

Editorial

India's economic growth hinges on its ability to attract and effectively utilize foreign capital. The Foreign Exchange Management Act (FEMA), enacted in 1999, plays a pivotal role in regulating foreign exchange transactions and fostering a conducive environment for Foreign Direct Investment (FDI).

FEMA, while aiming to safeguard the country's economic interests, has evolved to facilitate global economic integration. It provides a framework for inbound and outbound investments, facilitating cross-border capital flows. This has been crucial for attracting FDI, a key driver of economic growth, job creation, and technology transfer.

We have also included exciting sections in the newsletter like brain teasers.

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 January 2025.

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

Happy reading,
Team CimplyFive
January 06, 2025

What's more in this month's issue…

- ***What is Hot in Company Law?***
- ***Article of 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 **46 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 December 2024 here is based on visitors to our site.

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

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

There have been no changes in the top 5 rankings.

LODR Top 5 Chartbuster Regulations

Rank in Nov	Change in Rank	Rank in Dec	Regulation	Regulation 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 (Chapter I)
N	↑	5	16	Definitions (Chapter IV)

Sections 29 and 33 have been replaced with Sections 2 & 16 in the top 5 rankings.

IB Code Top 5 Chartbusters

Rank in Nov	Change in Rank	Rank in Dec	Section	Section title
1	↔	1	59	Voluntary liquidation of persons
3	↑	2	5	Definitions (Part 2, Chapter 1)
5	↑	3	30	Submission of Resolution plan
2	↓	4	3	Definitions (Part 1)
N	↑	5	6	Persons who may initiate corporate insolvency resolution process

Section 7 has been replaced with Section 6 in the top 5 Ranking.

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Article of the Month:

The Foreign Exchange Management Act, (FEMA) 1999

Introduction

The Foreign Exchange Management Act, 1999 ("FEMA") is India's primary law governing foreign exchange transactions. It was introduced to replace the earlier Foreign Exchange Regulation Act, 1973 (FERA), which was considered too restrictive for a liberalized economy.

FEMA aims to:

- **Facilitate international trade and payments:** Make it easier for businesses and individuals to engage in cross-border transactions.
- **Promote a stable foreign exchange market:** Ensure a smooth and orderly functioning of the market for foreign currencies in India.
- **Prevent illegal financial activities:** Combat money laundering and other financial crimes related to foreign exchange.

Understanding Transactions Under FEMA

Current Account Transactions: These are transactions related to the import and export of goods and services, interest payments, remittances for personal expenses, etc. These transactions are generally free, subject to certain restrictions.

- **Imports and Exports:** Trade in goods and services across borders.
- **Remittances:** Sending or receiving money between individuals or entities.
- **Travel Payments:** Expenses related to travel, tourism, and education abroad.
- **Payments for Services:** Fees for professional services, royalties, and other service payments.

Capital Account Transactions: These involve investments, borrowing, and lending in foreign exchange, and include activities like foreign investments in India and Indian investments abroad. Capital account transactions are subject to stricter regulations to control the flow of funds in and out of the country.

- **Foreign Direct Investment (FDI):** Investments by foreign companies in Indian businesses.
- **Foreign Portfolio Investment (FPI):** Investments in Indian stocks and bonds by foreign investors.
- **External Commercial Borrowings (ECBs):** Loans from foreign lenders to Indian companies.
- **Foreign Currency Convertible Bonds (FCCBs):** Debt instruments issued by Indian companies overseas, convertible into shares.

FDI & FPI

An "FDI" or "Foreign Direct Investment" refers to an investment through equity instruments by a resident outside India, in an unlisted Indian company; or in 10% or more of the post issue paid-up equity capital, on a fully diluted basis of a listed Indian company.

A "Foreign Portfolio Investment" refers to an investment made by a resident outside India through equity instruments where such an investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company, or less than ten percent of the paid-up value of each series of the equity instrument of a listed Indian company.

