



**dvmgopal & associates**  
Company Secretaries

# Newsletter

**September - 2021**

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2. A Glance on Amendments.
3. Compliance Calendar (Sept 2021)

## OVERSEAS DIRECT INVESTMENT

- Company can open branch offices abroad - submit applications to their AD bankers in **Form OBR** along with
  - ✓ the particulars of their turnover duly certified by their auditors
  - ✓ Declaration that they have not approached/would not approach any other AD for this facility.
- AD may release exchange towards initial expenditure and recurring expenses of the office as under, provided the applicant fulfils the following conditions:

Category	Initial Expenditure	Recurring Expenditure (per annum)
<b>a) EEFC Account</b>	No limit for remittances out of EEFC funds	No limit for holders remittances out of EEFC funds
<b>b) Others (No account/insufficient balance)</b>	<ul style="list-style-type: none"> <li>✓ Upto 15% of the average annual sales/income or turnover during the last 2 financial years or</li> <li>✓ Upto 25% of networth whichever is higher</li> </ul>	Up to 10% of their average annual sales/income turnover during last 2 years

➤ **100% EOUs or Units in EPZs and Hardware/Software Technology Parks**

In the case of newly established 100% EOUs or Units in EPZs and Hardware/Software Technology Parks,

- First 2 years - exchange may be released as per their estimated requirements for both expenses on verification of suitable documentary evidence
- From third year onwards - exchange may be released as per item (a) or (b) above.
- Thus, for first two years such units can get more foreign exchange released than the limits for other Indian companies.

➤ **Terms and Conditions**

- Overseas office is set up for conducting normal business activities of the Indian entity;
- The overseas office shall not enter into any contract or agreement in contravention of the Act, Rules or Regulations made there under;
- Overseas office shall not invest surplus funds abroad without prior approval of the Reserve Bank.

➤ **Compliances post release of exchange**

- Submit statement showing details of initial expenses incurred together with suitable documentary evidence, wherever possible, within 3 months.
- Submit annual accounts of office abroad as certified by Auditors

➤ **Renewal of remittance facility**

- Can be renewed after 2 years if proper accounts of utilisation are furnished to AD.
- **Exemption:** Firms/companies having trading offices abroad operating on 'no remittance' basis or maintained out of funds in EEFC accounts. However, annual statements should be submitted to AD.

Applications from firms/companies who do not satisfy the above conditions shall be made in form OBR to the Regional Office under whose jurisdiction the Registered/Head Office is situated. The applicant should justify the need for setting up the office.

- Prohibition on setting up of offices and meeting their expenses from the any of the following



✚ **Remittances towards actual retainer fees allowed to the overseas agents**

Engaged for rendering services for promotion of exports by Indian firms/companies provided

- (a) the applicant does not have a non-trading/trading office
- (b) the eligibility criteria as stated in (i) above is satisfied and
- (c) the amount of retainer fee is within the ceiling fixed for recurring expenses.

#### ✦ **Grant of GR waiver in respect of such exports.**

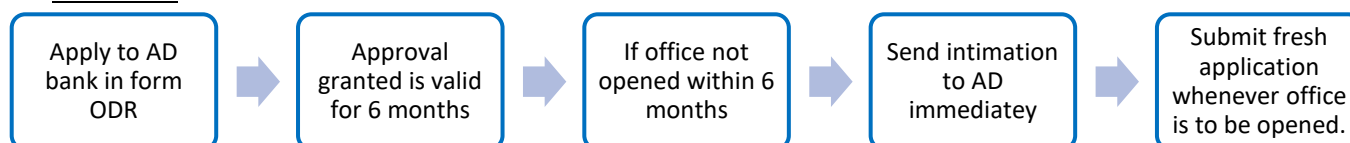
Firms/companies wishing to take Indian goods such as floor covering, furniture and other items for office use may approach Reserve Bank.

While issuing approval the following terms and conditions should be advised to the applicant.

- Overseas office should **not** create any financial liabilities contingent or otherwise for the Head Office in India.
- Use the exchange released by the authorised dealer for the purpose(s) for which it is released. The unused exchange may be repatriated to India under advice to AD.
- Report the details of bank account opened in the overseas countries to AD
- The account so opened, held or maintained shall be closed,
  - if the overseas branch is not set up within 6 months of opening the account, or
  - within 1 month of closure of the overseas branch/ office, or
  - where no representative is posted for 6 months,
- After closure the balance held in the account shall be repatriated to Indi

