

Editorial

Directors and Key Managerial Personnel ("KMP"), being the key decision makers of the Company, need to be compensated fairly for the expertise and experience they bring to the table. Owing to this, the concept of Remuneration to Managerial Personnel has been introduced in the Companies Act, 2013. Companies need to achieve the balance between paying adequate remuneration to the Directors and KMPs whilst ensuring that the remuneration is within the reasonable limits as mandated by the law. In this backdrop, this newsletter contains an article on Managerial Remuneration, covering its meaning, objective, limits and regulatory applicability and requirements.

We have also included exciting sections in the newsletter such as engaging brain teasers.

Our other regular features comprising of Gist of Changes in the Companies Act, 2013, SEBI's LODR, 2015 and IB Code, 2016, and Statutory Compliance Calendar for the month of December 2023..

Please share your feedback on this newsletter with us at contact@cimplyfive.com, we eagerly look forward to it.

Happy reading,
Team CimplyFive
December 05, 2023

What's more in this month's issue.

- ***What is Hot in Company Law?***
- ***Article for the Month***
- ***BLISS Tips for the Month***
- ***Test your Gray Matter!***
- ***Compliance Calendar***
- ***Regulatory Changes in the Month***

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OPINION:

What is Hot in Company Law?

Our free to use website www.ca2013.com has the unique distinction of providing an integrated view of the Companies Act, SEBI (LODR) and IB code. Our site has crossed **34 million page-views** as on date and attracts over 6,000 users accessing around 25,000 pages a day. List of the most viewed sections in the Companies Act, LODR and IB Code in the month of November 2023 here is based on visitors to our site.

For the Month of November 2023
Companies Act, 2013 Top 5 Chartbusters

Rank in October	Change in Rank	Rank in November	Section reference	Section title
1	↔	1	188	Related party transactions
N	↑	2	179	Powers of Board
N	↑	3	62	Further issue of share capital
5	↑	4	186	Loan and investment by company
3	↓	5	135	Corporate Social Responsibility

Section 179 and 62 have replaced section 134 and 139 in top 5 Rankings.

LODR Top 5 Chartbuster Regulations

Rank in October	Change in Rank	Rank in November	Section reference	Section title
1	↔	1	30	Disclosure of Events or Information
2	↔	2	17	Board of Directors
3	↔	3	23	Related Party Transactions
N	↑	4	2	Definitions
N	↑	5	29	Prior Intimations

Regulations 2 and 29 have replaced Regulation 28 and 33 in top 5 rankings.

IB Code Top 5 Chartbusters

Rank in October	Change in Rank	Rank in November	Section reference	Section title
1	↔	1	59	Voluntary liquidation of corporate persons
N	↑	2	14	Moratorium
2	↓	3	5	Definitions
3	↓	4	3	Definitions
N	↑	5	30	Submission of resolution plan

Section 33 and 53 have been replaced with Section 14 and 30 in the top 5 Ranking.

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Article of the Month:

'Remuneration To Managerial Personnel'

Introduction:

A Company being a legal entity needs people for planning, directing, and controlling the activities, for taking crucial decisions and managing the human resources. This responsibility is vested in the individuals employed at the managerial levels.

In fact, Companies Act mandates a certain set of companies to appoint Key Managerial Personnel ("KMP") who will shoulder the responsibility of not just laying down the strategies but also its implementation and ensuring the efficient working of a company.

WHO ARE KEY MANAGERIAL PERSONNEL?

Section 2(51) of the Companies Act, 2013 states that, in relation to a company, "key managerial personnel" includes the following:



WHAT INCLUDES REMUNERATION ?

Back in the day, it was believed that directors had no claim to be paid remuneration by the company for the services they provided. The rationale being that they have a fiduciary relationship with the company. Thus, the directors cannot pay themselves or receive other benefits from the company's assets.

However, in the world where profits drive business, remuneration was also looked upon as an important and a fair factor playing a vital role in motivating the managers.

The term "remuneration" is defined under Section 2(78) of the Companies Act, 2013. It defines the term as money, or its equivalent provided or given to a person in return for the services provided by him.