The difference between the 'Foreign Direct Investment' and 'Foreign Portfolio Investment' lies in the percentage of stake being held by the foreign investor.

Ways to Invest in India under FDI

Some of the methods through which foreign investors can invest in India under the FDI are:

- Subscription to the Memorandum of Association (MoA)
- Merger/ De-merger /Amalgamation
- Preferential allotment/ Private placement/ Private arrangement
- Purchase of shares from the Indian residents/companies
- Rights/Bonus Issue
- Conversion of convertible notes
- Swap of capital instruments.

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FDI Routes in India

There are three routes through which FDI flows into India, They are as follows:



Automatic Route FDI

In the **automatic route**, the foreign entity does not require the prior approval of the government or the RBI

Examples:

- Medical devices: up to 100%
- Thermal power: up to 100%
- Services under Civil Aviation Services such as Maintenance & Repair Organizations
- Insurance: up to 49%
- Infrastructure company in the securities market: up to 49%
- Ports and shipping: 100%
- Railway infrastructure: 100%
- Pension: up to 49%
- Power exchanges: up to 49%
- Petroleum Refining (By PSUs): up to 49%

Government Route FDI

Under the **government route**, the foreign entity should compulsorily take the approval of the government. It should file an application through the Foreign Investment Facilitation Portal, which facilitates single-window clearance. This application is then forwarded to the respective ministry or department, which then approves or rejects the application after consultation with the DPIIT.

Examples:

- Broadcasting Content Services: 49%
- Banking & Public sector: 20%
- Food Products Retail Trading: 100%
- Core Investment Company: 100%
- Multi-Brand Retail Trading: 51%
- Mining & Minerals separations of titanium bearing minerals and ores: 100%
- Print Media (publications/printing of scientific and technical magazines/speciality journals/periodicals and a facsimile edition of foreign newspapers): 100%
- Satellite (Establishment and operations): 100%
- Print Media (publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news & current affairs): 26%

Sectors where FDI is Prohibited

There are some sectors where any FDI is completely prohibited. They are:

- Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations.
- Nidhi Company
- Lotteries (online, private, government, etc.)
- Investment in Chit Funds
- Trading in TDR's
- Any Gambling or Betting businesses
- Cigars, Cigarettes, or any related tobacco industry
- Housing and Real Estate (except townships, commercial projects, etc.)
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business, Gambling and Betting activities

Reporting Under FEMA

All the reporting is required to be done through the Single Master Form (SMF) available on the Foreign Investment Reporting and Management System (FIRMS) platform at https://firms.rbi.org.in

A Single Master Form is the master form on which the reporting for the Foreign Investment (FC-GPR, FC-TRS, LLP-I, LLP-II, CN, ESOP, DRR, DI, Invi) can be done.

FC-GPR Foreign Currency- Gross Provisional Return filing is done at the time of issuance of Capital instruments of an Indian Company to a Non-Resident. The shares should be allotted within 60 days of receipt of the remittance. The FCGPR filing should be done within 30 days from the date of issuance.

FC-TRS Foreign Currency-Transfer of Shares filing is usually done at the time of transfer of existing shares from Non-Resident to Resident or vice versa. The filing

should be done within 60 days from either date of remittance or date of transfer, whichever is earlier.

FC-TRS is not required to be filed for:

1. ***for transfer of shares of an Indian company from a non-resident holding the shares on non-repatriable basis to a resident and vice versa.***
2. ***for transfer of shares from a person resident outside India holding capital instruments in an Indian company on a repatriable basis to a person resident outside India holding capital instruments on a repatriable basis***
3. ***A transfer of shares by way of Gift***

LLP-I LLP-1 filing is done at the time of Capital contribution into an LLP by a Non- Resident. The filing should be done within 30 days from the date of receipt of the amount of consideration.

LLP-II LLP-2 filing is done at the time of disinvestment of Capital contribution or transfer of ownership in an LLP from a Non-Resident to Resident or Vice versa. The filing should be done within 60 days from the date of receipt of the amount of consideration.

