2013, defines "control" as encompassing the right to appoint the majority of the directors or to influence or control management or policy decisions. This right can be exercised directly or indirectly and includes control via shareholding, management rights, shareholder agreements, or voting agreements. The definition is broad, covering various methods of exerting control, which ensures that both direct and indirect forms of control are recognized. This comprehensive definition addresses complex ownership structures by including direct ownership and various indirect methods.

Section 90: Register of Significant Beneficial Owners

Section 90(1) requires individuals or entities holding at least 25% beneficial interest or significant influence/control over a company to declare their interest to the company. This requirement extends to persons residing outside India. This 25% threshold has been refined to 10% by the Companies (Significant Beneficial Owners) Rules, 2018. The provision aims to enhance transparency and accountability by mandating that significant beneficial owners disclose their interests, thereby curbing hidden control structures.

"**Significant Beneficial Owner**" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely: -

(i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares.

(ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares.

iii) has the right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings.

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:

Explanation I - For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.

Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely.'

i) the shares in the reporting company representing such right or entitlement are held in the name of the individual.

ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89 and has made a declaration in this regard to the reporting company.

Section 90(4) mandates companies to file returns of significant beneficial owners and any changes with the Registrar within 30 days using Form No. BEN-2. This regular filing ensures that the Registrar maintains up-to-date records, facilitating regulatory oversight and public transparency.

Section 90(5) requires companies to issue notices to individuals who are believed to be significant beneficial owners, those who might have knowledge of such persons, or those who were significant beneficial owners in the past three years. Notices must be given in Form No. BEN-4. This provision ensures comprehensive identification and disclosure by including current and former significant beneficial owners as well as individuals with potential knowledge.

Section 90(6) stipulates that the information requested in the notice must be provided within 30 days. This strict deadline ensures timely compliance and prevents delays in updating the register.

Section 90(7) outlines that if the information is not provided or is unsatisfactory, the company must apply to the Tribunal for orders to restrict share transfers, dividend rights, and voting rights. This mechanism enforces compliance and imposes penalties to safeguard against non-compliance.

Section 90(8) empowers the Tribunal to impose restrictions on share rights within 60 days of receiving an application. The Tribunal's involvement ensures a formal resolution process for disputes regarding non-compliance and mandates timely decision-making.

Section 90(9) allows for appeals to relax or lift restrictions within one year. If no appeal is made, the shares will be transferred to a designated authority. This provision balances enforcement with the opportunity for rectification by providing a clear pathway for reviewing and potentially reversing restrictions.

Section 90(10) imposes penalties for individuals who fail to declare their significant beneficial ownership, with fines up to ₹2 lakh. These penalties serve as a deterrent against non-compliance and encourage timely declarations.

Section 90(11) outlines penalties for companies failing to maintain the register or file required information, with fines up to ₹5 lakh for companies and ₹1 lakh for officers in default. The heavy fines emphasize the importance of compliance and proper record-keeping.

Companies (Significant Beneficial Owners) Rules, 2018

Rule 2(h) defines "significant beneficial owner" as an individual holding:

1. At least 10% of shares or voting rights,
2. A right to receive at least 10% of dividends or other distributions,
3. Significant influence or control in any manner.

This rule provides specific criteria for determining significant beneficial ownership, addressing both direct and indirect holdings. It clarifies various ways ownership and influence can be exercised, ensuring comprehensive disclosure.

Rule 2(i) defines "significant influence" as the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company without controlling those policies. This definition helps distinguish between influence and control, ensuring clarity in regulatory requirements and the scope of influence that must be disclosed.

Analysis of Provisions Relating to Significant Beneficial Owners

Registered Owner vs. SBO

A registered owner is the individual whose name appears in the Register of Members of the Company as the owner of shares. This person is entitled to attend and vote at meetings, receive dividends, and exercise shareholder rights. In contrast, a beneficial owner is the true owner of the shares, who enjoys the benefits of being a shareholder through another person. The registered owner acts on the direction of the beneficial owner.

Definition of Control (Section 2(27))

Section 2(27) defines control broadly, covering the ability to:

- Appoint a majority of directors,
- Influence or control management or policy decisions.

