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ICMENTORS NEWSLETTER

MONTHLY NEWSLETTER FOR COMPLIANCE PROFESSIONALS



Newsletter Featuring

- Important Regulatory Updates / Notifications
- Articles (SEBI, Company Law, IBC, Telecom Sector)
- FAQs on Trademark
- Important Case Laws (Income Tax & GST)

Published By

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FROM THE EDITORS DESK



"Knowledge has to be improved, challenged and increased constantly, or it vanishes." Peter Drucker

Dear Professional Colleagues,

We are delighted to present the second edition of "**Icmentors Newsletter**". We are very happy to see the response of our beloved readers. It gives us motivation and inspiration to bring valuable regulatory updates, articles and case laws for our beloved readers.

The Bhagwad Gita gives us this wisest message "You are what you think you are. Your thoughts make and define you." If you think you're a happy person, you become happy. If you let sad thoughts take over your mind, you tend to become a sad person. If you feel that you will nail a presentation in a meeting, then chances are that you will. However, if you're not prepared and feel nervous then you might make a blunder.

The objective of this newsletter is to share knowledge among professionals /entrepreneurs/ startups and national and international business communities and to publish articles on latest laws with best research. As we believe that knowledge has no borders, articles from many parts of the world are welcomed for publication in the newsletter.

We are sure that our newsletter will provide top-quality regulatory updates, articles, case laws, case studies and due date compliance calendar that will continue to help everyone interested in doing compliance of a business. We, again, hope that the newsletter will continue to be an important conduit for corporate legal information on a very broad international level.

Happy Learning.
Editorial Board

OUR EDITORIAL TEAM

Meet our editorial team. Our team thrives on innovation and creation and is always working on improving and expanding our research to further benefit the readers. Icmntors Newsletter is a result of team efforts wherein every member of team puts their sincere efforts in bringing this newsletter.

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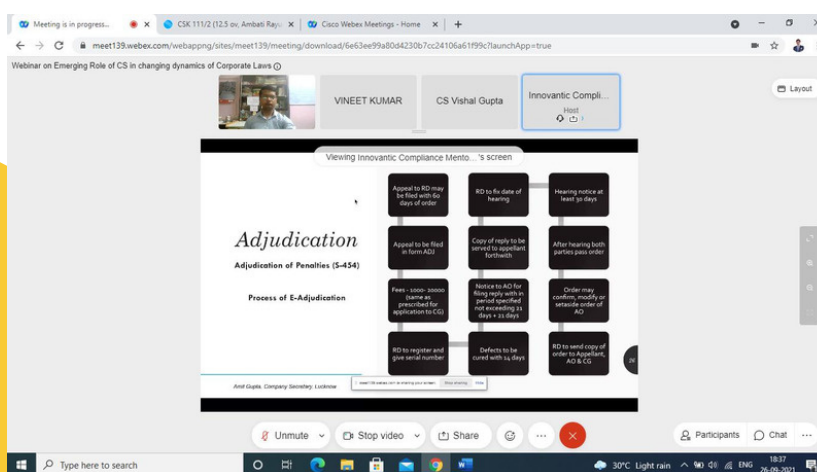
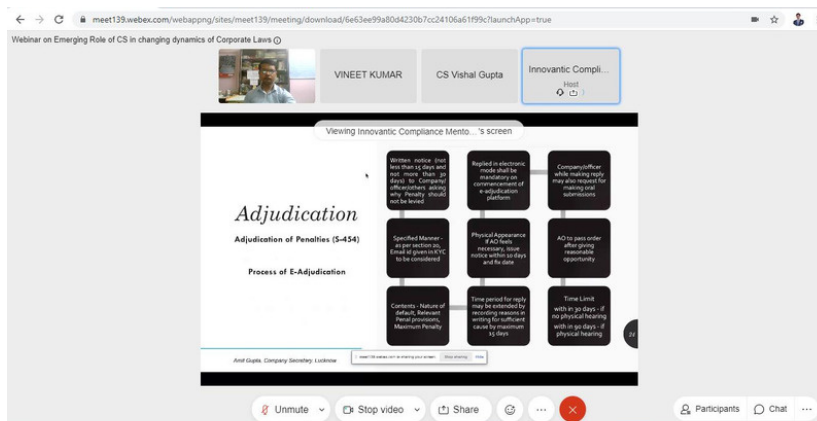
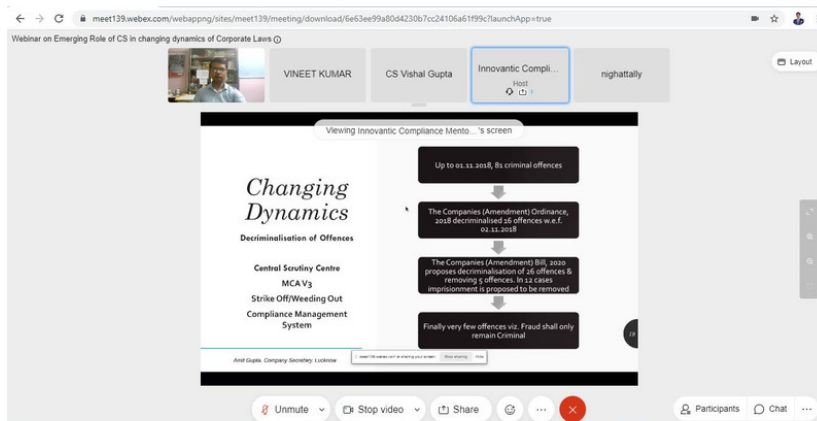
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WEBINAR ON "EMERGING ROLE OF CS IN CHANGING DYNAMICS OF CORPORATE LAWS"

Innovantic Compliance Mentors LLP organised its second webinar on the topic "Emerging Role of CS in changing dynamics of Corporate Laws" on 26th September 2021. Eminent Speaker was CS Amit Gupta, Member, Northern India Regional Council (ICSI), Practicing Company Secretary and Insolvency Professional. Members of professional bodies attended the webinar.



MINISTRY OF CORPORATE AFFAIRS**Extension of time for holding Annual General Meeting for the Financial Year ended on March 31, 2021**

The Ministry of Corporate Affairs has extended the time for holding of Annual General Meeting by the companies, for a period of two months beyond the due date by which the companies are required to conduct their AGMs for the financial year 2020-21 ended on March 31, 2021.

Accordingly, respective ROCs have issued extension orders, which are available at the link below:

<https://mca.gov.in/content/mca/global/en/data-andreports/rd-roc-info/extension-agm.html>

Extension of tenure of the Company Law Committee

The tenure of the Company Law Committee is further extended by one year from the date of expiry of the last order i.e. till September 16, 2022.

For details: <https://mca.gov.in/bin/dms/getdocument?mids=%252BpaAmGaQ%252Bcc0bTDekaOWIQ%253D%253D&type=open>

Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014-reg.

In view of the extraordinary disruption caused due to COVID-19 pandemic, the MCA has decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the Companies is submitted by October 31, 2021 then the same would not be viewed as violation of Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014. Consequently, the cost audit report for the financial year ended on March 31, 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company.

However, in case a Company has availed extension of time for holding Annual General Meeting, then e-form CRA-4 may be filed within the timeline provided under the proviso to Rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014.

SECURITIES LAWS & CAPITAL MARKETS**Revised guidelines for Liquidity Enhancement Scheme in the Equity Cash and Equity Derivatives Segments**

The SEBI has modified that liquidity enhancement schemes which provides that the Scheme shall have prior approval of the Governing Board of the Stock Exchange which will be valid for one year. The Governing Board of the Stock Exchange may give yearly approval till the time the scheme is in operation. Further, its implementation and outcome shall be monitored by the Governing Board at quarterly intervals. The Stock Exchange shall introduce liquidity enhancement schemes on any security. Once the scheme is discontinued, the scheme can be re-introduced on the same security. SEBI vide its circular dated April 23, 2014 permitted stock exchanges to introduce liquidity enhancement schemes in the equity cash and equity derivatives segments to enhance liquidity in illiquid securities.

SEBI may dilute certain clauses in controversial MF compensation circular

The SEBI could dilute certain clauses in the controversial compensation circular introduced for the mutual fund (MF) industry that required fund houses to invest a fifth of fund managers' and other senior officials' salaries in their own schemes. Sources said SEBI and industry representatives have got into a huddle to ensure smooth implementation of the new norms ahead of the October 1 deadline. The industry has requested SEBI to make some changes, citing implementation challenges, and expect the regulator to issue a revised circular in coming weeks.