CN Form Convertible Notes filing is required at the time of issuance/transfer of Convertible Notes by Start-ups. The filing should be done within 30 days of issuance/transfer of CN.

ESOP Form ESOP needs to be filed while the issuance of ESOPs to a Non-Resident by an Indian Company. The filing should be done within 30 days from the date of issuance of ESOPs.

DRR Form Depository Receipt Return needs to be filed within 30 days from the close of issue/program.

DI Form Downstream Investment is to be filed by the Indian Company making downstream investment in another Indian Company. The filing should be done within 30 days from the date of allotment of Capital Instruments.

InVi Form Investment Vehicle needs to be filed by the Indian Company (Investment Vehicle) when the units are issued to a foreign investor. The filing needs to be done within 30 days from the date of issue of units to the foreign investors.

Valuation of Issue &Transfer of shares

Nature	Listed Company	Unlisted Company
Issue by an Indian Company	Price should not be < the price asper SEBI guidelines	Price should not be < the Fair Value worked out by a CA
Transfer from R->NR	Price should not be < the price asper SEBI guidelines	Price should not be < the Fair Value worked out by a CA
Transfer from NR->R	Price should not be > the price asper SEBI guidelines	Price should not be > the Fair Value worked out by a CA

Applicability of Valuation Certificate under FEMA and other Laws.

Comparative Chart

Particulars	Registered Valuer	Merchant Banker	Chartered Accountant	Cost Accountant
Issue of Shares				
Companies Act 2013	✓	X	x	X
Income Tax Act 2013	X	✓ (DCF)	✓ (NAV)	X
FEMA	X	✓	✓	✓
SEBI	✓	✓	x	X
Transfer of Shares				
Companies Act 2013	X	X	x	X
Income Tax Act 2013	X	✓	✓	X
FEMA	X	✓	✓	✓
SEBI	X	✓	✓	X

Remittance and Repatriation

Remittance of sale proceeds

i) Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations, 2000 under FEMA.

ii) AD Category-I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to

the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC/tax clearance certificate from the Income Tax Department has been produced.

Remittance on winding up/liquidation of Companies

AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, as applicable. AD Category-I banks shall allow the remittance provided the applicant submits:

- No objection or Tax clearance certificate from Income Tax Department for the remittance.
- Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable.
- In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceeding spending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

Repatriation of Dividend

Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is Guided by the Consolidated FDI Policy 2020 Department for Promotion of Industry and Internal Trade governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

Repatriation of Interest

Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

FEMA and Indian Startups

FEMA, while crucial for India's economic stability, presents both opportunities and challenges for the burgeoning startup ecosystem. While facilitating foreign capital inflows and enabling international expansion, FEMA's intricate regulations can pose significant hurdles for these dynamic entities

FEMA as a Catalyst for Growth

FEMA plays a pivotal role in enabling startups to access foreign capital, a critical factor for their growth and scalability. By allowing foreign direct investment (FDI) in various sectors, FEMA facilitates:

- **Funding for Innovation:** Startups can secure funding from global venture capitalists, angel investors, and private equity firms, fueling research & development, product development, and market penetration.
- **Access to Global Expertise:** Foreign investment often comes bundled with valuable expertise, mentorship, and access to global networks, accelerating a startup's growth trajectory.
- **Fueling International Expansion:** FEMA enables startups to expand their operations internationally, accessing new markets, diversifying revenue streams, and building a global brand.

Way Forward

Moving forward, the success of India's FDI policy hinges on several factors. Maintaining a predictable and investor-friendly regulatory environment is crucial.

Continuous review and refinement of FDI norms, in conjunction with effective implementation of FEMA regulations, are essential to ensure that India remains an attractive destination for foreign investment.