This expansive definition encompasses various means of control, ensuring that both direct and indirect forms are recognized. It is particularly relevant for addressing complex ownership structures.

Declaration of Significant Beneficial Owners (Section 90)

Section 90(1) requires declarations from those holding at least 10% beneficial interest or significant influence/control over a company. This threshold aims to increase transparency and prevent hidden control structures by mandating disclosure of significant beneficial interests.

Filing Returns (Section 90(4))

Regular filing of returns with the Registrar ensures that the records remain up-to-date, facilitating oversight and transparency. The 30-day timeframe for filing helps maintain accurate and current data.

Issuing Notices (Section 90(5))

The requirement to issue notices to current and former significant beneficial owners, as well as those with potential knowledge, ensures comprehensive identification and disclosure. This approach addresses various potential sources of information about SBOs.

Provision of Information (Section 90(6))

The 30-day deadline for providing information ensures prompt compliance and prevents delays. This strict requirement underscores the importance of timely updates to the register.

Restrictions on Shares (Section 90(7))

The provision allowing the company to apply for restrictions on shares in case of non-compliance ensures enforcement and penalties for failure to provide satisfactory information. This mechanism is crucial for maintaining regulatory compliance.

Tribunal Orders (Section 90(8))

The Tribunal's role in imposing restrictions provides a formal resolution process for disputes related to non-compliance. The 60-day timeframe for decision-making ensures timely resolution of issues.

Appeals and Transfers (Section 90(9))

Allowing appeals to relax or lift restrictions within one year provides a pathway for rectifying non-compliance. The provision for transferring shares to a designated authority if no appeal is made ensures that unresolved issues are addressed.

Penalties (Sections 90(10) and 90(11))

Penalties for failing to declare significant beneficial ownership or maintain the register emphasize the importance of compliance. The fines for individuals and companies serve as deterrents and underscore the need for accurate record-keeping.

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Recent ROC Orders

HEROX Private Limited

HEROX Private Limited, a startup company based in New Delhi, was penalized for non-compliance with Section 90. The company failed to issue a notice in Form BEN-4 to identify significant beneficial owners and did not file Form BEN-2 within the stipulated 30 days of receiving the declaration. The directors, aware of the contravention, did not rectify the non-compliance, rendering them officers in default. The penalty, as per Section 446B for startups, was ₹2 lakh for the company and ₹50,000 for the officers in default

LinkedIn India

In a recent adjudication, the ROC of Delhi and Haryana imposed a penalty of ₹27 lakh on LinkedIn India and its significant beneficial owners, including Satya Nadella and Ryan Roslansky. The penalty was for violations of Sections 89 and 90 of the Companies Act. The ROC assessed beneficial ownership based on subsidiary relationships, reporting channels, and financial control, determining that Nadella and Roslansky held significant influence over LinkedIn India. The penalty reflects the importance of accurate reporting and compliance with SBO regulations.

Conclusion

The concept of Significant Beneficial Ownership, as delineated in the Companies Act, 2013 and the Companies (Significant Beneficial Owners) Rules, 2018, plays a crucial role in enhancing corporate transparency and accountability. The legislative framework mandates the declaration of significant beneficial interests, regular filing of returns, and the issuance of notices to ensure comprehensive disclosure of ownership structures. Recent case laws and ROC orders underscore the importance of compliance, and the penalties associated with non-compliance. Together, these provisions aim to prevent hidden control structures, promote good governance, and ensure that corporate ownership is transparent and accountable.

Authors:

CS Jaya Yadav and Anuj Pathak, CS Article

WHITESPAN Advisory

Case Laws

1. New India Assurance Co Ltd v. M/S Mudit Roadways BRS Ventures Investments Ltd. V. SREI Infrastructure Finance Ltd. & Anr.

Judgment- the Supreme Court recently held that a holding company is not the owner of its subsidiary's assets and thus, subsidiary assets cannot be included in the holding company's resolution plan**.**

2. Ramkrishna Forgings Limited v Ravindra Loonkar & Anr.

Judgement- No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself...assuming that there was a vacancy to the subject posts, it would not have automatically created a valuable right in favour of the respondent for claiming retrospective promotion to the next higher post. It is only when an actual vacancy arose that the respondent was granted the benefit of accelerated promotion and that too on going through the prescribed process.

