

# LEGAL EAGLE

## SOCIAL STOCK EXCHANGE

A Publication of Council on Legal  
and Corporate Governance, MCCI

JUNE 2023 • ISSUE-III

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# Merchants' Chamber of Commerce & Industry







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**Namit Bajoria**

President, MCCI

MCCI Council on Legal and Corporate Governance is working towards the betterment of the industry and business fraternity.

Last month, we had started MCCI Legal Help Desk to provide mentoring and handholding services to the members and MSME units on Corporate Governance, Insolvency & Bankruptcy Code (IBC) and Environmental & Social Goals (ESG).

I invite all to avail the services and take the benefit of this Help Desk.

This issue of Legal Eagle is on the Social Stock Exchange.

We are all aware that the market regulator, Securities and Exchange Board of India (Sebi) has given its final approval to the National Stock Exchange of India (NSE) to launch its Social Stock Exchange (SSE) as a separate segment. SSE will provide a platform for social enterprises, such as Non-Profit Organizations (NPOs) or For-Profit Social Enterprises (FPEs), to raise funds to finance their social initiatives. It will also ensure transparency in fund mobilisation and utilisation.

I am happy to present this value-added Issue to all.



**Mamta Binani**

Chairperson,  
Council on Legal and  
Corporate Governance,  
MCCI

Undoubtedly, the social economy refers to a wide range of businesses and organizations that generate goods and services with the explicit objective of having the greatest possible social, environmental, or cultural effect.

In July 2022, SEBI notified the framework for Social Stock Exchange (SSE). This initiative has opened a new avenue for social enterprises to finance social initiatives. It will drive greater transparency, professionalism, and efficiency in the sector while ushering in an era of accelerated development.

We are proud to publish Newsletter of our Council for this month on Social Stock Exchange with the pros and cons of this landmark initiative of SEBI.

Hope this Issue will add value to our beloved readers.



# HOW THE CONCEPT OF SOCIAL STOCK EXCHANGE CAME TO BE IN INDIA?

Philanthropy is in the blood of India, implanted in our culture and tradition. Ancient Indian literature talks in detail about the concept of 'DAAN' and charity, such as Vedas, especially Rigveda, Bhagavad Gita, etc. The concept of modern philanthropy was developed by George Peabody, who was widely referred to as the Father of Modern Philanthropy whereas Andrew Carnegie came up with the idea of Corporate

Philanthropy. Azim Premji, India's top philanthropist for two consecutive years, revealed that he abides by the principles of Mahatma Gandhi by considering himself as the trustee of his wealth rather than the owner for the greater good of people and the community<sup>1</sup>.

The social economy refers to a wide range of businesses and organizations that generate goods and services with the explicit objective of having the greatest possible social, environmental, or cultural effect. It is typically seen as a third sector in mixed capitalist economies separate from the private and public sectors, as well as a collection of varied social purposes of the various sectors. It consists of the non-governmental sector, the third sector, and, more recently, social economy entities and social enterprises ("**SE/SEs**"), involving a wide range of organizations ranging from non-governmental organizations ("**NGOs**") and mutual aid associations to cooperatives and, more recently, SEs<sup>2</sup>. The social economy encompasses organizations motivated by the concept of reciprocity in order to pursue mutual

#### References:

<sup>1</sup> <https://www.ndtv.com/offbeat/azim-premji-tops-philanthropy-list-with-rs-7-904-crore-in-donations-2323676>

<sup>2</sup> C. S. Divyesh Patel & Naresh K. Patel (2022): India's Social Stock Exchange (ISSE) – A 360° Analysis - Today's commitment for tomorrow's action, Journal of Sustainable Finance & Investment <https://doi.org/10.1080/20430795.2022.2061404>



economic or social objectives, social control, and people's economic demands<sup>3</sup>.

As is known to all, the social sector is a significant driver of India's development story. Since its independence, India has been surrounded by social causes, and conditions that were nothing but impediments to the realization of its ambitions. Although it has covered a long way in eliminating these hurdles, not all social issues have been curbed which leaves room for SEs since due to constitutional and political obstacles, the government has not addressed and continues to ignore social issues such as assisting economically disadvantaged students in their education, re-establishing and resurrecting ancient temples, funding for reviving 'Santana dharma,' on which our society has thrived for thousands of years<sup>4</sup>.

According to the Scottish Executive (2003)<sup>5</sup>, the social economy should be viewed as a method of attracting new money, generating employment and training, and providing community services. Yet, financial arrangements, a shortage of assets, market access, and a lack of clarity regarding the sort of support mechanisms that should be supplied to social businesses are among the challenges preventing the sector from reaching its full potential. SEs

can successfully handle such difficulties with the support of philanthropists/donors who have an emotional connection to such situations. Unlike the government, SEs have no such constitutional or political barriers, allowing them to contribute freely.

Despite everything, it really piques my curiosity how come the innovative idea of combined forces of philanthropy and commerce go together developed. Donna Karan, a fashion designer, and philanthropist at heart persisted that she believes philanthropy and commerce can work together. In 2007, she co-founded Urban Zen, a model of philanthropy and commerce that worked to create, connect and collaborate in order to raise awareness and inspire change<sup>6</sup>.

### **What inspires the creation of SSE?**

Social entrepreneurship is not new, with projects dating back to Victorian England (Dart 2004; Hines 2005)<sup>7</sup>. As early as the 17th century, a business model that aimed to serve all three parties – seller, buyer, and society – existed in Japan<sup>8</sup>.

An instance can be found in India itself in the name of Narayana Health, Bangalore which is an exemplary example of a low-cost and high-quality healthcare business model for the global healthcare industry<sup>9</sup>. SE with sufficient market exposure can have a role in

eradicating poverty and promoting economic growth in a socially sustainable manner (Shahnaz. D, Shu Ming. P 2009). Furthermore, ADB (2011)<sup>10</sup> found that primary research with a sample size of 109 in India, Bangladesh, and Thailand had a beneficial impact on the expansion of social capital markets and the willingness of intermediaries to participate in impact investing. Microfinance's success can be considered as a learning curve for SE, as they, too, can thrive with the correct market exposure and play an active part in poverty eradication and

#### **References:**

- <sup>3</sup> Nivedita Nahak, Prof. K. John, "Concept Of Social Economy And Its Relevance To India", 2018 JETIR October 2018, Volume 5, Issue 10 <https://www.jetir.org/papers/JETIR1810971.pdf>
- <sup>4</sup> C. S. Divyesh Patel & Naresh K. Patel (2022): India's Social Stock Exchange (ISSE) – A 360° Analysis - Today's commitment for tomorrow's action, Journal of Sustainable Finance & Investment <https://doi.org/10.1080/20430795.2022.2061404>
- <sup>5</sup> Executive, S. 2003. Organic Action Plan. Edinburgh: Scottish Executive.
- <sup>6</sup> <https://www.yahoo.com/lifestyle/donna-karan-fashion-designer-philanthropist-202634995.html>
- <sup>7</sup> C. S. Divyesh Patel & Naresh K. Patel (2022): India's Social Stock Exchange (ISSE) – A 360° Analysis - Today's commitment for tomorrow's action, Journal of Sustainable Finance & Investment <https://doi.org/10.1080/20430795.2022.2061404>
- <sup>8</sup> Tomomi Kikuchi, 'Social enterprises' rise in Asia amid skepticism, December 27, 2017 <https://asia.nikkei.com/Spotlight/The-Big-Story/Social-enterprises-rise-in-Asia-amid-skepticism2>
- <sup>9</sup> <https://timesofindia.indiatimes.com/india/narayana-health-inspires-the-west/articleshow/64888480.cms>
- <sup>10</sup> ADB. 2011. Market Intermediaries in Asia and the Pacific: Developing a Regional Social Investment Exchange Initiative. Asian Development Bank <https://www.adb.org/sites/default/files/publication/29413/market-intermediaries.pdf>.

economic development of the country in a socially sustainable way, subject to legal limits in the environment<sup>11</sup>.

According to a McKinsey and Raker report (2003, 105), "the professionalization of non-profit management, as well as changes in the financing climate, will continue to drive non-profit culture towards a more enlightened perspective of capacity building." These visible changes in the financial environment would also promote a more educated understanding of social entrepreneurship. It aids in boosting people's "self-sustaining ability to recognise, analyse, and solve issues by more effectively regulating and utilising their own and external resources" (de Graaf cited in Crisp, Swerissen, and Duckett 2000, 100). According to ADB (2011), capacity building will be critical in stimulating the expansion of social exchange and impact investing platforms, and intermediaries will need to play a more parallel role in connection to impact investors, social exchanges, and impact investment platforms. SE can help India's population benefit from its exceptional growth and can possibly be listed on a Social Stock Exchange (SSE) to efficiently obtain funds from investors in a liquid

atmosphere for their growing needs (ADB 2012)<sup>12</sup>.

India has reconditioned the conventional belief that social and economic development is solely the responsibility of the government into a framework in which individuals, high-net-worth individuals, and corporate executives all share responsibility for bringing India to its supreme social and economic development potential. According to a British Council study conducted in 2018, Indian social entrepreneurs struggled to meet sustainable development growth due to a lack of access to capital (Council, B. 2018). Furthermore, it is observed from an Indian perspective that there is a significant gap in meeting the Sustainable Development Goals (SDGs) by 2030 as directed by the UN, and this is an alarming call for an immediate proactive response given the funding gaps in the Indian economy as well as the social sector.

With a country score of 60.1, Jeffrey et al. (2021) rated India 120th out of 165 countries. India, which is home to one-sixth of humankind, must play a critical role in accomplishing the 2030 Agenda for Sustainable Development Goals. The India Philanthropy Report 2019 by Anant Bhagwati, A. S. (2019) estimates that India alone contributes to more than 20% of the world performance gap

in 10 of the 17 SDGs and more than 10% of the deficit in the other 6 SDGs. This translates into a yearly fiscal deficit of around Rs 4.2 lakh crore for attaining only 5 of the 17 SDGs by 2030. (SEBI-2021). According to UN research, developing nations would need to invest roughly US\$3.9 trillion per year to achieve the SDGs by 2030, whereas the private and public sectors will only need to fund a US\$1.4 trillion investment gap. This is recommended to be filled through social impact investments.