Addressing emerging challenges such as technological advancements, globalization, and the need for sustainable and inclusive growth is paramount. By fostering a conducive environment for foreign investment while mitigating potential risks and ensuring fair competition, India can unlock its full economic potential and emerge as a global leader in innovation and economic development.

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BLISS Tips for the Month

BLISS Tips #307: Standard Email Templates for sharing Meeting Documents in BLISS.

BLISS allows users to create standard email templates for sending meeting documents to Directors and Shareholders for various meetings, such as Board, Sub-Committee, and Shareholder meetings. This feature helps the users to avoid clerical errors and repetition of data entry, as the meeting date, venue and serial number of the meeting are populated based on pre-coded templates in the software.

BLISS Tips #308: Maintain Digital Attendance Registers for all the meetings in BLISS.

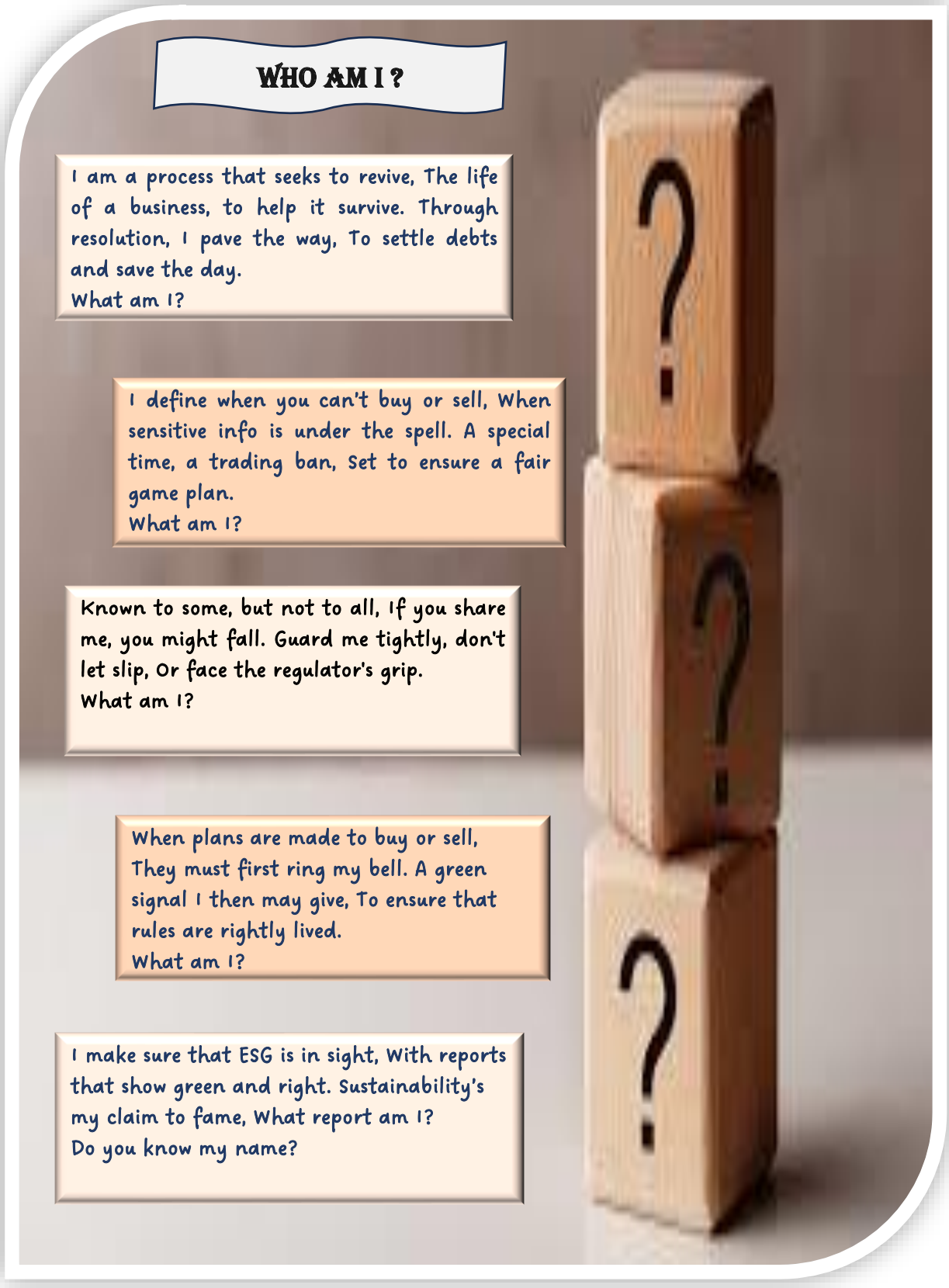
BLISS enables users to digitally maintain attendance for Board meetings, Sub-Committee meetings, and General meetings. Users can download the relevant attendance sheets in customisable formats, obtain the necessary signatures from Directors or Members, and then re-upload it into the system for secure record-keeping, meeting wise. This not only saves time and reduces paperwork but also improves the accessibility and reliability of attendance records, ensuring compliance and promoting smoother corporate governance.

