

### **Information Technology Governance, Risk, Controls and Assurance Practices**

The Reserve Bank of India vide RBI/2023-24/107 DoS.CO.CSITEG/SEC.7/31.01.015/2023-24 dated 7<sup>th</sup> November, 2023 issued the Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023. The Directions are applicable to banking companies, non-banking financial companies, credit information companies etc. (referred to as Regulated Entities in the Directions) and will come into effect on 1<sup>st</sup> April 2024.

The Regulated Entities (REs) will have to put in place some important measures, some of them being:

- IT Governance Framework based on the key focus areas of strategic alignment, risk management, resource management, performance management and Business Continuity/ Disaster Recovery Management.
- The Enterprise-wide risk management policy or operational risk management policy of the REs shall also incorporate periodic assessment of IT-related risks (both inherent and potential risk)
- Board-level IT Strategy Committee (ITSC) having a minimum of three directors as members
- IT Service Management Framework for supporting the entity's information systems and infrastructure to ensure the operational resilience of their entire IT environment.
- Documented Data Migration Policy specifying a systematic process for data migration, ensuring data integrity, completeness and consistency. The policy shall, inter alia, contain provisions pertaining to signoffs from business users and application owners at each stage of migration, maintenance of audit trails, etc.
- IT and Information Security Risk Management Framework covering inter alia Implementation of comprehensive Information Security management function, internal controls and processes (including applicable insurance covers) to mitigate/ manage identified risks
- Information Security Policy, which shall take into consideration, inter alia, aspects such as the objectives, scope, ownership and responsibility for the Policy; information security organizational structure; exceptions; compliance review and penal measures for non-compliance of Policies. Apart from that, REs shall also put in place a Cyber Security Policy and Cyber Crisis Management Plan (CCMP).
- Business Continuity Plan (BCP) and Disaster Recovery (DR) Policy which shall adopt best practices to guide its actions in reducing the likelihood or impact of the disruptive incidents and maintaining business continuity. The policy shall be updated based on major developments/ risk assessment

- Information Systems Audit Policy containing a clear description of its mandate, purpose, authority, audit universe, periodicity of audit etc. The policy shall be approved by the Audit Committee of the Board and reviewed at least annually.

### **Clarifications regarding Goods & Services Tax (GST) on certain Services**

The Central Board of Indirect Taxes and Customs (CBIC) vide Circular No. 206/18/2023 dated 31<sup>st</sup> October 2023, has clarified the following issues, with reference to Goods & Services Tax (GST) levy:

1. Input services in the same line of business include transport of passengers or renting of motor vehicle with operator and not leasing of motor vehicles without operator which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.
2. Whenever electricity is being supplied bundled with renting of immovable property or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations, Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.
3. Job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers “job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt and attracts 5% GST.
4. District Mineral Foundations Trusts(DMFTs) work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc. Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.
5. Supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification No. 12/2017-CTR dated 28.06.2017. [Note - Sr. No. 3 & 3A of Notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union Territory or Local Authority by way of any activity in relation to any function entrusted to a Panchayat or Municipality.]

## **Limited Liability Partnerships – Significant Beneficial Interest Reporting**

The Ministry of Corporate Affairs (MCA) vide its notification G.S.R. 803(E). dated 27<sup>th</sup> October, 2023, had notified the Limited Liability Partnership (Third Amendment) Rules, 2023. According to the amendment, a LLP would have to make Declaration in respect of beneficial interest in any contribution.

In furtherance of this, the Ministry of Corporate Affairs (MCA) vide its notification dated 9<sup>th</sup> November, 2023 has notified 'The Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023'. The Rules have defined key words like 'significant beneficial owner', 'control', 'significant influence' and 'ultimate holding company' and also given timelines for reporting about significant beneficial ownership.