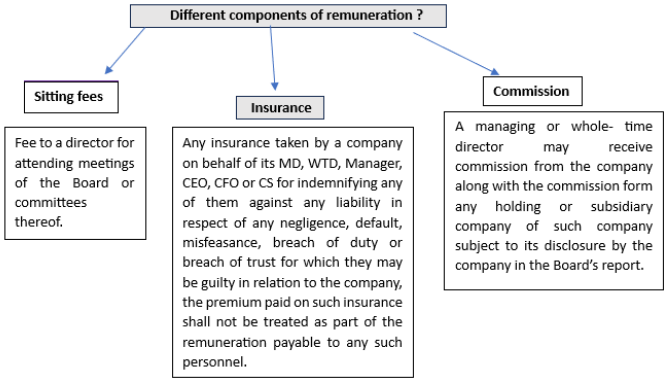
A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

How is remuneration different from salary?

A "salary" is a fixed amount of money paid to an employee on a regular basis; this amount is fixed and agreed upon by both the Employee and the Employer.

"Remuneration" is a method of compensating a person for services rendered to a company.

Thereby making salary a subset of the remuneration that can be paid to the employees.



How is it fixed and who fixes it?

While it is crucial to compensate those in the challenging role of managing daily functioning of the company, it is equally important not to exceed reasonable limits of perks and pay. To strike a balance between the need and the risk of excessive compensation, Indian law intervenes to regulate managerial remuneration. The law aims to prevent companies from spending the profits recklessly while ensuring that the managerial personnel receive adequate and reasonable compensation. This balancing act helps to ensure that businesses thrive without exploiting their resources or employees.

The Board of Directors consult the Nomination & Remuneration Committee on the draft remuneration plan and obtain a report from the Committee to ensure that the Board exercises its authority appropriately.

The remuneration payable to the directors of a company shall be determined by any of the following:

- Articles of the company
- A resolution
- Special resolution if the articles so require.

Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 also provides for the payment of a sitting fee to a director for attending meetings of the Board or committees thereof and this fee will be decided by the Board of directors and shall not exceed Rs. 1,00,000 per meeting, be it board meeting or committee meeting.

What if the company earns profits and what if the company incurs loss?

I. If the company earns profits.

A. A company having profits in a financial year may pay remuneration to a managerial person or persons or other director(s) not exceeding the limits specified in section 197 of the Companies Act.

B. Remuneration to be paid by a Public company shall not exceed 11% of the net profits (which is computed as per section 198) for the financial year, and never from the gross profits.

- However, the company in general meeting may authorize the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V:
- A company, except with the approval in general meeting, by a special resolution can pay up to following limits-

Payable to Managing Director or Whole-Time Director or Manager	**to any 1 Managing Director or Whole-Time Director or Manager**	**5% of the net profits of the company**
	if there are more than Managing Director or Whole-Time Director or Manager	10% of the net profits of the company to all such directors and manager taken together
Payable to Directors who are neither Managing Director or Whole-Time Director or Manager	If there are any Managing Director or Whole-Time Director or Manager	1% of the net profits of the company
	In any other case	3% of the net profits of the company

Private Limited Companies are not subject to the provisions of Section 197 of the Companies Act, 2013, which applies only to Public Limited Companies. This means that there is no limit on the remuneration that private companies can pay to their managerial personnel and they are not required to comply with the provisions of Section 197 and Schedule V of the Act.

II. If the company incurs losses.

A. In such times when a company has no profits or its profits are inadequate, it shall not pay to its directors, including any managing or whole-time director or manager, or any other non-executive director, including an independent director by way of remuneration any sum, exclusive of any sitting fees payable to directors, except in accordance with the provisions of Schedule V.