Alignment of interest of Asset Management Companies ('AMCs') with the Unitholders of the Mutual Fund Schemes

SEBI has decided that based on the risk value assigned to the schemes, asset management companies ('AMCs') shall invest minimum amount as a percentage of assets under management ('AUM') in their schemes as provided in the Annexure to this circular. The mandatory contribution already made by the AMCs in compliance with the applicable MF Regulations shall not be withdrawn. However, such contribution can be adjusted against the investment required by the AMC as per this circular.

SECURITIES LAWS & CAPITAL MARKETS**SEBI moves Supreme Court against SAT order on PNB Housing Fin's 4,000 Crore preference issue**

PNB Housing Finance said capital markets regulator SEBI has approached the Supreme Court against the Securities Appellate Tribunal's order in the matter related to the company's 4,000 crore equity capital raise plan. Pronouncing its order on August 9, the two-member bench of the Securities Appellate Tribunal (SAT) gave a split verdict, saying there was difference of opinion between the members of the bench. SAT directed that its interim order of June 21, 2021 will continue till further orders, restraining PNB Housing Finance from disclosing the voting results by the shareholders on the fund raise plan.

Linking of PAN with Aadhaar

As per Central Board of Direct Taxes (CBDT) notification G.S.R 112(E) dated February 13, 2020, the Permanent Account Number (PAN) of a person allotted as on July 01, 2017 shall become inoperative if it is not linked with Aadhaar by September 30, 2021 or any other date specified by CBDT.

Since, PAN is sole identification number for all transactions in the Securities Market, in view of the said CBDT notification, all SEBI registered entities including Market Infrastructure Institutions (MIs) should ensure compliance of said notification and accept only operative PAN (i.e., linked with Aadhaar number) by the client while opening new accounts post September 30, 2021 or any other date specified by CBDT.

Also, all the existing investors are advised to ensure linking of their PAN with Aadhaar number prior to Sept 30, 2021 or any other date specified by CBDT for continual and smooth transactions in securities market and to avoid any consequences of noncompliance of said notification on their transactions in securities market.

Fraudulent trading: SEBI confirms directions against ex-CNBC anchor, family

SEBI has confirmed earlier directions passed against former CNBC Awaaz anchor Hemant Ghai, his wife and mother that barred them from the capital markets for indulging in fraudulent trading practices.

In an order passed late on Thursday, SEBI said the findings in the order are "prima facie" and that a detailed investigation in the matter is in progress. In its interim order passed in January, SEBI had noted that Hemant Ghai had advance information about the recommendations to be made on the "Stock 20-20" show, co-hosted by him, and he directly or indirectly used it to his advantage.

SECURITIES LAWS & CAPITAL MARKETS**SEBI bans 85 entities from capital markets for fraudulent trading**

SEBI barred total 85 entities, including Sunrise Asian Ltd, from the capital markets for up to one year for manipulating the company's share price. In its order, the regulator restrained Sunrise Asian and its then five directors from the capital markets for one year and the 79 connected entities for six months. The SEBI had conducted an investigation in the scrip of Sunrise Asian for the period from October 16, 2012 to September 30, 2015, based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. In its probe, SEBI found that pursuant to allotment of shares under the scheme of amalgamation, Sunrise Asian and its then directors had devised an arrangement whereby 83 connected entities had manipulated the price of the scrip in four patches of trading during the investigation period, thereby violating Prohibition of Fraudulent and Unfair Trade Practices norms.

IL&FS moves SC against show-cause notice by SEBI

IL&FS Financial Services has moved the Supreme Court against a show-cause notice issued by market regulator Securities and Exchange Board of India. At the heart of the controversy is whether SEBI has the powers to initiate regulatory action against entities placed under moratorium as per Insolvency Bankruptcy Code (IBC). The case has been admitted by the apex court and a two-member bench comprising Justices Vineet Saran and Dinesh Maheshwari will be hearing it.

Introduction of T+1 rolling settlement on an optional basis

SEBI has introduced T+1 rolling settlement on an optional basis. With effect from January 01, 2022, a Stock Exchange may choose to offer T+1 settlement cycle on any of the scrips, after giving an advance notice of at least one month, regarding change in the settlement cycle, to all stakeholders, including the public at large, and also disseminating the same on its website. After opting for T+1 settlement cycle for a scrip, the Stock Exchange shall have to mandatorily continue with the same for a minimum period of 6 months. Thereafter, in case, the Stock Exchange intends to switch back to T+2 settlement cycle, it shall do so by giving 1-month advance notice to the market. T+1 means that settlements will have to be cleared within one day of the actual transactions taking place.

SECURITIES LAWS & CAPITAL MARKETS**Position Limits for Currency Derivatives Contracts**

SEBI has revised the client level position limits for Currency Derivatives Contracts, per stock exchange. The revised position limits shall also apply to Non Resident Indians (NRIs) and Category II FPIs that are individuals, family offices, and corporates. The position limits for Category I FPIs and Category II FPIs (other than individuals, family offices, and corporates) shall continue to remain the same as specified by SEBI. Stock Exchanges/ Clearing Corporations are advised to specify additional safeguards/ conditions, as deemed fit, to manage risk and to ensure orderly trading.

SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021

SEBI vide gazette notification dated September 07, 2021 amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette. The amendments, inter-alia, provides the "non-convertible debt securities', 'non-convertible redeemable preference shares', 'non-convertible securities', 'perpetual debt instrument' and 'perpetual non-cumulative preference share' shall have the same meaning as defined under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. Further, the regulation 15, and regulation 16 to regulation 27 w.r.t. the corporate governance provisions shall apply to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed nonconvertible debt securities of Rs. 500 crore and above. However, in case an entity that has listed its nonconvertible debt securities triggers the specified threshold of Rs. 500 crore during the course of the year, it shall ensure compliance with these provisions within six months from the date of such trigger.

SC holds SEBI plea for two weeks in PNB Housing case

The Supreme Court put off by two weeks an appeal by the SEBI against the Securities Appellate Tribunal (SAT) order in the PNB Housing Finance case on the lender's 4,000 crore equity capital raise plan. A bench headed by Justice L Nageswara Rao clarified that the interim order restraining PNB Housing Finance from disclosing the voting results by shareholders on its fund raise plan will continue in the meantime.

SECURITIES LAWS & CAPITAL MARKETS**Future-RIL deal: SC stays proceedings in Delhi HC, asks NCLT, CCI, SEBI not to pass final orders for 4 weeks**

In a major relief to Future Group, the Supreme Court on September 09, 2021 stayed all proceedings before the Delhi High Court in matter related to the implementation of an award by Singapore's Emergency Arbitrator (EA) restraining Future Retail Ltd. (FRL) from going ahead with its 24,731 crore merger deal with Reliance Retail. A Bench, headed by Chief Justice of India NV Ramana, in a consent order, has directed NCLT, SEBI and CCI not to pass any final order relating to the case for four weeks.

Coffee Day Enterprises pays Rs. 69 lakh to settle case with SEBI

Coffee Day Enterprises has paid Rs 69 lakh to settle a case, pertaining to alleged disclosure norm violations, with the SEBI. Following issuance of a show cause notice, the company filed an application dated February 18 this year for settlement under the SEBI (Settlement Proceedings) Regulations, 2018.

One of the allegations against the company was that no limited review report was placed before the board of directors at its meetings dated November 13, 2019 and January 29, 2020 wherein the financial results for the quarters ending June 30, 2019 and September 30, 2019 were approved, respectively. Further, the company submitted unaudited financial results for the quarters ended June 30, 2019 and September 30, 2019, but the same were not subjected to limited review by its statutory auditors.

Consultation Paper on Review of the SEBI (Settlement Proceedings) Regulations, 2018

SEBI has placed a consultation paper on its website for public comments on the proposed amendments in the Settlement Regulations with the objective of taking into consideration the concerns of various stakeholders, latest by October 14, 2021 by 05:00PM, in the prescribed format. SEBI has proposed to revise the Settlement Regulations to harmonize them with the specific nature of violations done by entities, in a bid to make the mechanism more effective.

