

VEDANAM



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Why Vedanam?

Mehta & Mehta proudly presents VEDANAM, our monthly newsletter designed to equip legal professionals, Company Secretaries, Chartered Accountants, and all Stakeholders navigating complex regulatory and legal environments. VEDANAM delivers meticulously curated:

- Timely Regulatory Updates
- Comprehensive Case Law Analysis
- Strategic Knowledge Article

With the release of our June 2025 issue, we reaffirm our commitment to providing you with the actionable knowledge needed to proactively navigate and thrive in today's dynamic business and legal landscapes.

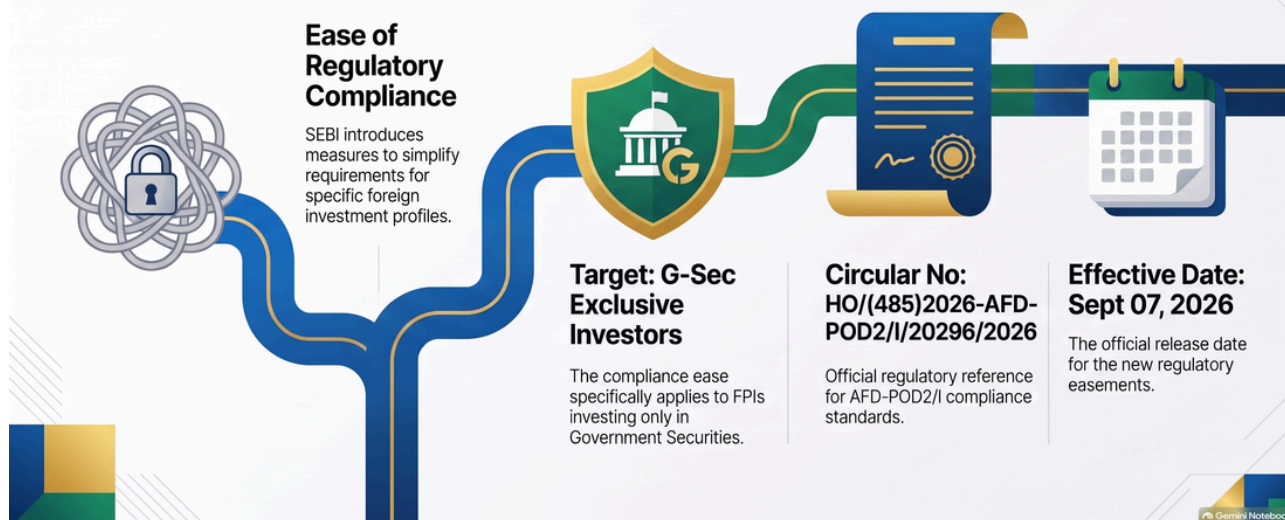
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Find the latest updates about our Webinars and Circulars, Notifications and Updates published by SEBI, MCA, RBI, IBBI and other official government site.

SEBI UPDATE - EASE OF REGULATORY COMPLIANCES FOR FPIs INVESTING ONLY IN GOVERNMENT SECURITIES

Streamlining Compliance: New SEBI Guidelines for FPIs



We wish to update you on a recent SEBI circular relaxing compliance requirement for Foreign Portfolio Investors (FPIs).

Background: Earlier, only FPIs investing in Government Securities through the "Fully Accessible Route" were exempted from furnishing investor group details. FPIs using the "General Route" still had to comply with concentration limits and identify their investor group.

What has changed: RBI, vide its circular dated June 5, 2026, withdrew the concentration limit requirement for FPIs investing in Government Securities through the General Route as well. As a natural consequence, SEBI has now extended the investor group exemption to all FPIs investing exclusively in Government Securities, irrespective of the route used.

Practical impact:

- FPIs investing only in G-Secs (via any route) are no longer required to furnish investor group details.
- Depositories, Custodians, and Designated Depository Participants (DDPs) must update their internal systems to reflect this change.
- The change is effective immediately.

SEBI UPDATE - EASE OF REGULATORY COMPLIANCES FOR FPIs INVESTING ONLY IN GOVERNMENT SECURITIES

SEBI UPDATE - RELAXATION IN TIMELINE WITH RESPECT TO ACCREDITED INVESTOR MANDATE FOR ANGEL FUNDS



SEBI has granted additional time to certain Angel Funds to comply with the Accredited Investor mandate under the AIF Master Circular.

Background: Angel Funds registered with SEBI on or before September 10, 2025 were required to fully transition to onboarding only Accredited Investors by September 8, 2026, subject to a cap of 200 non-accredited investors during the transition period.

What has changed: Based on representations from the AIF industry, SEBI has extended this compliance deadline from September 8, 2026 to March 31, 2027.

