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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

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Happy New Year 2023

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MAA FOUNDATION Activities



Maa Foundation organized various training and sessions for the women empowerment, capacity building and legal education, students workshops and communication skill programs.

FROM THE CHIEF EDITOR'S PEN

“We will open the book. Its pages are blank. We are going to put words on them ourselves. The book is called Opportunity and its first chapter is New Year’s Day”- Edith Lovejoy Pierce

It gives us immense satisfaction to share the 69th Edition of “WINS – e-newsletter” for December 2022, covering legal updates released during the month of December 2022, articles shared by respected professionals, Case Laws and compliance calendar for the month of January 2023.

In this issue, we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBIC and other miscellaneous laws
2. Articles on:
 - i. CMMI Certification_ Measure The Maturity of Development
 - ii. Social Stock Exchange
 - iii. Article on brief history of Sexual Harassment At Workplace in India
3. Case Laws
4. Compliance checklist for the month of January 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.

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With warm regards,

TEAM WINS (Whitespan Information and News Services)
December 31, 2022

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. Trishna Choudhary** an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Commerce from Delhi University.
4. **Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
5. **Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.

Ministry of Corporate Affairs (MCA)

1. Company Forms rolled out in January 2023

Date of Update: December 23, 2022

Link: <https://www.mca.gov.in/content/mca/global/en/home.html>

The Ministry of Corporate Affairs is launching Second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal. 10 out of 56 forms will be launched on 09th January 2023 at 12:00 AM and the remaining 46 forms on 23rd January 2023.

To facilitate implementation of these forms in V3 MCA21 portal, stakeholders are advised to note the following points:

- (1) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which are planned for roll-out on 09th January 2023.
- (2) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 22nd January 2023 11:59 pm for 46 forms which are planned for roll-out on 23rd January 2023.
- (3) All stakeholders are advised to ensure that there are no SRNs in pending payment and Resubmission status.
- (4) Offline payments for the above 56 forms in V2 using Pay later option would be stopped from 28th December 2022 12:00 AM. You are requested to make payments for these forms in V2 through online mode (Credit/Debit Card and Net Banking).
- (5) In view of the upcoming launch of 56 Company forms, V3 portal will not be available from 07th January 2023 12:00 AM to 08th Jan 2023 11:59 pm due to 10 company forms roll-out and from 21st January 2023 to 22nd January 2023 for 46 company forms roll-out.
- (6) V2 Portal for company filing will remain available for all the forms excluding 56 forms as mentioned in updates.

2. Common Issues and Their Solutions on Company Forms and LLP Forms in MCA V3 Portal by ICSI

Date of Update: December 28, 2022

The Institute of Company Secretaries of India have with a view to benefit its stakeholders have complied the common issues and their solutions based on various meetings with the officials of the Ministry of Corporate Affairs for smooth transition and implementation of the following forms:

- i. DIR 3 KYC;
- ii. DIR 3 KYC (Web);
- iii. CHG-1, 4, 6, 8 and 9;
- iv. DPT 3 and 4; and
- v. LLP Forms

3. Clarification of Holding of Annual General Meeting (AGM) through Video Conference (VC) or other Audio Visual Means (OAVM).

Date of Circular: December 28, 2022

Effective Date: December 28, 2022

Link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjMxNjg0MTE1&docCategory=Circulars&type=open>

MCA vide its circular dated December 28, 2022 have allowed the companies whose AGMs are due in the year 2023, to conduct their AGM on or before 30th September, 2023 though Video Conference (VC) or Other Audio Visual Means (OAVM).

It was further clarified that this general circular shall not be construed as conferring any extension of time for holding AGMs by the Companies.

Securities Exchange Board of India (SEBI)

1. Operational Circular for listing obligations and disclosure requirements for Non-convertible Securities, Securitized Debt Instruments and/or Commercial Paper Modifications in Chapter IV and Introduction of Chapter XII on Scheme(s) of Arrangement by entities who have listed their NCDs/NCRPS

Date of Circular: December 01, 2022

Effective date: August 01, 2022

Link: <https://www.sebi.gov.in/legal/circulars/dec-2022/updated-operational-circular-for-listing-obligations-and-disclosure-requirements-for-non-convertible-securities-securitized-debt-instruments-and-or-commercial-paper-modifications-in-chapter-iv-and-65728.html>

SEBI vide its circular dated December 01,2022 have released an Operational Circular for listing obligations and disclosure requirements for Non-convertible Securities, Securitized Debt Instruments and/or Commercial paper. The circular is a compilation of all relevant existing circular regarding the continuous disclosure requirements for issuers of listed Non-convertible Securities, Securitized Debt Instruments and Commercial Papers, with consequent changes. The stipulations contained in these circulars have been detailed chapter-wise in this operational circular. For ease of reference, each chapter of this operational circular contains footnotes corresponding to the respective erstwhile circulars.

2. Clarification -Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS) ('debt listed entities')

Date of Circular: December 09, 2022

Effective date: December 09, 2022

Link: ://www.sebi.gov.in/legal/master-circulars/nov-2022/master-circular-on-issuance-of-no-objection-certificate-noc-for-release-of-1-of-issue-amount_64744.html

SEBI vide its circular dated December 09, 2022 have clarified that the provisions of the Circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156 dated November 17, 2022 on “Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS)”.

As per the recent update, the above mentioned circular dated shall not apply to a Scheme of Arrangement which solely provides for an arrangement between a debt listed entity and its unlisted wholly owned subsidiary. However, Such debt listed entity shall file the draft Scheme of Arrangement with Stock Exchange(s) for the Purpose of disclosure and the Stock Exchange(s) shall disseminate the scheme documents on their websites.