BLISS Tips #309: With CimplyBest, share evaluation surveys to the Directors enabling them to submit it without the hassle of Logging-in.

CimplyBest is a custom-built software for Board Evaluation, which allows the creation of tailor-made surveys for the Board, Chairperson, Sub-committees, Independent Directors & Executive Directors. The Directors/Committee Members can easily complete the surveys by clicking on the link received in their email IDs that redirects them to the survey page eliminating the need to login into the tool.

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



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

1. **Who is classified as an "insider" under the PIT regulations?**

a. Any person who has traded in securities
b. Any person with access to unpublished price-sensitive information (UPSI)
c. Only directors of a company
d. Only promoters and key managerial personnel

2. **Which regulation deals with the materiality of related party transactions?**

a. Regulation 23
b. Regulation 30
c. Regulation 44
d. Regulation 17

3. **Under Section 68 of the Companies Act, 2013, what is the maximum limit for a company to buy back its shares?**

a. 10% of paid-up capital and free reserves
b. 15% of paid-up capital and free reserves
c. 25% of paid-up capital and free reserves
d. 50% of paid-up capital and free reserves

4. **How often must a listed company hold a board meeting?**

a. Once every 3 months
b. Once every 6 months
c. At least four times a year, with no gap of more than 120 days between two meetings
d. At least four times a financial year, with no gap of more than 120 days between two consecutive meetings

5. **Under the Companies Act, 2013, which of the following cannot be a Director of a company?**

a. A person who has been declared insolvent
b. A person with a criminal conviction of 2 years or more
c. A person who is of unsound mind
d. All of the above

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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 January 2025

SEBI (LODR) Regulations, 2015			
Sl. No.	**Compliance Requirement**	**Section/ Rules**	**Due Date**
1.	Shareholding pattern	31(1)(b)	Within 21 days from the end of the quarter i.e., within 21st January, 2025
SEBI (Depositories and Participants) Regulations, 2018			
2.	Reconciliation of share capital audit report	76	Within 30 days from the end of the quarter i.e., within 30th January, 2025

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

- **03-12-2024**

Extension of time for filing Forms to monitor liquidation and voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016 ("IBC")

The timeline to file forms for monitoring the liquidation and voluntary liquidation process under the IBC and its regulations has been extended to December 31, 2024 as against the timeline of November 30, 2024 owing to the technicalities and issues involved in submission of the forms.

The responsibility for filing the forms for the ongoing liquidation and voluntary liquidation cases rests with the Insolvency Professionals (IP) currently handling the process. Moreover, if an application for closure/ dissolution has been filed, or a dissolution/ closure order has been passed, the IP under whose tenure such application was filed or the order was passed will be responsible for filing all forms related to the particular case.