Yes Bank, 6 others settle case with SEBI for Rs. 1.65 crore

Yes Bank and six individuals have settled a case with the SEBI by paying Rs. 1.65 crore as settlement amount. Last October, SEBI issued a show-cause, alleging the private lender had made a selective disclosure on Feb 13, 2019, highlighting 'NIL' divergence from RBI norms in its asset classification and provisions, which had a significant positive impact on price movement.

SECURITIES LAWS & CAPITAL MARKETS**SEBI probe finds Poonawalla Fincorp MD, others guilty of Insider Trading**

The SEBI passed an interim order banning Poonawalla Fincorp's Managing Director Ajay Bhutada and seven others from the securities market after they were found guilty in an insider trading case. SEBI's investigation found that Bhutada had shared information about Adar Poonawalla's Rising Sun Holdings' proposed takeover of Magma Fincorp in his capacity as MD and CEO of Poonawalla Finance. The investigation found that Bhutada, who was in possession of the Unpublished Price-sensitive Information (UPSI) regarding the acquisition, and shared the same with Saumil Shah, Rakesh Bhojgadhiya and Rakesh Bhojgadhiya HUF.

Clarifications with respect to Circular dated April 28, 2021 on 'Alignment of interest of Key Employees ('Designated Employees') of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes'

SEBI, vide its Circular dated April 28, 2021, has provided that a part of the compensation of Key Employees of the AMCs shall be paid in the form of units of the schemes in which they have a role or oversight. In this regard, SEBI has clarified that junior employees (a designated employee of the AMC below the age of 35 years excluding CEO, head of any department and Fund Managers) shall be required to invest 10% during October 01, 2021 to September 30, 2022 and 15% during October 01, 2022 to September 30, 2023, in the MF units. However, all junior employees shall be mandatorily required to invest 20% w.e.f. October 01, 2023 onwards. Further, it has been provided that other designated employees shall be mandatorily required to invest 20% in the MF units w.e.f. October 01, 2021.

SEBI in talks to redefine promoter norms

SEBI is in talks with other regulators on the transition from the traditional concept of 'promoters' to that of 'controlling shareholders' so that corporate control is accurately reflected. As a part of this process, the regulator is reaching out to the Reserve Bank of India (RBI), Ministry of Corporate Affairs (MCA) and Insurance Regulatory Development Authority of India (IRDAI) in an attempt to bring a uniform framework. The market regulator is of the view that the current concept of promoter and promoter group has become irrelevant for the new-age companies, especially start-ups since these are not family-owned businesses but backed by institutional investors.

SECURITIES LAWS & CAPITAL MARKETS**SEBI drops proceedings against RIL in alleged incorrect disclosures matter**

SEBI has disposed of adjudication proceedings without imposing any penalty on Reliance Industries Ltd. in a matter related to alleged incorrect disclosure of diluted earnings per share in its financial results more than 13 years ago. SEBI decided not to impose any penalty for the alleged violations mainly on two grounds, including that the amendment to the relevant law that made incorrect disclosure of information by a listed company punishable came into force prospectively from March 2019. Besides, the regulator mentioned about its pending appeal before the Supreme Court against a Securities Appellate Tribunal (SAT) order.

SEBI might soon allow PE players to snap up, set up their own AMCs

Private Equity (PE) players may soon get more leeway to snap up asset management companies (AMCs) or set up their own. Market regulator SEBI is likely to further ease mutual fund (MF) ownership rules. The issue will be taken up at its board meeting scheduled for Tuesday. The board is also likely to ease the framework governing superior voting rights (SR shares), in a bid to give more flexibility to the founders of new-age companies to raise capital before going public. SEBI could also operationalise the framework to allow setting up of gold spot and social stock exchanges. At present, PE firms are not banned from acting as a MF sponsor. However, the prerequisites make it difficult for them to acquire or run a fund house.

SEBI disposes of proceedings against Kotak Mahindra Bank

SEBI disposed of proceedings against Kotak Mahindra Bank in a matter pertaining to the breach of investment limit in the scrip of Sathavahana Ispat Ltd by two foreign portfolio investors. However, in the same matter, SEBI has levied a fine of Rs 1 lakh on two foreign portfolio investors (FPIs) -- Heshika Growth Fund and Plutus Terra India Fund -- to be paid jointly and severally by them. Two separate orders were issued by the SEBI on September 24, 2021 in this regard. The proceedings against Kotak Mahindra Bank were initiated in its capacity as a designated depository participant (DDP). The charges levelled against the Noticee No.1, i.e., Kotak Mahindra Bank Limited do not stand established and hence no penalty is to be imposed upon it," SEBI said.

SECURITIES LAWS & CAPITAL MARKETS**SEBI revises risk management framework for mutual funds**

To protect the interests of investors and to ensure that mutual funds render high standard of service, SEBI has come out with a revised risk management framework.

SEBI's new RMF terms risk management as an independent and specific function of the asset management company. For each risk such as investment risk, compliance risk, operational risk, and cyber security the asset management company should appoint a dedicated risk officer. In addition to these officials, there should be a chief risk officer (CRO) in each asset management company.

The RMF seeks to clearly define the roles of risk personnel and mention the same on the fund house's website. Though the CRO is responsible for the overall risk, along with the management, both board of AMC and trustees should also be responsible

SEBI proposes higher net worth for brokers to tackle possible risks

SEBI has proposed hiking the net worth requirement for trading members to at least 1 crore in two years as well as the net worth thresholds for clearing members. These proposals are part of efforts to mitigate possible risks amid increasing investor participation in the securities market.

SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

The SEBI has merged the SEBI (Issue of Sweat Equity) Regulations, 2002 ("Sweat Equity Regulations") and SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") into a single regulation the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, with a view to facilitate smooth operation of schemes by companies for the benefit of their employees while preventing any possible manipulation and matters connected therewith or incidental thereto. The companies will be allowed to provide share based employee benefits to employees, who are exclusively working for such company or any of its group companies including its subsidiary or its associate.

BANKING / INSURANCE**RBI to set up five-member panel on New Umbrella Entity (NUE) licences**

The Reserve Bank of India (RBI) will set up a committee to scrutinise applications and give recommendations on New Umbrella Entity (NUE) licences. NUEs will establish their own payment infrastructure to compete with National Payments Corporation of India (NPCI). The government hopes to build a settlement system similar to the Unified Payments Interface (UPI) with the NUEs. The system will be focussed on small and medium enterprises, merchants and consumers.

12 entities express interest in Yes Bank's ARC proposal

Yes Bank Limited has received expressions of interest from a dozen investors for setting up an Asset Reconstruction Company (ARC) with the private sector lender as the minority partner. Some of the private equity firms who have shown interest include Brookfield Asset Management, Ares SSG, Oaktree Capital Management, JC Flower, Vardhe Capital, CarVal Investors, Avenue Asia Group, Bain Capital's India Resurgent Fund, Apollo Global Management, Rohatyn Group and Silver Point Capital.

UPI transactions cross 3.5 billion in August

The volume of transactions made through the Unified Payments Interface (UPI) channel stood at 3.55 billion in August, up from 3.24 billion in the previous month. The value of transactions rose to Rs. 6.39 lakh crore from Rs. 6.06 lakh crore in July, the National Payments Corporation of India (NPCI) said on September 01, 2021.

RBI extends current account rules implementation deadline to October 31, 2021 after reports of hassles

The Reserve Bank of India on August 04, 2021 allowed time to banks till October 31 to implement changes on the current account front, following reports of small businesses being hit with account freezes in the last few days. The central bank said the circular is aimed at enforcing credit discipline amongst the borrowers as well as to facilitate better monitoring by the lenders, but made it clear that a graded approach had been prescribed to banks on opening and operating of current accounts and cash credit / overdraft CC / OD facilities.

BANKING / INSURANCE**RBI enhances scope of tokenisation to ensure security of card data**

In a bid to ensure security of card data, the Reserve Bank of India (RBI) has enhanced the scope of tokenisation and permitted card issuers to act as Token Service Providers (TSP). Under tokenisation services, a unique alternate code is generated to facilitate transactions through cards. The RBI on September 07, 2021 extended the device-based tokenisation to Card-on-File Tokenisation (CoFT) services, a move that will bar the merchants from storing actual card data.

