

Editorial

Corporate Social Responsibility ("CSR") has become a huge pillar of corporate governance in the past few years, considering the important amendments and reporting requirements that has been specified by the Government. From a voluntary compliance which may be undertaken by Companies in the past, it has now become a mandatory compliance, which is strictly enforceable, pursuant to the powers given in the Act. In the recent years, the Act has undergone a lot of changes, stressing on the importance "giving back to the society". In this month's article, we delve deeper into the latest amended provisions for CSR relating to its applicability, computation, implementation and reporting, etc. for the perusal of the readers.

We have also included exciting sections in the newsletter like brain teasers. We are also pleased to inform that we have released the Corporate Board Evaluation Practices Report 2023 on November 08, 2024 and is now available on our website. Our other regular features comprise 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 2024.

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, 2024

What's more in this month's issue…

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

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 **45 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 2024 here is based on visitors to our site.

For the Month of November 2024
Companies Act, 2013 Top 5 Chartbusters

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

Section 134 has been replaced with Section 62 in the top 5 ranking.

LODR Top 5 Chartbuster Regulations

Rank in Oct	Change in Rank	Rank in Nov	Regulation	Regulation title
1	↔	1	30	Disclosure of Events or information
2	↔	2	17	Board of Directors
3	↔	3	23	Related Party Transactions
4	↔	4	29	Prior Intimations
5	↔	5	33	Financial Results

There have been no changes in the top 5 rankings.

IB Code Top 5 Chartbusters

Rank in Oct	Change in Rank	Rank in Nov	Section	Section title
N	↑	1	59	Voluntary liquidation of persons
N	↑	2	3	Definitions (Part 1)
1	↓	3	5	Definitions (Part 2, Chapter 1)
3	↓	4	7	Initiation of Corporate Insolvency Process by financial creditor
5	↔	5	30	Submission of Resolution plan

Sections 29 and 6 have been replaced with Sections 59 and 3 in the top 5 Ranking.

 Copyright © 2024, CimplyFive

Article of the Month:

Deep dive into CSR provisions

Introduction

Corporate Social Responsibility ("CSR") refers to the contribution made by the Company towards the society. Organisations use resources that belong to society, and it is expected that they should operate in a sustainable manner and spend some funds for preservation and sustainability of resources as a way of giving back.

Going with this ideology, Governments across the world have been using different forms of regulations to improve corporate behaviour to promote increased accountability, disclosures and transparency.

In this article we delve deeper into the ***latest amended provisions*** for CSR relating to its applicability, computation, implementation and reporting, etc.

Definition of CSR

As per the Rule 2 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

(i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that:

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;

Note: Pursuant to the definition, it is clear that any contribution made by a Company, towards CSR, should not directly or indirectly benefit itself, but shall solely be for charitable purposes.

Applicability of CSR

Pursuant to Section 135(1) of the Act, the CSR provisions will be applicable to companies which fulfil any of the following criteria during the immediately preceding financial year:

i. Net worth of rupees five hundred crore or more,
ii. turnover of rupees one thousand crore or more or,
iii. a net profit of rupees five crore or more

This essentially means that ALL companies registered under Companies Act, 2013, which crosses these threshold limits, shall spend on CSR mandatorily, including Section 8 companies and Joint Venture entities which are primarily doing business outside India.

CSR Expenditure

As per Section 135(5) of the Act, the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year:

i) at least two per cent. of the average net profits of the company made during the three immediately preceding financial year,

ii) or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy

Priority shall be given to local areas in/around which the Company operates. Further, if the Company fails to spend such amount, the same shall be disclosed in its Board's report specifying the reasons for not spending and such amount shall me transferred to any Fund specified in Schedule VII within a period of six months of the expiry of the financial year.