Insolvency and Bankruptcy Board of India ("IBBI") issues the Insolvency Professionals ("IPs") to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2024

The IBBI recognized the need to prepare a panel of Insolvency Professionals (IPs) in advance and share it with the Adjudicating Authority (AA) to minimize administrative delays in the appointment of IPs. The aforementioned guidelines outline the procedure for creating a panel of IPs to serve as Interim Resolution Professionals, Liquidators, Resolution Professionals, and Bankruptcy Trustees and provide for the following:

a. Eligibility of IPs
b. Expression of interest
c. Panel of IPs
d. Sorting criteria for the IPs
e. Conditions for IPs

- **09-12-2024**

Introduction of SEBI (PIT) (Third Amendment) Regulations 2015

Following changes have been introduced through the above-mentioned Regulations:

1. Minor changes in the definition of 'connected person' and in the note mentioned for the definition of 'Insider'.

2. Deemed Connected person is no longer restricted only to 'Immediate relative', now it includes any relative. The notification has also introduced the definition of 'Relative'.

3. The definition of deemed connected person has been amended to include a firm or its partner or its employee in which a connected person is also a partner; and a person sharing household or residence with him.

- **20-12-2024**

Introduction of the SEBI (LODR) (Third Amendment) Regulations, 2024.

SEBI has recently notified the SEBI (LODR) (Third Amendment) Regulations, 2024, following the recommendations of the Expert Committee based on a consultation paper. The amendments aim to facilitate ease of doing business and enhance compliance standards for listed entities. We have prepared a comprehensive summary outlining the key highlights of these amendments, including the major changes and their implications for listed entities, which can be viewed at https://www.cimplyfive.com/wp-content/uploads/2024/12/SEBI-LODR-Third-Amendment-Regulation-Gist-1.pdf

- **23-12-2024**

Introduction of Industry Standards on Reporting of BRSR Core

The Industry Standards Forum ("ISF") comprising of representatives from three industry associations, i.e., ASSOCHAM, CII and FICCI, along with the Stock Exchanges, has formulated industry standards for disclosures in the BRSR Report, which will be applicable from FY 2024-25. The aforementioned industry associations will also publish these standards on their websites.

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The main aspects covered under the Note on the Industry standards on BRSR Core Reporting, issued separately by the ISF are-

1. General Requirements: Explaining Intensity-based calculations and Spend-based Approach to estimate the Environmental Footprint (along with their methodologies).

2. Attribute-wise requirements: Explaining Greenhouse Gas Footprint, Water Footprint, Energy Footprint, embracing circularity - details related to waste management by the entity, Enhancing Employee Wellbeing and Safety, Enabling Gender Diversity in Business, Enabling Inclusive Development, Fairness in Engaging with Customers and Suppliers and Open-ness of business.

   A detailed and more comprehensive understanding of these Standards can be found in the enclosed Circulars.

- **30-12-2024**

Update on the single filing system through API-based integration between Stock Exchanges.

In continuation to the Circulars issued by BSE and NSE for the single filing system through the API-based integration between the Exchanges, the same, post being extended to Reconciliation of Share Capital Audit Report w.e.f. November 15, 2024, has now been extended to disclosures pertaining to Voting Results of Shareholders Meeting to "Equity" listed companies and "Equity and Debt listed companies" w.e.f. December 28, 2024.

- **31-12-2024**

Allowing subscription to the issue of Non- Convertible Securities during trading window closure period.

Schedule B of the PIT Regulations and SEBI Circular dated July 23, 2020, lists out few transactions to which the trading window restrictions are not applicable. In furtherance of the same, the trading window restrictions shall also not apply to subscription to the issue of Non- Convertible Securities.

Solution for Riddles	**Solution for Quiz**
1. Corporate Insolvency Resolution Process (CIRP)	1. B
2. Trading Window Closure	2. A
3. Unpublished Price Sensitive Information (UPSI)	3. C
4. Pre-clearance approval	4. D
5. Business Responsibility and Sustainability Report (BRSR)	5. D

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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



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