B. Schedule V sets forth the following limits for paying the remuneration to its KMPs in events of no or inadequate profits-

Where the effective capital is	Limit of yearly remuneration payable shall not exceed in case of a managerial person	Limit of yearly remuneration payable shall not exceed in case of other director
Negative or less than 5 crores.	Rs. 60 Lakhs	Rs. 12 Lakhs
5 crores -100 crores.	Rs. 84 Lakhs	Rs. 17 Lakhs
100 crores -250 crores.	Rs. 120 Lakhs	Rs. 24 Lakhs
250 crores and above	Rs. 120 Lakhs + 0.01% of the effective capital in excess of Rs.250 crores	Rs. 24 Lakhs+ 0.01% of the effective capital in excess of Rs.250 crores

- However, remuneration more than the above Limit may be paid if the shareholders approve of it by the way of a special resolution.

A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified above-

(a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);

(b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and

(c) encashment of leave at the end of the tenure.

Maximum and minimum limits from 1 or more than 1 company.

A managerial person, subject to schedule V of the Companies Act, can draw remuneration from one or more than one company, provided that the total remuneration drawn from the companies does not exceed the limits admissible from any one of the companies of which he is a managerial person and that the same is disclosed in the Board's report.

Statutory compliances-

- If any director draws or receives, directly or indirectly, remuneration in excess of the limits prescribed or without necessary approvals required, he is bound to refund such sums to the company, within 2 years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.
- The Board of Director's report under the heading "Corporate Governance" shall have the following disclosures:

  (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;

  (ii) details of fixed components and performance linked incentives along with the performance criteria;

  (iii) service contracts, notice periods, severance fees; and

  (iv) stock option details, if any, and whether the same had been issued at a discount as well as the period over which accrued and over which exercisable.

- Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median/average employee's remuneration and other details as required.
- If any person makes any default in complying with the provisions section 197, he shall be liable to a penalty of Rs. 1,00,000 and where any default has been made by a company, the company shall be liable to a penalty of Rs. 5,00,000.

A look at the remuneration paid to the Executive Directors and Non-Executive Directors:

Listed below are a certain figure to throw light on the remuneration that 5 out of the Nifty 50 companies pay to their KMPs thereby striking a balance between the need and the risk of excessive remuneration.

Company	Remuneration to the executive directors	Remuneration to the non-executive directors
Maruti Suzuki India Limited	Rs. 94.11 million (Rs. 9,41,17,000) in the form of salaries and perquisites	Rs. 7.75 million by way of sitting fees and Rs. 45 million by way of commission
Wipro Limited	Rs. 202.53 million in the form of salaries and allowances	Rs. 3.9 million as sitting fees and Rs. 116.57 million by way of commission.
UPL Limited	Rs. 123.6 million by the way of salaries and perquisites	Rs. 5.7 million in the form of sitting fees and Rs. 9 million by way of commission
Ultratech Cement Limited	Rs. 180.1 million by the way of salary, benefits, pensions	Rs. 2.9 million in the form of sitting fees and Rs. 120 million (1,200 lakhs) by the way of commission.
Titan company	Rs. 15 million by the way of salary and Rs. 24.4 million by the of perquisites.	Rs. 5.99 million in the form of sitting fees and Rs. 89.5 million in the form of commission.

Conclusion:

With this, it can be understood that it is vital to compensate the directors for their role in the Company whilst ensuring that the remuneration is in line with the statutory limits. In addition to the statutory limits, the Company shall also abide by the Articles of Association,

Terms as set by the Company and the Nomination and Remuneration Committee, if any to ensure fair compensation to the Directors.

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BLISS Tips for the Month

BLISS Tips #279: Enhance Your Productivity by Replicating entire Meeting Documents in a SINGLE CLICK with BLISS.

BLISS allows the User to replicate the entire Meeting Documents with all its Agenda items created for a meeting (Board/Committee/Shareholder). The replication can be done to the same company or to another company by the user. This feature enhances the productivity and saves time by avoiding duplication of work in case of similar meetings across companies. Users can replicate the meeting documents from the Records Page.

BLISS Tips #280: Track your Event and Calendar based Compliances with BLISS.