In addition, Rule 7 stipulates further conditions on the expenditure of CSR:

i) Administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

Meaning: Administrative overheads are the expenses incurred by the company for 'general management and administration' of CSR functions. However, the expenses which are directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme, shall not be included in the administrative overheads.

ii) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account or a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Meaning: Surplus refers to income generated from the spend on CSR activities, e.g., interest income earned by the implementing agency on funds provided under CSR, revenue received from the CSR projects, disposal/sale of materials used in CSR projects, and other similar income sources.

Computation of Profits for the purpose of CSR

i) Vis à vis General Circular No. 14 /2021 dated 25th August 2021, the Government has clarified how the profits for the purpose of CSR are computed.

ii) The average net profit for the purpose of determining the spending on CSR activities is to be computed in accordance with the provisions of section 198 of the Act and will also be exclusive of the items given under Rule 2(1)(h) of the Companies (CSR Policy) Rules, 2014.

iii) Section 198 of the Act specifies certain additions/deletions (adjustments) to be made while calculating the net profit of a company (mainly it excludes capital payments/receipts, income tax, set-off of past losses). Profit Before Tax (PBT) is used for computation of net profit under section 135 of the Act. The detailed Section can be referred to in https://ca2013.com/198-calculation-of-profits/.

Constitution of CSR Committee

Rule 5 of the Companies (Corporate Social Responsibility Policy) Rules, 2014:

The composition of the CSR Committee for various categories of companies is as under:

Listed companies	Three or more directors, out of which at least one shall be an independent director.
Unlisted public companies	Three or more directors, out of which at least one shall be an independent director. However, if there is no requirement of having an independent director in the company, two or more directors.
Private companies	At least two persons out of which: (a) one shall be as specified under clause (d) of subsection (1) of

	section 380 of the Act, and (b) another shall be nominated by the foreign company. (Refer rule 5(1) of the Companies (CSR Policy) Rules, 2014)
Foreign Companies	the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company

Exception*: Section 135(9) states that where the amount to be spent by a company does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.*

Roles and Responsibilities of the CSR Committee

The Corporate Social Responsibility Committee shall—

(*a*) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

(*b*) recommend the amount of expenditure to be incurred on the activities referred to in clause (*a*); and

(*c*) monitor the Corporate Social Responsibility Policy of the company from time to time.

(d) CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy.

Implementation and Reporting of CSR

CSR programs, projects or activities of the company should be implemented through following methods:

i. Directly by the company;
ii. Implementing Agencies;
iii. Any foundation or body incorporated by the company and eligible to undertake such CSR projects.
iv. in collaboration with other organizations / group companies

Notes:

- The Board shall also ensure that the implementing agencies are registered under the Act through CSR-1 certificate which contains a unique CSR Registration Number. In addition, companies shall also check for certificates pursuant to Section 12A and 80G of Income Tax Act.

- Disclosure shall be made in the Board's report in the form of CSR annual report, which shall be an annexure to the report and the same shall be filed with the ROC through the form CSR-2 and the details of such activities, expenditure and the committee shall also be updated on the website of the Company.

- Additionally, the Board shall also satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall issue a certificate to that effect.

- It is also the responsibility of the Company to ensure that the implementing agencies spend the amount disbursed within the timelines as specified in the Act.

- In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

CSR-2: Annual report on CSR

CSR-2 was introduced by Ministry of Corporate Affairs vide notification dated 11th February 2022, by amendment to Companies (Accounts) Amendment Rules, 2022 as an addendum to form AOC-4. However, the notification also clarified that form CSR-2 be filed separately unless provision is made in AOC-4 to add it as an addendum. The following are the major disclosures in CSR-2:

i) Details of CSR expenditure for the three preceding financial years

ii) Information about the company's CSR Committee.
iii) Disclosure of CSR details on the company's website, as per Rule 9 of the Companies (CSR Policy) Rules, 2014.
iv) Net profit and other relevant company financial details for the preceding financial years.
v) Details of the implementing agencies, along with their CSR registration number
vi) Information on ongoing projects and amount transferred to funds as per Schedule VII
vii) Details of any capital assets created or acquired through CSR funds, including the location, pin code, amount spent, and the registered owner of the property.