NPCI, Fiserv to open RuPay API platform

The National Payments Corporation of India (NPCI) has tied up with Nasdaq-listed fintech firm Fiserv to launch an Application Programming Interface (API) platform for startups and banks looking to build credit card-based products on top of the RuPay rails. They said the collaboration will help faster and cheaper on boarding of customers and merchants by banks as well as enable fintech firms to build out new models of digital interfaces for customers launching RuPay credit card products.

IRDAI (Trade Credit Insurance) Guidelines, 2021

The Insurance Regulatory and Development Authority of India (IRDAI) has issued revised guidelines on Trade Credit insurance considering the evolving insurance risk needs of various sectors and response to changing market conditions. The guidelines shall come into force with effect from 1st November, 2021.

Karnataka High Court directs IRDAI to ensure Insurance Companies transfer unclaimed amounts to Senior Citizens Welfare Fund

The Karnataka High Court on September 08, 2021 directed the Insurance Regulatory and Development Authority of India (IRDAI) to ensure that all insurance companies transfer unclaimed amounts to the Senior Citizens Welfare Fund, in line with the master circular issued by the regulatory body in 2017.

BANKING / INSURANCE**Application for Aadhaar e-KYC Authentication Licence**

In terms of Section 11A of the Prevention of Money Laundering Act, 2002, entities other than banking companies may, by notification of the Central Government, be permitted to carry out authentication of client's Aadhaar number using e-KYC facility provided by the Unique Identification Authority of India (UIDAI). A detailed procedure for processing of applications under the aforementioned Section for use of Aadhaar authentication services by entities other than banking companies has been provided by the Department of Revenue, Ministry of Finance.

Accordingly, Non-Banking Finance Companies (NBFCs), Payment System Providers and Payment System Participants desirous of obtaining Aadhaar Authentication License - KYC User Agency (KUA) License or sub-KUA License (to perform authentication through a KUA), issued by the UIDAI, may submit their application to this Department for onward submission to UIDAI.

Extension of timelines for sale and renewal of short term Covid specific Health Insurance Policies

Reference is invited to the short term Covid specific health insurance policies permitted to be offered by all Insurers. All insurers are permitted to offer and renew short term Covid specific health policies up to 31.03.2022. Accordingly, Corona Kavach Policies offered as per Guidelines on Covid Standard Indemnity based Health Policy and Corona Rakshak Policies offered as per Guidelines on Covid Standard benefit based Health Policy are also permitted to be offered and renewed by all insurers up to 31.03.2022.

Banks look to resolve large assets even as NARCL gets set up

Banks are continuing with their regular practice of putting up large stressed assets for sale to Asset Reconstruction Companies (ARCs) and other investors even as the process for setting up the The National Asset Reconstruction Co. Ltd (NARCL) has been set in motion. The possibility of quicker and better-yielding resolutions in some assets is the reason behind this, according to bankers and other industry executives.

DIRECT TAX**Vodafone, Cairn Flag Terms For Settling Retro Tax Cases**

Vodafone Group and Cairn Energy have raised concerns over proposed terms for settling retrospective tax cases that require them to provide declarations from stakeholders that they will not press any claims after the disputes are resolved.

Income-tax (29th Amendment) Rules, 2021

The Central Board of Direct Taxes notifies Income-tax (29th Amendment) Rules, 2021 to amend Income-tax Rules, 1962. The Amendment inserts a provision prescribing income-tax authority under second proviso to clause (i) of sub-section (1) of section 142 as follow: Rules12F: The Rule provides that the prescribed income-tax authority under second proviso to clause (i) of sub-section (1) of section 142 shall be an income-tax authority not below the rank of Income-tax Officer who has been authorised by the Central Board of Direct Taxes to act as such authority for the purposes of that clause.

No Section 194A TDS on Interest payment to Scheduled Tribe by Scheduled Bank (Notification No. 110, Dated September 17, 2021)

CBDT notifies that no Section 194A TDS will be deducted by 'Scheduled Bank on payment of interest, other than interest on securities to Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in section 10(26) if the payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees.

CBDT notifies pension fund, namely '2452991 Ontario Limited' Section 10(23FE) (Notification No. 111, Dated September 16, 2021)

CBDT notifies pension fund, namely, '2452991 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after September 16, 2021 but on or before March 31, 2024 subject to fulfilment of certain conditions.

CBDT notifies pension fund, namely '276522 Ontario Limited' Section 10(23FE) (Notification No. 112, Dated September 16, 2021)

CBDT notifies pension fund, namely, '276522 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after September 16, 2021 but on or before March 31, 2024 subject to fulfilment of certain conditions.

DIRECT TAX**Notification No. 114 (September 20, 2021)**

The Central Government hereby specifies the pension fund, namely, the BCI IRR India Holdings Inc., as the specified person for the purposes of the sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before March 31, 2024 subject to the fulfilment of the certain conditions.

Notification No. 115 (September 20, 2021)

The Central Government hereby notifies for the purposes of the clause (46) of section 10 of the Incometax Act, 1961, 'Gujarat Electricity Regulatory Commission', Gandhinagar (PAN AAAAG0638C), a commission established by the state government of Gujarat, in respect of the certain specified income arising to the Commission subject to fulfilment of certain conditions.

No Section 194A TDS on Interest payment to Scheduled Tribe by Scheduled Bank (Notification No. 110, Dated September 17, 2021)

CBDT notifies that no Section 194A TDS will be deducted by 'Scheduled Bank on payment of interest, other than interest on securities to Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in section 10(26) if the payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees.

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CBDT notifies pension fund, namely, '276522 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after September 16, 2021 but on or before March 31, 2024 subject to fulfilment of certain conditions.

**INDIRECT TAX
GOODS & SERVICE TAX (GST)****Online food delivery services may attract GST soon.**

There could be bad news for individuals who frequently order from online food delivery platforms like Zomato and Swiggy. Food delivery services offered by app-based e-commerce operators (ECOs) may soon attract Goods and Services Tax (GST). At the upcoming GST Council meeting to be held on September 17, a proposal to levy GST on restaurant delivery services offered by ECOs such as Swiggy and Zomato will be discussed.

Recommendations of 45th GST Council Meeting (September 17, 2021)

The GST Council's 45th meeting (first physical GST council meeting since pandemic) was held on September 17, 2021 in Lucknow under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has inter-alia made the following recommendations relating to changes in GST rates on supply of goods and services and changes related to GST law and procedure:

- Life-saving drugs Zolgensma and Viltepso used in treatment of Spinal-Muscular Atrophy exempted from GST when imported for personal use;
- Extension of existing concessional GST rates on certain COVID-19 treatment drugs upto December 31, 2021;
- GST rates on 7 other medicines recommended by Department of Pharmaceuticals reduced from 12% to 5% till December 31, 2021;
- GST rate on Keytruda medicine for treatment of cancer reduced from 12% to 5%;
- GST rates on Retro fitment kits for vehicles used by persons with special abilities reduced to 5%;
- GST rates on Fortified Rice kernels for schemes like ICDS reduced from 18% to 5%; Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' is exempt from GST;
- Services by cloud kitchens/central kitchens are covered under 'restaurant service', and attract 5% GST [without ITC];
- Ice cream parlor sells already manufactured ice-cream. Such supply of ice cream by parlors would attract GST at the rate of 18%;
- Overloading charges at toll plaza are exempt from GST being akin to toll;
- The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption; and
- On the issue of compensation scenario, a presentation was made to the Council wherein it was brought out that the revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22 etc.

**INDIRECT TAX
GOODS & SERVICE TAX (GST)****Clarification on doubts related to scope of “Intermediary” - Circular No. 159/15/2021- GST**

The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

Clarification in respect of certain GST related issues - Circular No. 160/16/2021- GST

With effect from January 01, 2021, section 16(4) of the CGST Act, 2017 was amended vide the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Accordingly, for availment of ITC on or after January 01, 2021, in respect of debit notes issued either prior to or after January 01, 2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to January 01, 2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on January 01, 2021.

Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017 - Circular No. 161/17/2021- GST

Supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of section 2(6) of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

**INDIRECT TAX
GOODS & SERVICE TAX (GST)****CBIC waives off Late Fees for one day to Taxpayers facing Technical Glitches while filing GST Returns**

The Central Board of Indirect Taxes and Customs (CBIC) directed the Goods and Service Tax Networks to waive off Late Fees and interest for one day due to technical glitches in the updation of Electronic Cash Ledger while filing GSTR-3B returns.

