

# **NEWS LETTER**

## **COMPANY LAW AND CORPORATE AFFAIRS COMMITTEE**

**THE MADRAS CHAMBER OF COMMERCE AND INDUSTRY**

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### **FLASH NEWS**

**Ms. CS Vasumathy Vasudevan, Practicing Company Secretary & Insolvency Professional, V. Vasumathy & Associates to make a presentation on the recent changes in LODR**

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- a) MINISTRY OF CORPORATE AFFAIRS – No  
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month of December, 2024.**
- b) SECURITIES EXCHANGE BOARD OF INDIA**
- c) RESERVE BANK OF INDIA**

**IN THE MONTH OF DECEMBER 2024**

## AUDIT COMMITTEE–DEMYSTIFIED

### INTRODUCTION:

The company being an artificial person, it is managed by a group of individuals called the Board of directors (Board) who are responsible for making decisions in the best interests of stakeholders of the company and to promote corporate governance. Establishing committees is one way of managing the work of the board in a better and efficient manner, thereby strengthening the board's governance role and to focus on specific areas of governance and oversight. The committees of the Board primarily consist of the members of the Board with expertise in specified filed delegated with specialized functions by the Board.

The Companies Act, 2013 and SEBI Regulations require certain committees to be mandatorily constituted by the Board which include Audit committee. While all the committees constituted by the Board are significant, the role of Audit committee assumes special significance considering the role and responsibility it has to discharge.

**Audit committee** is responsible for overseeing internal controls, financial reporting framework, compliance, risk management, audit function etc and thus acts as one of the main pillars of Corporate Governance mechanism.

### CHARGING SECTION,RULE AND REGULATION:

- **Section 177 of the Companies Act 2013(Act)**
- **Rule 6** of the Companies (Meetings of Board and its Powers) Rules, 2014.**(Rule)**
- **Regulation 18** of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. (LODR)

## **APPLICABILITY:**

### **Under Companies Act 2013**

Section 177(1) of the Act with Rule 6 is reproduced below for easy reference:

**177(1):** *the Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.*

**Rule 6:** *The Board of Directors of every listed public company and a company covered under rule 4 of the Companies (Appointment and Qualification of directors) Rules, 2014 shall constitute an "Audit Committee" and a "Nomination and Remuneration Committee of the Board".*

**Rule 4(1)** of the Companies (Appointment and Qualification of directors) Rules, 2014 provides as follows:

- All public companies with a paid up capital often crore rupees or more;
- All public companies having turnover of one hundred crore rupees or more;
- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

*The paid up share capital or turnover or outstanding loans or borrowings or debentures or deposits, as the case may be , as existing on the date of last audited financial statement shall be taken into account for the purposes of this rule.*

**Rule 4(2)** provides that the following classes of unlisted public company shall not be covered under sub rule(1), namely,

- ❖ A joint venture
- ❖ A wholly owned subsidiary
- ❖ A dormant company as defined under section 455 of the Act

On a combined reading of Rule 6 of the Rule and Rule 4(1) and 4(2) of *Companies (Appointment and Qualification of directors) Rules, 2014*, Audit committee is mandatory for the following companies and not required for those companies which falls under Rule 4(2) of *Companies(Appointment and Qualification of directors)Rules, 2014*.

- **Listed Public Company**(it is to be noted that the requirement is applicable only when the listed company is a public company, whereby it implies that a private company if it has any of its securities listed in stock exchange will not be attracted)
- All public companies with a paid up capital often crore rupees or more;
- All public companies having turnover of one hundred crore rupees or more;
- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits **exceeding** fifty crore rupees or more.

**It is to be noted that in the last condition alone the word exceeding is used.**

### **LODR-Regulation18(1)**

**Every listed entity** shall constitute a qualified and independent audit committee in accordance with the terms of reference.