#### ✦ **Profits, if any, earned by the overseas office/s should be repatriated to India**

##### ➤ **Procedure**



##### ➤ **Compliances to be carried out by AD**

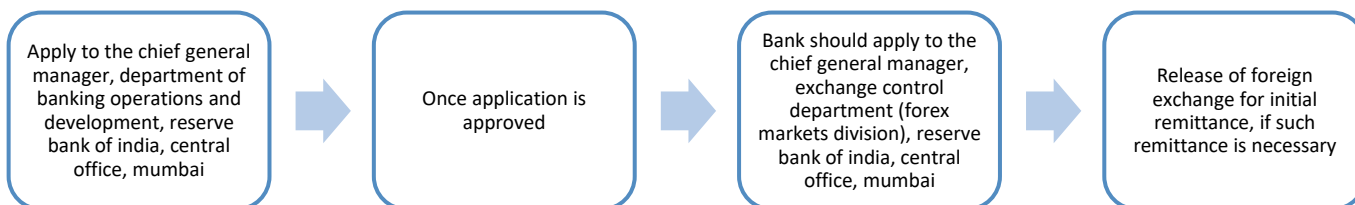
- Send report of permission granted for opening of office in **form ORA** on a monthly basis to the Regional Office of Reserve Bank within 10 days from the close of month.
- Obtain from the applicants a statement in **form ORR**, where remittances are made from EEFC accounts. Send copies of **ORR** statements to Reserve Bank after adding their certification alongwith the monthly statements in form ORA.
- Keep records relating to the remittance facilities in a systematic manner to facilitate inspection.
- Send 'nil' statement in form ORA even if no permission is granted during the month

#### ✦ **Temporary Site/Project Offices Abroad**

- Indian firms/companies executing contracts/projects abroad with the approval of the appropriate authority are permitted under a general permission granted by Reserve Bank to set up site/project offices abroad provided that such offices are maintained out of project receipts and remittances from India are not required.
- These offices are required to be closed down and surplus foreign exchange earnings repatriated to India after completion of the project.

#### ✦ **Branches of Indian Banks abroad**

Indian banks can open branches only with permission of Reserve Bank under Section 23 of the Banking Regulation Act, 1949 as per the follows:



*\*Opening of representative offices abroad by Indian banks also requires permission of both the Department of Banking Operations and Development and the Exchange Control Department of Reserve Bank.*

## A Glance on Amendments

### LLP (AMENDMENT) ACT, 2021

- Hon'ble financial minister announced Amendment in LLP Act.
  - Passed by Rajya Sabha – 04th August 2021
  - Passed by Lok Sabha – 09th August 2021
  - President Assent – 13<sup>th</sup> August 2021
- Total 30 amendments to LLP Act 2008 by LLP Amendment Act 2021.

#### KEY HIGHLIGHTS OF THE AMENDMENT

- ✚ Conversion of certain offences into civil defaults & changes the nature of punishment for these offences.
- ✚ Definition of Small LLP
- ✚ Provides for appointment of certain adjudicating officers, & establishment of special courts
- ✚ Authorisation to Regional Directors w.r.t., compounding of offences- fine only
- ✚ Empowering Govt. to prescribe 'Accounting and Auditing Standards for a certain class of LLPs etc.

#### NEW CONCEPTS

##### **Small LLP:**

- Proposed to create a "Small LLP" in line with the concept of Small Companies.
- Lesser compliances, lesser fee or additional fee and lesser penalties in the event of default.
- Thus, lower cost of compliance would incentivize unincorporated micro and small partnerships to convert into the organized structure of an LLP and derive its benefits.
- LLPs with contribution less than or equal to ₹5 crores and the turnover size less than or equal to ₹50 crores.

##### **Non-convertible Debentures (NCDs):**

LLPs can raise capital through issue of fully secured Non-Convertible Debentures (NCDs) from investors who are regulated by SEBI or RBI.

##### **Reduction of Additional Fee:**

Reduction of additional fee of Rs. 100 per day which is presently applicable for the delayed filing of forms, documents, will be reduced to incentivize smooth filing of records and returns of LLPs and consequently result in an updated registry for proper regulation and policy making.