3. Foreign investment in Alternative Investment Funds (AIFs)

Date of Circular: December 09, 2022

Effective date: December 09, 2022

Link: https://www.sebi.gov.in/legal/circulars/dec-2022/foreign-investment-in-alternative-investment-funds-aifs-_6_6_045.html

SEBI vide its circular dated December 09, 2022 have clarified that at the time of on-boarding investors, the manager of an AIF shall ensure the following:

- a. Foreign investor of the AIF is a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatory) or a signatory to the bilateral Memorandum of Understanding with SEBI.
- b. The investor, or its underlying investors contributing twenty-five percent or more in the corpus of the investor or identified on the basis of control, is not the person(s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as –
 - i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Reserve Bank of India (RBI)

1. Central Payments Fraud Information Registry – Migration of Reporting to DAKSH

Date of Circular – December 26, 2022

Effective Date – January 01, 2023

Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12431&Mode=0 4>

RBI vide its circular dated December 26, 2022 have with reference to the operationalization of the Central Payments Fraud Information Registry (CPFIR) in March 2020 with reporting of payment frauds by scheduled commercial banks and non-bank Prepaid Payment Instrument (PPI) issuers, migrated the fraud reporting module to [DAKSH – Reserve Bank’s Advanced Supervisory Monitoring System](#).

In addition to the existing bulk upload facility to report payment frauds, DAKSH provides additional functionalities, viz. maker-checker facility, online screen-based reporting, option for requesting additional information, facility to issue alerts / advisories, generation of dashboards and reports, etc. Detailed reporting guidelines are mentioned in the above mentioned circular. Further, the reporting format remains unchanged.

Central Board of Direct Taxes (CBDT)

1. Income-Tax Deduction from salaries during the Financial Year 2022-23 under section 192 of The Income-tax Act, 1961

Date of Circular: December 07, 2022

Link: <https://incometaxindia.gov.in/communications/circular/circular-24-2022.pdf>

CBDT vide its circular dated December 07, 2022 have prescribed the rates of deduction of Income-tax from the payment of income chargeable under the head "Salaries" under Section 192 of the Income-tax Act, 1961 during the financial year 2022-23. The circular also certain related provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962.

As per section 192(1) of the Act, any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under the head of Salary income for that financial year. The section also provides that a person responsible for paying any income chargeable under the head "Salaries" shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof.

Central Board of Excise and Customs (CBEC)

1. The Postal Export (Electronic Declaration and Processing) Regulations, 2022

Date of Notification: December 09, 2022

Effective Date: December 09, 2022

Link: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2022/cs-nt2022csnt104-2022.pdf>

CBIC vide its notification dated 9th December 2022 have notified the Postal Export (Electronic Declaration and Processing) Regulations, 2022 applicable to export of goods by any person, holding a valid Import-Export Code issued by the Director General of Foreign Trade, in furtherance of business through a foreign post office appointed by the Board under clause (e) of sub-section (1) of section 7 of the Customs Act, 1962.

As per the regulations, the postal authorities shall set up, operate and maintain the PBE Automated System for filing of electronic declarations for export of goods through post. An exporter who wishes to export goods through post or his authorized agent shall register himself on the PBE Automated System. The PBE Automated System shall validate and recognize the registered person and enable him to file electronic declaration and upload supporting documents on the said system.

Miscellaneous Laws

1. Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2022

Date of Circular: December 12, 2022

Effective Date: January 01, 2023

Link: <https://ibbi.gov.in/uploads/legalframework/15fd41484696472007c3bf90e8f76e45.pdf>

IBBI vide its guidelines on December 12, 2022, notifies that the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals, and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2022 to further supersede the earlier Guidelines [Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2022.

Key highlights of the guidelines are as follows :

- The Insolvency and Bankruptcy Board of India (Board) is required under the Insolvency and Bankruptcy Code, 2016 (Code) to recommend the name of an Insolvency Professional (IP) for appointment as Interim Resolution Professional (IRP) or Liquidator.
- The Board has been making available Panels of IPs to the AA for appointment as IRP or Liquidator, as the case may be.
- The Board is also required under the Code to recommend the name of an IP for an appointment as a resolution professional (RP) or bankruptcy trustee (BT).
- At the time of reference/ directions received from the AA, the Board does not have information about the volume, nature, and complexity of an insolvency or bankruptcy process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add much value by recommending an IP for the process.

- Given that every IP is equally qualified to be appointed as the IRP, Liquidator, RP, or BT of any corporate or individual insolvency resolution, liquidation, or bankruptcy process, as the case may be, if otherwise not disqualified, and in the interest of avoiding administrative delays, the Board considers necessary to have these guidelines to prepare a Panel of IPs for the purpose of section 16(4), 34(6), 97(4), 98(3), 125(4), 146(3) and 147(3).
- The Form A Expression of Interest to act as an IRP, Liquidator, RP, and BT in any process relating to any corporate or individual debtor is also specified.

2. Proforma for reporting liquidator's decision(s) different from the advice of Stakeholders' Consultation Committee (SCC) under proviso to sub-regulation (10) of regulation 31A of IBBI (Liquidation Process) Regulations, 2016

Date of Circular: December 21, 2022

Effective Date: January 01, 2023

Link: <https://ibbi.gov.in/uploads/legalframework/2d5613091cded4721f7f0297f4416a8e.pdf>

IBBI vide its circular dated December 21, 2022 have issued a proforma for reporting liquidator's decision(s) different from the advice of stakeholders' consultation committee under proviso to sub-regulation (10) of regulation 31A of IBBI(Liquidation Process) Regulations, 2016. According to the circular, the liquidator shall constitute a SCC to advise him on matters relating to remuneration of professionals, sale under regulation 32, fees of liquidator, valuation, etc. Regulation 31A (10) as amended vide notification dated 16.09.2022, provides that the'... advice of the consultation committee shall not be binding on the liquidator'. The proviso to sub-regulation (10) provides that 'where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report.'