The mandatory requirements stipulated under the Act and LODR is tabulated below for easy reference in respect of composition, chairperson, frequency of meetings, quorum, and role to be played by the Audit committee.

| <b>Requirements</b>       | <b>Companies Act, 2013</b>  | <b>SEBI LODR Regulations</b>   |
|---------------------------|---|--|
| <b>Composition</b>        | A minimum of 3 Directors. Majority of the composition should be Independent Directors.  | Minimum 3 directors as members. At least 2/3 <sup>rd</sup> shall be independent directors. In case of a listed entity having outstanding Superior rights (SR) equity shares, the audit committee shall only comprise of independent directors. |
| <b>Financial Literacy</b> | Majority of the members of Audit committee including its Chairperson shall be persons with ability to read and understand the financial statements. | All members of audit committee shall be <b>financially literate</b> and at least one member shall have <b>accounting or related financial management expertise.</b>  |

|                              |  |  |
|------------------------------|--|--|
|                              |  | <p><b>“Financially literate”</b> shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.</p> <p>a member shall be considered to have <b>accounting or related financial management expertise</b> if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.</p> |
| <b>Secretary</b>             | No specific provision given  | The Company Secretary shall act as the secretary to the audit committee.   |
| <b>Chairperson</b>           | Chairperson shall be with ability to read and understand the Financial statement   | The chairperson of the audit committee shall be an Independent director.   |
| <b>Frequency of Meetings</b> | No specific provision given  | The audit committee shall meet <b>at least four times in a financial year</b> and not more than <b>120 days</b> shall elapse between two consecutive Meetings  |
| <b>Quorum</b>                | No specific provision given  | The quorum shall either be 2 members or 1/3 <sup>rd</sup> of the members of the audit committee, whichever is greater, with <b>at least 2 Independent directors.</b>   |
| <b>Role</b>                  | Audit Committee shall act in accordance with the terms of reference specified in writing by the Board as specified in Section 177(4) | The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.  |



## **Terms of Reference:**

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board and in accordance with section 177(4) which is reproduced below:

- (i) The recommendation for appointment, remuneration and terms of appointment of auditors of the company;*
- (ii) Review and monitor the auditor's independence and performance ,and effectiveness of audit process;*
- (iii) Examination of the financial statement and the auditors' report thereon;*
- (iv) approval or any subsequent modification of transactions of the company with related parties;*
- (v) scrutiny of inter-corporate loans and investments;*
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;*
- (vii) evaluation of internal financial controls and risk management systems;*
- (viii) Monitoring the end use of funds raised through public offers and related matters.*

***Omnibus approval:*** *The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;*

***In case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:***

***In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it:***

***The provisions of this clause shall not apply to a transaction, other than a***

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*transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.*

#### **RIGHTS AND AUTHORITIES OF THE AUDIT COMMITTEE:**

*The Audit Committee may call for the comments of the auditors about:*

- ✓ *Internal control systems,*
- ✓ *The scope of audit, including the observations of the auditors and*
- ✓ *Review of financial statement before their submission to the Board and*
- ✓ *May also discuss any related issues with the internal and statutory auditors and the management of the company.*

*The Audit Committee shall have **authority to investigate into any matter** in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have **power to obtain professional advice** from external sources and have full access to information contained in the records of the company.*

**As per Schedule II Part C of SEBI (LODR), the audit committee shall mandatorily review the following information**

- *Management discussion and analysis of financial condition and results of operations;*
- *Management letters/ letters of internal control weaknesses issued by the statutory auditors;*
- *Internal audit reports relating to internal control weaknesses; and*
- *The appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.*
  
- *Statement of deviations:*
  - (a) *quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).*
  - (b) *annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).*



## **DISCLOSURE IN BOARD'S REPORT**

The Board's report is required to disclose the following:

- the composition of audit committee and
- where the Board had not accepted any recommendation of the Audit Committee the fact of the same along with the reasons thereof.

## **PRESENCE IN ANNUAL GENERAL MEETING:**

As per regulation 18(1)(d) of LODR, the Chairperson of the Audit committee shall be present at the Annual General Meeting to answer shareholder queries.

Standard 4.1.1 of Secretarial Standard – 2 on General Meetings also requires that the chairperson of the Audit Committee, or any other member authorized by the chairperson of the Audit Committee to attend on his behalf, shall attend the General Meeting.

## **DISCLOSURE INCORPORATE GOVERNANCE REPORT:**

As per **Schedule V (c) of SEBI LODR**, the following shall be disclosed in the Corporate Governance Report which forms part of the Annual Report:

*Audit committee:*

- (a) brief description of terms of reference;
- (b) composition, name of members and chairperson;
- (c) meetings and attendance during the year.