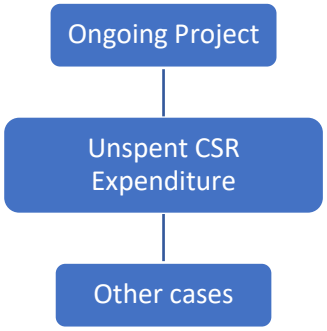
Ministry of Corporate Affairs vide its notification dated 24th September 2024, has notified that the due date for filing of CSR-2 for the FY 2023-24, shall be on or before 31st December 2024

Unspent CSR expenditure

Section 135(6) states that any unspent CSR expenditure, pursuant to any ongoing project, undertaken as per the CSR Policy of the Company, shall be transferred within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the "Unspent Corporate Social Responsibility Account".

If the Company fails to transfer funds as per the above timelines, it shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year

Definition: *"Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification*



In any other case, in cases where there in no ongoing CSR project, the unspent amount shall be transferred to any Fund as specified in Schedule VII, within a period of six months from the date of expiry of the financial year.

Conclusion

Complying with CSR provisions is not just promoting charitable activities of the Company, but also to ensure that they do not violate the provisions of the Act. In addition to public disclosure of the unspent amount along with reasons, the Act also specifies that the said non-compliance is a civil wrong and shall attract the following penalties:

Company	Twice the unspent amount required to be transferred to any fund included in Schedule VII of the Act or Unspent CSR Account, as the case may be, or one crore rupees, whichever is less.
Every Officer in Default	1/10th of the unspent amount required to be transferred to any fund included in Schedule VII of the Act or Unspent CSR Account, or two lakh rupees, whichever is less.

Considering the above, it becomes necessary for companies to comply with CSR provisions and ensure that the spirit of the law is followed while undertaking any charitable activities. Hence, it can be concluded that the onus of responsibility mainly falls on the Company to ensure that the entire amount contributed is spent for the purposes for which it was disbursed, and the timelines are being adhered to, whether they undertake the activities directly or indirectly.

BLISS Tips for the Month

BLISS Tips #305: Enhanced Register Management with Timestamping feature in BLISS!

With BLISS, users can maintain the statutory registers electronically. With a system-generated OTP, users can authenticate entries by capturing the time stamp and email ID of the person finalizing and verifying them. This digital authentication process eliminates the need for physical printouts or manual signatures from authorized personnel, ensuring seamless compliance with regulatory standards for maintaining registers electronically.

BLISS Tips #306: With BLISS, efficiently manage Non-Convertible Debentures ("NCD") master data along with its compliance tracking.

With BLISS, users can securely store and maintain a complete master database of NCDs. This feature assists users in tracking essential details related to NCD issuance and redemption, interest payments, other compliance requirements, as well as enables report generation. As a result, compliance activities get mapped within the software and email reminders are sent to ensure timely compliance.

Bliss Feature Update!

BLISSLISTED, BLISSPLUS, BLISS & BLISSGLOBAL

- **Approving action trackers via mail**

Users marked as approvers for the event and calendar-based action trackers will now be able to directly approve/ disapprove the action trackers through their mail once the respondent marks it as complete. This will help in timely completion of activities/ compliances as the approvers need not login to Bliss every time for the same.

BLISSLISTED, BLISSPLUS & BLISS

- **CHG 4 form filing automation**

Bliss now enables its users to file their CHG-4 return directly through Bliss itself. Users can use their MCA login credentials at the form filing stage and submit the form.

- **Provision to have meeting specific compliances**

On customer requirement, we have introduced the functionality to map compliances for a specific meeting in addition to specific agenda items. Users will now be able track the meeting specific compliances which are required to be complied without mapping them against any agenda item.

- **Provision to print the preamble in the CTCs**

On customer requirement, we have enabled the provision to print the preamble along with the resolution in the CTCs. This will help the users to print the summary of the resolution along with the final resolution, if needed.