In pursuance of the above, the Board has made available an electronic platform at www.ibbi.gov.in, for reporting the liquidator's decisions different from the advice given by the SCC. The proforma for such reporting is placed as Annexure to this circular and the insolvency professionals are directed to make use of the said proforma for reporting to the Board and Adjudicating Authority, under proviso to regulation 31A(10).

Article 1

CMMI CERTIFICATION MEASURE THE MATURITY OF DEVELOPMENT

CMMI can help you make decisions about your process improvement plans. CMMI approach which is being adopted by various industries to create great quality products at reduced cost. Process improvement is continuous improvement. We can never reach perfection. Thus CMMI model is in place where the focus is always on doing better.

What is CMM?

CMM stands for **C**apability **M**aturity **M**odel.

- Focuses on elements of essential practices and proven ways of doing business

CMM is a method to evaluate and measure the maturity of the software development process of an organization.

- CMM measures the maturity of the software development process on a scale of 1 to 5.

Origin

CMM was originally developed for Software Development and Maintenance but later it was developed for

- Systems Engineering
- Supplier Sourcing
- Integrated Product and Process Development
- People CMM
- Software Acquisition

CMM Examples--

- People CMM – Develop, motivate and retain project talent.
- Software CMM – Enhance a software focused development and maintenance capability.

What is Maturity?

Maturity can be said to be –

- Well-defined,
- Repeatable,
- Measured,
- Analyzed,
- Improved, and
- Effective.

Poor but mature processes are just as bad as no maturity at all. CMM helps to solve the maturity problem by defining a set of practices and providing a general framework for improving them.

What is CMMI?

CMM Integration project was formed to sort out the problem of using multiple CMMs.

CMM Integration

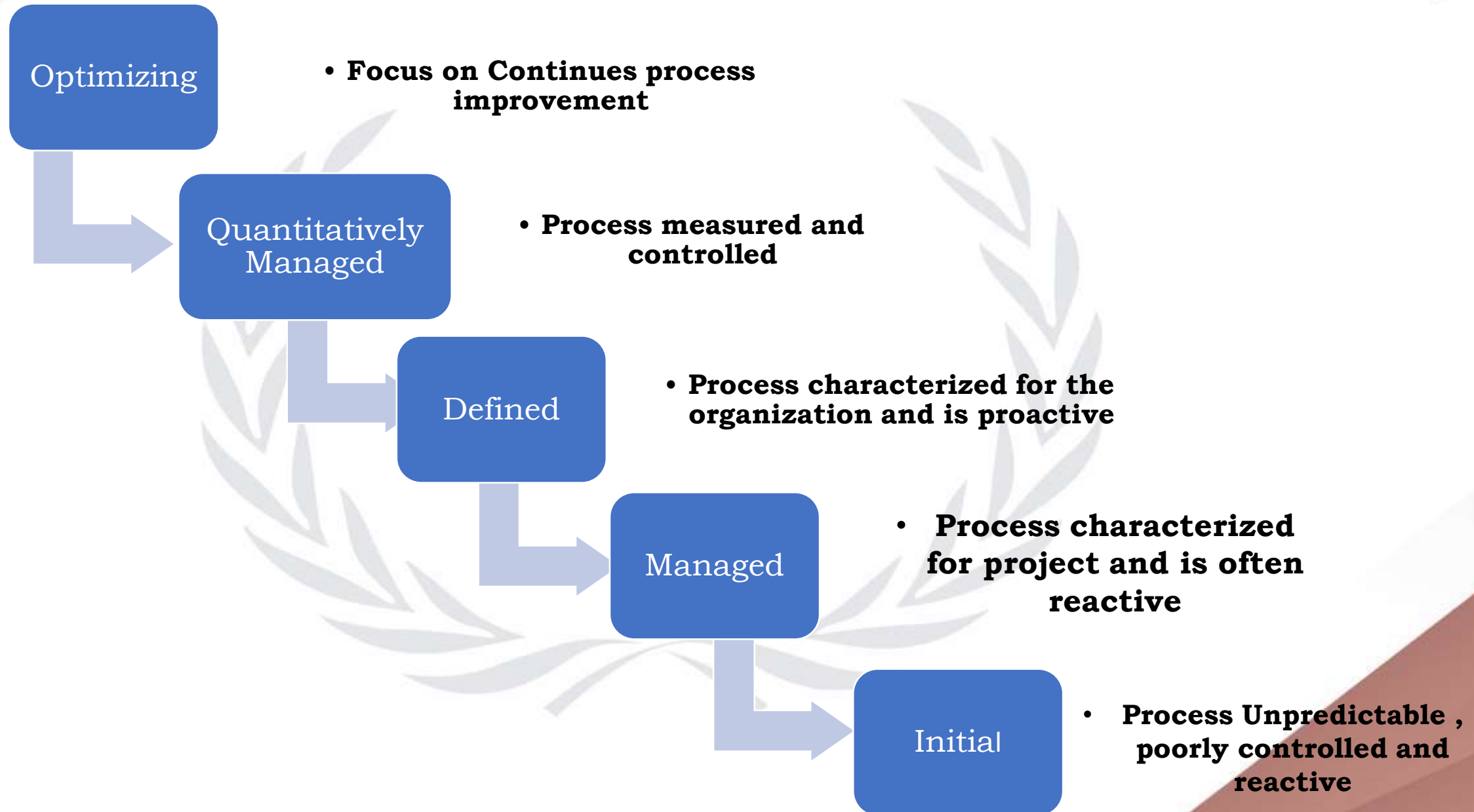
- Builds an initial set of integrated models.
- Improves best practices from source models based on lessons learned.
- Establishes a framework to enable integration of future models.