## **RIGHT TO BE HEARD IN THE AUDIT COMMITTEE MEETINGS:**

The auditors of the company and the Key managerial personnel have the right to be heard in the meetings of the Audit committee when it considers the auditor's report. However, they have no right to vote.

## **VIGIL MECHANISM:**

Vigil Mechanism also known as Whistle Blower Policy acts as a platform for employees and other stakeholders to report concerns about unethical practices, fraud, or violations of company policies. It encourages transparency and accountability within the organization.

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**Who shall establish vigil mechanism:** As per Section 177(9) and (10) read with rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014

- every listed company
- the Companies which accept deposits from the public
- the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees

are required to establish a vigil mechanism for Directors and employees to report genuine concerns.

**Responsibility to oversee the vigil mechanism:** Audit committee is responsible for overseeing the vigil mechanism and in ensuring whether all the grievances and concerns are addressed appropriately.

If any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

In case of companies which are not required to constitute Audit committee, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for **direct access to the chairperson of the Audit Committee** in appropriate or exceptional cases.

In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

**Disclosure in the website, if any and in the Board's report:** Details of establishment of vigil mechanism shall be disclosed in the website of the company if any and also in the Board's report.

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## **RELATED PARTY TRANSACTIONS:**

**Regulation 23(2) of SEBI LODR envisages that the audit committee shall approve all related party transactions of the listed entity.**

The same has been extracted below:

*All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity:*

*Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions and subsequent material modifications.*

***SEBI vide its notification dated 12.12.2024, inserted the below mentioned clauses:***

*Remuneration and sitting fees paid by the listed entity or its subsidiary to its director, key managerial personnel or senior management, except who is part of promoter or promoter group, shall not require approval of the audit committee provided that the same is not material in terms of the provisions of 23(1).*

*The members of the audit committee, who are independent directors, may ratify related party transactions within three months from the date of the transaction or in the immediate next meeting of the audit committee, whichever is earlier, subject to the following conditions:*

*(i) the value of the ratified transaction(s) with a related party, whether entered into individually or taken together, during a financial year shall not exceed rupees one crore;*

*(ii) the transaction is not material in terms of the provisions of sub-regulation (1) of this regulation;*

*(iii) rationale for inability to seek prior approval for the transaction shall be placed before the audit committee at the time of seeking ratification;*

*(iv) the details of ratification shall be disclosed along with the disclosures of related party transactions in terms of the provisions of sub-regulation (9) of this regulation;*

*(v) any other condition as specified by the audit committee:*

*Provided that failure to seek ratification of the audit committee shall render the transaction voidable at the option of the audit committee and if the transaction is with a related party to any director, or is authorised by any other director, the director(s) concerned shall indemnify the listed entity against any loss incurred by it*

From the above it can be inferred that:

- ❖ All material related party transactions require approval of the audit committee.
- ❖ All subsequent modification of the related party transactions requires approval of the audit committee.

- ❖ The approval can be accorded only by the members of the audit committee **who are Independent directors.**
- ❖ In extra ordinary cases, the related party transactions entered may be ratified within the timelines prescribed after fulfilling the conditions specified above.

#### OMNIBUS APPROVAL ON ANNUAL BASIS:

**Rule 6A of Companies (Meetings of Board and its powers) Rules 2014** provides in detail related to the omnibus approval for related party transactions on annual basis, which is reproduced below for easy reference and it is self-explanatory.

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely

- (1) *The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-*
    - (a) *maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;*
    - (b) *the maximum value per transaction which can be allowed;*
    - (c) *extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;*
    - (d) *review, at such intervals as the Audit Committee may deem fit, related party transaction entered in to by the company pursuant to each of the omnibus approval made;*
    - (e) *transactions which cannot be subject to the omnibus approval by the Audit Committee.*
  - (2) *The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -*
    - (a) *Repetitiveness of the transactions(in past or in future);*
    - (b) *Justification for the need of omnibus approval.*
  - (3) *The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.*
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(4) *The omnibus approval shall contain or indicate the following:-*