BLISS enables users to plan and stay prepared for all compliances as required by the Companies Act, 2013 and the SEBI (LODR) Regulations, 2015 with BLISS Action Tracker. Action Trackers provide for a list of compliance activities required to be undertaken by a Company. BLISS identifies and automatically bifurcates the action trackers into two types:

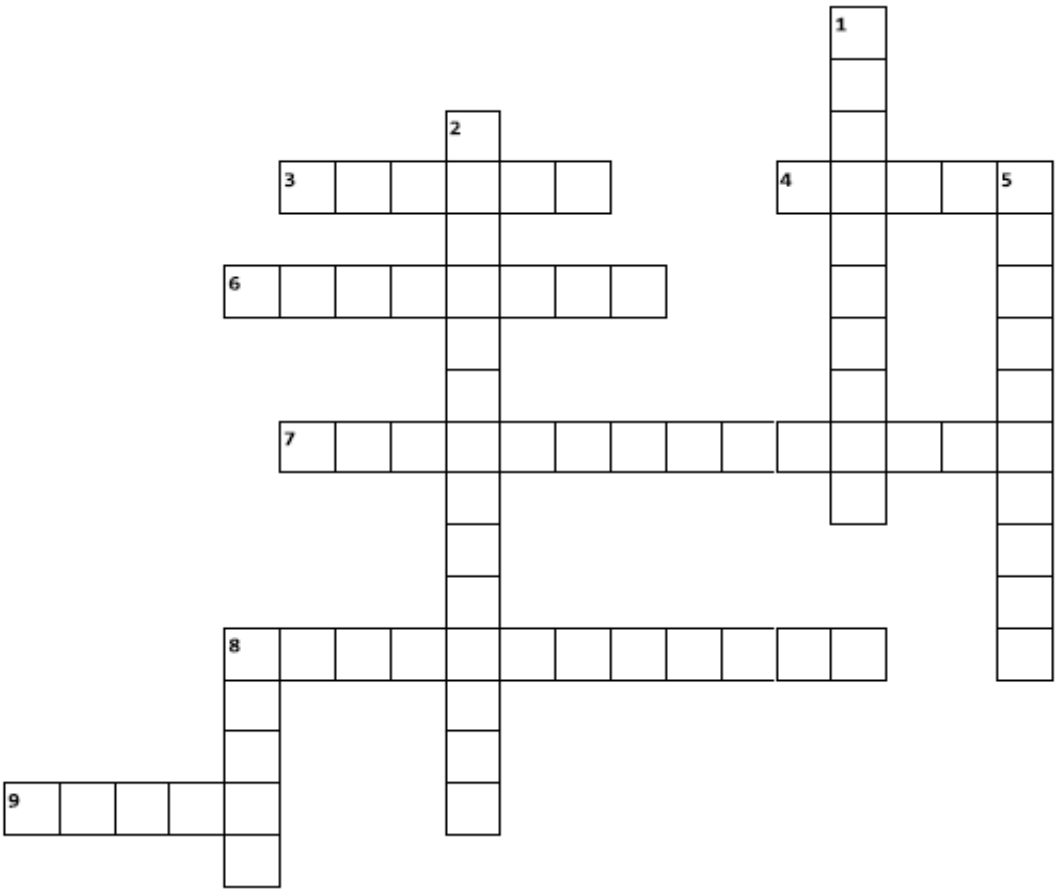
'Event based' action trackers which are triggered from the agenda items taken up at any meeting and

'Calendar based' action trackers which refer to the compliance activities with a statutorily mandated timeline.

Users will receive email reminders for the due date of the action trackers if authorised to receive the same under the 'Reminder Status' of the User Rights. These actions can be assigned to other users as 'Responders' and similarly, an 'Approver' can be assigned to have a maker-checker system in place.

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Test your Gray Matter!! Take our Crossword and Brain teasers to find out!