Difference between CMM and CMMI

- CMM is a reference model of matured practices in a specified discipline like Systems Engineering CMM, Software CMM, People CMM, Software Acquisition CMM etc., but they were difficult to integrate as and when needed.
- With the passage of time, CMMI became the successor of the CMM and evolved as a more matured set of guidelines. It can be applied to product manufacturing (Product CMM), people management (Labour CMM), software development (Software CMM), etc.
- For example, CMM describes about the software engineering alone whereas CMM Integrated describes both software and system engineering.

CMMI models with staged representation, have five maturity levels designated by the numbers 1 through 5. They are –

- Initial
- Managed
- Defined
- Quantitatively Managed
- Optimizing



Maturity Level Details

- Maturity levels consist of a predefined set of process areas. The maturity levels are measured by the achievement of the **specific** and **generic goals** that apply to each predefined set of process areas.
- The following sections describe the characteristics of each maturity level in detail.

Maturity Level 1 Initial

- At maturity level 1, the organization usually does not provide a stable environment.
- Maturity level 1 organizations often produce products and services that work; however, they frequently exceed the budget and schedule of their projects.
- Maturity level 1 organizations are characterized by a tendency to over commit, abandon processes in the time of crisis, and not be able to repeat their past successes.

Maturity Level 2 Managed

- At maturity level 2, an organization has achieved all the **specific** and **generic goals** of the maturity level 2 process areas but the status of processes, work products, and services are visible to management at defined points.

Maturity Level 3 Defined

- At maturity level 3, processes are well characterized and understood, and are described in standards, procedures, tools, and methods.
- At maturity level 3, processes are typically described in more detail and more rigorously than at maturity level 2. At maturity level 3, processes are managed more proactively using an understanding of the interrelationships of the process activities and detailed measures of the process, its work products, and its services.

Maturity Level 4 Quantitatively Managed

- At maturity level 4, sub-processes are selected that significantly contribute to the overall process performance. These selected sub-processes are controlled using statistical and other quantitative techniques.

Maturity Level 5 Optimizing

- At maturity level 5, an organization has achieved all the **specific goals** of the process areas assigned to maturity levels 2, 3, 4, and 5 and the **generic goals** assigned to maturity levels 2 and 3.
- Processes are continually improved based on a quantitative understanding of the common causes of variation inherent in processes.
- This level focuses on continually improving process performance through both incremental and innovative technological improvements.
- The effects of deployed process improvements are measured and evaluated against the quantitative process-improvement objectives. Both the defined processes and the organization's set of standard processes are targets of measurable improvement activities.
- Maturity Levels Should Not be skipped
- Each maturity level provides a necessary foundation for effective implementation of processes at the next level.
- Higher level processes have less chance of success without the discipline provided by lower levels.

Why is CMMI important?

- 1. CMMI Ensures Better Quality** -- One of the key concepts of CMMI is **repeatability**. By designing processes that are easily repeatable, and harnessing technology to do so easily, quality can be maintained at a consistently high level throughout the project. This means a high quality delivery for our customer, with a low number of defects.
- 2. CMMI Provides Better ROI** -- Because fewer defects make it into the production release, they cost less to fix and because defects are resolved earlier in the development lifecycle, they have less of an impact overall. Market share is a result of many factors, including quality products and services, name identification, pricing, and image. Customers like to deal with suppliers who have a reputation for meeting their commitments.

Productivity is a key performance indicator (KPI) both for us and for our customers. Because a focus on improving productivity leads to direct increases to your ROI.

- 3. Create value for the stockholders**-Mature organizations are more likely to make better cost and revenue estimates than those with less maturity, and then perform in line with those estimates. CMMI supports quality products, predictable schedules, and effective measurement to support the management in making accurate and defensible forecasts.
- 4. Enhance customer satisfaction** – Meeting cost and schedule targets with high quality products that are validated against customer needs is a good formula for customer satisfaction. CMMI addresses all of these ingredients through its emphasis on planning, monitoring, and measuring, and the improved predictability that comes with more capable processes.
- 5. Gain an industry-wide recognition for excellence** – The best way to develop a reputation for excellence is to consistently perform well on projects, delivering quality products and services within cost and schedule parameters. Having processes that conform to CMMI requirements can enhance that reputation.

Maintaining a Certification

- Each CMMI Certification has a three year validity period. At the end of a Certification's validity period, the Certification is no longer valid.

Disclaimer: This Article is for educational purposes and to give you general information and a general understanding of the law. It is not professional advice to anyone and therefore neither the Author nor the Organization accepts any responsibility whatsoever. You must not rely on the information on the Article as an alternative to professional advice from a professional service provider/ attorney/ legal advisor.

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article

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Article 2

SOCIAL STOCK EXCHANGES

Governing Regulations:

1. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”)
2. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”) and
3. Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“**AIF Regulations**”)

ICDR Regulations

“**Social Stock Exchange**” means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not for Profit Organizations in accordance with provisions of these regulations.

“**For Profit Social Enterprise**” means a company or a body corporate operating for profit, which is a Social Enterprise for the purposes of these regulations and does not include a company incorporated under section 8 of the Companies Act, 2013.