(a) *Name of the related parties;*

(b) *Nature and duration of the transaction;*

(c) *Maximum amount of transaction that can be entered into;*

(d) *the indicative base price or current contracted price and the formula for variation in the price, if any; and*

(e) *any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:*

*Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.*

(5) *Omnibus approval shall be **valid for a period not exceeding one financial year** and shall require fresh approval after the expiry of such financial year.*

(6) ***Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.***

(7) *Any other conditions as the Audit Committee may deem fit.*

**Similarly as per Regulation 23(3) of LODR,**

*Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity and/or its subsidiary subject to the following conditions, namely-*

(a) *the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions and such approval shall be applicable in respect of transactions which are repetitive in nature;*

(b) *the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;*

(c) *the omnibus approval shall specify:*

(i) *the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,*

(ii) *the indicative base price / current contracted price and the formula for variation in the price if any; and*

(iii) *such other conditions as the audit committee may deem fit:*

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*Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.*

*(d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity or its subsidiary pursuant to each of the omnibus approvals given.*

*(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:*

#### **CONTRAVENTION AND CONSEQUENCES:**

Section 178(8) provides that in case of any contravention of the provisions of section 177 the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees.

#### **REQUIREMENTS:**

RBI vide Notification No.DNBR.019/CGM (CDS)-2015 dated April 10, 2015 mandates that:

*i. All Applicable NBFCs shall constitute an Audit Committee, consisting of not less than three members of its Board of Directors.*

*Explanation I : The Audit Committee constituted by a non-banking financial company as required under Section 177 of the Companies Act, 2013 shall be the Audit Committee for the purposes of this paragraph.*

*Explanation II : The Audit Committee constituted under this paragraph shall have the same powers, functions and duties as laid down in Section 177 of the Companies Act, 2013.*

*ii. The Audit Committee must ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the NBFCs*

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## **ANALYSIS:**

Although the Companies Act, 2013 exempts private companies from constituting an Audit Committee, the Reserve Bank of India has made it mandatory for all deposit taking NBFCs and systematically important NBFCs, irrespective of whether they are public or private, to constitute an Audit Committee in order to ensure that an information systems, audit of the internal systems and processes is conducted to assess operational risks faced by the company. Accordingly, as per RBI's circular, private companies registered as NBFC with RBI, having assets of Rs. 50 crore and above are required to constitute an Audit Committee.

## **CONCLUSION:**

The audit committee serves as a cornerstone of corporate governance, playing a crucial role in upholding the integrity and transparency of financial reporting and thereby ensuring that an organization adheres to high standards of accuracy and compliance.

**COMPILED BY: Ms CS Anusha and Ms CS Shiva Priyaa S. Partners, B RAVI & ASSOCIATES**

## **DISCLAIMER:**

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**AN OVERVIEW  
OF THE PROPOSED REGULATORY FRAMEWORK  
FOR DIGITAL COMPETITION IN INDIA**

**Written by - Neelambara Sandeepan, Krithika Jaganathan and Lavanya Lakshmi G. Lakshmikumaran and Sridharan Attorneys**

As Reverend Mother in Sound of Music says, “How do you hold a moon beam in your hand?”, so also is the attempt to regulate competitive practises in the digital economy – how do you exercise control over something no one can control?

The value of data is so significant today, in that the market behaves as the data dictates, and the markets choose the player(s). Digital services and online platforms play a seminal role in the economy, right from enabling businesses to access users to facilitating cross-border trade. Even with far-reaching benefits to businesses and consumers alike, the peculiarity of the digital economy carries ample room for exploitation by the participating large undertakings: leveraging, market foreclosure, bundling of products/services, customer entrenchment to name a few. It is this space that the proposed Draft Digital Competition Bill (“DDCB”) seeks to regulate to ensure that the markets remain fair and contestable.

The authors attempt to explore the implications of the DDCB and to examine what the future holds for the digital economy.