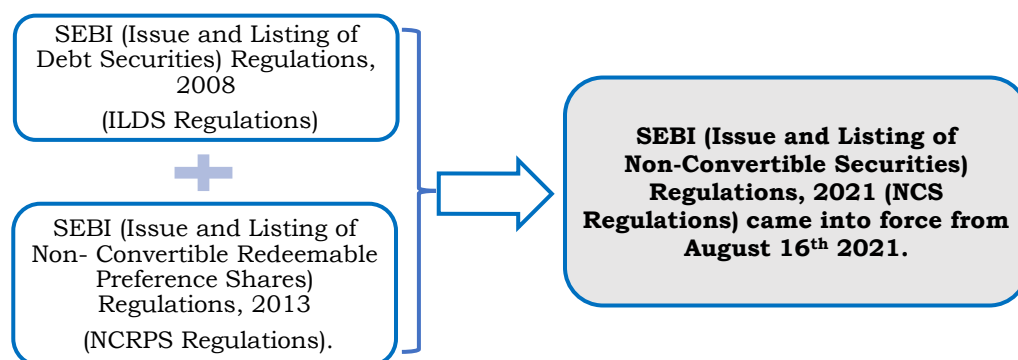
#### PENAL PROVISIONS

S. No.	Category	Nature of offences
1.	Compoundable Offences	Improper and deceptive use of the words 'LLP' or 'Limited Liability Partnership' to without incorporation as a LLP
2.		Failure to maintain proper books of accounts of LLP
3.		Failure to furnish information or details asked for by the ROC within a reasonable period of time
4.		Failure to preserve and procedure documents and evidence in case of inspection and inquiry.
5.		Failure to indicate the fact of conversion of a firm to LLP in every communication made by the resultant LLP for a period of 12 months from the date of registration of LLP.
6.		Failure to indicate the fact of conversion of a private company to LLP in every communication made by the resultant LLP for a period 12 months from the date of registration of LLP
7.		Failure to indicate the fact of conversion of a unlisted public company to LLP in every communication made by the resultant LLP for a period of 12 months from the date of registration of LLP.

8.	Non-compoundable Offences	Furnishing of a False statement (intentionally and knowingly) by a professional during incorporation of the LLP that all requirements of the Act has been satisfied
9.		Carrying out any act with the intent to defraud creditors of the LLP or any other person
10.		Furnishing a false material statement or omitting to furnish a material fact intentionally in any document or return to be furnished under the Act by the LLP
11.	In-house Adjudication Mechanism	Contravention with the requirement of ensuring that every LLP has 2 Designated Partners, out of which 1 should be a resident Designated Partner
12.		Failure to file the appointment of a Designated Partner with the Registrar within 30 days of appointment
13.		Failure to ensure that the Designated Partners appointed by the LLP satisfies the requirements prescribed under the Act
14.		Failure to fill up the vacancy of the position of Designated Partner within the required timelines
15.		Non-maintenance of registered office for the purpose of receiving and acknowledging communications.
16.		Failure to publish the name, address and LLPIN of the LLP in all its official communications.
17.		Failure to furnish information to the Registrar regarding the change in partners or particulars of the partner within the prescribed timeline.
18.		Failure to file Statement of Account and Solvency within a period of 6 months from the end of the financial year.
19.		Failure to file Statement of Annual return within a period of 60 days from the end of the financial year.
20.		Non-filing of the Order of the Tribunal in case of compromise or arrangement scheme within 30 days of passing order
21.		Non-filing of the order of the Tribunal in case of reconstruction or amalgamation of LLPs within 30 days of passing order
22.	Contravention of any provision of the Act or the relevant rules where no specific penalty has been indicated.	

## SEBI - Amendments

### SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021



#### NCS regulations shall apply to the:

- Issue & listing of debt securities & redeemable preference shares through public issue or private placement; and
- Listing of commercial paper issued by an issuer in compliance with the guidelines framed by RBI.

#### NCS Regulations - Important Changes:

Basis	Before Amendment	After Amendment
<b>Debenture Trustee</b>	The requirement to <b>appoint Debenture Trustee</b> was only for public issue of debt securities	It is mandatory to appoint Debenture Trustee for <b>all</b> issues of debt security.
<b>Period of Existence</b>	A Company has to be in existence for at least 3 years to list its privately placed debentures	Issuers who are desirous of issuing debt securities on private placement basis but are in existence for less than three years may provide Annual Reports pertaining to the years of existence while making application for listing.
<b>Validity of shelf Prospectus</b>	Not more than 4 issuances can be made under a single shelf prospectus in a year.	This restriction has been removed from NCS Regulations
<b>Minimum Subscription</b>	ILDS Regulations gave the option to the issuer to identify the minimum subscription.	NCS Regulations has straight away set a bar of 75% of the base issue size.
<b>Creation of Security</b>	In case of secured debentures, the assets offered as collateral were required to be unencumbered and if the same are already charged to secure a debt, then permissions from existing charge holders would be required to be taken to create a pari passu or a second charge.	Assets over and above the 100% security cover may be encumbered and the same may be provided as security without obtaining relevant permissions from the existing charge holders.

SEBI vide its notification dated 06<sup>th</sup> August, 2021 made the following amendments in SEBI (LODR) Regulations, 2015 to be effective from January 1, 2022.