“**Not for Profit Organization**” means a Social Enterprise which is any of the following entities:

- (i) a charitable trust registered under the Indian Trusts Act, 1882;
- (ii) a charitable trust registered under the public trust statute of the relevant state;
- (iii) a charitable society registered under the Societies Registration Act, 1860;
- (iv) a company incorporated under section 8 of the Companies Act, 2013;

v. any other entity as may be specified by the Board.

vi. Minimum requirements to be met by a Not for Profit Organization (NPO) for registration with SSE in terms of Regulation 292F of the ICDR Regulations

Board	Indicator Details	Parameter
Legal Requirements		
Entity is registered as an NPO	Registration certificate valid at least for next 12 months at the time of seeking registration with SSE	Entities must be registered in India as one of the below: a) a charitable trust registered under the public trust statue of the relevant state; b) a charitable trust registered under the Societies Registration Act, 1860 c) a charitable trust registered under the Indian Trusts Act, 1882 d) a company incorporated under section 8 of the Companies Act, 2013
Ownership and control	Governing document (MOA & AOA/ Trust Deed/ Bye-laws/ Constitution)	Disclose if NPO is owned and/or controlled by government or private
Exemption under Income Tax Act	Registration Certificate under section 12A/12AA/12AB under Income Tax Act, 1961	Registration Certificate under section 12A/12AA/12AB to be valid for at least the next 12 months. Does not have a notice or ongoing scrutiny by Income Tax.

Board	Indicator Details	Parameter
Legal Requirements		
Registration with Income Tax as an NPO	IT PAN	Valid IT PAN
Age of the NPO	Registration certificate	Minimum 3 years
Deduction under Income Tax Act, 1960	Valid 80G registration under Income Tax Act, 1961.	Entity to ensure whether tax deduction is available or not to investors.
Eligible to be Social Enterprise	Requirements with Regulation 292E of ICDR Regulations	As may be specified by SSE
Minimum Fund Flows		
Annual Spending in the past financial year	Receipts or Payments from Audited accounts/ Fund Flow Statement	Must be at least Rs. 50 lakhs
Funding in the past financial year	Receipts from Audited accounts/ Fund Flow Statement	Must be at least Rs. 10 lakhs

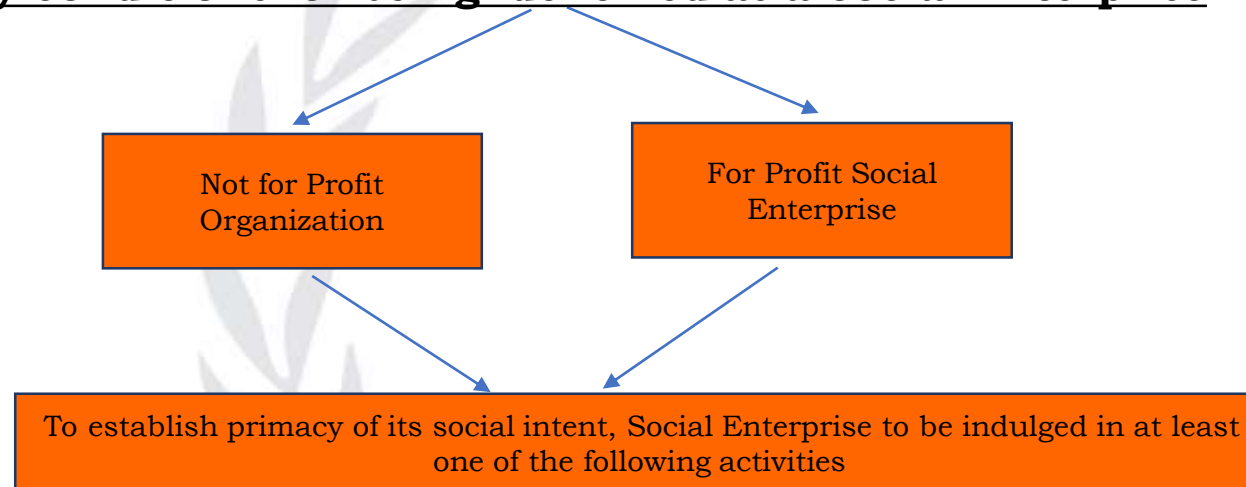
Applicability:

- (a) a Not for Profit Organization seeking to **only get registered** with a Social Stock Exchange;
- (b) a Not for Profit Organization seeking to get **registered and raise funds** through a Social Stock Exchange;
- (c) a For Profit Social Enterprise seeking to be **identified as a Social Enterprise** under the provisions of this Chapter.

Accessibility

Institutional investors and non-institutional investors

Eligibility conditions for being identified as a Social Enterprise



- i. eradicating hunger, poverty, malnutrition and inequality;
- ii. promoting health care including mental healthcare, sanitation and making available safe drinking water;
- iii. promoting education, employability and livelihoods;
- iv. promoting gender equality, empowerment of women and LGBTQIA+ communities;
- v. ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation;

- vi. protection of national heritage, art and culture;
- vii. training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;
- viii. supporting incubators of Social Enterprises;
- ix. supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building;
- x. promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector;
- xi. slum area development, affordable housing and other interventions to build sustainable and resilient cities;
- xii. disaster management, including relief, rehabilitation and reconstruction activities;
- xiii. promotion of financial inclusion;
- xiv. facilitating access to land and property assets for disadvantaged communities
- xv. bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection;
- xvi. promoting welfare of migrants and displaced persons;
- xvii. any other area as identified by the Board or Government of India from time to time

Target: Underserved or less privileged population segments or regions recording lower performance in the development priorities of central or state governments.