Across

3. Fast Track Insolvency Resolution Process shall be completed within _____ days of insolvency commencement date

4. The Structured Digital Database is to be preserved for a period of _____ years from the date of completion of relevant transactions

6. A High Value Debt Listed Entity shall undertake Directors and _____ Insurance for all its Independent Directors

7. The Director in the Serious Fraud Investigation Office shall be an officer not below the rank of _____ of the Government of India

8. The notice of record date shall be given by the Listed entity to the Stock Exchange atleast _____ days before the record date

9. The Vigil Mechanism shall provide direct access to the Chairperson of the _____ Committee in exceptional circumstances

Down

1. Communication of unpublished price sensitive information is allowed if the communication is in furtherance of _____ purposes

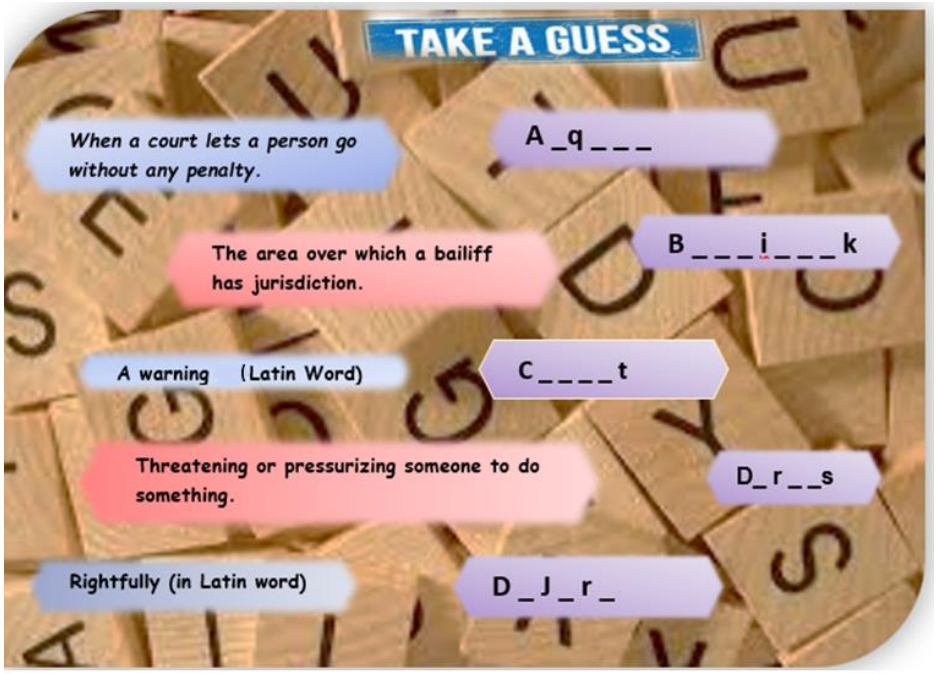
2. A _____ shall be appointed as Manager to the open offer under SEBI (SAST) Regulations, 2011