3. S Tirupati Rao vs M. Lingamaiah & Ors,

Judgment: the Supreme Court held that the action for contempt should be brought within a year, and not beyond, from the date on which the contempt is alleged to have been committed.

4. SBI General Insurance co. ltd. vs. Krish Spinning,

Judgement: Supreme Court recently held that if any dispute arises as to whether a contract has been discharged or not, such a dispute is arbitrable. It observed that once the contract has been discharged by performance, neither any right to seek performance, nor any obligation to perform remains under it. However, whether there has been a discharge of contract or not is a mixed question of law and fact, and if any dispute arises as to whether a contract has been discharged or not, such a dispute is arbitrable as per the mechanism prescribed under the arbitration agreement contained in the underlying contract.

5. Maharashtra State Electricity Distribution Company Limited v. Ratnagiri Gas and Power Private Limited & Ors.

Judgment: the Supreme Court recently observed that pay parity cannot be claimed as an indefeasible right unless the competent authority consciously decides to equate two posts despite their different nomenclature or qualifications. It further observed that the pay parity cannot be claimed as an indefeasible enforceable right save and except where the Competent Authority has taken a conscious decision to equate two posts notwithstanding their different nomenclature or distinct qualifications. An incidental grant of same pay scale to two or more posts, without any express equation amongst such posts, cannot be termed as an anomaly in a pay scale of a nature which can be said to have infringed the right to equality under Article 16 of our Constitution.

6. State of Uttar Pradesh and Anr. v. Virendra Bahadur Katheria and Ors., .

Judgement: the Supreme Court held that an authority is bound by the promise held by its agent under the Indian Contract Act. The Apex Court held so in the context of a consumer dispute, where Kuwait Airways, through its agent, Dagga Air Agents, had fixed a schedule of 7 days for delivery of certain goods. The Court held that the Airline was liable to pay the complainant damages for the delay in delivering the consignment.

7. Yogesh Goyanka Versus Govind & Ors.,

Judgment: the Supreme Court recently held that that a registered sale deed cannot be held to be void merely because it was executed during the pendency of a suit in relation to the property. The doctrine of lis pendens under Section 52 of the Transfer of Property Act 1882 does not render the pendente lite transfer void. "...no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

8. Ram Prakash Chadha vs. The State of Uttar Pradesh

Judgement: Discharging a person who was arraigned as an accused, the Supreme Court observed that the grounds for proceeding against the accused should not be based on mere suppositions suspicions, or conjectures but must be founded upon relevant material available before the Court. The Court said that while considering the application for discharge under Section 227 of CrPC, if 'the record of the case and the documents submitted therewith doesn't disclose grounds for proceeding against the accused then the accused shall be discharged.

WHITESPAN Advisory

Compliance Checklist

WHITESPAN Advisory

COMPLIANCE CALENDAR FOR AUGUST 2024

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

TAX RELATED COMPLIANCE	
15th	30% of advance tax liability of the year. Issuance of certificate for ESIC and EPF payment.
7th	TDS payment and return
14th	Issuance of TDS certificate in form 16B, 16C, 16D
30th	Challan cum statement for tax deducted under 194IA, 194IB and 194M.
20th	GSTR-3B- Summary of all inward and outward supplies, tax liability, and ITC claimed
10th	GSTR 7 (GST-TDS) -report the details of tax deducted at source (TDS) by government authorities on payments made to suppliers GSTR 8(GST-TCS)- report the supplies made through e-commerce platforms and to discharge the tax liability on such supplies.
11th	GSTR 1 filed to provide details of outward supplies of goods or services made by registered taxpayers during a particular period.
13th	GSTR 5 Non-Resident Taxable person GSTR 6 Input Tax Distributor
SEBI COMPLIANCE	
15th	Filing of Quarterly financial results by listed companies to disclose their financial performance for the preceding quarter.

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