Practical impact:

- Such Angel Funds may continue to onboard up to 200 non-accredited investors until March 31, 2027.
- No fresh contributions can be accepted from non-accredited investors after March 31, 2027.
- Existing investors will continue to hold their investments as per the terms of the PPM/fund documents — no change to their status.
- All other provisions of Chapter 8 of the AIF Master Circular remain unchanged.
- The SEBI Master Circular for AIFs (dated June 3, 2026) has been updated to reflect this extension.

SEBI UPDATE - RELAXATION IN TIMELINE WITH RESPECT TO ACCREDITED INVESTOR MANDATE FOR ANGEL FUNDS

SEBI UPDATE - REVIEW OF POSITION LIMITS FOR CLIENTS AND PENALTY PROVISIONS FOR VIOLATION / BREACH OF POSITION LIMITS FOR COMMODITY DERIVATIVES SEGMENT.

The Penalty Escalation Heatmap

		X-Axis: Frequency of Offense (Rolling Quarter)		
Y-Axis Severity of Breach (Over Limit)		1st Instance	2nd Instance	3rd+ Instance
	> 5% Over Limit	₹ 50,000 fine	₹ 1,00,000 fine + 1 Day Trading Suspension	₹ 5,00,000 fine + 7 Day Trading Suspension
	2% - 5% Over Limit	₹ 25,000 fine	₹ 50,000 fine	₹ 1,00,000 fine
	< 2% Over Limit	Warning Letter	₹ 10,000 fine	₹ 25,000 fine

SEBI has revised the position limit and penalty framework applicable to the Commodity Derivatives segment, amending Chapter 3 of the Master Circular dated August 4, 2023.

Key Changes:

1. Penalty for Position Limit Violations (Annexure J)

- Violation exceeding 2% of prescribed limit: Penalty = 2% of (limit exceeded × closing price × number of days), capped at ₹2,00,000
- Violation up to 2% of prescribed limit: Same formula, capped at ₹10,000
- Members must correct the position by the next trading day; failing this, the exchange may square off the excess position without prior notice
- Repeated violations (more than 3 times in a month) may attract square-off mode for a day and/or additional penalty (with relief for violations solely due to clubbing of positions)
- Penalties are credited to the Exchange's Investor Protection Fund

2. Revised Definition of "Broad Commodity"

- An agricultural commodity now qualifies as "Broad" if its average deliverable supply over the past 5 years is at least 10 lakh Metric Tonnes, or at least ₹5,000 crore in value (provided it is not already classified as "Sensitive").

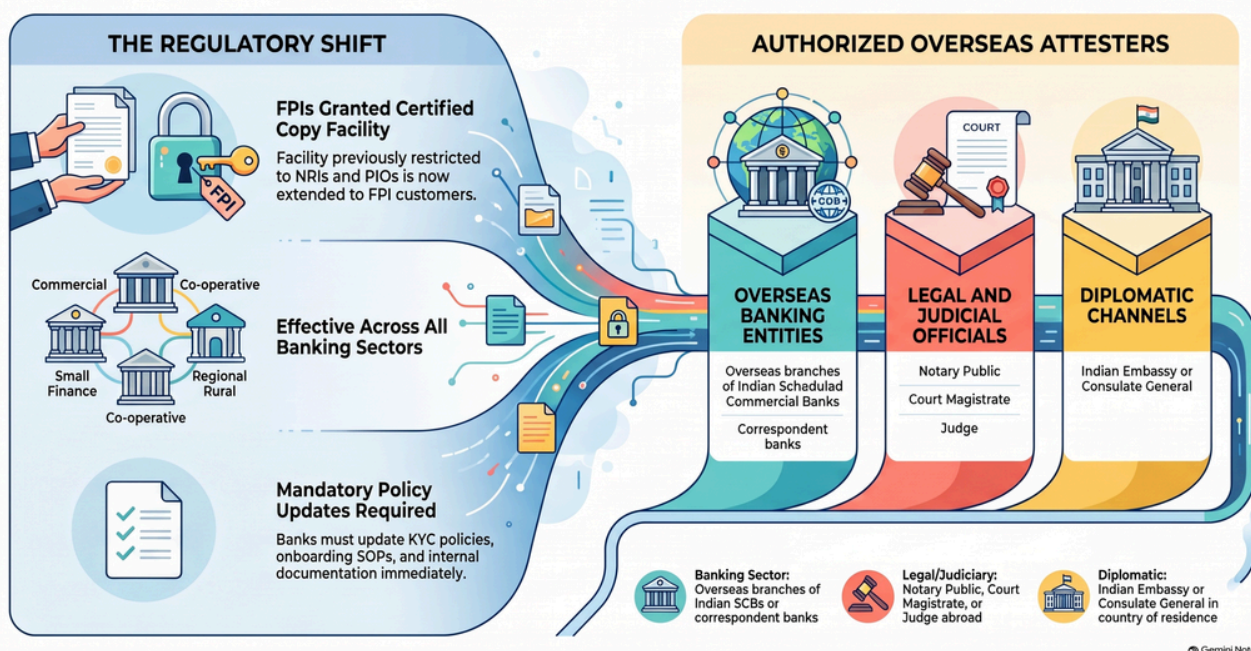
Category	Position Limit
Broad	2% of Deliverables Supply
Narrow	1% of Deliverables Supply
Sensitive	0.5% of Deliverables Supply