The incorporation of required Corporate Social Responsibility (CSR) under the Companies Act 2013 is regarded as a step forward. Yet, CSR has limits since it is perceived as more of a compliance checkbox requirement than a meaningful commitment to producing social impact. But, in the latter years of the twentieth century, India was introduced to the phenomena of impact investing, which combines financial investment with the achievement of developmental goals. Impact investments, according to the Global Impact

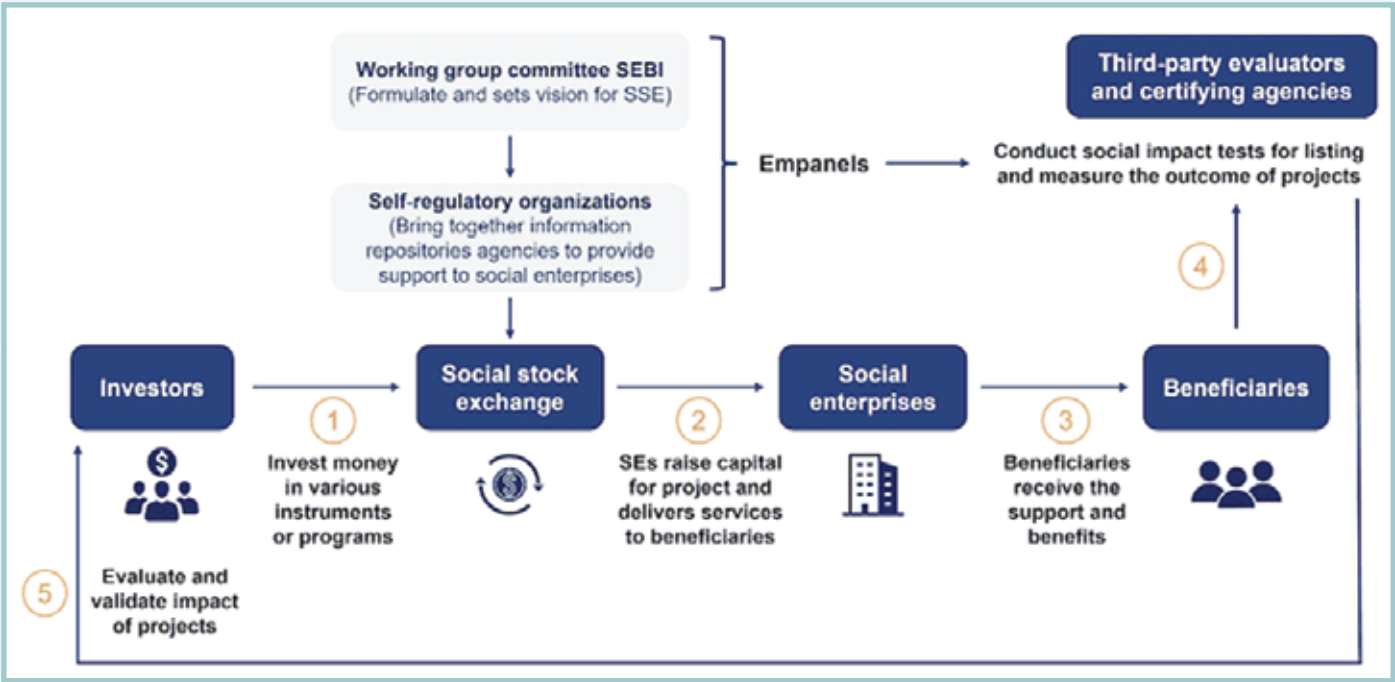
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#### References:

- <sup>11</sup> C. S. Divyesh Patel & Naresh K. Patel (2022): India's Social Stock Exchange (ISSE) – A 360° Analysis – Today's commitment for tomorrow's action, Journal of Sustainable Finance & Investment <https://doi.org/10.1080/20430795.2022.2061404>
- <sup>12</sup> ADB. 2012. India Social Enterprise Landscape Report. Asian Development Bank. Accessed October 26, 2021. from India Social Enterprise Landscape Report (adb.org)

Investing Network (GIIN), are made in companies, organizations, and funds to achieve social and environmental effects as well as financial returns. It is time to transform the culture of charity into one of social investment, which necessitates a common platform for sourcing and channeling funds for such impact projects, as well as introducing and developing the framework for impact evaluation and related methods such as SWOT analysis, impact measurement and analysis, independent compliance, and governance perspectives. From this perspective, the SSE is extremely important (A. Sekar, N. P. 2021). As a result, the scope of SEs and impact investors in India has grown beyond financial services and agriculture to encompass a wide range of other industries.

A picturesque presentation<sup>13</sup> of how an SSE operates is given below for a quick understanding.



**Conclusion:**

If done correctly, establishing an SSE benefits both individuals and society. Investors would have a stronger and more powerful opportunity to contribute to society's ever-changing requirements, such as health and elder care, but this will benefit people and the system alike. Through the ages, society and business have complimented one another, and early economic operations were largely geared toward meeting societal demands. However, it is claimed that SSE would be most helpful in balancing the growing gap between the haves and have-nots given the idea that commercial activities focused on earning a profit have surpassed the necessities of a balanced social order. In addition, because they are investing in businesses that are not for profit, social entrepreneurs will get a relatively decent economic return on their investments as well.

It's also true that the success of the planned SSE in India would depend on the government's ability to instill trust in the SSE among private investors and on its policies for effectively managing the SSE. The SSE needs reliable tools and processes to define which social businesses will be listed, attract public funds to the SSE, and provide incentives for social entrepreneurs and investors to participate in the SSE<sup>14</sup>.

**References:**

<sup>13</sup> Manali Jain, Mohit Saini, India's Social Stock Exchange is Coming: Key Considerations to Maximize its Impact, next billion <https://nextbillion.net/india-social-stock-exchange-impact/>

<sup>14</sup> Deepak Kumar Adhana, Social Stock Exchange: An Innovative Financing Platform for Social Enterprises In India, Mukht Shabd Journal, Volume IX, Issue V, ISSN NO: 2347-3150



## ARTICLE II



# DEMYSTIFYING ZERO COUPON ZERO PRINCIPAL INSTRUMENTS

The framework for SSE has articulately delineated the securities that the different kinds of enterprises may issue for fund raising on the SSE platform. The modes of fund raising by social enterprises have been specified under Regulation 292G of the SEBI (ICDR) (Third Amendment) Regulations, 2022, which is set forth below for quick reference:

“A Social Enterprise may raise funds through the following means:

(a) A Not-for-Profit Organization may raise funds on a Social Stock Exchange through:

- (i) issuance of Zero Coupon Zero Principal Instruments to institutional investors and/or non-institutional investors in accordance with the applicable provisions of this Chapter;
- (ii) donations through Mutual Fund schemes as specified by the Board;
- (iii) any other means as specified by the Board from time to time.

(b) A For-Profit Social Enterprise may raise funds through:

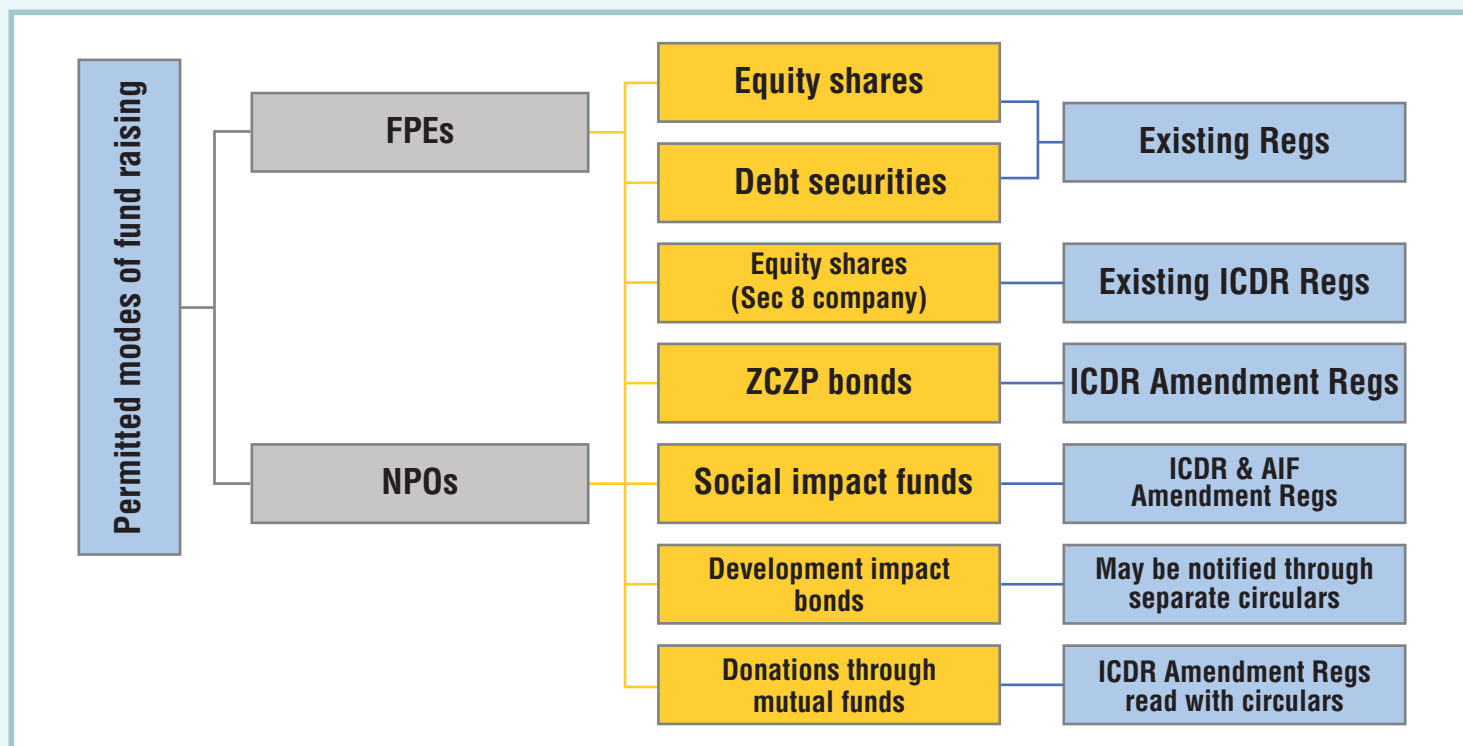
- (i) issuance of equity shares on the main board, SME

platform or innovators growth platform or equity shares issued to an Alternative Investment Fund including a Social Impact Fund;

- (ii) issuance of debt securities;
- (iii) any other means as specified by the Board from time to time.