- **Section-wise downloading enabled for Directors and customized viewers**

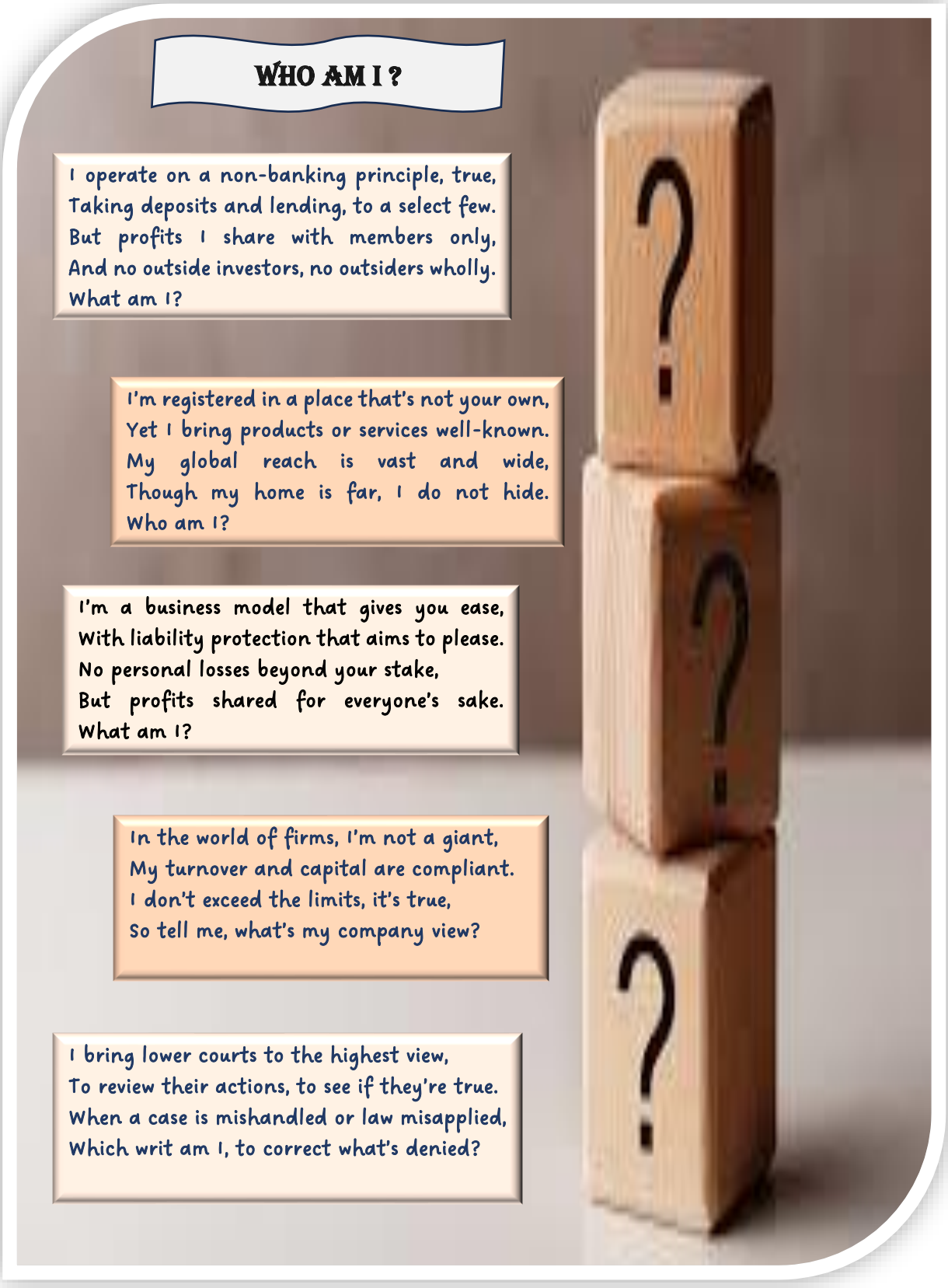
Admins will now be able to control what type of documents the directors and customized viewers can download rather than downloading entire set of documents. With this feature, a further selective downloading can be enabled for the users with director and customized viewer role.