SEBI UPDATE - REVIEW OF POSITION LIMITS FOR CLIENTS AND PENALTY PROVISIONS FOR VIOLATION / BREACH OF POSITION LIMITS FOR COMMODITY DERIVATIVES SEGMENT.



RBI UPDATE - RESERVE BANK OF INDIA (RURAL CO-OPERATIVE BANKS / URBAN CO-OPERATIVE BANKS/ REGIONAL RURAL BANKS / SMALL FINANCE BANKS/ COMMERCIAL BANKS/LOCAL AREA BANKS (KNOW YOUR CUSTOMER) AMENDMENT DIRECTIONS, 2026

RBI Amendment: Streamlining KYC for Foreign Portfolio Investors (FPIs)



The Reserve Bank of India, vide six parallel notifications dated September 18, 2026 (RBI/2026-27/257 to 262), amended the Know Your Customer Directions, 2025 for Commercial Banks, Small Finance Banks, Local Area Banks, Regional Rural Banks, Urban Co-operative Banks, and Rural Co-operative Banks with immediate effect.

The amendment substitutes the relevant sub-paragraph of Paragraph 4(1)(v)/5(1)(v) across each set of Directions to extend the certified copy facility — hitherto available only to Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) under FEMA 5(R) — to Foreign Portfolio Investors (FPIs). Going forward, banks may accept certified copies attested by: (a) authorised officials of overseas branches of Scheduled Commercial Banks registered in India; (b) branches of overseas banks with whom Indian banks maintain correspondent relationships; (c) a Notary Public abroad; (d) a Court Magistrate or Judge; or (f) the Indian Embassy or Consulate General in the country of the non-resident customer's residence. Banks are advised to update their KYC/AML policies, account-opening SOPs, and onboarding documentation to reflect the extended facility for FPI customers and communicate the same to their compliance, operations, and customer onboarding teams.

RBI UPDATE - RESERVE BANK OF INDIA (RURAL CO-OPERATIVE BANKS / URBAN CO-OPERATIVE BANKS/ REGIONAL RURAL BANKS / SMALL FINANCE BANKS/ COMMERCIAL BANKS/LOCAL AREA BANKS (KNOW YOUR CUSTOMER) AMENDMENT DIRECTIONS, 2026

RBI UPDATE- RESERVE BANK OF INDIA (ALL INDIA FINANCIAL INSTITUTION/ SMALL FINANCE BANKS / COMMERCIAL BANKS/LOCAL AREA BANKS / PAYMENTS BANKS)- CLASSIFICATION, VALUATION, AND OPERATION OF INVESTMENT PORTFOLIO) THIRD AMENDMENT DIRECTIONS, 2026

The Reserve Bank of India, vide five parallel notifications dated September 22, 2026 (RBI/2026-27/264 to 268), amended the Classification, Valuation, and Operation of Investment Portfolio Directions, 2025 for Commercial Banks, Local Area Banks, Small Finance Banks, Payments Banks, and All India Financial Institutions (AIFIs), with effect from the date of issue.

The amendments insert new paragraphs in the respective Directions to establish a uniform valuation framework for units of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs).

Under the framework: (i) quoted units of InvITs/REITs are to be valued as quoted securities (*mutatis mutandis*); (ii) unquoted units are to be valued at the NAV disclosed by the InvIT/REIT in accordance with the SEBI InvIT Regulations, 2014 or SEBI REIT Regulations, 2014, as applicable — and treated as ₹1 where NAV is not so disclosed or the units are infrequently traded; and (iii) other unquoted instruments continue to be valued as per the methodology applicable to such instruments.

Banks and financial institutions are advised to update their investment valuation policies, board-approved valuation methodologies, and treasury systems to give effect to the revised framework.