Explanation. —Securities issued by For-Profit Social Enterprises shall be listed and traded under the applicable segment of the stock exchange with an identifier stating that the scrip is that of a For-Profit Social Enterprise and such For-Profit Social Enterprises shall meet the eligibility criteria for the main board, SME Platform or innovators growth platform, as applicable, in addition to the criteria provided in this Chapter.”





Zero-Coupon Bonds (ZCBs) are well known in the market, but Zero Coupon Zero Principal Instrument (“**ZCZP**”) is a novel product. The Ministry of Finance has recognized ZCZPs as securities under the Securities Contract (Regulation) Act, 1956 (“**SCRA**”) in a gazette announcement dated July 15, 2022.

Non-Profit Organizations (“**NPOs**”), Trusts, and Societies are not defined as 'body corporates' under the Companies Act, 2013 (excluding those established under Section 8 of the Companies Act, 2013). As a result, prior to this warning, the instruments they issued to raise money did not qualify as securities under the SCRA. This, along with their non-profit status and the lack of certified data on the actualized social implications of their programs, hampered their access to institutionalized financing and limited their capacity to maximize their social impact potential. Through this announcement, the Ministry of Finance has endeavored to overcome this constraint by easing the channeling of money from the capital market to social impact initiatives via ZCZP<sup>15</sup>.

NPOs shall issue these instruments, which will be listed on the social stock exchange and treated as securities. It resembles a debt security like a bond due to its zero-coupon, zero-principal structure. When an entity obtains a loan by issuing conventional debt security, such as a bond, it is required to pay interest and principal when the bond matures. However, when a company issues these securities and generates funds using this new financial instrument, it is not a loan but a donation. As a result, the borrowing company is not required to pay interest (thus, zero coupon) or principal (hence, zero principal)<sup>16</sup>. This instrument is available for purchase and sale on the market; however, the social business will not be refunded either the coupon or the capital<sup>17</sup>.

Gone were the days when doing charity or donation was simpler since the launch of the SSE framework has complicated the process of donation, which makes one ponder: Why has this donation been complicated? Concerns have been raised about the lack of transparency in the way

#### References:

<sup>15</sup> Ritu Raj, Institutionalizing Social Impact: The Scope Zero Coupon Zero Principal Instruments, The HNLU CCLS Blog <https://hnluccls.in/2022/09/06/institutionalizing-social-impact-the-scope-zero-coupon-zero-principal-instruments/>

<sup>16</sup> Asha Menon, MC Explains| What is a 'zero-coupon, zero-principal' instrument? Money Control <https://www.moneycontrol.com/news/business/markets/mc-explains-what-is-a-zero-coupon-zero-principal-instrument-8855131.html>

<sup>17</sup> Pradiptarathi Panda, Innovative Financial Instruments and Investors' Interest in Indian Securities Markets, National Centre for Biotechnology Information doi: 10.1007/s10690-023-09403-0 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10024301/>

these (non-profit or for-profit social) companies use donations. The organizations listed on the market would be required to conduct regular audits of their social impact, which will be reported to all stakeholders (just like for-profit firms on existing stock exchanges. Furthermore, if an organization offers these instruments but receives few takers, it may be a red indicator for other funders. The interested parties may then wish to do further research before signing that cheque. The tools outlined might make "the entire process (of giving and using donations) more transparent and authentic." It can also be considered as a government initiative to bring our capital markets closer to social welfare.

While the trading potential of ZCZP instruments is limited, their identification and subsequent listing, as well as the substantial disclosure requirements, provide an effective structure of checks and balances. It allows for an unbiased and objective evaluation of money utilization and the actualized social effect of linked initiatives. As a result, the operation of NPOs becomes more open, reducing information asymmetry between issuers and investors. The availability of accurate impact assessments will assist both retail and institutional investors in assessing the

operational efficiency of NPOs and directing funding to ZCZPs with better social effect potential. This will incentivize NPOs to enhance their operational efficacy and adopt best practices, allowing the social impact of ZCZP-funded initiatives to be maximized.

By introducing liquidity, the ZCZP instruments provide a means of changing the basic character of supporting social development programs. While NPOs are not required to refund the principal received, the ZCZP is freely exchanged on Social Stock Exchanges. The investors can liquidate their investment by selling it on the market to other investors who will continue to keep it as their contribution<sup>18</sup>. The inherent features of ZCZPs provide that only the NPOs registered with SSE shall be permitted to issue ZCZPs through public/private issues. Institutional and non-institutional investors (excluding retail investors) are authorized investors, as are Social Impact Funds registered with SEBI under the AIF Regulations.

In addition, the ZCZPs will be issued solely in dematerialized form, with a minimum issue size of one crore rupees and a minimum application size of two lakh rupees. ZCZPs must raise 75% of the desired funds. In the event of an under subscription, the NPO must include in the fund-raising document:

- a) how to raise balance capital in the event of an under subscription of 75% to 100%; and
- b) the potential impact on achieving the social objective(s) if an under-subscription is not arranged; however, funds must be refunded if the subscription is less than 75% of the subscription<sup>19</sup>.

The proceeds shall be utilized for specific projects falling within the activities specified in Regulation 292E(2)(a) of the SEBI (ICDR) (Third Amendment) Regulations, 2022. The risk involved in the issuance of ZCZPs is the risk of failure to generate the "impact" for which money was invested in ZCZP bonds. The listing of an NPO's Zero Coupon Zero Principal Instruments on the SSE shall terminate when either a certificate stating that the goal for which the funds were solicited has been submitted to the SSE, or the time span stipulated in the fund-raising document for attaining the goal for the purpose for which the funding was raised has expired<sup>20</sup>.

#### References:

<sup>18</sup> Ritu Raj, Institutionalizing Social Impact: The Scope Zero Coupon Zero Principal Instruments, The HNLU CCLS Blog <https://hnluccls.in/2022/09/06/institutionalizing-social-impact-the-scope-zero-coupon-zero-principal-instruments/>

<sup>19</sup> Rahul Rishi, SEBI Accords In-Principle Approval For Social Stock Exchange, Nishith Desai Associates <https://www.nishithdesai.com/SectionCategory/33/Research-and-Articles/12/32/DisputeResolutionHotline/8466/19.html>

<sup>20</sup> Ibid.

Conclusion and Suggestions:

The registration of ZCZP as securities is an important step towards institutionalizing financing sources for social development initiatives, which are currently driven by individual benefactors and state-sponsored grants. However, its successful implementation confronts several hurdles. Similar initiatives were undertaken in Canada, the United Kingdom, Singapore, Brazil, South Africa, Portugal, and Jamaica to divert funds from the capital market for social development projects by allowing the listing of securities issued by non-profit organizations. They did not, however, take off in four of the seven nations (Brazil, Portugal, South Africa, and the United Kingdom). The lack of bulk transactions and a small investor base rendered their business models unsustainable, since the exchanges were unable to produce enough income to pay their running expenses<sup>21</sup>.

To make the envisioned objective of bringing "the capital market closer to the masses" and democratizing finance for social development initiatives a reality. It is critical for the government to overcome the obstacles that may obstruct the successful implementation of ZCZP Instruments in the Indian capital market. The government must learn from the failures of other nations' comparable programs and implement mitigating measures tailored to the Indian setting. There is a need to increase investor and donor appetite for institutionalized social impact investments while also creating a sustainable revenue stream for the hosting SSEs<sup>22</sup>.

In addition to the designation of ZCZP as a security, the additional proposals as recommended by the SEBIs Working Group must be adopted. The Group proposed incentivizing investors by providing a 100 percent tax deduction for investments made through ZCZP in NPOs with 80G certification, waiving securities transaction tax and capital gains tax on ZCZP investments, and making CSR expenditures made through ZCZP investments deductible from taxable income<sup>23</sup>.

References:

<sup>21</sup> Ritu Raj, Institutionalizing Social Impact: The Scope Zero Coupon Zero Principal Instruments, The HNLU CCLS Blog <https://hnluccls.in/2022/09/06/institutionalizing-social-impact-the-scope-zero-coupon-zero-principal-instruments/>

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

“

*Impact investing has become a broad umbrella that includes all investing with a focus on both financial return and social impact, but in its best form, impact investing prioritizes impact over returns and achieves outcomes that traditional investing cannot.*

”



Jacqueline Novogratz

# Snippets



## 1. Development Impact Bonds<sup>24</sup>:

Development Impact Bonds (DIBs), like Social Impact Bonds (SIBs), are outcome-driven contracts wherein private investors provide pre-financing for social programs and public sector agencies repay investors their principal plus return on investment contingent upon the favorable social results these programs deliver. DIBs, as opposed to SIBs, include donor agencies as full or part financiers of outcomes. DIBs are not "bonds" in the traditional sense because repayment to investors is contingent on the accomplishment of defined social goals.