Eligibility Criteria

At least **67%** of its activities, qualifying as eligible activities to the target population, to be established through one or more of the following

At least 67% of the immediately preceding 3-year average of revenues comes from providing eligible activities to members of the target population

Members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base and/or total number of beneficiaries

At least 67% of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities to members of the target population

Corporate foundations, political or religious organizations or activities, professional or trade associations, infrastructure and housing companies, except affordable housing, shall not be eligible to be identified as a Social Enterprise.

Fund raising by Social Enterprises

A Not for Profit Organization may raise funds on a Social Stock Exchange through:

- (i) issuance of Zero Coupon Zero Principal Instruments to institutional investors and/or non-institutional investors in accordance with the applicable provisions of this Chapter;
- (ii) donations through Mutual Fund schemes as specified by the Board;
- (iii) any other means as specified by the Board from time to time.

A For Profit Social Enterprise may raise funds through:

- (i) issuance of equity shares on the main board, SME platform or innovators growth platform or equity shares issued to an Alternative Investment Fund including a Social Impact Fund;
- (ii) issuance of debt securities;
- (iii) any other means as specified by the Board from time to time

Securities issued by For Profit Social Enterprises shall be listed and traded under the applicable segment of the stock exchange with an identifier stating that the scrip is that of a For Profit Social Enterprise and such For Profit Social Enterprises shall meet the eligibility criteria for the main board, SME Platform or innovators growth platform, as applicable, in addition to the criteria provided herein.

Ineligibility for raising of funds

- a) if the Social Enterprise, any of its promoters, promoter group or directors or selling shareholders or trustees are debarred from accessing the securities market by the Board;
- b) if any of the promoters or directors or trustees of the Social Enterprise is a promoter or director of any other company or Social Enterprise which has been debarred from accessing the securities market by the Board;
- c) if the Social Enterprise or any of its promoters or directors or trustees is a wilful defaulter or a fraudulent borrower;
- d) if any of its promoters or directors or trustees is a fugitive economic offender;
- e) if the Social Enterprise or any of its promoters or directors or trustees has been debarred from carrying out its activities or raising funds by the Ministry of Home Affairs or any other ministry of the Central Government or State Government or Charitable Commissioner or any other statutory body.

Restrictions under clauses (a) and (b) above shall not apply to the persons or entities mentioned therein, who were debarred in the past by the Board and the period of debarment is already over as on the date of filing of application for registration with the Social Stock Exchange or filing of draft fund raising document or draft offer document, as may be applicable, with the Social Stock Exchange or the Stock Exchange or the Board.

Zero Coupon Zero Principal Instruments

- i. To be issued only by a Not for Profit Organization registered on a Social Stock Exchange

- ii. To have a specific tenure. To be issued only for a specific project or activity to be completed within a duration specified in the fund raising document: Provided that the specific project or activity falls under the list of eligible activities specified under regulation 292E of these regulations
- iii. To be issued without any coupon and no principal amount shall be payable on its maturity.
- iv. To be issued in dematerialized form only.
- v. The minimum issue size shall be rupees one crore and minimum application size shall be rupees two lakhs
- vi. The minimum subscription required to be achieved shall be 75% of the funds proposed to be raised through issuance of Zero Coupon Zero Principal Instruments.
- vii. In case of any under subscription, the Not for Profit Organization shall, in the fund raising document, provide details on the following:
 - (a) manner of raising balance capital in case of such under subscription between 75% and 100%;
 - (b) possible impact on achieving the social objective(s) in case such under subscription is not arranged:
Provided that the funds shall be refunded in case the subscription is less than 75% of the issue size
- viii. The Social Stock Exchange shall maintain the details of the allotment pursuant to issuance of Zero Coupon Zero Principal Instruments by a Not for Profit Organization.
- ix. The Social Stock Exchange shall specify the additional norms in respect of issue procedure including on agreements with depositories, banks, etc., ASBA related matters, duration for public issuance, allocation methodology and any other ancillary matter related to issue procedure.

Procedure for public issuance of Zero Coupon Zero Principal Instruments by a Not for Profit Organization

1. To register with the SSE
2. To file the draft **fund raising document** with the SSE where it is registered along with the fees as specified by the SSE and an application seeking in-principle approval for listing of its Zero Coupon Zero Principal Instruments on the SSE. Social Stock Exchange shall specify the details to be incorporated in the fund raising document.
3. The draft fund raising document shall be made available on the website of the SSE and the Not for Profit Organization for a period of at least 21 days for public comments.
4. The SSE shall provide its observation on the draft fund raising document to the Not for Profit Organization, within 30 days from the filing of the draft fund raising document or receipt of clarification, if any, sought by the Social Stock Exchange from Not for Profit Organization, whichever is later.
5. The Not for Profit Organization shall incorporate the observations of the Social Stock Exchange in draft fund raising document and file the final fund raising document with the Social Stock Exchange prior to opening the issue.

The Not for Profit Organization registered on a Social Stock Exchange, may also make private issuance of Zero Coupon Zero Principal Instruments to **Social Impact Fund(s) registered under the applicable provisions of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations 2012.**

Contents of the Fund Raising Document

- i. Vision
- ii. Target Segment
- iii. Strategy
- iv. Governance
- v. Management
- vi. Operations
- vii. Finance
- viii. Compliance
- ix. Credibility
- x. Social Impact
- xi. Risks

Source: <https://www.sebi.gov.in/legal/circulars/sep-2022/framework-on-social-stock-exchange-63053.html>

Termination of listing of Zero Coupon Zero Principal Instruments from the Social Stock Exchange

The listing of Zero Coupon Zero Principal Instruments of a Not for Profit Organization on the Social Stock Exchange shall terminate in the following events:

- (a) The object for which the funds were raised has been achieved and a certificate to this effect is submitted to the Social Stock Exchange; or
- (b) The tenure to achieve the object for which the funds were raised as provided in the fund raising document has expired.