RBI UPDATE- RESERVE BANK OF INDIA (ALL INDIA FINANCIAL INSTITUTION/ SMALL FINANCE BANKS / COMMERCIAL BANKS/LOCAL AREA BANKS / PAYMENTS BANKS)- CLASSIFICATION, VALUATION, AND OPERATION OF INVESTMENT PORTFOLIO) THIRD AMENDMENT DIRECTIONS, 2026

FEMA UPDATES- FOREIGN EXCHANGE MANAGEMENT (EXPORT AND IMPORT OF GOODS AND SERVICES) (AMENDMENT) REGULATIONS, 2026

Foreign Exchange Management (Export and Import of Goods and Services) (Amendment) Regulations, 2026 (Updates)

1. Notification No. and Date

Notification No. FEMA 23(R)/(1)/2026-RB dated September 22, 2026, published in the Official Gazette of India (Extraordinary) – Part III, Section 4, on September 24, 2026.

2. Subject / Title of Notification

Foreign Exchange Management (Export and Import of Goods and Services) (Amendment) Regulations, 2026 — amending the principal Notification No. FEMA 23(R)/2026-RB dated January 13, 2026.

3. Effective Date

October 1, 2026.

4. Key Amendments

(a) Reduction of Period under Regulation 5(1) – Clauses (a) and (b)

The period specified in clauses (a) and (b) of sub-regulation (1) of Regulation 5 of the principal regulations has been reduced from fifteen months to nine months. Exporters are accordingly required to realise and repatriate export proceeds within the revised period of nine months.

(b) Reduction of Period under First Proviso to Regulation 5(1)

The period stipulated under the first proviso to sub-regulation (1) of Regulation 5 has been reduced from eighteen months to twelve months. This revised timeline of twelve months shall now apply as per the terms of the said proviso.

(c) Treatment of Exporters on the Caution List as on September 30, 2026

A new proviso has been inserted at the end of Regulation 13 of the principal regulations. Exporters who are on the Caution List as on September 30, 2026, pursuant to orders issued by the Reserve Bank under Regulation 16 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015, shall continue to be governed by the said order until such time as the exporter is removed from the Caution List.

(d) Powers of Authorised Dealers for Pre-October 1, 2026 Transactions

A new Regulation 20 has been inserted in the principal regulations. Authorised Dealers are now empowered to handle transactions related to the export and import of goods

and services, as well as merchanting trade, undertaken prior to October 1, 2026, which hitherto required approval of the Reserve Bank of India under:

- the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015;
- Master Direction – Export of Goods and Services (FED Master Direction No. 16/2015-16, dated January 1, 2016, as updated till July 17, 2026); and
- Master Direction – Import of Goods and Services (FED Master Direction No. 17/2016-17, dated January 1, 2016, as updated till January 12, 2026).

5. Practical Implication / Action Point

Members advising exporters should note the tightened repatriation timelines effective October 1, 2026, and ensure clients review their outstanding export receivables against the revised nine-month and twelve-month periods under Regulation 5. For exporters on the Caution List as on September 30, 2026, existing RBI orders remain operative until formal removal from the list. Authorised Dealers may now exercise delegated powers for pre-October 1, 2026 transactions that previously required RBI approval — no separate RBI application will be required for such cases going forward.



RAJENDRA MITTAL VS. SEMAC CONSULTANTS LTD.

NCLT, CHENNAI BENCH

Whether a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 is maintainable when a plausible pre-existing dispute supported by prior correspondence, invoked arbitration, and pending proceedings before the MSED Council existed before the Section 8 demand notice?

Facts of the Case:

The Operational Creditor, engaged in construction and civil engineering works, filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of CIRP against the Corporate Debtor for an alleged unpaid operational debt of ₹2.79 crore.

The claim arose from construction and additional works executed for a commercial project at Palwal, Haryana.

The Operational Creditor contended that final bills had been approved and part payments were made, leaving an outstanding balance.

Prior to issuing the Section 8 demand notice, the Operational Creditor had also invoked arbitration and initiated proceedings before the MSE Facilitation Council.

The Corporate Debtor disputed the claim, alleging delays, defects, abandonment of work, absence of completion certification, excess payments, and entitlement to liquidated damages.

Issues

Whether an undisputed operational debt was due and payable under Section 9 of the IBC?

Whether a pre-existing dispute existed before issuance of the demand notice?

Whether the approval emails and part payments constituted an unconditional admission of liability?

Whether the prior arbitration proceedings, MSED Council proceedings, and correspondence regarding defects, delays, and billing objections rendered the

Section 9 petition non-maintainable?

Order

The NCLT held that at the Section 9 stage it is only required to determine whether a genuine and plausible dispute exists and not to adjudicate the merits of such dispute.

The Tribunal found that the Corporate Debtor had consistently raised objections regarding quality, delays, defects, completion of work, and billing issues through correspondence exchanged before the demand notice.

It further noted that arbitration had already been invoked and proceedings before the MSE Facilitation Council were pending prior to issuance of the Section 8 notice. The approval emails and part payments did not amount to an unconditional acknowledgment of liability. Since a bona fide pre-existing dispute existed and required adjudication in appropriate proceedings, the Section 9 application was held to be not maintainable and was dismissed.