The passing on of risk from the public to private entities is a critical component of

Development Impact Bonds. High levels of risk, among other factors, can deter public agencies - typically donors working with national governments - from investing sufficiently in prevention, or in innovative methods where there may be a degree of ambiguity as to anticipated outcomes; when they do invest in social programs, public agencies are frequently compelled to micro-manage inputs (i.e. how funds are spent) to minimize risks of failure, stifling a results-focused approach and flexibility in program implementation. DIBs enable public entities to transfer the kind of risk that prevent them from engaging in socially beneficial activities by bringing in private investors who give upfront money.

Nevertheless, risk transfer is not sans cost. The probability of losing money must be paid for by investors. In general, the larger the financial return required for an investment, the

greater the risk investors perceive they are accepting. The perceived amount of risk transfer, as well as the desired level of financial returns, will be higher when investors feel the risk is beyond their control.

DIBs ought to concentrate on strengthening the host government's capacity to collect and measure data, commission services, and co-manage contracts rather than creating unnecessary, redundant parallel systems. Furthermore, DIBs are committed to scaling innovative, evidence-based programs that address the underlying causes of poverty. It is natural – and maybe even desirable – for such initiatives to originate and be tested outside of government because governments – both in developed and developing nations – are typically more restricted in terms of what they can and cannot spend public resources on.

### References:

<sup>24</sup> <https://www.cgdev.org/page/investing-social-outcomes-development-impact-bonds-0>





## 2. Market Linked Debentures:

Market-linked debentures (**"MLDs"**) are non-convertible debt securities that generate income tied to a certain financial market index, such as the Nifty 50 Index or stock. Unlike bonds, which pay a fixed interest rate monthly, quarterly, half-yearly, or annually, MLDs do not pay coupons prior to maturity. Maturity durations might range from one to five years.

The risk they pose to investors varies based on the terms set out by the issuer in the debenture prospectus. The issuer must have a minimum net worth of Rs 100 crore at the time of issuance. Market-linked debt securities "have an underlying principal component issued with market-linked returns obtained through exposures on exchange-traded derivatives or MIBOR, GDP, inflation rate, underlying securities/indices, etc. with coupon linked to a benchmark different from plain vanilla debt securities," according to the SEBI.

### Who is eligible to buy MLDs?

An MLD carries a face value of Rs 10 lakh, making it popular

among high-net-worth individuals. (HNIs). Since January 1, 2023, Sebi has cut the face value to Rs 1 lakh, allowing private investors to purchase MLDs.

### How Do MLDs Function?

The performance of the underlying index determines the return on MLDs. If an MLD offers 1.3 percent for every 1% increase in the Nifty 50 Index, the investor will only receive their money back if the index yields negative returns by maturity. Investing in this choice is less dangerous than investing in stocks, where your cash may be lost entirely.

High Net worth Individuals ("HNIs") used to flock towards these investments since capital gains on these listed debentures held for more than a year were only taxed at 10%. In comparison, MLDs were known to give higher yields than bank fixed deposits.

### MLDs Sans Principal Protection:

Another sort of MLD does not provide main protection. However, according to SEBI, debt securities that do not commit to refund the principal amount in full at the conclusion of the instrument's duration cannot be issued under the MLD category.

It should be emphasized that even with MLDs that guarantee principal protection, dividends are subject to the issuer's

credit risk. Credit rating firms assign ratings to MLDs with principal protection. Those with AAA and AA+ ratings are considered low-risk instruments.

### Recent Amendment:

The Finance Bill, 2023, was passed by the Lok Sabha, and it includes revisions to increase the taxation of market-linked debentures ("MLDs") on a retroactive basis. Prior to the Finance Bill modifications, the taxation structure for MLDs was comparable to that of equity instruments. This meant that any gains from the redemption or transfer of an MLD after a 12-month holding period would be subject to long-term capital gains tax.

However, following the passage of the Finance Bill, any capital gains on MLDs would be taxed as short-term capital gains beginning April 1, 2024.



## 3. Characteristics of accounting software as per Companies (Accounts) Rules 2014:

With effect from April 1, 2023, all companies, large and small, including not-for-profits licensed under Section 8 of the Indian Companies Act 2023,

must ensure that the software they use has a built-in mechanism to record an audit trail of every transaction, creating an edit log of each change made in the electronically maintained books of account along with the date such changes are made, and ensuring that the audit trail cannot be disabled.

According to the Companies (Accounts) Rules 2014, any firm that employs accounting software for managing books of accounts must use accounting software that includes the following features:

- The feature of recording an audit trail of each and every transaction;
- Keeping an edit log of every change made in the books of accounts, including the date the modification was made, and
- Ensuring that the audit trail cannot be obstructed.

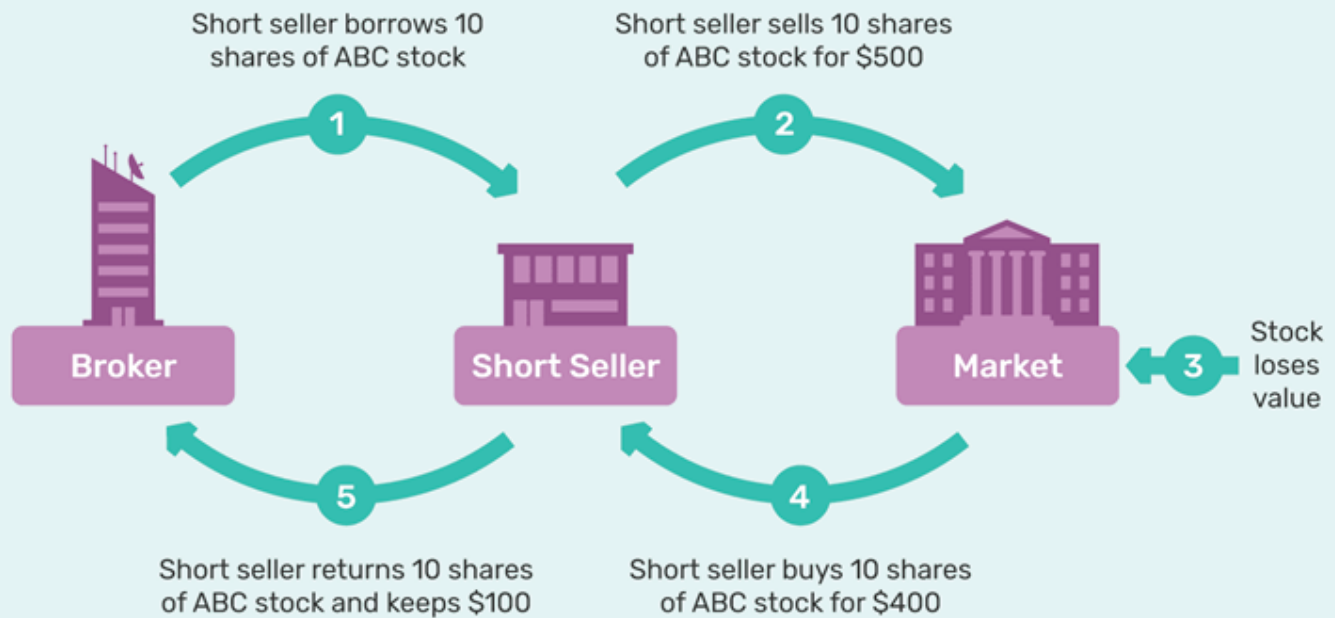
Companies (Accounts) Rules, 2014 also require that: the books of accounts be kept in India at all times; and a daily backup of the books of accounts and other books and papers of the company kept in electronic mode, including at a location outside India, be kept in servers physically located in India.

#### 4. India’s Sustainable Developmental Goals (SDGs):

The 17 Sustainable Developmental Goals , which India is aiming to achieve encompass the following:

- No Poverty
- Zero Hunger
- Good Health and Well Being
- Quality Education
- Gender Equality
- Clean Water and Sanitation
- Affordable and Clean Energy
- Decent Work and Economic Growth
- Industry, Innovation, and Infrastructure
- Reduced Inequalities
- Sustainable Cities and Communities
- Responsible Consumption, and Production
- Climate Action
- Life Below Water
- Life on Land
- Peace, Justice, and Strong Institutions
- Partnerships for the Goals

## Short Selling



# Maxim Dose

## Short Selling

When an investor sells all the shares he does not already possess at the moment of a deal, this is known as short selling. With the aid of a brokerage, a trader purchases shares from the owner with the intention of selling them at a premium in the future. The seller purchases the shares and records a profit when the stock price drops. When the stock price falls, the seller buys the shares and books a profit. The primary reasons why investors would be involved in short-selling of shares are as follows:

1. **Speculation** – The investor may be speculating about the prices of a particular company's stock falling due to an impending earnings announcement or several other significant factors.

In this scenario, the investor purchases the shares, sells them at a higher price, then buys them back at a lower price, returns them to the lender, and makes a profit on the difference in price.

2. **Hedging Risk** – An investor holding a long position in some related security protect himself from the downside risk, by short-selling the same security to hedge the risk.

# Quick Guide

## NAVIGATING THROUGH THE INTERFACE CRAFTED FOR QUALIFYING ENTITIES UNDER INDIA'S SOCIAL STOCK EXCHANGE REGIME

The Social Stock Exchange (“SSE”) in India evolved over the span of due time and effort. With participation from civil society, the Securities and Exchange Board of India (“SEBI”) initially established a Working Group (WG) in June 2020 and a Technical Group in May 2021 to build a framework for SSE. The SSE framework was subsequently accepted by SEBI at its board meeting in September 2021. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”), Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations (“LODR Regulations”), 2015, and Securities and Exchange Board of India (Alternative Investments) Regulations, 2015 (“AIF Regulations”) were finally amended by SEBI Circular (SEBI/HO/CFD/PoD-1/P/CIR/20

22/120), which provided a detailed framework on SSE.