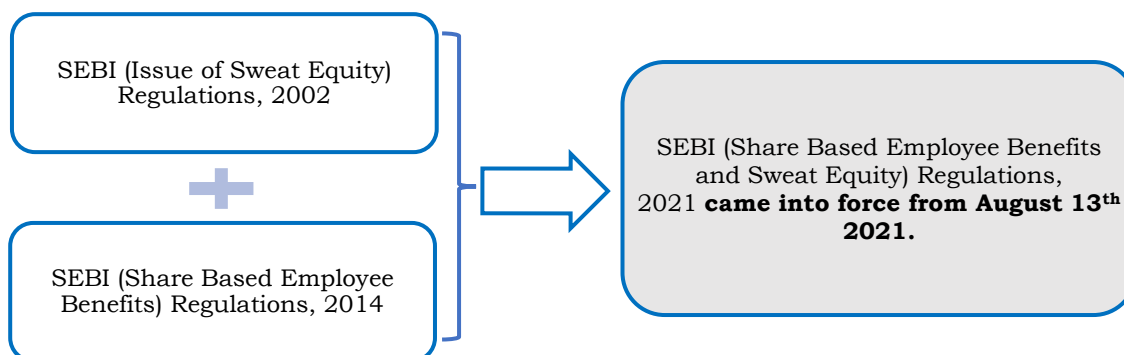
Few of the important changes are:

Basis	Existing Regulation	After Amendment
<b>Regulation 17 w.r.t Regularisation of Director</b>	-	The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier
<b>Regulation 19 NRC Committee Composition</b>	At least fifty percent of the directors shall be independent directors [and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors	at least two-thirds of the directors shall be independent directors <del>[and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors].</del>



<b>Regulation 23 Related party transactions</b>	All related party transactions shall require prior approval of the audit committee.	All related party transactions shall require prior approval of the audit committee. <b>New proviso inserted</b> “ <b>Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.</b> ”
<b>Regulation 25 Obligations with respect to independent directors</b>	-	<b>New inserted sub regulation:</b> The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

### SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.



#### These regulations shall apply to the:

The provisions of these regulations shall apply to the following: –

(i) Employee Stock Option Schemes (ESOS)	(ii) Employee Stock Purchase Schemes (ESPS);
(iii) Stock Appreciation Rights Schemes (SAR)	(iv) General Employee Benefits Schemes (GEBS);
(v) Retirement Benefit Schemes (RBS)	(vi) Sweat Equity Shares.

### Important Changes

Basis	Before Amendment	After Amendment
<b>Employee</b>	<p><b>Employee Means</b></p> <p>(i) a permanent employee of the company who has been working in India or outside India; or</p> <p>(ii) a director of the company, whether a whole time director or not but excluding an independent director;</p>	<p><b>Employee Means</b></p> <p>(i) an <del>permanent</del> employee of the company who has been working in India or outside India; or</p> <p>(ii) a director of the company, whether a whole time director or not, <b>including a non-executive director (who is not a promoter or member of the promoter group)</b>, but excluding an independent director;</p>
<b>Compensation Committee</b>	<p>The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013</p>	<p>The compensation committee shall be a committee of such members of the board of directors of the company as provided under <del>section 178 of the Companies Act, 2013,</del> <b>regulation 19 of the Securities and Exchange Board of India (LODR) Regulations, 2015</b></p> <p><b>Provided that a company may also opt to designate its NRC as compensation committee for the purposes of these regulations.”</b></p>

**Sweat Equity Shares - Alignment of compliances with the Companies Act, 2013:**

- Sweat Equity shares can be issued to an employee of the company working in India or abroad; or to a director of the company whether a whole-time director or not only for providing know-how or making available rights in the nature of intellectual property rights or value additions.
- Maximum quantum: not more than 15% of the existing paid-up equity share capital in a year & overall shall not exceed 25% of the paid-up equity share capital at any time.
- a company listed on Innovators Growth Platform shall be permitted to issue not more than 15% of the paid-up equity share capital in a financial year subject to overall limit not exceeding 50% of the paid-up equity share capital, up to ten years from the date of its incorporation
- Pricing and lock-in requirements as applicable to preferential allotment under ICDR Regulations

**Auditor’s Certificate – ESOP or Sweat Equity:**

At the AGM **subsequent to the issue of ESOP or sweat equity shares**, the Board of Directors shall place before the shareholders, **a certificate from the secretarial auditor** of the company that the **issue of ESOP has been implemented or sweat equity shares has been made in accordance with these regulations** and in accordance with the resolution passed by the company authorizing the issue of such shares.