ANJU MAURYA AND ORS. VS. KORAS PIN SAVINGS FINANCIAL SERVICES NIDHI LTD.

NCLT, ALLAHABAD BENCH

Whether matured term deposits accepted under Deposit Confirmation Certificates constitute financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, and can multiple depositors jointly maintain a Section 7 application to meet the Section 4 threshold despite an automatic renewal clause?

Facts

The application was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") by 34 individual depositors against Koras Pin Savings Financial Services Nidhi Limited ("Corporate Debtor") for initiation of Corporate Insolvency Resolution Process ("CIRP").

The total amount claimed as default was ₹1,04,17,337/-.

The deposits were supported by Deposit Confirmation Certificates and had matured between 14.11.2021 and 20.12.2023

The Corporate Debtor opposed the application on the grounds of limitation, automatic renewal, the deposits being mere investments, joint filing to meet the threshold, and absence of a Section 8 demand notice.

Issue

Whether the matured deposits constituted financial debt, whether there was a default, whether the application was within limitation and maintainable jointly by 34 depositors, and whether automatic renewal and absence of a Section 8 notice defeated the Section 7 proceedings.

Order

The NCLT held that the deposits constituted financial debt under Section 5(8) as they had the commercial effect of borrowing and were repayable with interest on maturity.

The Corporate Debtor failed to establish actual renewal of the deposits, and non-repayment upon maturity constituted default. The application was within limitation, and the depositors could jointly file the application as the aggregate default exceeded the ₹1 crore threshold under Section 4.

A Section 8 demand notice was not mandatory for Section 7 proceedings.

Accordingly, the application was admitted under Section 7(5), CIRP was initiated, moratorium was declared, and IRP was appointed.

INDIAN BANK VS. NIMITAYA HOTEL & RESORTS LTD. RP OF NAVNEET GUPTA

NCLAT, PRINCIPAL BENCH, NEW DELHI

Whether under Section 27 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority can require reasons for replacement of the Resolution Professional, issue notice to the existing Resolution Professional, and question the Committee of Creditors' decision taken during CIRP?

Facts

Indian Bank filed a Section 7 application against Nimitaya Hotel & Resorts Ltd., which was admitted into CIRP on 24.12.2021.

The CoC approved a resolution plan on 08.01.2023.

Subsequently, Indian Bank sought replacement of the RP, and the CoC approved the replacement with the requisite majority under Section 27.

The NCLT questioned the reasons for replacement, issued notice to the existing RP, and made adverse observations against bank officials.

Issues

Whether the CoC can replace the RP at any stage under Section 27 without assigning reasons or hearing the existing RP, whether the NCLT can question the CoC's decision or substitute its own view, and whether adverse remarks against bank officials were justified.

Order

The NCLAT held that Section 27 permits the CoC to replace the RP at any stage of CIRP by the required 66% voting share, along with the consent of the proposed RP.

No reasons for replacement are required to be given, and the existing RP has no statutory right to be heard before such replacement.

The Adjudicating Authority cannot substitute its own wisdom for that of the CoC merely because the replacement was sought 2½ years after approval of the resolution plan.

The adverse remarks against Indian Bank's officers were expunged. The impugned orders were accordingly modified, and the appeals were disposed of with directions regarding the sequence for considering the pending applications.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) (FIFTH AMENDMENT) REGULATIONS, 2026.

Regulation	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016	Insolvency and Bankruptcy Board of India (Liquidation Process) (Fifth Amendment) Regulations, 2026	Comments
Reg – 31 List of stakeholders.	(3) The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority. (4) The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under section 42.	The liquidator may modify an entry in the list of stakeholders when he comes across additional information warranting such modification, and shall intimate the Adjudicating Authority regarding such modification, within thirty days of such modification.	The amendment removes the requirement for the liquidator to seek approval/directions from the Adjudicating Authority before modifying the list of stakeholders. The liquidator can now directly make such modifications based on additional information and is only required to intimate the Adjudicating Authority within 30 days.

MCA UPDATE- GENERAL CIRCULAR NO. 04/2026 — SUBJECT: EXTENSION OF VALIDITY OF THE COMPANIES COMPLIANCE FACILITATION SCHEME, 2026 (CCFS-2026) UP TO 15TH SEPTEMBER, 2026.

The Ministry of Corporate Affairs, vide General Circular No. 04/2026 dated 31st August 2026, has further extended the validity of the Companies Compliance Facilitation Scheme, 2026 (CCFS-2026) up to September 15, 2026. The scheme, originally introduced vide Circular No. 01/2026 dated 24th February 2026 to enable companies to complete pending statutory filings, was initially valid up to 15th July 2026 and was first extended to 31st August 2026 vide Circular No. 03/2026 dated 8th July 2026.