**REPORT OF THE COMMITTEE ON DIGITAL COMPETITION LAW**

The Ministry of Corporate Affairs instituted a Committee on Digital Competition Law (“Committee”) to review whether existing provisions of the Competition Act, 2002 (“Competition Act”) are adequate to address the challenges emerging in the digital economy and to examine whether an ex-ante digital competition law is required. The Committee presented a detailed report on 27.02.2024 (“Report”). The Report recommended the necessity for a new law to regulate digital competition, that would supplement the existing regime under the Competition Act. The Report acknowledged that as elaborate as the 2002 Act may be, the Competition Act the primary tenets of the law may not be designed to meet the specific challenges presented by the rapidly evolving digital market landscape in India. The Report emphasized that the Competition Act regulates anti-competitive conduct only once it has taken place. For instance, under Section 4 of the Competition Act, until a dominant enterprise has not



abused its position of dominance, the law has no role to play. However, the pace at which digital markets function, large incumbent digital enterprises have the potential to irreversibly tip the markets in their favour in a very short span of time. An ex-post measure may not have the desired impact for competitors and consumers.

In addition to the Committee studied allied Indian Instruments that regulate digital markets through a sector-specific lens, as well as international best practices to enumerate a list of recommendations that would be well-suited to regulate the regime for digital markets. A significant, effective contributor to this exercise was the Digital Markets Act, 2022 (“DMA”) enacted by the European Union and the Report draws much inspiration from the DMA.

### **DRAFT DIGITAL COMPETITION BILL, 2024**

In line with the Committee’s proposal for a fresh legislation to enable the CCI to selectively regulate large digital enterprises, albeit ex ante, the DDCB is a fit-for-purpose instrument crafted to cater to the Indian digital economy.

The DDCB is primarily aimed at identifying Systemically Significant Digital Enterprises (‘SSDE’) and regulating their practices in the provision of core digital services. An SSDE is an enterprise designated as such by the CCI under Section 4 (self-reporting obligation and designation) of the DDCB.

“Core Digital Service” is defined under Section 2(6) to mean any service specified in Schedule I of DDCB. In order to afford more flexibility in expanding the list of core digital services, the Committee recommended that the core digital services be enumerated in the Schedule I to the DDCB. The extant Schedule I includes online search engines; online social networking services; video sharing platform services; interpersonal communications services; operating systems; web browsers; cloud services advertising services; and online intermediation services. This list is not exhaustive and is capable of expansion depending on the economic climate.

According to Section 3 of DDCB, an enterprise may be designated as an SSDE in respect of a Core Digital Service if it has a significant presence in providing such Core Digital Service in India.

There are various qualitative and quantitative criteria framed to identify an SSDE, where the qualitative criteria are divided into financial thresholds and user thresholds. Financial

thresholds include turnover in India of not less than INR 4000 crore; or global turnover of not less than USD 30 billion; or gross merchandise value of not less than INR 16000 crore; or global market capitalisation of not less than USD 75 billion, or its equivalent fair value of not less than USD 75 billion. User thresholds include core digital enterprise having at least one crore end users or ten thousand business users.

The DDCB provides for other factors such as volume of commerce of the enterprise; size and resources of the enterprise; number of business users or end users; economic power of the enterprise; integration or inter-linkages of the enterprise with regard to the multiple sides of the market; dependence of end users or business users on the enterprise; etc. At the same time, the CCI is endowed with the power to designate an entity as an SSDE based on other factors it may consider relevant.

DDCB requires digital enterprises that cross the thresholds to self-assess and voluntarily apply for designation. The enterprise must also notify CCI of other enterprises within the group the enterprise belongs to, which are directly or indirectly involved in provision of the Core Digital Service, as an Associate Digital Enterprise ('ADE'). The DDCB prevent circumvention of designation as an SSDE by way of segmentation, division, fragmentation, or splitting of its core platform services. The designation is initially for a period of three years. Thereafter, an SSDE has an option to request the CCI to remove the designation as SSDE owing to (i) no longer meeting the threshold (ii) significant change in market dynamics.

The specific obligations that the SSDEs will be subjected to will depend upon the core digital service being provided by them and the same will be done by way subsequent regulations. Some of the broad-level obligations that the SSDEs are typically likely to be subjected to include:

- SSDE to operate in a fair, non-discriminatory and transparent manner with end users and business users.
- SSDE shall not, directly or indirectly favour its own products, services, or lines of business, or those of related parties, third parties with whom SSDE has business deals to provide goods/ services.