A few taxpayers have reportedly faced difficulty in the updation of their Electronic Cash Ledger on September 20, 2021, while filing their GSTR-3B returns. To mitigate their difficulties, GSTN has been directed to take up the issue of waiver of late fee and interest for one day for such taxpayers, before the IT Grievance Redressal Committee.

Notification to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017 - Notification No. 35/2021- Central Tax (September 24, 2021)

In the Central Goods and Services Tax Rules, 2017, — (1) In rule 10A of the said rules, with effect from the date as may be notified, - (a) after the words “details of bank account”, the words “which is in name of the registered person and obtained on Permanent Account Number of the registered person” shall be inserted; (b) the following proviso shall be inserted, namely:- “Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

Notification to amend Notification No. 03/2021 dated 23.02.2021 - Notification No. 36/2021- Central Tax (September 24, 2021)

The Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 03/2021-Central Tax, dated the 23rd February, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 132(E), dated the 23rd February, 2021, namely: - In the said notification, in the first paragraph after the words “hereby notifies that the provisions of”, the words, brackets, figure and letter “subsection (6A) or” shall be inserted.

INSOLVENCY & BANKRUPTCY**NCLT orders attachment of Venugopal Dhoot's properties with immediate effect**

The Mumbai bench of the National Company Law Tribunal (NCLT) today issued directions for attachment of assets belonging to Videocon Industries promoter Venugopal Dhoot in response to the Ministry of Corporate Affairs' petition against the company under the Companies Act, 2013. The tribunal has ordered the concerned authorities to freeze movable and immovable properties, bank accounts, and Demat accounts, among others belonging to Dhoot. The tribunal has also issued directions to the Central Board of Direct Taxes (CBDT) and the Indian Banking Association to identify such assets and properties belonging to the beleaguered promoter of the Videocon Industries, which has been under corporate insolvency resolution process for more than three years now.

Why controlling CoC conduct could be a challenging task for IBBI

Experts say such a code could lead to litigation, which may affect the decision-making ability of the committee. While the Insolvency and Bankruptcy Board of India (IBBI) has proposed a code of conduct for the committee of creditors (CoC), industry experts feel the move is not required since most entities under CoC are well regulated already. Such a code could lead to litigation which may affect the decision-making ability of the committee, experts have cautioned.

Amendment to the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020

In exercise of powers under section 196(1)(aa) of the Code read with regulation 5(b) and clause (ba) of subregulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 and clauses (a) and (e) of sub-rule (2) of rule 12 of the Companies (Registered Valuers and Valuation) Rules, 2017, the Insolvency and Bankruptcy Board of India hereby extends the validity of the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till 31st December, 2021.

INSOLVENCY & BANKRUPTCY**The Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021**

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021 and issued press release No. IBBI/PR/2021/24 dated September 30, 2021.

The press release states:

- The amendment expands the scope of consultation to cover all aspects related to sale of assets and appointment of professionals. The amendment regulations also provide for manner of selection of representatives of stakeholders in Stakeholder Consultation Committee (SCC).
- The amendment regulations provide that Liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction. It also provides that the earnest money deposit shall not exceed ten percent of the reserve price in an auction, the Board has also made available an electronic platform at www.ibbi.gov.in for hosting public notices of auctions of liquidation assets of ongoing liquidation processes.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021 on September 29, 2021 and issued press release No. IBBI/PR/2021/23 dated September 30, 2021.

The press release states, amendment regulations enhance the conduct, timeliness, and value maximization in corporate insolvency proceedings:

- The amendment regulations provide that the committee and members of the committee in discharge of its functions and exercise powers under the Code and regulations in respect of corporate insolvency resolution process, shall be in compliance with the guidelines as may be issued by the Board.
- The amendment seeks to address delays in CIRP such as repeated issue of expression of interest, numerous modifications in request for resolution plans and iterations of modifications in the resolution plan and even consideration of unsolicited resolution plans.

BUSINESS AND ECONOMIC NEWS**Union Cabinet approves Rs. 10,683 crore PLI scheme for Textile Sector**

The Union Cabinet approved the Production-Linked Incentive (PLI) scheme for textiles for a budgetary outlay of Rs. 10,683 crore to boost domestic manufacturing of Man-Made Fibres (MMF), garments, and technical textiles. Incentives will be provided over five years for manufacturing these products. The scheme is focused at expanding MMFs and technical textiles' value chain and will help India regain its dominant status in the global textile trade, at a time when India's share of global exports has gradually declined over the years.

Fifty two companies file applications for PLI Scheme for White Goods (ACs and LED Lights)

A total of 52 companies have filed their application with committed investment of Rs 5,866 crore under the PLI scheme to incentivize the domestic manufacturing of components of White Goods (Air conditioners and LED lights), applications for which closed on 15 September, 2021. The PLI Scheme was notified on 16.04.2021.

Several companies like Daikin, Panasonic, Hitachi, Mettube, Nidec, Voltas, Bluestar, Havells, Amber, EPack, TVS-Lucas, Dixon, R K Lighting, Uniglobus, RadhikaOpto, Syska among others have applied for manufacturing critical components of Air conditioners and LED Lights.

Applications have been filed for production of components which are not manufactured in India presently with sufficient capacity. For Air Conditioners, several companies will be manufacturing compressors, copper tubing, aluminium stock for foils, control assemblies for IDU or ODU, Display units, BLDC motors among other components. Similarly, for LED Lights LED Chip packaging, LED Drivers, LED Engines, LED Light Management Systems, PCBs including metal clad PCBs and Wire wound inductors etc. will be manufactured in India.

Zee Enterprises board approves merger with Sony Pictures, Punit Goenka to remain MD & CEO

Zee Entertainment Enterprises (ZEEL) announced that its board of directors, unanimously provided an in-principle approval for the merger with Sony Pictures Networks India (SPNI). As part of the transaction, Punit Goenka will continue to be the Managing Director and CEO of the merged entity. The shareholders of Sony Pictures will hold a majority stake in the merged entity. They will also infuse growth capital into SPNI as part of the merger such that SPNI has approximately \$1.575 billion at closing, for use in pursuing other growth opportunities.

BUSINESS AND ECONOMIC NEWS**Single window system launched, to improve ease of doing business**

The Government launched the much-awaited national single-window system for investors and businesses. The portal will integrate the existing clearance systems of the Centre and states.

The single-window portal will become a “one-stop-shop” for approvals and clearances. It will enable obtaining approvals as well as clearances needed by investors, entrepreneurs, and businesses in India.

Sony comes to Zee Entertainment’s rescue, signs term sheet for merger

Punit Goenka, MD and CEO of Zee Entertainment Enterprises (ZEE), has found his white knight in Sony Corp and set in motion a merger that will fend off the largest investor Invesco, which sought his removal from ZEE’s board. As part of the proposed merger, which the Board of Directors of ZEE has approved in principle unanimously, will allow shareholders of Sony Pictures Networks India (SPN) –a step-down subsidiary of Japanese multinational conglomerate Sony Corp – to hold a majority stake in the merged entity.

Gallantt Ispat receives NCLT approval for scheme of amalgamation and slump sale

Gallantt Ispat announced that the Honorable National Company Law Tribunal, Kolkata Bench vide its order dated September 22, 2021 has approved the Scheme of Amalgamation of Gallant Metal, Gallant Ispat, AAR Commercial Company, Hipoline Commerce, Lexi Exports and Richie Credit and Finance and slump sale of power plant undertakings of Gallant Ispat to Gallant Metal.

Future gets NCLT nod to conduct shareholders meeting for deal with RIL

The National Company Law Tribunal (NCLT) allowed Kishore Biyani-led Future Group firms to hold meetings of its shareholders and creditors to seek approval for the sale of assets to Reliance Retail Ltd. A Mumbai-based two-member NCLT bench comprising Suchitra Kanuparthi and Chandra Bhan Singh dismissed the application filed by ecommerce major Amazon opposing the scheme of merger of the Future group companies, sources close to the development said.

Merchant Banker Registration under SEBI Regulations

Merchant Banker refers to entity registered with SEBI with specific purpose and guidelines of activities to pursue in financial market per se securities market.