In view of representations received from various stakeholders, the validity has now been extended once again to 15th September 2026, with all other terms and conditions of the scheme remaining unchanged. Members are advised to conclude their pending compliances under the scheme on or before the revised deadline.

**MCA UPDATE- GENERAL CIRCULAR NO. 04/2026 — SUBJECT: EXTENSION
OF VALIDITY OF THE COMPANIES COMPLIANCE FACILITATION SCHEME,
2026 (CCFS-2026) UP TO 15TH SEPTEMBER, 2026.**

APPOINTMENT OF INDEPENDENT DIRECTOR IN PUBLIC COMPANIES - CONSEQUENCES OF NON-APPOINTMENT

Who is an Independent Director?

1. Independent Director is a Director other than a Managing Director or a Whole time Director or a Nominee Director who fulfills all criteria as given in Section 149(6) of the Companies Act 2013 along with Rule 4 and Rule 5 of the Companies (Appointment and qualification of Directors) Rules 2014. The SEBI (Listing Obligations & Disclosure Requirements) Regulation 2015, vide its Regulation 16(b) lays down the requirements for appointment criteria of Independent Directors for listed public companies. In general sense, an independent director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards. He does not have any kind of relationship with the company that may affect the independence of his judgment. It may be also be noted that the Independent Directors are required to give a declaration confirming compliance with the criteria of independence as laid down under 16(b) of LODR Regulation as well as Section 149(6) of the Companies Act, 2013 to the company at the time of appointment.

Need for appointing an Independent Director

2. Appointment of independent in a company is done basically to ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively. The independent director would bring with him in-depth knowledge and they can help in the growth of the company, improve the credibility and governance standards of the company and ensure better governance by playing an active role in the Board. Independent directors also play an active role in various committees that are set up by the company such as Audit Committee, Nomination and Remuneration Committee, Strategic Risk Management Committee etc.

Besides the above, an Independent Director being a board member is able to play a pivotal role in neutralizing any conflicts that arise amongst the board members while taking impartial decision. By appointing an Independent Director in a specific expertise, the company would be in a position to take advantage of growth opportunities and also avoid potentially costly mistakes.

Governing regulation for the appointment of Independent Director

3. Section 149, 150 of Companies Act, 2013 and Schedule IV read with Rule 4, 5 & 6 of the Companies (Appointment and Qualification of Directors) rules, 2014 deal with Independent Directors.

Companies requiring to appoint Independent Director

4. As per section 149 of the Companies Act 2013 read with Rule 4(1) of Companies (Appointment and qualification of Directors) Rules 2014, the following classes of companies need to appoint independent directors on their board.

Listed public company

4.1 Every listed public company shall have to appoint one-third of a total number of directors as independent directors.(Any fraction contained in that one-third shall be rounded off as one)

Provisions under SEBI (Listing Obligations & Disclosure Requirements) Regulation 2015 {SEBI (LODR)} on the Appointment of independent director

Regulation 17 (1) (b) of the SEBI (Listing Obligations & Disclosure Requirements) Regulations 2015 specifies on the appointment of independent director (s) that

- (i) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and
- (ii) where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.

The Regulation further provides that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board or directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Unlisted public company

4.2 As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following classes of companies shall have at least 2 directors as independent directors.

- (a) Public Companies with paid-up share capital of Rs. 10 crores or more.
- (b) Public Companies with turnover of Rs. 100 crore or more.

(c) Public Companies with aggregate outstanding loans, debentures, and deposits, exceeding Rs. 50 crore

Explanation provided by the Rules, by way of clarification that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

Private company

5. The provisions of independent directors are not applicable to a private company.

Exemptions for appointment of independent director

6. Following companies are exempted from appointment of an independent director as per sub-rule (1) of the provisions of Companies (Appointment & Qualification of Directors) Amendment Rules, 2017 and also MCA Notification dated 5 July 2017.

- (a) A joint venture
- (b) A wholly owned subsidiary and
- (c) A dormant company as defined under section 455 of the Act

The provisions of the Act and Rules further states that where a company ceases to fulfil any of the three conditions laid down in sub rule(1) of 4 of the Companies (Appointment and qualification of Directors) Rules 2014 (i.e. falling below the limits paid-up share capital of Rest. 10 crores or more; turnover of Rs. 100 crore or more and aggregate outstanding loans, debentures, and deposits, exceeding Rs. 50 crore) for three consecutive years, then the company shall not be required to comply with these provision until such time as it meets any of such conditions. (this is as per the third proviso to Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014)

Exception to the exemptions for appointment of independent director in the wholly owned subsidiary company

6.1 The unlisted public company which falls under Rule 4 (2) above is still required to appoint one independent director in order to ensure compliance of Listing Regulation by the listed holding company in view of Regulation 24 (1) of the Listing Obligation and Disclosure requirements if such a subsidiary is a

material subsidiary as defined in Regulation 16 (c) of the SEBI (LODR) Regulations 2015. The criteria which would apply for "Material subsidiary" is spelled out by Regulation 16(c) of the Listing Obligations and Disclosure Requirements stating that material subsidiary shall mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively of the listed entity and its subsidiaries in the immediately preceding accounting year.