[The Securities and Exchange Board of India \(Listing Obligations and Disclosure Requirements\)](#)

DISCLOSURES

By a For Profit Social Enterprise

For Profit Social Enterprise whose designated securities are listed on the Stock Exchange(s) shall comply with the disclosure requirements contained in these regulations with respect to issuers whose specified securities are listed on the Main Board or the SME Exchange or the Innovators Growth Platform, as the case may be.

By a Not for Profit Organization.

Annual disclosures to be made to the Social Stock Exchange(s) on matters specified by the Board, within 60 days from the end of the financial year or within such period as may be specified by the Board.

1. Disclosures on General aspects
2. Disclosures on Governance aspects
3. Disclosures on Financial aspects
4. A guidance note in respect of the above aspects in provided in the framework.

<https://www.sebi.gov.in/legal/circulars/sep-2022/framework-on-social-stock-exchange-63053.html>

In addition to the above disclosures, the Social Stock Exchange(s) may specify matters that shall be disclosed by the Not for Profit Organization on an annual basis.

Quarterly Statement of utilisation of funds

A listed Not for Profit Organization shall submit to the Social Stock Exchange(s) the following statement in respect of utilisation of the funds raised, on a quarterly basis within 45 days from the end of quarter:

- (a) category-wise amount of monies raised;
- (b) category-wise amount of monies utilised;
- (c) balance amount remaining unutilised.

The unutilised amount shall be kept in a separate bank account and shall not be co-mingled with other funds. The above statement shall be given till the time the issue proceeds have been fully utilised or the purpose for which they were raised, has been achieved.

Annual Impact Report

A Social Enterprise, which is either registered with or has raised funds through a Social Stock Exchange or a Stock Exchange, as the case may be, shall be required to submit an annual impact report to the Social Stock Exchange or the Stock Exchange in the format specified by the Board from time to time. The annual impact report shall be audited by a Social Audit Firm employing Social Auditor.

“Social Auditor” means an individual registered with a self-regulatory organization under the Institute of Chartered Accountants of India or such other agency, as may be specified by the Board, who has qualified a certification program conducted by National Institute of Securities Market and holds a valid certificate.

“Social Audit Firm” means any entity which has employed Social Auditors and has a track record of minimum three years for conducting social impact assessment.

All Social Enterprises (SEs) will have to provide duly audited Annual Impact Report (AIR) to SSE within 90 days from the end of Financial Year. Guidance notes given:

https://www.sebi.gov.in/legal/circulars/sep-2022/framework-on-social-stock-exchange_63053.html

The AIR should at a minimum, cover the aspects -

1. Strategic Intent and Planning,
2. Approach,
3. Impact Score Card

Event Based Intimations and disclosures – Applicable to all Social Enterprises

- a. To frame a policy for determination of materiality, duly approved by its board or management, as the case may be, which shall be disclosed on the Social Stock Exchange(s) or the Stock Exchange(s).
- b. The board and management of the Social Enterprise to authorize one or more of its Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to the Social Stock exchange(s) or the Stock Exchange(s), as the case may be and the contact details of such personnel shall also be disclosed to the Social Stock Exchange(s) or the Stock Exchange(s).
- c. To disclose to the Social Stock Exchange(s) or the Stock Exchange(s) where the SE is registered or has listed its specified securities, as the case may be, any event that may have a material impact on the planned achievement of outputs or outcomes.

This disclosure shall be made as soon as reasonably possible but not later than seven days or within such period as may be specified by the Board, from the occurrence of the event and shall comprise details of the event including the potential impact of the event and the steps being taken by the Social Enterprise to address the same.

- d. The Social Enterprise to provide updates on a regular basis along with relevant explanations in respect of the disclosures made above till the time the concerned event remains material.

- e. To provide specific and adequate reply to all queries raised by the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, with respect to any events or information. The Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, shall disseminate the information and clarification as soon as reasonably practicable.
- f. The Social Enterprise may *suo moto* confirm or deny any reported event or information to Social Stock Exchange(s) or the Stock Exchange(s), as the case may be.
- g. The Social Enterprise shall disclose on its website all such events or information which have been disclosed to the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, under this regulation.

Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

“Social Impact Fund” means an Alternative Investment Fund which invests primarily in securities, units or partnership interest of social ventures or securities of social enterprises and which satisfies the social performance norms laid down by the fund.

“Social Units” means units issued by a social impact fund or schemes of a social impact fund to investors who have agreed to receive only social returns or benefits and no financial returns against their contribution.

In case of a social impact fund which invests only in securities of not for profit organizations registered or listed on a social stock exchange, the minimum value of investment by an individual investor shall be two lakh rupees;”

The following conditions shall apply to social impact funds in addition to the conditions:

- a. at least seventy-five percent of the investable funds shall be invested in unlisted securities or partnership interest of social ventures or in units of social ventures or in securities of social enterprises. An existing social impact fund may invest the remaining investable funds in securities of not for profit organizations registered or listed on a social stock exchange with the prior consent of atleast 75% of the investors by value of their investment;

- b. such funds may accept grants, provided that such utilization of such grants shall be restricted to the above.

Disclaimer: This Article is for educational purposes and to give you general information and a general understanding of the law. It is not professional advice to anyone and therefore neither the Author nor the Organization accepts any responsibility whatsoever. You must not rely on the information on the Article as an alternative to professional advice from a professional service provider/ attorney/ legal advisor.