It means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities issued by corporate who is in process of or already listed in securities market or acting as manager, consulting, adviser or rendering corporate advisory service in relation to such issue either fresh or post fresh issue management.

Issue means an offer of sale or purchase of securities by anybody corporate, or by any other person or group of person on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through merchant banker.

Principal Officer means:-

- Proprietor, in the case of proprietary concern
- Partner, in the case of a partnership firm
- Director, in the case of body corporate who is responsible for the activities of the merchant banker

Application to be placed in Form A accompanied by non-refundable application fees INR 50,000/-

Category I

Issue Management which will, inter alia, consists of preparation of prospectus and other information relating to issue, determining financial structure, tie up of financiers and final allotment and refund of the subscriptions And To act as adviser, consultant, manager, underwriter, portfolio manager.

Category II

To act as adviser, consultant, manager, underwriter, portfolio manager

Category III

To act as underwriter, adviser, consultant to an issue

Category IV

To act only as adviser or consultant to an issue

Merchant Banker Registration under SEBI Regulations

Considerations of Applications:-

- Applicant shall be body corporate other than non-banking financial company
- Applicant has necessary infrastructure like adequate office space, equipment's and manpower to effectively discharge the activities
- Applicant has employment minimum of two person who have experience to conduct the business of merchant banker
- Applicant fulfill the capital adequacy as required by regulation
- Person directly or indirectly connected with applicant has not been granted registration by the Board.
- Applicant, his partner, director or principal officer has not involved in any litigation connected with securities market or has not at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence
- Applicant has professional qualification from an institution recognized by Government in finance, law or business management.

Capital Adequacy:-

- The bare minimum capital adequacy requirements shall be a net worth of not less than INR 5 Crore.
- Net worth means sum of paid-up capital and free reserves of the applicant at the time of making application under this regulation.
- The minimum requirement of capital earlier used to have different limit subject to category but by amendment now the every category available need to have minimum capital adequacy of INR 5 Crore.

Process:-

Applicant should filled the Form A and provide the documentary evidence in support of information provided in application form. It should be filled and numbered accordingly. All pages of submission need to be signed by Authorized signatory, originally and stamped thereon.

It need to be properly bind and placed in from of SEBI, Mumbai. Before that online application need to be submitted with non-refundable application fees thereon to place physical file at Mumbai.

Merchant Banker Registration under SEBI Regulations

Checklist:-

- Name of Applicant, contact no, mail id, principal place of business
- Organization structure and chart showing functional responsibilities
- Certificate of Incorporation, Memorandum and Article of Association
- Partnership Deed/LLP Incorporation Certificate
- PAN Card of Applicant
- Academic qualification, experience certificate and profile of Director/Partner of Applicant
- Shareholding Pattern of Applicant
- Board Resolution
- Details of Directors/Partners in other company, their activity and interest holding, if any
- Particulars of Key Managerial Personnel, qualification, experience certificate and responsibilities assigned
- Experience in terms of issue management, investment adviser, underwriting, portfolio management and consultant/advisor to issue to be provided
- Business Plan
- Details of infrastructure including computing facilities, equity research and data base available with applicant
- Audited/Un-audited financial statement of applicant
- Net worth certificate from Statutory Auditor
- Details of principal bankers and statutory auditor
- Declaration and undertaking.

Registration Fees:-

INR 50,000 is initial cost as non-refundable application fees. Thereafter INR 20,00,000 is to be paid to Board as Registration Fees as Merchant Banker. It has to be paid within 15 days from the communication receipt by applicant from Board.

Further to keep registration certificate in force, shall pay fee of INR 9,00,000/- every three years from the sixth year from the date of grant of certificate of registration. The stated fees shall be paid by the merchant banker 3 months before expiry of the block for which fees has been paid.

The fees mentioned above shall be payable by the merchant banker by a Demand Draft in favour of "Securities and Exchange Board of India" payable at Mumbai.

This article has been written by CS Tanuj Chandra Saxenaa (ACS, M.COM, MBA (FINANCE), CFI (FMVA) (Pursuing) SAP FICO Certified.

MSME's under IBC Regime

IBC refers to Insolvency and Bankruptcy Code, 2016, the Bankruptcy Law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy.

Certain provisions on Insolvency Law deals with Micro, Small and Medium Enterprises (MSME's) which are reproduce below for reference.

1. Section 29A of IBC, 2016:

Insolvency and Bankruptcy Code (Second Amendment) Ordinance, 2018 has brought relief to the Micro Small and Medium Enterprises (MSME) by relaxing the applicability of the provisions of Section 29A as regards submission of a resolution plan in case of such entities in their favour. Intention behind this is to restrain untrustworthy promoters from buying back assets at a subsidized price.

2. Central Government is empowered to exempt or vary application of provisions of the Code by way of a notification for a certain class or classes of companies, including for MSMEs as defined in Section 7 of the Act.

3. Section 240A: Application of this Code to micro, small and medium enterprises:

Section 240A (1): provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.

Section 240A (2): the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

- a)not apply to micro, small and medium enterprises; or
- b)apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.

Section 29A – Clause C to H

c. Clause c of section 29A debars a person or a person acting jointly or in concert with such person who-

- has an account classified as NPA;
- is a promoter of a corporate debtor the account of which has been classified as NPA;
- is in the management of a corporate debtor the account of which has been classified as NPA
- is in control of a corporate debtor the account of which has been classified as NPA;

MSME's under IBC Regime

At least a period of 1 year should have elapsed from the date of classification till the insolvency commencement date. Therefore, any company (including the promoters/persons in the management of or control of such company) which has its account classified as NPA for last 1 year will not be able to file a resolution plan however, the Code provides for a carve out that such person shall be eligible to submit the resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan. See also, clause (j) of Section 29A.

Clause c of section 29A shall not apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

d. the person has been convicted for any offence punishable with imprisonment for 2 (Two) years or more;

The person shall be eligible to submit resolution plan after expiry of 2 years from the date of his release from imprisonment.

e. is disqualified to act as a director under the Companies Act, 2013;

f. is prohibited by SEBI from trading in securities or accessing the securities markets;

g. Clause g of section 29A debars the person who has been

- a promoter or
- in the management or
- control

of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and an order has been made by the adjudicating authority under the provisions of the Code;

Proviso of this clause allows the resolution applicant if such preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has been taken place prior to the acquisition of corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

MSME's under IBC Regime

h. The negative list includes persons who might have guaranteed the obligations of the corporate debtor which is currently in insolvency. As the provision goes:-

Going by the construction of the clause, it appears that the guarantee should be in favour of that creditor who has applied for insolvency resolution of the corporate debtor.

4. With an intention to ease out the pressure on small sized companies and MSME and not drive them into insolvency and bankruptcy, The Finance Minister has also announced that the minimum threshold to initiate insolvency proceedings shall also be raised to Rs 1 crore from Rs 1 lakh.

5. Initiation of fresh insolvency proceedings shall also remain suspended for up to 1 year, depending on the situation of the pandemic.

6. Insertion of Section 10A in the IBC, a bold move to safeguard the businesses from the rigours of IBC. Section 10A seeks to eclipse section 7,9,10 that provides for filing of applications for initiating the CIRP in case of a default for a minimum period of six months.

Timeline:

for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Kindly note that:

Provisions of Section 10A shall not apply to any default committed under the said sections before 25th March, 2020.

7. Report of Insolvency Law Committee (February, 2020)

MSMEs have special position in the Indian economy, as key drivers of employment, growth & financial inclusion and forms major part operational creditors along with employees and trade creditors.

“the Committee agreed that operational creditors should be allowed to have recourse to CIRP on a minimum default of INR 5 lakh only, and appropriate actions may be taken to revise the threshold accordingly”

This article has been written by CS Lalit Rajput (ACS, B.Com.)

OPC Annual Filing, Compliances, Due Date & MGT – 7A**One Person Company:**

Sec 2(62) "One Person Company" means a company which has only one person as a member.