Further provisions of Rule 4 on appointment of independent director

7. The Act and Rules further provides that the companies which are covered under the above rule is also required to appoint a higher number of independent directors due to the requirement of constituting Audit Committee since majority of the Audit Committee members needs to be independent directors, wherever it is called for.

In case of non-appointment of independent director

8. As seen in the earlier para, the appointment of an independent director is called for in listed companies, unlisted public companies barring those exempted as per the provisions of the Act as per section 149 of the Companies Act 2013 read with Rule 4(1) of Companies (Appointment and qualification of Directors) Rules 2014.

If the company contravenes the requirement of sub-section (1) of section 149 by not appointing independent director on its board, then, non-compliance happens. This would result into violation due to non-adhering the requirements of section 149 of the Companies Act 2013 and the company and its directors are liable for penal actions. Since the penalty for non-compliance of appointment of independent director is not mentioned separately, the punishment prescribed under section 172 of the Companies Act shall be applicable.

The Penal provisions as per the Companies Act 2013 in case of non-appointment of independent director.

9. Chapter XI of the Companies Act 2013 relating to appointment and qualification of directors, it has sections 149 to 172 which exclusively deal with all the provisions related to directors. By virtue of section 172 of the Companies Act 2013, which prescribes punishment for contraventions for which no specific punished is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than

Rs. 50,000 but which may extend to Rs, 5,00,000.

Consequences following the non-appointment of independent director

10. Under the provisions of sub-section (5) of section 206 of the Companies Act 2013, the Central Government can carry out the inspection of the books of accounts, other documents, minutes etc., by an inspection officer and submit the report. The inspecting officer, after going through the records maintained by the company, can establish the fact that the company does not have independent director effective from a particular date and not complied with the requirement of section 149 of the Companies Act 2013.

Even if the inspection is not taking place, the Registrar of Companies (RoC) can call for the required information, documents and details from the company and can establish the facts that there has been no appointment of independent director.

Action from the Regulator

11. Upon establishment of non-compliance, the regulator would issue of show cause notice to the company and its defaulting officers, calling upon them to show cause within a specified time limit (say 10 days' time) from the date of issue of show cause notice as to why legal action under section 172 of the Companies Act 2013 should not be taken against them, failing which the necessary penal action will be initiated.

The regulator would also draw the attention of the company and its defaulting officers that as per section 441 of the Companies Act 2013 where under offence in question can be compounded by appropriate authority namely RD / NCLT In case of listed companies, Security Exchange Board of India would be taking action against non-compliance of SEBI (Listing Obligations and Disclosure Requirements) Regulations as per the circular issued by them from time to time specified the levy of fines penalties for non-compliance of the provisions of the Listing Regulations. Non compliances with the requirements pertaining to the composition of the board (including failure to appoint independent director) being a continuous offence, the fines shall continue to accrue till the time of rectification of non-compliance by the listed companies to the satisfaction of the stock exchange(s). (SEBI has specified fines either per day or per instances of non-compliances)

Defending / replying the show cause notice by the company

12. In case of default i.e. in case of non-appointment of independent director, it may not be possible for the company to defend themselves. The only alternative, open to the company is to file an application for compounding of offences to get over the non-compliance / violation as per the provisions of section 441 of the Companies Act 2013

Filing of compounding application and its processing

13. Since the offence under this section i.e. 149 of the Companies Act 2013 is compoundable under section 441 of the Companies Act, the company may have to resort filing the compounding application, admitting the offence and with a request to the regulatory authorities to compound the offence and close the issue. Upon filing the compounding application, the company not only spends its money on litigation but also spends a lot of time, instead of concentrating on the business issues. The company needs to follow the various steps involved in the process such as

- (I) e-filing of form GNL-1 for compounding of offences,
- (II) lodging the physical copies of the application with the concerned Registrar of Companies,
- (III) follow up the matter and get the date for personal hearing
- (IV) attending the hearing / hearings as and when called for either by the Regional Director's office or by the National Company Law Tribunal
- (V) obtaining the order upon passing of the order by the authority
- (VI) follow instructions given in the order and finally
- (VII) file form INC-28 along with requisite documents and fees within 7 days from the date of receipt of compounding order or such time as may be mentioned in the compounding order as per the provisions of section 441(3) (b) of the Companies Act 2013.