It must be noted that the scheme of SSE shall not be applicable to all but a select few that qualifies for the scheme basis the applicability and eligibility criteria as reproduced below for ready reference.

### Applicability:

The provisions germane to SSE is applicable to the following enterprises as stipulated under Regulation 292 B of SEBI ICDR Regulations, 2022:

- An NPO wishing to solely be registered with an SSE;
- An NPO seeking to be registered and raise money through an SSE; and
- FPE seeking to be recognized as a Social Enterprise (“SE”) under the requirements of this Chapter.

Note: A SE means either an NPO or an FPE that meets the

eligibility criteria specified in this Chapter which is mentioned below for reference.

Furthermore, an FPE need not register with Social Stock Exchange before it raises funds through SSE, but have to comply with all provisions of the ICDR Regulations and the AIF Regulations [as applicable].

It is important to note that an SSE shall be accessible only to institutional investors and non-institutional investors, excluding Retail Individual Investors (RII), etc<sup>25</sup>.

### Eligibility<sup>26</sup>:

A SE must comply with the following qualifying conditions in order to establish the overarching importance of its social intent: -

- The SE must participate in at

References:

<sup>25</sup> Regulation 292C of SEBI (ICDR) Regulations, 2022

<sup>26</sup> Regulation 292E of SEBI (ICDR) Regulations, 2022





least one of the following activities:

- eradicating hunger, poverty, malnutrition, and inequality;
- promoting health care including mental healthcare, sanitation, and making available safe drinking water;
- promoting education, employability, and livelihoods;
- promoting gender equality, and empowerment of women and LGBTQIA+ communities;
- ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation;
- protection of national heritage, art, and culture;
- training to promote rural sports, nationally recognized sports, Paralympic sports, and Olympic sports;
- supporting incubators of SE;
- supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building;
- promoting livelihoods for rural and urban poor including enhancing the income of small and marginal farmers and

workers in the non-farm sector;

- slum area development, affordable housing, and other interventions to build sustainable and resilient cities;
  - disaster management, including relief, rehabilitation, and reconstruction activities;
  - promotion of financial inclusion;
  - facilitating access to land and property assets for disadvantaged communities;
  - bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection;
  - promoting the welfare of migrants and displaced persons;
  - any other area as identified by the Board or Government of India from time to time
- The SE shall target underserved or less privileged population groups or regions that perform poorly in central or state government development priorities.
  - At least 67% of the SE's activities must qualify as eligible activities for the target audience and must be developed by one or more of the following:
    - Offering qualifying

activities to members of the target group generates at least 67% of the prior three-year average income;

- At least 67% of the preceding 3-year average expenditure for providing qualifying activities to members of the target population has been incurred;
- Members of the target group who have benefited from qualifying activities account for at least 67% of the preceding 3-year average of the total customer base and/or the total number of beneficiaries.

#### **Ineligibility:**

A SE shall not qualify for raising funds or to register on the SSE, as the case may be, in the following situations, as stipulated under Regulation 292H of the SEBI ICDR Regulations:

- if the Social Enterprise, any of its promoters, promoter group or directors or selling shareholders or trustees are debarred from accessing the securities market by the Board;
- if any of the promoters or directors or trustees of the Social Enterprise is a promoter or director of any other company or Social Enterprise which has been debarred from accessing the securities market by the Board;

- if the Social Enterprise or any of its promoters or directors or trustees is a wilful defaulter or a fraudulent borrower;
- if any of its promoters or directors or trustees is a fugitive economic offender;
- if the Social Enterprise or any of its promoters or directors or trustees has been debarred from carrying out its activities or raising funds by the Ministry of Home Affairs or any other ministry of the Central Government or State Government or Charitable Commissioner or any other statutory body.

The explanation to Regulation 292H states that the restrictions set forth in clauses on debarment above do not apply to the individuals or entities mentioned therein who were previously barred by the Board and whose period of debarment has expired as of the date of filing of an application for registration with the Social Stock Exchange or filing of a draft fundraising document or draft offer document, as applicable, with the Social Stock Exchange, the Stock Exchange, or the Board.

### **Twin-commitments of SSE:**

The assimilation of the SSE regime can be effective upon getting an insight into the responsibilities shouldered by the SSE. The SSE's twin commitments under the framework are outlined below:

- To effectively use the

structures and instruments for fundraising that are available to SEs under the regulatory guidelines:

- Equity and Social Venture Funds ("**SVFs**") for FPEs
- ZCZP, SVFs, Mutual Funds (MFs), other pay-for-success arrangements, additional securities, and units that may develop are available to NPOs.
- Equity and Debt for Section 8 Companies
- To promote the growth of the whole sector by establishing a capacity-building unit that will be tasked with the following:
  - Encourage the development of a Self-Regulatory Organization ("**SRO**") that will gather together current Information Repositories ("**IRs**") in the short term to provide necessary assistance to SSE.
  - Putting the reporting standard into action for all SE that benefit from the SSE.
  - Managing the "capacity building fund" for NPOs in order to strengthen their reporting capabilities (particularly the smaller NPOs). Raising awareness and promoting the use of this fund among non-profits, philanthropists, and

contributors.

- Actively generating awareness and promoting the SSE's fundraising instruments/structures among SE and NPO.

Upon getting a good insight into the SSE's amenability, one must feel weighed down by umpteen legal conundrums which the SEBI has already taken care of by way of its SSE framework that throws light on the following aspects:

- The minimal conditions that a Non-profit Organization ("NPO") must meet in order to register with SSE in accordance with ICDR Regulation 292F.
- Minimum Initial Disclosure Requirement for NPOs issuing Zero Coupon Zero Principal Instruments ("ZCZP") in accordance with ICDR Regulation 292K (1).
- Annual disclosure by NPOs registered with SSE or who have obtained funds through SSE in accordance with Regulation 91C of the LODR Regulations.
- In accordance with Regulation 91E of the LODR Regulations, all social enterprises that have registered or collected money through SSE are required to file their Annual Impact Reports.
- Statement of Funds Utilization in accordance with LODR Regulations 91F.

Let's discuss each of them at length.

### **A. Minimum requirements to be met by a Not-for-Profit Organization (NPO) for registration with SSE in terms of Regulation 292F of the ICDR Regulations:**

In accordance with Regulation 292F (1) of the ICDR Regulations, an NPO intending to register on SSE must meet the following criteria, which fall under two heads:

#### **i. Legal Requirements:**

- The Entity is registered prior to seeking registration on SSE as an NPO and the registration certificate shall be valid for a minimum of 12 months approaching the time of intending to register on SSE.
- The Entity must possess a governing document such as MoA & AoA/trust deed, bye-laws/constitution as evidence of ownership and control. In addition, the governing document would also reveal whether the NPO is government-owned or privately owned.
- The NPO must obtain a registration certificate under Section 12A/12AA/12AB of the Income Tax Act, 1961 so as to avail of the exemption benefits under the Act. Provided that the said certificate shall be valid for the next 12 months at least and that the NPO must not have received a notice from

the income tax department or be a part of ongoing scrutiny by the department.

- The NPO shall obtain a valid IT PAN.
- The age of the NPO at the time of seeking registration with SSE shall be a minimum of 3 years. In other words, the registration certificate shall be valid for 3 preceding years prior to seeking registration on SSE.
- The NPO must also possess registration under Section 80G of the Income Tax Act, 1961 so as to ensure that investors are able to qualify for deductions under the Act.
- Lastly, the NPO must meet the requirements specified under Regulation 292E of SEBI ICDR Regulations so as to be treated as an SE.

#### **ii. Requirements with regard to minimum fund flows:**

- The annual expenditure incurred in the preceding fiscal year shall be at least Rs. 50,00,000/- (Rupees Fifty Lakhs Only), as evidenced by receipts/payments from audited accounts/ fund flow statements.
- The funding received in the preceding financial year shall be a minimum of Rs. 10,00,000/- (Rupees Ten Lakhs Only), as indicated by receipts from audited accounts/ fund flow statements.

### **B. Minimum Initial Disclosure Requirement for NPOs raising funds through the issuance of ZCZP in terms of Regulation 292K (1) of the ICDR Regulation:**

The NPOs raising funds through ZCZP ought to publicize the minimal disclosures through the draft fund-raising document/ final fund-raising document, which includes vision, target segment, strategy, governance, management, operations, finance, compliance, credibility, social impact, and risks.

### **C. Annual disclosure by NPOs on SSE which have either raised funds through SSE or are registered with SSE in terms of Regulation 91C of the LODR Regulations:**

The NPOs are mandated to file annual disclosure within 60 days from the end of the financial year on the following aspects:

#### **i. Disclosures on General Aspects:**

Name of the organization (legal and popular name); Location of headquarters and location of operations; Vision / Mission / Purpose; Organizational goals, activities, products, and services; Outreach of organization (Type and number of direct, indirect, and institutional beneficiaries/stakeholders

reached); Scale of operations (Including Employee and Volunteer strength); Details of top donors or investors of organization - List of Top 5 donors or investors (budget wise); Details of top 5 programs in disclosure period - List of Top 5 interventions/programs (budget wise).

## ii. Disclosures on Governance Aspects:

Ownership and legal form; governance structure (outlines board and management committee structures, mandates, membership, charters, policies, and internal controls); details of governing body including names of the members of the body; executives with key responsibilities; number of meetings by governing body and other committees formed by them along with attendance and the process of performance review; organization level potential risks and mitigation plan; reporting of related party transactions; mechanisms for advice and concerns about ethics, along with conflict of interest and communicating other critical concerns; remuneration policies; stakeholder grievance, the process of grievance redressal and number of

grievances received and resolved; compliance management process and statement of compliance from senior decision maker; organization registration certificate and other licenses and certifications (12A, 80G, FCRA, GST, etc.).

## iii. Disclosures on Financial Aspects:

Financial statement (Balance Sheet, Income statement, and Cash Statement). Also, program-wise fund utilization for the year; and auditors report and auditor details.