For OPC: Return Filing Provisions & AGM**Section 137 of the Companies Act, 2013**

One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty (180) days from the closure of the financial year

AGM not Applicable for OPC: Section 96

(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

OPC Annual Filings – Timeline and Key points:

1. One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty (180) days from the closure of the financial year. (Section 137 of the CA 2013).
2. AGM not Applicable for OPC: (Section 96.)
3. A person can be member in only one OPC.
4. The following 2 E - forms to be filed for Annual ROC filing is:
 - a. MGT-7 - Annual return
 - b. AOC- 4 - Financial Statements, Balance Sheet & P&L Account

OPC Annual Filing, Compliances, Due Date & MGT – 7A

5. Due date for Annual Financial Statements (AOC-4): The due date for Annual Filing is 27.09.2021 (if FY ended on 31.03.2021)

6. Due date for Annual Return (MGT-7A) : OPC does not require to hold AGM, yet the due date for filing Form MGT 7 shall be 60 days from the completion of the 6 months from the end of financial year, that means due date will be 60th day from 27.09.2021.

7. Form MGT-7A is the form prescribed for Annual Return of One Person Company and Small companies. This form is applicable in respect of Annual Return for the F.Y. 2020-21 and onwards of OPC as defined under Section 2(62) of Companies Act, 2013, and small companies.

8. Penalty for non - submission with in due timeline: In case a return has not been filed, a Penalty (additional fees) will be levied from the due date (27.09.2021) of INR 100/- per day for each day for which default continue.

This article has been written by CS Lalit Rajput (ACS, B.Com.)

Key Reforms in Telecom Sector

The Union Cabinet on 15.09.2021, approved a number of structural and process reforms in the Telecom sector. These are expected to protect and generate employment opportunities, promote healthy competition, protect interests of consumers, infuse liquidity, encourage investment and reduce regulatory burden on Telecom Service Providers (TSPs).

In big bang reforms, the Union Cabinet on Wednesday approved a relief package for the telecom sector that includes a four-year moratorium on payment of statutory dues by telecom companies as well as allowing 100 per cent foreign investment through the automatic route.

Structural Reforms

1. Rationalization of Adjusted Gross Revenue: Non-telecom revenue will be excluded on prospective basis from the definition of AGR.
2. Bank Guarantees (BGs) rationalized: Huge reduction in BG requirements (80%) against License Fee (LF) and other similar Levies. No requirements for multiple BGs in different Licenced Service Areas (LSAs) regions in the country. Instead, One BG will be enough.
3. Interest rates rationalized/ Penalties removed: From 1st October, 2021, Delayed payments of License Fee (LF)/Spectrum Usage Charge (SUC) will attract interest rate of SBI's MCLR plus 2% instead of MCLR plus 4%; interest compounded annually instead of monthly; penalty and interest on penalty removed.
4. For Auctions held henceforth, no BGs will be required to secure instalment payments. Industry has matured and the past practice of BG is no longer required.
5. Spectrum Tenure: In future Auctions, tenure of spectrum increased from 20 to 30 years.
6. Surrender of spectrum will be permitted after 10 years for spectrum acquired in the future auctions.
7. No Spectrum Usage Charge (SUC) for spectrum acquired in future spectrum auctions.
8. Spectrum sharing encouraged- additional SUC of 0.5% for spectrum sharing removed.
9. To encourage investment, 100% Foreign Direct Investment (FDI) under automatic route permitted in Telecom Sector. All safeguards will apply.

Key Reforms in Telecom Sector

Procedural Reforms

1. Auction calendar fixed - Spectrum auctions to be normally held in the last quarter of every financial year.
2. Ease of doing business promoted - cumbersome requirement of licenses under 1953 Customs Notification for wireless equipment removed. Replaced with self-declaration.
3. Know Your Customers (KYC) reforms: Self-KYC (App based) permitted. E-KYC rate revised to only One Rupee. Shifting from Prepaid to Post-paid and vice-versa will not require fresh KYC.
4. Paper Customer Acquisition Forms (CAF) will be replaced by digital storage of data. Nearly 300-400 crore paper CAFs lying in various warehouses of TSPs will not be required. Warehouse audit of CAF will not be required.
5. SACFA clearance for telecom towers eased. DOT will accept data on a portal based on self-declaration basis. Portals of other Agencies (such as Civil Aviation) will be linked with DOT Portal.

The Cabinet approved the following for all the Telecom Service Providers (TSPs) w.r.t. Liquidity requirements:

1. Moratorium/Deferment of upto four years in annual payments of dues arising out of the AGR judgement, with however, by protecting the Net Present Value (NPV) of the due amounts being protected.
2. Moratorium/Deferment on due payments of spectrum purchased in past auctions (excluding the auction of 2021) for upto four years with NPV protected at the interest rate stipulated in the respective auctions.
3. Option to the TSPs to pay the interest amount arising due to the said deferment of payment by way of equity.
4. At the option of the Government, to convert the due amount pertaining to the said deferred payment by way of equity at the end of the Moratorium/Deferment period, guidelines for which will be finalized by the Ministry of Finance.

With the measures, the government is looking to boost 4G proliferation, infuse liquidity and create an enabling environment for investment in 5G networks with the new set of reform measures.

This article has been written by CS Lalit Rajput (ACS, B.Com.)

FAQs on Trademark in India

1. What is a trademark?

A trademark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

The legal requirements to register a trademark under the Act are:

- The selected mark should be capable of being represented graphically (that is in the paper form).
- It should be capable of distinguishing the goods or services of one undertaking from those of others.
- It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person.

2. How to select a good trademark?

If it is a word it should be easy to speak, spell and remember. The best trademarks are invented words or coined words or unique geometrical designs.

Please avoid selection of a geographical name, common personal name or surname. No one can have monopoly right on it.

Avoid adopting laudatory word or words that describe the quality of goods (such as best, perfect, super etc.)

It is advisable to conduct a market survey to ascertain if same/similar mark is used in market.

3. What is the function of a trademark?

Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, may apply in writing in prescribed manner for registration. The application should contain the trademark, the goods/services, name and address of applicant and agent (if any) with power of attorney, the period of use of the mark. The application should be in English or Hindi. It should be filed at the appropriate office.

The applications can be submitted personally at the Front Office Counter of the respective office or can be sent by post. These can also be filed on line through the e-filing gateway available at the official website.

FAQs on Trademark in India

4. What are different types of trademarks that may be registered in India?

- Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark.
- An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/service.
- Letters or numerals or any combination thereof.
- The right to proprietorship of a trademark may be acquired by either registration under the Act or by use in relation to particular goods or service.
- Devices, including fancy devices or symbols
- Monograms
- Combination of colors or even a single color in combination with a word or device
- Shape of goods or their packaging
- Marks constituting a 3- dimensional sign.
- Sound marks when represented in conventional notation or described in words by being graphically represented.

5. Who benefits from a trademark?

The Registered Proprietor of a trademark can create establish and protect the goodwill of his products or services, he can stop other traders from unlawfully using his trademark, sue for damages and secure destruction of infringing goods and or labels. The Government earns revenue as a fee for registration and protection of registration of trademarks

The Legal professionals render services to the entrepreneurs regarding selection registration and protection of trademarks and get remunerations for the same

The Purchaser and ultimately Consumers of goods and services get options to choose the best.

6. What does the Register of trademark contain?

The register of trademark currently maintained in electronic form contains inter alia the trademark the class and goods/ services in respect of which it is registered including particulars affecting the scope of registration of rights conferred; the address of the proprietors; particulars of trade or other description of the proprietor; the convention application date (if applicable); where a trademark has been registered with the consent of proprietor of an earlier mark or earlier rights, that fact.

FAQs on Trademark in India

7. Can any correction be made in the application or register?

But the basic principle is that the trademark applied for should not be substantially altered affecting its identity. Subject to this changes are permissible according to rules detailed in the subordinate legislation.

8. Can a registered trademark be removed from the register?

It can be removed on application to the Registrar on prescribed form on the ground that the mark is wrongly remaining on the register. The Registrar also can suo moto issue Notice for removal of a registered trademark.

9. What are the sources of trademark laws?

- The national statutes i.e., the Trade Marks Act, 1999 and rules made thereunder .
- International multilateral convention.
- National bilateral treaty.
- Regional treaty.
- Decision of the courts.
- Office practice reduced in Manuals and guidelines and rulings of the Courts
- Decision of Intellectual Property Appellate Board.
- Text books written by academicians and professional experts.