No doubt, the process of filing the compounding of offences, the company would be spending enormous amount of time coupled with money in getting the matter resolved finally.

Disclosure by company on this matter in the Board report

14. In couple of places, the disclosure is required to be made in the annual report of the company as listed below:-

14.1 Disclosure by all Public companies

(i) Board report - under "Directors Responsibility Statement" the Board members have to make a statement that they have devised proper systems to ensure compliance with the provisions of all applicable laws and that these are adequate and are operating effectively – at this place, they may have to make a mention of the non-compliance. Further the Board report is also required to address the non-compliances pointed out by way of qualification by the secretarial auditor.

(ii) Secretarial Audit Report - pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the secretarial auditor is required to report that the board of directors of the company is duly constituted with proper balance of executive directors, non-executive directors and independent directors. In case of non-appointment of independent director, the secretarial auditors would issue a qualified report highlighting the non-compliance.

(iii) Extract of Annual Return - All the companies, Public companies– listed or unlisted or Private companies are required to report in its extract of annual return annexed to the Board report the details of compounding of offences under the headings "Penalties / Punishment / Compounding of offences pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration) Rules, 2014.

14.2 Disclosure by Listed companies

(i) Corporate Governance report (by listed companies) – the company is required to make a disclosure on the Composition and Category of Directors under the heading "Board of Directors. The company would disclose that the Board of Directors of the Company is an optimal combination of Executive, Non-Executive and Independent Directors who have in-depth knowledge of business, in addition to the expertise in their areas of specialisation. In case of non-appointment of independent director (s) on the board, the above statement would stand differently i.e. highlighting the factual position.

(ii) Certificate of Compliance of Corporate Governance requirements issued by Practicing Company Secretary (by listed companies) – the company is required to obtain a certificate from a practicing Company Secretary (PCS) confirming compliance of the conditions of Corporate Governance as stipulated in Para E of Schedule V of the SEBI (LODR) Regulations and the same is required to be

annexed to the Board report. The Practicing Company Secretary is required to state and confirm that he /he has examined the compliance of conditions of corporate governance by the company for the year ended (relevant year) as stipulated in chapter IV of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 pursuant to the Listing Agreement of the said Company with stock exchanges. Further he / she has to also express his/her opinion and to the best of his / her information and according to the explanations given to us, he / she certify that the Company has complied with the conditions of Corporate Governance as stipulated in the provisions as specified in chapter IV of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 pursuant to Listing Agreement of the said Company with stock exchanges. In case of non-compliance, he / she would be issuing a qualified report

(iii) Board Report to address the qualifications of the audit report:- The Board Report also needs to provide its explanations or comments on every qualification, reservation or adverse remark or disclaimer made by the statutory auditor and by the secretarial auditor in their report as required under the provisions of section 134(3) (f) of the Companies Act 2013.

Under the head "Secretarial Audit", the Sub-section (3) of section 204 of the Companies Act 2013 also provides that the Board of Directors in their report made in terms of sub-section (3) of section 134 is required to explain in full any qualifications or observations or other remarks made by the company secretary in practice in his report under sub-section (1).

Company's reputation / image in the market place

15. The recipient / readers of the annual report would know the non-compliance committed by the company and the compounding fees details, which would obviously affect the reputation of the company.

Conclusion

16. The role of company secretary has evolved from just being a support person to being the 'trusted advisors' to the board of directors of the company and even going beyond regulation and ensure and ensure absolute compliance with reference to all applicable laws / rules / secretarial standards. Since company secretaries understand the law being an expert in corporate laws, they have transitioned to one of the key governance positions within a corporation and can help to the highest level of achieving various regulatory compliances and the

mutual ethics and trust in a Company to achieve excellence in corporate governance. Further the company secretaries possess the fundamental and distinctive characteristics or qualities of being remarkable professionals that corporates seek. The company secretaries could develop a law-abiding culture and a sustainable framework for the Company wherein a constant watch prevails over the company's activities by the regulators. The company secretaries should take pride in referring themselves as Governance professionals and ensure they uphold the highest professional value and ethics in the organization with which they are associated.

Prof. R Balakrishnan

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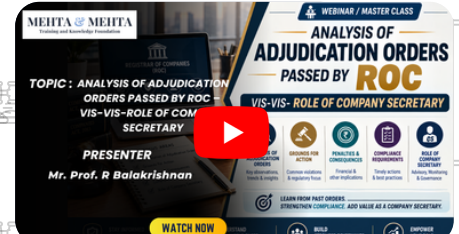
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