- SSDE to not, directly or indirectly, use or rely on non-public data of business users operating on its Core Digital Service to compete with such business users on the identified Core Digital Service of the SSDE.
- SSDE to not intermix or cross use personal data of end users/ business users collected from different services including Core Digital Services or permit usage of such data by any third party without obtaining consent from end users/ business users.
- SSDE to not restrict the ability of end users/ business users to download, install, operate or use third-party applications or other software on its Core Digital Services; and allow end users and businesses to set and change default settings.
- SSDE to not restrict business users from, directly or indirectly, communicating with or promoting offers to their end users, or directing their end users to their own/ third party services unless integral to the provision of Core Digital Service of the SSDE.
- SSDE shall not require or incentivise business users or end users to use one or more of the SSDE's other products or those of related parties, third parties with whom SSDE has business deals to provide goods/ services.

In addition to the SSDEs, the ADE will also be obligated to comply with all the obligations imposed on the SSDE. However, CCI, under its discretion, may subject ADE to lesser compliance.

The DDCB vests the CCI with powers of inquiry & investigations, and powers to grant interim orders temporarily restraining any party from carrying any act that may be in contravention of the DDCB. When it comes to violation of the DDCB, it also provides for a settlement mechanism and envisages a commitment from the SSDE as a mode of enforcement of the provisions. The DDCB provides extra-territorial jurisdiction to the CCI and enterprises outside of India servicing the Indian market/customers may also be required to comply with the requirements of the law. The Central Government also has powers to exempt enterprises from compliance in the interest of security of State or public interest; in accordance with any obligation assumed by India under any treaty if it performs a sovereign function on behalf of the Central Government.

The DDCB contemplates penalties for non-compliance by SSDE and ADE. For contraventions under the DDCB, CCI may impose penalties not exceeding 10% of SSDE's global turnover, in the preceding financial year. In case of failure to notify for designation, the penalty is 1% of the global turnover of the SSDE. The DDCB vests the NCLAT as the appellate forum for parties aggrieved by Orders of the CCI.

### **CONCLUSION: A LAUDABLE EFFORT**

The DDCB is a forward-looking legislation that requires self-regulation by the designated entities to ensure that the competitive forces of the market are not distorted by a single or a few enterprises. At the same time, given the constant innovation that drives products and services in digital markets run the risk of stagnation on account of over regulation. As such, the DDCB has to walk the tight rope balancing competitive markets with innovative markets. With the rapid strides that the Indian Digital Economy is making, the DDCB is positioned to engender best practices amid businesses. The effects that unfold may be best perceived as we "learn to labour and to wait".

Given the expertise required for implementing the DDCB it is imperative that the CCI builds the capabilities and engages sufficient manpower for effective implementation.

It may also be befitting to introduce the legislation, when enacted, in a staggered manner as was the case with the DMA. Introducing the DDCB with a buffer of 6 months to 1 year may help the market accustom itself to the change in norms. Implementing the law in pilot mode may be beneficial for enhanced productivity and recovery gains of the market.

The DDCB is a laudable instrument aimed at counterbalancing compliance with fair and transparent competition. Ex-ante laws are a powerful tool that are expected to ensure market equilibrium by reposing trust on businesses to toe the line. It is all the more important for the entire ecosystem to work together in harmony for the thriving digital economy in India to attain dizzying heights.

## CIRCULARS ISSUED BY SEBI DURING THE MONTH OF DECEMBER 2024

| Date                | Title   |
|---------------------|---|
| <b>Dec 30, 2024</b> | Allowing subscription to the issue of Non- Convertible Securities during trading window closure period  |
| <b>Dec 27, 2024</b> | Prior approval for change in control: Transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control |
| <b>Dec 20, 2024</b> | Upload of draft scheme information documents  |
| <b>Dec 20, 2024</b> | Industry Standards on Reporting of BRSR Core  |
| <b>Dec 20, 2024</b> | Policy for Sharing Data for the Purpose of Research / Analysis  |
| <b>Dec 17, 2024</b> | Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs                |
| <b>Dec 13, 2024</b> | Pro-rata and pari-passu rights of investors of AIFs   |
| <b>Dec 13, 2024</b> | Classification of Corporate Debt Market Development Fund (CDMDF) as Category I Alternative Investment Fund  |
| <b>Dec 13, 2024</b> | Relaxation from the ISIN restriction limit for issuers desirous of listing originally unlisted ISINs (outstanding as on December 31, 2023)                        |
| <b>Dec 10, 2024</b> | Enhancement in the scope of optional T+0 rolling settlement cycle in addition to the existing T+1 settlement cycle in Equity Cash Markets                         |
| <b>Dec 10, 2024</b> | Revised Guidelines for Capacity Planning and Real Time Performance Monitoring framework of Market Infrastructure Institutions(MIIs)                               |
| <b>Dec 05, 2024</b> | Repository of documents relied upon by Merchant Bankers during due diligence process in Public issues   |
| <b>Dec 03, 2024</b> | SMS and E-mail alerts to investors by stock exchanges.  |