10. What are the formalities and government fees for major trademark transactions ?

For filing new applications Form TM-A,

Fees for Physical filing: Rs. 5,000/- Fees for online filing: Rs. 4,500/-

To file a Notice of Opposition to oppose an application published in the Trade Marks Journal (Form TM-O)

Fees for Physical filing: Rs. 3,000/- Fees for online filing: Rs. 2,700/-

For Renewal of a Regd. trademark (Form TM-R)

Fees for Physical filing: Rs. 10,000/- Fees for online filing: Rs. 9,000/-

Surcharge for belated renewal Fees plus renewal fee applicable

Fees for Physical filing: Rs. 5,000/- Fees for online filing: Rs. 4,500/-

Restoration of removed mark: Fees plus renewal fee applicable

Fees for Physical filing: Rs. 10,000/- Fees for online filing: Rs. 9,000/-

Copyright search request and issuance of certificate (Form TM-C)

Fees for Physical filing: Rs. 10,000/- Fees for online filing: Rs. 9,000/-

Income Tax**1. Deputy Commissioner of Income Tax vs. Leena Power Tech Engineers Pvt. Ltd. (ITAT Mumbai)**

Using 'shell' companies to launder money or dodge tax will become tougher with a tribunal ruling shifting the 'burden of proof' from the income tax (I-T) department to the taxpayer dealing with such private entities which, though legal, simply serve as conduits for fund transfers.

Facts of the Case: The assessee 'Leena Power Tech Engineers' is a private limited company stated to be engaged in the business as 'investment company'. Its assessment under section 143(3) was completed on 27th February 2014 at Rs 4,64,80,490. On 28th March 2018, however, the assessment was reopened on the basis of certain information so received indicated that the assessee has received monies, in the form of share application money, from an entity 'Rohini Vyapar Pvt Ltd' but that money, though subjected to routing through several layers, ultimately has its source in of huge cash deposits in one of the branches of ICICI Bank. It was found that high value cash deposits, just below Rs 10,00,000, were regularly deposited in 19 different bank accounts maintained with ICICI Bank and the amount so deposited in cash, in ICIC Bank alone, aggregated to Rs 241.50 crores.

The assessee was asked to "prove identity, capacity and genuineness (of its share application money) even if confirmations are filed and the persons are assessed to tax". The assessee was then asked as to why the amounts so received from Rohini Vyapar Pvt. Ltd. not be brought to tax, in his hands, under section 68 of the Act.

The Assessing Officer, not satisfied with the reply of assessee, thus proceeded to treat the entire share capital subscription, aggregating to Rs 8,13,29,600, as unexplained credit under section 68. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The stand of the Assessing Officer was reversed by the learned CIT(A). The Assessing Officer has challenged the correctness of the order passed by the learned CIT(A).

Judgement : "The Tribunal has categorically held that once there is doubt in the credentials of a transaction, the entire onus shifts on to the assessee to prove that the transactions are genuine and compliant". The burden is thus on the assessee to prove the nature and source of credits in his books of accounts, to the satisfaction of the Assessing Officer.

Goods & Service Tax (GST)

1. Union of India & Ors (Appellant) vs. VKC Footsteps India Pvt Ltd. (Respondent) (Supreme Court of India)

Supreme Court verdict on Input Tax Credit in Inverted Tax Structure

Facts of the case: Inverted duty structure means higher taxes on input and lower tax on output or final product. Several products such as footwear have an inverted duty structure. Though Section 54(3) of CGST Act, 2017 prescribes refund and rule 89(5) of CGST Rules provides a formula for that. Writ petitions under Article 226 of the Constitution were instituted before the High Court of Gujarat and the High Court of Judicature at Madras. The petitioners before the High Court submitted inter alia that (i) Section 54(3) allows for a refund of ITC where the accumulation is due to an inverted duty structure; (ii) ITC includes the credit of input tax charged on the supply of goods as well as services; (iii) Section 54(3) does not restrict the entitlement of refund only to unutilised ITC which is accumulated due to the rate of tax on inputs being higher than the rate of tax on output supplies. It also allows for refund of unutilised ITC when the rate of tax on input services is higher than the rate of tax on output supplies; (iv) While Section 54(3) allows for a refund of ITC originating in inputs as well as input services, Rule 89(5) is ultra vires in so far as it excludes tax on input services from the purview of the formula; and (v) In the event that Section 54(3) is interpreted as a restriction against a claim for refund of accumulated ITC by confining it only to tax on inputs, it would be unconstitutional as it would lead to discrimination between inputs and input services.

Judgment: Supreme Court affirmed the view of Madras High Court that Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.

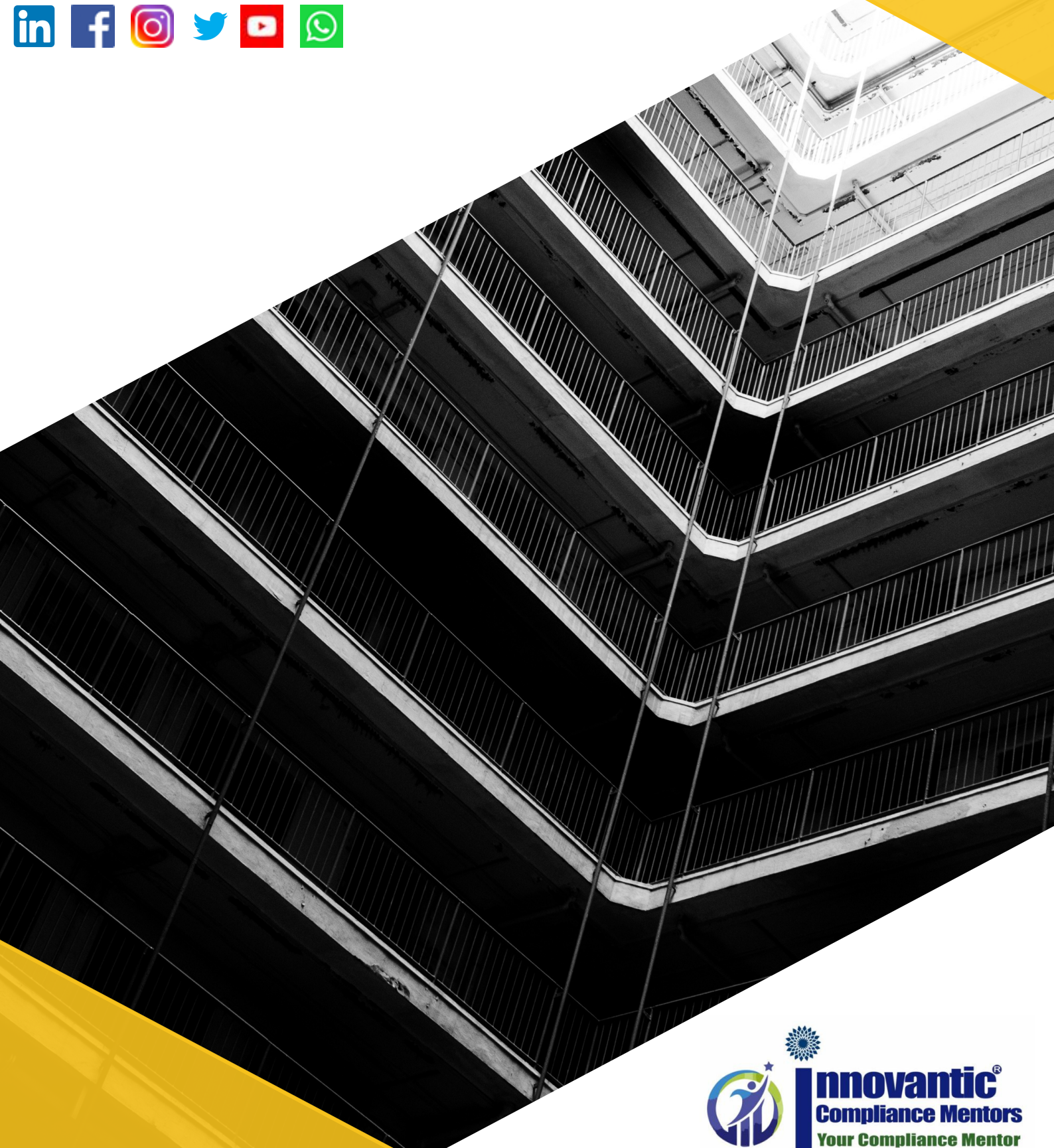
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