Please feel free to contact the undersigned in case you require any further information/ clarification on the above article

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Article 3

BRIEF HISTORY OF SEXUAL HARASSMENT AT WORKPLACE IN INDIA

Women in India are recognized and granted protection under the Constitution of India. The preamble to the Constitution, inter alia, guarantees social, economic, and political justice, equality of status, opportunity, and the dignity of the individual. Notwithstanding these avenues of protection, for a long time working Indian women did not practically receive the protections granted under the Constitution and national or state legislations. It was obvious that women needed specific rules to enforce their rights.

In 1992, Bhanwari Devi, a Dalit woman who was a social worker employed with the Rural Development Programme of the Government of Rajasthan was gang raped. The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace. Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India. The Supreme Court framed guidelines and issued directions to the Union of India for a law to combat workplace sexual harassment. The main intention of these guidelines was to provide a platform for redressal and grievance mechanisms against workplace sexual harassment. It was these guidelines that motivated the formation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH).

Before the introduction of the POSH Law, there was no statutory remedy that directly addressed workplace sexual harassment except the Indian Penal Code, 1860. The only sections under the Indian Penal Code that could be used for sexual harassment are under:

- Section 354 (Outraging the modesty of a woman) and
- Section 509 (Insulting the modesty of a woman).

Women who were sexually harassed at the workplace had to go to the police and file a complaint.

After 16 years of Vishaka, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("the Act") was enacted with the objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto

POSH COMPLIANCE – MORAL RESPONSIBILITY OF EVERY EMPLOYER

Sexual Harassment of women is not only a gross violation of her fundamental right to live with equality and dignity but is a crime against humanity. As we are moving towards becoming a better nation economically, our business houses should not only aim at maximizing their profits but should also make sure that they comply with all applicable laws so as to sustain this development in long run.

One such law is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which came into being on December 09, 2013. The Act was introduced by the Ministry of Law and Justice with an objective to provide a safe working environment for women.

100% Compliance of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is not only an obligation of employers (any person responsible for the management, supervision and control of the workplace and management includes the person or board or committee responsible for formulation and administration of policies for such organization) but is their moral responsibility to ensure that no provision of this Act is left non-complied.

The Act applies to all entities (company, LLP, OPC, sole proprietorship firms, partnership firms) irrespective of their nature, size, scale of operations or location.

COMPLIANCE UNDER POSH

S. No	One Time Compliance	On Going Compliance
1.	To have a policy on prevention, prohibition and redressal of sexual harassment	To file an annual report with the District Officer at the end of each calendar year
2.	To set up an Internal Complaints Committee in accordance with Section 4 of the Act	To organize workshops and awareness programs at regular intervals for sensitizing employees with provisions of the Act
3.	To display the policy at office premises the list of ICC members along with their contact details	Legal training of ICC Members
4.		To facilitate: i. ICC in handling POSH related complaints ii. Help the aggrieved women in registering criminal case, if she so desires.

PENALTY FOR NON-COMPLIANCE WITH THE PROVISIONS OF THE ACT

- **First Time Offence : Fine Upto 50,000/-**
- **Repeated Offence : Fine Upto 50,000/-**

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Please feel free to contact the undersigned in case you require any further information/ clarification on the above article

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Case Laws

CASE LAWS

1. In **Solomon Selvaraj vs Indrani Bhagawan Singh**, the Supreme Court held that an application to sue as indigent under Order XXXIII Rule 1 of Code of Civil Procedure can be rejected if it is found that the suit is barred by res judicata.
2. In **Anjali vs Lokendra Rathod**, the Supreme Court observed that the deceased's Income Tax Return can be considered for computation of his annual income in Motor Accident Compensation Claim cases.
3. In **Sudesh Chhikara Vs. Ramti Devi & Anr**, the Supreme Court observed that an appeal as a whole cannot be treated as abated merely for failure to substitute the legal representative of some of respondents who died during pendency of the appeal.
4. In **Anjali Bhardwaj vs CPIO, SC (RTI Cell)**, the Supreme Court dismissed a petition which sought for details of the Supreme Court collegium's meeting of December 12, 2018 under the Right to Information Act, observing that the discussion cannot be disclosed to the public and that only the final decision of the Collegium need to be uploaded in the website.
5. In **Kamla Neti (D) vs Special Land Acquisition Officer**, the Supreme Court held that a female member of the scheduled tribe is not entitled to any right of survivorship under the provisions of Hindu Succession Act.

6. In **State of Uttar Pradesh Vs. Karunesh Kumar & Ors.**, the Supreme Court has reiterated that a candidate who has participated in the selection process adopted under a specific set of rules is estopped and has acquiesced himself from questioning it thereafter. However, the court has further stated that a change in the selection process will not amount to changing 'rules of the game. The principle that the 'rules of game cannot be changed after the game has started' will apply only when the basic qualification is sought to be changed after the notification.

Compliance Checklist



COMPLIANCE CALENDAR FOR JANUARY 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	31				

Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of December 2022. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan.
- Due date for deposit of TDS for the period October 2022 to December 2022 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, in the month of November, 2022
- Quarterly statement of TCS for the quarter ending December 31, 2022
- Quarterly TCS certificate in respect of quarter ending December 31, 2022
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of December, 2022
- Quarterly statement of TDS for the quarter ending December 31, 2022
- Quarterly return of non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending December 31, 2022

FEMA Related Compliances

- Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market

Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File Monthly Return (Form No.5) for employees leaving / joining during the Previous Month
- File monthly return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form No.3(IF))
- File monthly return of members joining service during the previous month (Form No.F4(PS))

GST Related Compliance

- GSTR 1 (Monthly) for December
- GSTR 3B for December (Monthly)
- GSTR-1 (Oct-Dec, 2022) for QRMP

Compliance under Prevention of Sexual Harassment at Workplace Act, 2013

- Due Date for Annual filing of POSH Return

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