- **Search across all the companies**

With this new feature, users will now be able to search the data and the compliances across all the companies that they have access to. Their search will not be restricted to the company currently being accessed.

 Copyright © 2024, CimplyFive

Test your Gray Matter!! Take our Riddles to find out!



Test your Gray Matter!! Take our Quiz to find out!

1. A person is a beneficial owner if they:

a. Own shares in their own name only
b. Hold shares through an intermediary such as a nominee or trustee
c. Are only entitled to receive dividends
d. Do not exercise voting right

2. What is the definition of "Slump Sale" under the Companies Act, 2013?

a. Sale of goods by a company to its shareholders
b. Sale of a business or undertaking as a whole for a lump sum consideration without determining the value of individual assets and liabilities
c. Sale of a company's shares to another company
d. Sale of assets of a company in pieces

3. In case of winding-up of a company under the Companies Act, 2013, which of the following has the highest priority for payment from the company's assets?

a. Debenture holders
b. Unsecured creditors
c. Employees' dues and wages
d. Shareholders

4. What is the time limit for filing Form AOC-5 with the Registrar of Companies (ROC)?

a. Within 7 days of the board resolution
b. Within 30 days of the board resolution
c. Within 15 days of the resolution
d. Within 60 days of the board resolution

5. What is the stamp duty rate on issue of shares under the latest amendments?

a. 0.005% for all the states.
b. 0.1% of the issue price
c. 0.5% of the market value
d. 1% of the face value of the shares

 Copyright © 2024, CimplyFive

Board Leaders Integrated Software Solution

BLISSPLUS

BLISSPLUS 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. It also has 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

BLISSLISTED is 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.

BLISSDOCS

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

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

Clear Compass

Clear Compass is an All-law Compliance Software to ascertain, track and manage all the applicable state, central and industry-specific laws.

CAIRR LODR Integrated

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 are 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 2024

Compliances for Companies under Companies Act, 2013			
Sl. No.	**Compliance Requirement**	**Section/ Rules**	**Due Date**
1	CSR – 2	Companies (Accounts) Amendment Rules, 2024 dated 24th September 2024	On or before 31st December 2024

 Copyright © 2024, CimplyFive

Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of November 2024.

- **14-11-2024**

Standard Operating Procedures under SEBI (PIT) Regulations 2015.

The BSE and NSE circulars have mandated unlisted companies, which are getting listed pursuant to any scheme as approved by NCLT, to submit SDD Certificate from Practicing Company Secretary (PCS) at the time of filing of application with the Exchanges, certifying that the Company is compliant with Regulation 3(5) and 3(6) of SEBI (PIT) Regulations, 2015 and any amendment thereof.

- **29-11-2024**

Introduction of SEBI (Attestation of Documents) (Amendment) Regulations, 2024.

SEBI vide the abovementioned regulations, states that an acquirer, for seeking exemption from making an open offer for acquiring shares, and the target company, for seeking relaxation from strict compliance with any procedural requirement under Chapter III and Chapter IV of the SEBI (SAST) Regulations, can now file only a self-attested application with the Board giving details of the proposed acquisition and the grounds on which the exemption has been sought. The earlier requirement of a supporting duly sworn affidavit has been done away with vide this notification.

Solution for Riddles	Solution for Quiz
1. Nidhi Company	1. B
2. Foreign Company	2. B
3. Limited Liability Partnership	3. C
4. Small Company	4. A
5. Writ Of Certiorari.	5. A

 Copyright © 2024, CimplyFive

About CimplyFive

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

Vision

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



To view the previous issues of *iComply* click here