## CONSULTATION PAPERS ISSUED BY SEBI DURING THE MONTH OF DECEMBER 2024

### FOR PUBLIC COMMENTS

| Date                | Title   |
|---------------------|---|
| <b>Dec 17, 2024</b> | Consultation paper on draft circular for “Service platform for investors to trace inactive and unclaimed Mutual Fund folios: MITRA (Mutual Fund Investment Tracing and Retrieval Assistant)”  |
| <b>Dec 13, 2024</b> | Extension in timeline to submit comments on consultation paper on Review of Ownership and Economic Structure of Clearing Corporations   |
| <b>Dec 13, 2024</b> | Extension in timeline to submit comments on consultation paper on Process for appointment of specific KMPs of an MII; and cooling-off period for KMPs and Directors of an MII joining a competing MII.  |
| <b>Dec 13, 2024</b> | Participation of retail investors in algorithmic trading  |
| <b>Dec 10, 2024</b> | Consultation paper on Draft Circular on Operational Efficiency in Monitoring of Non-Resident Indians (NRIs) Position Limits in Exchange Traded Derivatives Contracts - Ease of Doing Investment.  |
| <b>Dec 10, 2024</b> | Harnessing DigiLocker as a Digital Public Infrastructure for reducing Unclaimed Assets in the Indian Securities Market  |
| <b>Dec 06, 2024</b> | Consultation Paper on draft circular to provide clarity on provisions related to association of persons regulated by the Board, MIIs, and their agents with persons carrying on prohibited activities.  |
| <b>Dec 05, 2024</b> | consultation paper on “the proposed framework for devolvement of In-The-Money (ITM) single stock option contracts into futures, 1 day prior to expiry, to mitigate the potential risks arising from sudden movement of Out-of-The-Money (OTM) option contracts to ITM option contracts near expiry in the context of physical settlement in the derivatives segment”. |
| <b>Dec 05, 2024</b> | Consultation paper on Introducing Close Auction Session in Equity Cash segment.   |
| <b>Dec 05, 2024</b> | Measure for ease of doing business – Settlement of Account of Clients who have not traded in the last 30 days   |
| <b>Dec 03, 2024</b> | Consultation Paper on Online Monitoring of System Audit of Stock Brokers  |

**NOTIFICATIONS ISSUED BY RBI DURING THE MONTH OF DECEMBER 2024**

- Dec 30, 2024** Introduction of beneficiary bank account name look-up facility for Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT) Systems.
- Dec 27, 2024** Unified Payments Interface (UPI) access for Prepaid Payment Instruments (PPIs) through third-party applications
- Dec 27, 2024** Reporting Platform for transactions undertaken to hedge price risk of gold
- Dec 06, 2024** Credit Flow to Agriculture – Collateral free agricultural loans
- Dec 06, 2024** Maintenance of Cash Reserve Ratio (CRR)
- Dec 06, 2024** Interest Rates on Foreign Currency (Non-resident) Accounts (Banks) [FCNR(B)] Deposits
- Dec 04, 2024** Amendment to Framework for Facilitating Small Value Digital Payments in Offline Mode
- Dec 04, 2024** Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 03 Entries
- Dec 02, 2024** Inoperative Accounts / Unclaimed Deposits in banks

**6<sup>th</sup> Meeting is scheduled on Tuesday, 07.01.2025  
at**

**4.00 pm at MCCI conference room**

**7<sup>th</sup> Meeting is scheduled on Tuesday, 11.02.2025  
at**

**4.00 pm at MCCI conference room**