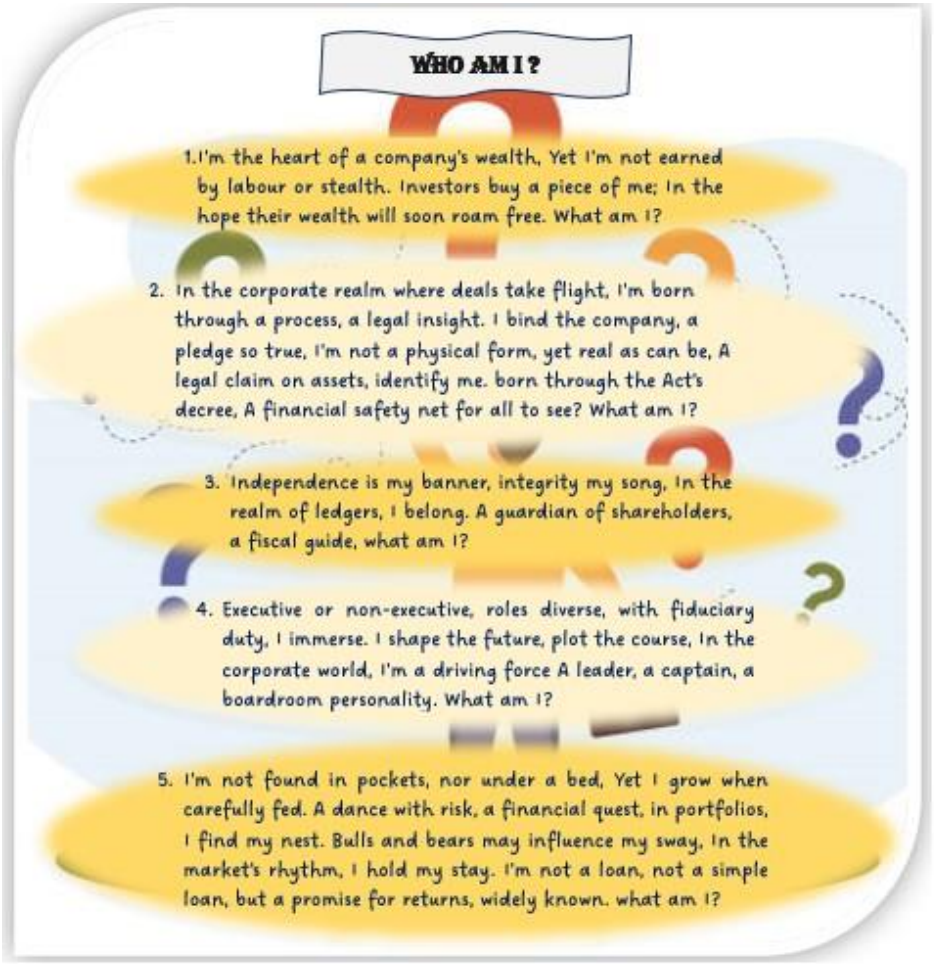
5. Any acquirer acquiring shares in a target company entitling them to exercise more than _____ percent voting rights in the Company is required to make a public announcement of an open offer for acquiring shares of such target company

8. The gross annual income of the debtor should not exceed _____ thousand rupees to be eligible to make an application for Fresh Start Process

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Brain Teasers





Board Leaders Integrated Software Solutions



BLISSPLUS

BLISS LISTED

BLISSGLOBAL

BLISSDOCS

CIMPLYBEST

BLISSTAT

CAIRR LODR Integrated

BLISS is a Cloud hosted software that automates the routines, provides an e-repository, timely alerts, and a real-time dashboard, all aimed at ensuring compliance and good corporate governance. By doing so, it provides complete peace of mind to the Board of Directors and assurance to professionals by providing them with real-time compliance status with respect to the Companies Act, 2013

BLISSPLUS is an advanced variant of BLISS with multiple premium features like Directors view, facility to store past Secretarial records, automated compliance tracker for size- based compliance under the Companies Act, 2013

BLISSLISTED An advanced variant of BLISSPLUS for Listed Companies with Companies Act,2013 and SEBI's LODR 2015 compliances integrated to provide a single point compliance automation, risk manager & e-repository for secretarial records including past secretarial records.

BLISSGLOBAL is a cloud hosted key document management solution with Action Tracker that provides master data capture of the entity, e-repository for document management, Automated Tracker for managing event based and calendar-based activities.

BLISSDOCS is an Android/IOS based Board app for Directors which provides secure access to Board documents on Tablets/mobile phones, enhancing Directors productivity and making the Board meetings efficient & effective

CimplyBest is a tailormade software for Indian Corporates in conducting Corporate Board Evaluation which will optimize Board's Time & Effort with confidentiality assured.

BLISSTAT is a cloud hosted custom built software to automate Direct Tax assessment processes and provide a comprehensive action tracker enabling workflow automation with a e-repository for storing all tax assessment records.