The NPO shall also reveal other additional information as specified by SSE from time to time.

## **D. Disclosure of Annual Impact Report by all Social Enterprises which have registered or raised funds using SSE in terms of Regulation 91E of the LODR Regulations:**

- All SEs must submit an audited Annual Impact Report ("AIR") to SSE within 90 days of the end of the fiscal year.
- The AIR should capture the qualitative and quantitative components of the entity's social impact and, when relevant, the effect achieved by the project or solution for which funds have been solicited on SSE.
- If an NPO is just registered without listing any security,

the AIR must describe the NPO's major actions, interventions, programs, or initiatives throughout the year, and the process for determining importance must be explained. Furthermore, if an activity, intervention, program, or project is covered by a specified security, it will qualify as a substantial activity, intervention, program, or project.

- A Social Impact Fund whose underlying receivers are SEs that have registered or acquired funds through SSE must declare an overall AIR for the fund that covers all investee/grantee organizations where the fund is allocated.
- The AIR should, at the very least, cover the following aspects:
  - i. Strategic Planning and Intention:
    - What is the social or environmental issue that the organization and/or the specified instrument are addressing? Has anything changed in the past year?
    - How is the organization responding to or preparing to respond to the challenge? Is this any different from the previous year?
    - Who is affected (target segment)? Has anything changed in the past year?



- What will the activities, interventions, programs, or projects achieve? Positive and unanticipated negative consequences should be disclosed.

ii. Approach:

- What was the baseline state/situation analysis/context description at the beginning and conclusion of the last reporting period for the activity/intervention/programs or project?
- What has been the performance pattern in the past? (if relevant)
- What is the solution implementation strategy, as well as the steps implemented to ensure the long-term viability of the activity/intervention/programs or project outcomes? Is there any significant change in the implementation of the model in the recent year?
- Outline of the solution's connection with the Sustainable Development Goals (SDGs), national priorities, state priorities, and developmental goals.
- How were stakeholder comments incorporated throughout the reporting period?
- In the previous year, what has been identified as the most significant risks to achieving the target impact? How are these being addressed?

iii. Impact Score Card:

- What metrics are being watched, and what

is the trend?

- Brief narratives of the impact on the target segment(s) during the reporting period.
- Beneficiary/Stakeholder Validation by means of surveys and various other kinds of feedback

It must be noted that social auditors shall audit the AIR, and the SEs shall release the social auditor's report along with the AIR.

**E. Statement of the utilization of funds in terms of 91F of the LODR Regulations:**

Listed NPOs must provide a statement of fund utilization to SSE within 45 days of the end of the fiscal quarter, as required by Regulation 91F of the LODR Regulations.

**Conclusion:**

In India, there are 3.4 million NPOs. Even if 1% of the NPO population is presumed to be actively pursuing social goals, there are around 34,000 NPOs. Assume 10% of active NPOs register on the SSE (3,400) and intend to participate and, raise money, a modest market potential of Rs 3,400 crores might be estimated for SSE. Indian SSE looks to have incredible potential. Are social businesses, for-profit social enterprises, and non-profit enterprises prepared to capitalize on the opportunity afforded by the Indian Securities Regulator SEBI and the Stock Exchanges (A regulatory Framework) known as the Social Stock Exchange?

# Legal Stalker

## Insolvency and Bankruptcy Code, 2016 ("IBC/Code"):

### 1. Interpretation of Regulation 39 (1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

In *Vistra ITCL (India) Limited v. Torrent Investments Private Limited and others*, the National Company Law Appellate Tribunal ("NCLAT") was confronted with the critical task of interpreting a provision contained in Regulation 39(1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which empowered resolution professionals to allow modification of resolution plan, but only once, or allowed them to use a challenge mechanism to enable resolution applicants to apply for resolution.

While interpreting the aforementioned regulation, NCLAT made the following observations:

- There can be no restriction on the ability of the Committee of Creditors ("CoC") to terminate or alter



any discussion with a resolution application, including a challenge procedure, but it is up to the CoC to make this choice.

- Sub-section 4 of Section 30, which mandates the CoC to vote on a plan "after considering its feasibility and viability," implies that after receiving the plan, following the challenge mechanism, a CoC is not required to put the plan to vote, and Regulation 39(1A) does not prohibit CoC from negotiating with resolution applicants or asking Resolution Applicants to further increase the plan value; and
- that even after the challenge procedure under Regulation 39(1A) (b) is completed, the CoC retains the authority to negotiate with one or more Resolution Applicants, or to cancel the Resolution Process and re-issue the Request for Resolution Plan ("RFRP").

The NCLAT also noticed the following:

- the most expensive bidder in the challenge process does not have the power to demand that its resolution plan be placed to a vote without the CoC taking any additional action;
- that a debenture trustee holding 90% of the voting share in the CoC is entitled to maintain an appeal against the Adjudicating Authority's order rejecting the CoC's right to negotiate with the resolution applicants following the conclusion of the challenge mechanism, even if the underlying bondholders have not specifically authorized it.

### 2. Supreme Court resolves the conundrum between Negotiable Instruments Act and IBC:

The Apex Court in the matter of *Ajay Kumar Radheyshyam Goenka vs Tourism Finance Corporation of India Limited* finally resolved the legal dilemma existing between the Negotiable Instruments Act, 1881 ("NI Act") and IBC. The issue here was whether, during

the pendency of proceedings under the Code which have been admitted, the proceeding under NI Act can continue simultaneously or not.

The bench observed that the scope and type of proceedings under the IBC and the NI Act are fundamentally different and would not intervene with one another. The court stated, based on earlier rulings, that the moratorium under Section 14 of the IBC does not extend to actions begun against signatories/directors under the NI Act. In a similar case, the court ruled that debt extinguishment under Section 31 or Sections 38 to 41 of the IBC would not ipso facto extend to criminal proceedings. The court determined that the NIA actions are not in the nature of debt recovery processes, but rather are of a punitive nature. Because the accused may face jail, a fine, or both, the NIA procedure is not comparable to a suit proceeding. Apart from the idea of pecuniary culpability per se, the court ruled that criminal liability and fines are based on the notion of failing to honor a negotiable instrument, which has a direct impact on commerce.

Furthermore, the NIA Proceeding had already begun and cognizance of the complaint had already been taken, and while the Accused Company is facing CIRP, the directors/signatories cannot

evade their criminal culpability by invoking its liquidation. Only the Accused Company is dissolved, not the signatory/director's personal criminal culpability under Section 141 of the NI Act. Justice Pardiwala relied on Section 32A's second proviso (1) of the IBC and found that, even if the Accused Company is dissolving and its obligation has ended, the former signatory/director (Appellant herein) cannot be let off the hook after the resolution plan has been approved.

He further concluded that following the adoption of the resolution plan under Section 31 of the IBC and in accordance with Section 32A of the IBC, criminal proceedings under Section 138 of the NI Act will be discontinued only in regard to the corporate debtor if it is taken over by new management. The judgment provides reassurance to many creditors who worry that nothing can be done or that all hope is gone against the failing firm's founders if the company is facing corporate bankruptcy proceedings under the rules of the IBC.

### **3. Delineating the role of Adjudicatory Authority and Resolution Professionals:**

The NCLAT Delhi decided in *E-Homes Infrastructure Private Limited and Others v. New Okhla Industrial Development Authority and Others* that the

Adjudicating Authority has the authority to reject the resolution plan, which addresses land leased under a lease agreement whose contractual provisions were breached. The NCLAT further said that if no instruction for consolidation of CIRP of two distinct organizations was issued, the resolution professional shared by two such independent businesses could not submit a composite resolution plan that was dependent on each other.

It was also noted that resolution professionals have a duty to ensure that the provisions of the Code and relevant regulations are followed and cannot question the authority of the Adjudicating Authority to investigate issues that were deemed to violate any provision of law or be contrary to the interests of stakeholders.

### **4. Application under Section 12A for withdrawal of CIRP maintainable prior to constitution of CoC:**

The Supreme Court in the matter of *Abhishek Singh v Huhtamaki Ppl Ltd. & Anr.*

ruled that Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018, binds the National Company Law Tribunal ("NCLT").

The Bench ruled that Section 12A of the Insolvency and



Bankruptcy Code, 2016 ("IBC") does not preclude hearing petitions for withdrawal of the Corporate Insolvency Resolution Process ("CIRP") even before the Committee of Creditors ("CoC") is formed. Furthermore, Regulation 30A of the CIRP Regulations advances the cause of Section 12A of the IBC, and they are not contradictory laws.

It was held in the following words:

"The IBBI which had the power to frame Regulations wherever required and in particular section 240 of IBC for the subjects covered therein had accordingly substituted Regulation 30A dealing with the procedure for disposal of application for withdrawal filed under section 12A of IBC. The substituted Regulation 30A of IBC as it stands today clearly provided for withdrawal applications being entertained before the constitution of CoC. It does not in any way conflict or is in violation of section 12A of IBC. There is no inconsistency in the two provisions. It only furthers the cause introduced vide section 12A of IBC. Thus, NCLT fell in error in taking a contrary view."

## **Tax:**

### **1. Issuance of corporate guarantee on behalf of group companies without consideration is not a**

### **taxable service:**

The Supreme Court in the case of Commissioner Of CGST And Central Excise Versus M/S Edelweiss Financial Services Ltd., The government has appealed the dismissal of proceedings against the assessee, M/s Edelweiss Financial Services Ltd., for providing a 'corporate guarantee' on behalf of its subsidiaries in India and abroad. The department has disputed the failure to discharge tax responsibility as a supplier of "banking and other financial services" prior to and after June 30, 2012.