**Companies Act – Amendments**

Pre-Amendment	Post Amendment	Description of amendment
<b>Form MGT-7</b>	New e-form MGT-7A and revised e-form MGT-7 in line with the Companies (Management and Administration) Amendment Rules, 2021	<p>The following are the changes in Form MGT-7:</p> <ul style="list-style-type: none"> <li>• The bifurcation of shareholding in Demat and physical is inserted.</li> <li>• The Indebtedness table is removed.</li> <li>• The director wise details of attendance of meetings is removed.</li> </ul> <p>New e-form MGT-7A is introduced for filing of annual return for small companies and OPC.</p>
<b>Schedule VII - CSR</b>	Spending of CSR funds for COVID 19 Vaccination for persons other than the employees and their families, is an eligible CSR Activity under Promotion of health care including preventive health care and relating to disaster management.	Spending towards Vaccination for persons other than the employees and their families is covered under CSR.



# Compliance Calendar



INCOME TAX				
Compliance details	Applicability	Reporting period	Due Date	Form
Deposit of Tax Deducted	Non-government deductors	August, 2021	7th September, 2021	Challan 281
Issue of TDS certificate u/s 194IA, 194IB and 194M	All deductors	July, 2021	14th September, 2021	Form 16B & 16C
2nd Installment of Income Tax	Taxpayers liable to advance Tax	F.Y 2021-22	15th September, 2021	Challan 280
Filing of Income Tax Return and Audit Report	Companies including other entities on which Audit provisions are applicable	F.Y. 2020-21	30th September, 2021	
Challan-cum-statement for TDS u/s 194IA, 194IB and 194M	All deductors	August, 2021	30th September, 2021	Form 26QB & 26QC
Linking of Aadhaar number with PAN	All PAN holders		30th September, 2021	
Monthly Return for Profession Tax more than 50,000/-	Entities registered with PT Authorities	August, 2021	30th September, 2021	Through State-Wise PT Portal
GST				
Compliance details	Applicability	Reporting period	Due Date	Form
Return of outward supplies of taxable goods and/or services	Taxpayers with Annual Turnover more than INR 1.5 Cr	August, 2021	10th September, 2021	GSTR 1
Return for Details of Supplies and the amount of tax collector	E-commerce Operator	August, 2021	10th September, 2021	GSTR 8
Return for TDS under GST	Government Authorities	August, 2021	10th September, 2021	GSTR 7
Return for details of ITC received and distribution	Input Service Distributors	August, 2021	10th September, 2021	GSTR 6
Summary Return of Outward and Inward Supplies along with payment of Tax	GST Taxpayers	August, 2021	20th September, 2021	GSTR 3/3B
Summary Return of Outward taxable supplies and tax payable	GST Taxpayers	August, 2021	20th September, 2021	GSTR 5 & 5A
Return for details of goods and services purchased in India	Taxpayer claiming Refund & having UIN	August, 2021	28th September, 2021	GSTR-11

### Companies Act and FEMA

Compliance details	Applicability	Reporting period	Due Date	Form
<b>Appointment of Cost Auditor to Central Government</b>	<p><b>"If applicable under Item A (as per Rule 3):</b> Companies including foreign companies having an overall turnover from all of its products and services of RS 50 Crore or more.</p> <p>Aggregate turnover of the individual products or services is 25 Crores or more</p> <p><b>If applicable under Item B (as per Rule3):</b> Companies including foreign companies having an overall turnover from all of its products and services of RS 100 Crore or more.</p> <p>Aggregate turnover of the individual products or services is 35 Crores or more</p> <p><b>(Please refer Cost audit rules)</b></p>	F.Y 2021-22	27th Sep 2021 or 30 days from the Board meeting; Whichever is earlier	CRA-2
<b>File form DIR-3 KYC to update KYC details in the system</b>	Aggregate turnover of the individual products or services is 25 Crores or more	F.Y. 2020-21	30th Sep, 2021	DIR-3 KYC
<b>Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA</b>	all categories of ECB	August, 2021	7th September, 2021	ECB-2 Return

### Labour Laws

Compliance details	Applicability	Reporting period	Due Date	Form
<b>Deposit of Provident Fund Contributions</b>	Entities registered with PF Authorities	August, 2021	15th September, 2021	Monthly ECR
<b>EDLI Return (Employees Deposit Linked Insurance)</b>	All companies and firm deducting PF	August, 2021	25th September, 2021	
<b>Deposit of E.S.I.C Contributions</b>	Entities registered with ESIC Authorities	August, 2021	15th September, 2021	Monthly ECR