CAIRR is a free to use website from CimplyFive that provides at your fingertips, an integrated view of the Companies Act, 2013, IB Code, 2016 and LODR, 2015. The site and app is updated every business day by 11 AM for changes in the Act & Regulations. For more details, please visit www.ca2013.com

Compliance Calendar for the month of December 2023

Compliances for Companies under Companies Act, 2013			
Sl. No.	**Compliance Requirement**	**Section/ Rules**	**Due Date**
NIL			
SEBI (LODR) Regulations, 2015 Compliances			
Sl. No.	**Compliance requirement**	**Regulation reference**	**Timeline**
NIL			
SEBI (PIT) Regulations, 2015			
Sl. No.	**Compliance requirement**	**Regulation reference**	**Timeline**
1	Continual Disclosures by Every promoter, and director of every company shall disclose to the company number of securities acquired or disposed, if the value of the securities traded, in a calendar quarter, exceeds traded value in excess of 10 Lac	7(2)	Within two trading days of receipt of the disclosure or from becoming aware of such information
SEBI (SAST) Regulations, 2011			
Sl. No.	**Compliance requirement**	**Regulation reference**	**Timeline**
1.	Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to 5% or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company.	29(1)	Within 2 Working days of receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company
2.	Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company.	29(2)	within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company
3.	The Promoter shall disclose details of shares in such target company encumbered by him or by PAC's with him in such form as may be specified.	31(1)	Within 7 working days from the creation of encumbrance
4.	A Promoter shall disclose details of invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.	31(2)	Within 7 working days from the invocation or release of encumbrance as the case may be

Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of November 2023

- **08-11-2023**

SEBI vide this Circular provides a procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and the manner of claiming it by the investors.

1. A listed entity having non-convertible securities is mandated to transfer the interest/ dividend/ redemption amount which was not claimed within 30 days from its due date to an escrow account withing 7 days from the expiry of the said period of 30 days.

2. A need to standardize the procedure to be followed by the listed entities was felt and hence SEBI through this circular has defined the framework for the same in **Annexure- A** annexed to it.

3. Further, the amounts in the Escrow account which remain unclaimed for 7 years are to be transferred to-

   - the 'Investor Education and Protection Fund' (IEPF) constituted in terms of section 125 of the Companies Act, 2013 – in case of listed entities which fall under the definition of Company under Companies Act and rules; and

   - the 'Investor Protection and Education Fund' (IPEF) created by the Board in terms of Section 11 of the Act – in case of listed entities which are not companies as per Companies Act, 2013.

4. The said circular through **Annexure B** defines the procedure to be followed by the listed entities (which are not companies) for transfer of such unclaimed amounts from the Escrow Account to the IPEF and claim thereof by the investors.

5. Further, listed entities having unclaimed amounts in the Escrow Account for less than 7 years, as on February 29, 2024, have been directed to start computing interest, as stated in Annexure A, from March 1, 2024; and

6. The listed entities which are not companies, having unclaimed amounts in the Escrow Account for more than 7 years, as on February 29, 2024, have been directed to transfer the unclaimed amounts of the investors to IPEF, as per the provisions set out in Annexure B, on or before March 31, 2024.

- **17-11-2023**

BSE and NSE notify the effective date for trading window closure period for the next 1000 listed companies based on market capitalization as on 30/06/2023.

In furtherance to the BSE and NSE Circular dated 21/07/2023 wherein the list of top 1000 companies by market capitalization and the effective date for the trading window closure was notified, BSE and NSE hereby notify the Next 1000 companies based on market capitalization as on 30/06/2023.

This circular shall come into force for trading window closure w.e.f. 01/01/2024.

Solution for Crossword:

1.Legitimate	2. Merchant Banker	3. Ninety
4. Eight	5. Twenty-Five	6. Officers
7. Joint Secretary	8. Across – Seven Working Down- Sixty	9. Audit

Solution for Take a Guess:

1.	Acquit
2.	Bailiwick
3.	Caveat
4.	Duress
5.	De jure

Solution for Who am I ? :

1. Share Capital	2. Charge
3. Audit	4. Director
5. Investment	

About CimplyFive

Vision

Leverage research and technology to eliminate procedural non-compliance risk for entities regulated by the Indian Companies Act, 2013

Mission

Provide a cost-effective, secure web-based, menu driven, subscription services that provides curated resolutions, timely alerts and informative dashboards to free the management bandwidth for pursuing business goals



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