The CESTAT determined that the adjudicating authority correctly interpreted the criticality of 'consideration' for determining service, as defined in Section 65B(44) of the Finance Act, 1994, during the challenged period following the implementation of the negative list system of taxes. Any action must indicate not only a 'provider' in connection to another for the purposes of taxability under the Finance Act of 1994, but also the flow of 'consideration' for the providing of the service. Taxability under Section 66B of the Finance Act of 1994 does not exist in the absence of any of these two factors. There is clearly no consideration in relation to

the 'corporate guarantee' made by respondents on behalf of their subsidiary entities.

CESTAT's order was contested by the department in the Supreme Court, which denied the appeal and observed in the following words: "No effort was made on behalf of the Revenue to challenge the above finding or to demonstrate that issuance of corporate guarantees to group companies without consideration is a taxable service".

### **2. CBIC amends the rules related to biometric-based Aadhaar authentication and risk-based physical verification for GST registration:**

The Central Board of Indirect Taxes and Customs ("CBIC") has modified the Aadhaar Authentication and Biometric Verification Rules. The Central Goods and Services Tax (Amendment) Rules, 2023, have been notified by the Board and have been in effect since December 26, 2022. Rule 8(4A) of the CGST Act, 2017, has been substituted by the Board, which stands as follows:

"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall,



while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres

notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.”

### **3. CBIC notifies special procedure in respect of revocation of cancellation of registration:**

The CBIC has announced a specific method for the reversal of registration cancellation. The Board has announced the special process in respect of the registered person whose registration was revoked on or before December 31, 2022, and who has failed to request for revocation or cancellation of registration within the time period specified as the class of registered individuals.

The registered individual can submit an application for revocation or cancellation of the registration until June 30, 2023. Only after furnishing the returns due up to the effective date of cancellation of registration and after payment of any amount due as tax in terms of returns, as well as any amount payable towards interest, penalty, and late fee in respect of the returns, shall an application for revocation be filed.

There will be no additional extensions to the time limit

for filing an application for revocation or cancellation of registration.

### **4. Customs (Waiver of Interest) Order, 2023:**

The Customs (Waiver of Interest) Order, 2023 was issued on April 6th, 2023 by the Government of India's Ministry of Finance, Department of Revenue (Central Board of Indirect Taxes and Customs). The order is based on Section 47(2) of the Customs Act of 1962, which compels importers to pay import duty within a certain date or incur interest charges. The Central Government had earlier set the interest rate at 15% per annum in a May 13th, 2002 announcement.

The order additionally refers to the third proviso to Section 47(2) of the Customs Act, which allows the Board to waive interest entirely or substantially in the public interest. Section 51A of the Customs Act, read in conjunction with the Customs (Electronic Cash Ledger) Regulations, 2022, have been made applicable to deposits beginning April 1st, 2023, subject to specified exclusions.

To facilitate trade and reduce transaction costs, the Board has exercised its authority under the third proviso and waived the entire interest payable under Section 47(2)

of the Customs Act for the period April 1st to April 10th, 2023, in respect of goods where import duty payment is to be made from the amount available in the electronic cash ledger. The waiver will be incorporated into the Common Portal. However, for Bills of Entry for which import duty payment has already happened and is integrated in ICES during the specified time, a claim for interest refund will be subject to the terms of Section 27 of the Customs Act.

**5. CBDT outlines employers' TDS obligations under the new 'default' personal tax structure:**

The Central Board of Direct Taxes (“CBDT”), vide Circular No. 4/2023 dated April 5, 2023, clarifies the employer's Tax Deducted at Source (“TDS”) liability on salary in light of the new default personal tax regime introduced by the Finance Act, 2023 under Section 115BAC(1A) of the Income Tax Act, 1961. CBDT directs that an employer shall seek information from each of its employees having income under Section 192 regarding their intended tax regime and each such employee shall intimate the same to his employer for each year and upon intimation, according to whichever option is chosen, the employer must determine the employee's total income and deduct tax at source.

The order further specifies that regardless of an employee's confirmation, it will be assumed that the employee is still in the default tax system and has not exercised the opportunity to opt out of the new tax regime. Thus, the employer must deduct tax at source on Section 192 income in line with the rates specified in Section 115BAC(1A). Further emphasizes that an employee's indication does not constitute exercising an option under Section 115BAC (6), and the person must do so independently in line with the law. This circular applies to TDS in FY 2023-24 and the following years.

**6. GSTR-9 Non-Filing Amnesty Scheme:**

In its 49th meeting on February 18, 2023, the GST Council suggested rationalising the late charge for delayed filing of annual reports in FORM GSTR-9 for FY 2022-23 onwards, for registered persons with aggregate revenue of up to Rs 20 crore in a fiscal year. Furthermore, amnesty for outstanding returns in FORM GSTR-9 has been granted to a significant number of taxpayers in the form of conditional waiver/reduction of late costs.

The CBIC has now reduced the amount of late fees for filing the return under section 44 of the CGST Act, viz. Annual Return, which may include the self-certified reconciliation statement (GSTR 9 & GSTR 9C), for the fiscal year 2022-23 and onwards in the following manner: -

Registered Person having aggregate turnover (in the relevant FY) (INR)	Current Late Fees [CGST + SGST]	Proposed Late Fees (for FY 2022-23 and onwards) [CGST+SGST]
Up to 5 Crores	<ul style="list-style-type: none"><li>Rs. 200 per day,</li><li>Subject to the maximum of 0.5% of turnover in state or Union territory</li></ul>	<ul style="list-style-type: none"><li>Rs. 50 per day,</li><li>Subject to the maximum of 0.04% of turnover in state or Union territory</li></ul>
5 crores to 20 crores	<ol style="list-style-type: none"><li>Rs. 200 per day,</li><li>Subject to the maximum of 0.5% of turnover in state or Union territory</li></ol>	<ul style="list-style-type: none"><li>Rs. 100 per day,</li><li>Subject to the maximum of 0.04% of turnover in state or Union territory</li></ul>

GST Late Fees are capped for submitting the Annual Return under Section 44 of the CGST Act, which may contain the self-certified reconciliation statement for previous fiscal years. Furthermore, a proviso has been added to the above-mentioned notification to limit the amount of late fees for filing the return under section 44 of the CGST Act, viz. Annual Return, which may include the self-certified reconciliation statement, by the registered person who fails to file such returns for any of the Financial Years beginning from 2017-18 to 2021-22 up to INR 20,000 (CGST + SGST), if such registered person furnishes such return in a period beginning from April 1, 2023 to June 30, 2023.

It should be noted that there is no reduction in late fees for failure to file the return under Section 44 of the CGST Act, viz. Annual Return may include the self-certified reconciliation statement (Forms GSTR-9 & GSTR-9C) for registered persons with aggregate turnover exceeding INR 20 crores in the relevant financial year. Such a registered person will be subject to the existing late fees.

## **7. New Audit Report for Trusts registered u/s 12A**

## **and 10(23C) of the Income Tax Act, 1961 notified:**

CBDT, vide Notification No.7/2023 dt. February 21, 2023, has notified new Forms 10B and 10BB by amending Rules 16CC and 17B. The new rules and forms have become effective since April 1, 2023. Form 10B is the audit report for a fund or institution, trust, university, or any other educational institution, hospital, or any other medical institution. The new Rules also clarify that 'foreign contribution' shall be defined under Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010.

## **8. Finance Bill, 2023 passed:**

On February 1, 2023, the Union Budget was presented, and the Finance Bill, 2023, was tabled, advocating a number of tax ideas. The Bill was introduced in the Lok Sabha for discussion and passage in order to implement the Central Government's budgetary recommendations. Certain additions have been made to the Finance Bill and the following amendments have been incorporated: –

- The securities transaction tax (STT) applicable on futures and options contracts would

be increased. A tax of 0.0125% shall be levied for futures contracts as opposed to 0.01% and the STT leviable for options contracts has been increased from 0.017% to 0.021%.

- Debt mutual funds with an investment of less than 35% in equity shares of domestic companies would be taxable as short-term capital gains and accordingly taxed as per the investor's income tax slab rate. Previously, if such funds were held for more than three years, they were taxed as long-term capital gains with indexation benefits.
- Offshore banking units functioning in the Gujarat International Finance Tec-City would be eligible for a 100% deduction on the units' income for a period of 10 years.
- The tax levied on royalties or fees for technical services paid to non-residents would be increased from 10% to 20%.
- Income from Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) to be taxed as income from other sources (instead of capital gains).

## Competition Law:

### 1. Competition (Amendment) Bill, 2023 passed:

The significant highlights of the Bill are as under:

- The definition of "turnover" to include global turnover which is derived from all products and services by a person or an enterprise.
- The amendment allows for the imposition of penalties for competition law violations based on a company's global turnover, rather than just its turnover in India.
- The bill reduces the time limit for the CCI to form a prima facie opinion on a combination from 30 working days to 30 days. The change aims to speed up the process of mergers and acquisitions.
- Mergers and acquisitions exceeding Rs. 2,000 crores of value must be notified to CCI.
- The proposed amendment to reduce the overall time limit for the assessment of combinations to 150 days from 210 days.
- The bill decriminalizes certain offences under the act by changing the nature of punishment from the imposition of fines to civil penalties. these offences may be

the failure of compliance with the order by CCI or any direction related to anti-competitive agreements and abuse of dominant position.

## Environment Law:

### 1. Forest (Conservation) Amendment Bill, 2023 introduced:

The central government presented the Forest (Conservation) Amendment Bill, 2023 on March 29, 2023, with the goal of amending some provisions of the Forest (Conservation) Act, 1980.

The bill recognizes that the Forest (Conservation) Act of 1980 introduced novel challenges in terms of ecological, social, and environmental developments. These include reducing the consequences of climate change, achieving national Net Zero Emission objectives by 2070, and preserving or improving forest carbon stocks at both the national and international levels.

The Bill clarifies the Forest (Conservation) Act's application to various types of lands. The Act only applied to declared forest lands prior to a Supreme Court decision in T.N. Godavarman Thirumulpad vs. Union of India and others 1996, but following the verdict, it extended to

registered forest areas, raising confusion concerning non-forestry usage on private and government non-forest properties.

The Bill defines the Act's application while also attempting to expedite strategic and security-related projects of national importance, particularly in border and Left-Wing Extremism-affected areas. The Bill also aims to make public utilities more accessible and accessible to small businesses and residences near public roadways and railways.

## Securities Law:

### 1. Framework for adoption of cloud services by SEBI Regulated Entities (REs):

SEBI, vide circular dt. March 6, 2023, introduced a cloud framework to provide baseline standards of security and for the legal and regulatory compliances by the REs. This circular is applicable to the following REs:

- Stock Exchanges
- Clearing Corporations
- Depositories
- Stock Brokers through Exchanges
- Depository Participants through Depositories
- Asset Management Companies (AMCs)/



## Mutual Funds

- Qualified Registrars to an Issue and Share Transfer Agents
- KYC Registration Agencies (KRAs)

This cloud framework is a principle-based framework that covers Governance, Risk, and Compliance (GRC), selection of Cloud Service Providers (CSPs), data ownership and data localization, due diligence by REs, security controls, legal and regulatory obligations, DR & BCP, and vendor lock-in risk.

## 2. Operational guidance for Buyback through Stock Exchange Route:

The SEBI, vide circular dt. March 8, 2023, issued an operational guidance circular for companies opting for buyback through the stock exchange route and set out the following restrictions:

- The company shall not purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the (10) ten trading days preceding the day in which such purchases are made.
- The company shall not place bids in the pre-open market, first (30) thirty minutes, and the last (30) thirty minutes of the

regular trading session.

- The company's purchase order price should be within the range of  $\pm 1\%$  from the last traded price.

With regard to margin requirements for deposits in Escrow Account, the SEBI set forth the following:

- As per the sub-clause (c) of Clause (xi) of Regulation 9 and Clause (ii) of Regulation 20 of the Buy-back Regulations, the escrow account shall consist of cash and/or other than cash.
- The portion of an escrow account in the form of other than the cash shall be subject to the appropriate haircut, in accordance with the SEBI Master Circular for Stock Exchange and Clearing Corporations dated July 05, 2021, as amended from time to time.

## 3. Norms for Scheme of Arrangement by unlisted Stock Exchanges, Clearing Corporations, and Depositories:

The SEBI vide circular dt. March 28, 2023, introduced a detailed framework for the scheme of arrangement by unlisted Market Infrastructure Institutions ("MIIs"). The unlisted MII desirous of undertaking or

being involved in a scheme of arrangement shall file the draft scheme of arrangement along with a non-refundable fee with SEBI for obtaining the observation letter or no-objection letter, before filing such scheme with any Court or Tribunal, in accordance with the requirements specified by SEBI from time to time.

Following the approval of the proposed plan, the unlisted MII shall pay a charge to SEBI equal to 0.1% of the unlisted or transferee or resultant company's paid-up share capital, whichever is greater, subject to a ceiling of INR 5,000. The requirements may not apply to schemes that only provide for the merger of a totally owned subsidiary or a division of a wholly owned subsidiary with the parent business.

## 4. Cyber Security and Cyber Resilience Framework for Portfolio Managers:

SEBI vide circular dated March 29, 2023, released a framework relating to cyber security and cyber resilience, which shall be applicable w.e.f. October 1, 2023, on all Portfolio Managers with assets under management of INR 3000 crore or more, under discretionary and non-discretionary portfolio

management service taken together, as on the last date of the previous calendar month. This framework was published in line with the rapid technological advancement in the securities market, with ardent need for maintaining robust cyber security and to have a cyber-resilience framework to protect the integrity of data and guard against breaches of privacy.

### **5. Advertisement code for Investment Advisers and Research Analysts:**

SEBI vide circular dated April 5, 2023, introduced an advertisement code for Investment Advisors (“IAs”) and Research Analysts (“RAs”). This code is released with a view to strengthening the conduct of IAs and RAs governed under the already existing SEBI Regulations for Investment Advisors and Research Analysts. This code is effective from May 1, 2023.

### **6. Usage of brand name/trade name by Investment Advisers and Research Analysts:**

SEBI vide circular dated April 6, 2023, issued a circular in clarification of the investor doubts concerning the use of brand name/trade name by IAs and RAs in the advertisements, which shall take effect from May 1, 2023. To facilitate

transparency in the employment of the brand name/ trade name, the IAs and RAs must ensure the following:

- The information such as name of the IA/RA as registered with SEBI, its logo, its registration number and its complete address with telephone numbers shall be prominently displayed on portal/website, if any, notice board, display boards, advertisements, publications, know your client forms and client agreements.
- The information such as name of the IA/RA as registered with SEBI, its logo, its registration number, its complete address with telephone numbers, the name of the compliance officer, his telephone number and e-mail address, the name, telephone number and e-mail address of the grievance officer or the grievance redressal cell shall be displayed prominently in statements or reports or any other form of correspondence with the client.
- Disclaimer that “Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM

in no way guarantee performance of the intermediary or provide any assurance of returns to investors” shall be mentioned on portal/web site, if any, notice board, display boards, advertisements, publications, know your client forms, client agreements, statements or reports or any other form of correspondence with the client.

- SEBI logo shall not be used by IA/RA.

### **Other Legislative Developments:**

#### **1. Foreign Trade Policy, 2023 released:**

The end of the F.Y. 2022-23 was marked by the release of the Foreign Trade Policy 2023 by Mr. Piyush Goyal, Union Minister of Commerce and Industry, Consumer Affairs, Food and Public Distribution, and Textiles. The Key Approach to the policy is based on these 4 pillars: (i) Incentive to Remission, (ii) Export promotion through collaboration - Exporters, States, Districts, and Indian Missions, (iii) Ease of doing business, reduction in transaction cost and e-initiatives and (iv) Emerging Areas – E-Commerce Developing Districts as Export Hubs and streamlining SCOMET policy. The FTP 2023 aims at

process re-engineering and automation to facilitate ease of doing business for exporters. It also focuses on emerging areas like dual-use high-end technology items under SCOMET, facilitating e-commerce export, and collaborating with States and Districts for export promotion.

The new FTP is introducing a one-time Amnesty Scheme for exporters to close the old pending authorizations and start afresh. The FTP 2023 encourages recognition of new towns through the “Towns of Export Excellence Scheme” and exporters through the “Status Holder Scheme”. The FTP 2023 is facilitating exports by streamlining the popular Advance Authorization and EPCG schemes, and enabling merchanting trade from India.

## **2. Amendment in Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021:**

The Ministry of Electronics and Information Technology issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 on April 6, 2023, amending the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The

following are the key highlights:

- The definition of "online game" has been added, which means "a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary."
- A clause has been added that emphasizes that if the online game can cause harm to the user, it is the responsibility of the intermediaries and grievance redressal mechanism to inform the user of its computer resource not to host/display/upload/modify/publish/transmit/store/update/share any information of that harmful online game.
- A proviso has been added to Rule 3(1)(f) stating that if an online gaming intermediary has enabled users to access any legitimate online real money game, the intermediary must notify its users of such change as soon as feasible, but no later than 24 hours after the change takes effect.
- Rule 4 pertains to further due diligence to be undertaken by a key social media intermediary, whereas sub-rules focusing on

any permitted online real money game have been introduced. In such situations, online gaming intermediaries must:

- show a demonstrable and visible mark of verification of such online game by an online gaming self-regulatory organization on such permitted online real money game; and
- will not fund or enable third-party financing to be given.
- Rule 4-A (Verification of online real money game) has been added:
  - The Ministry may appoint as many online gaming self-regulatory organizations as it deems appropriate for validating an online real money game.
  - The regulatory authority must keep the details of the applicants, the dates and period of validity of verification, the dates of acceptance as a member, their corporate/business-related identity number, the reasons for verification, and the details of suspension/revocation on their websites/ mobile-based applications.
  - Every online gaming self-regulatory authority would prominently post

the grievance redressal framework and the Grievance Officer's contact details for grievance redressal and the contact details of the Grievance Officer on its website/mobile-based application.

- After performing an investigation, the self-regulatory body declares such online real money game as a permitted online game if it is satisfied that:
  - It does not entail gambling on any result.
  - Is in accordance with regulations governing the age at which a person is competent to engage into a contract.
  - Rule 4-B (Applicability of certain obligations after an initial period) has been added, which states that the obligations under Rules 3 and 4 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 will apply to online games only after a three-month period has lapsed.
  - Rule 4-C (Obligations in relation to online games other than online real money games) states that the Central Government may direct the intermediary to make necessary changes without affecting the main point if it considers it necessary in the interest of India's sovereignty and integrity/state security/friendship with foreign States.
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# INTERACTIVE SESSIONS



1. What shall be the turnover for a public company to have at least one-woman director on board?
2. A category of Directors who are expected to have impartial and objective judgment for the company's proper functioning.
3. A shareholder holding shares of the nominal value of not more than twenty thousand rupees.
4. Maximum No. of Directors that a company may appoint without passing of Special Resolution.
5. Which Rules prescribes the class or classes of companies which shall have at least two independent directors?
6. Where a director is found to accept directorship exceeding the limit specified under Section 165 of the Companies Act, 2013, what is the penalty?
7. Policy framed for the determination of the remuneration of directors, and key managerial personnel.
8. Which report has been mandatory for the top 1000 listed companies beginning the FY 2022-23 based upon the principles of the National Guidelines on Responsible Business Conduct (NGRBC).

[Answer: 1. Rs. 300 crores; 2. Independent Directors; 3. Small Shareholder; 4. Fifteen (15); 5. Companies (Appointment and Qualification of Directors) Rules, 2014; 6. Rs.20,000 for each day subject to maximum of Rs. 2 lakhs; 7. Nomination and Remuneration Policy; 8. Business Responsibility and Sustainability Report]



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