Important points of the aforesaid Rules are as follows:

- Significant beneficial owners to inform the Limited Liability Partnership (LLP) and such individual to make a declaration in Form No. LLP BEN-I.
- It is the duty of the reporting LLP to take steps to ascertain if there is any individual who is a significant beneficial owner (SBO) in relation to that reporting LLP and cause such individual to file Declaration in Form No. LLP BEN-1 within 30 days of acquiring/change in SBO.
- LLP will have to report about Significant Beneficial Owners (SBO) to the Registrar of Companies within 30 days of the date of declaration made by an individual about holding/acquiring status of SBO. Upon receipt of declaration, the reporting LLP shall file a Return in Form No. LLP BEN-2 with the Registrar along with the prescribed fee.
- The LLP shall maintain a register of significant beneficial owners in Form No. LLP BEN-3 and keep it open for inspection during the business hours for such reasonable time as mentioned in the rules.
- LLP will have to give notice in Form No. LLP BEN-4 to its partners (other than individual) seeking information about significant beneficial owners. Notice should be given to those partners (other than individuals) who hold 10% or more contribution, voting rights or right to receive dividend (or any other distributable profit).
- LLP can approach Tribunal in case a person fails to give information required by notice in Form No. LLP BEN-4 or gives unsatisfactory information.
- The provisions of the Rules are not applicable to the extent the contribution of the LLP is held by certain entities.

## **Designated Persons of Company**

The Ministry of Corporate Affairs (MCA) vide notification G.S.R. 801(E) dated 27<sup>th</sup> October, 2023 has notified the Companies (Management and Administration) Second Amendment Rules, 2023, and thereby amended the Companies (Management and Administration) Rules, 2014.

According to the amendment, *‘every company shall designate a person who shall be responsible for furnishing and extending co-operation for providing information to the Registrar or any other authorized officer with respect to beneficial interest in shares of the Company’*.

Section 89 and 90 of the Companies Act 2013, pertain to beneficial owner, beneficial interest in any share and significant beneficial owner. The amendment in the aforesaid mentioned Rules has laid down the requirement for designating a person for providing information regarding beneficial interests in the company’s shares.

The following persons may be designated as ‘designated person’:

- Company Secretary of the company, if there is requirement of appointment of company secretary under the Companies Act 2013 and Rules made thereunder
- Key Managerial Personnel of the Company, other than the Company Secretary.  
As per section 2(51) of the Companies Act 2013, “key managerial personnel”, in relation to a company, means—
  - (i) the Chief Executive Officer or the managing director or the manager;
  - (ii) the company secretary;
  - (iii) the whole-time director;
  - (iv) the Chief Financial Officer;
  - (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
  - (vi) such other officer as may be prescribed
- Every director of the company, if there is no Company Secretary or Key Managerial Personnel

However, until a responsible person is designated, certain specified individuals under rules are deemed to have been designated viz.:

- Company Secretary of the company, if there is requirement of appointment of such company secretary under the Companies Act 2013 and Rules made thereunder
- Every Managing director or Manager, incase Company Secretary has not been appointed
- Every director of the company, if there is no Company Secretary or Managing Director or Manager

The details of the designated person appointed by the Company should be disclosed in the Annual return of the Company. If there is a change in the designated person at any time, the company shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules 2014.

## **Dematerialization of Securities of Private Companies**

The Ministry of Corporate Affairs (MCA) vide its Notification No. GSR 802(E) dated October 27, 2023 has notified “the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023” and inserted a new Rule 9B after Rule 9A in the Companies (Prospectus and Allotment of Securities) Rules, 2014. Accordingly, every Private Company (not being a Small Company), within eighteen months from the closure of the financial year i.e. March 31, 2023, shall issue securities only in dematerialized form; and facilitate dematerialization of all its securities, in accordance with provisions of the Depositories Act, 1996.

The private company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, will now have to ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with the provisions of the Depositories Act, 1996 and regulations made thereunder.

Thereby, every holder of securities of the private company who intends to transfer such securities, shall get such securities dematerialized before the transfer; And every holder who subscribes to any securities whether by way of private placement or bonus shares or rights offer, shall ensure that all his securities are held in dematerialized form before such subscription.

Since the provisions of Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 shall, mutatis mutandis, apply to the dematerialization of securities of private companies, hence, apart from other requirements, the private company shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

A Small Company and Government Company are exempted from the applicability of these Rules

***Team Gopal Chopra & Associates***

***Chartered Accountants***

***Email: [info@gca-associates.com](mailto:info@gca-associates.com)***

***URL: <http://www.gca-associates.com>***

***34, Babar Lane, Bengali Market, New Delhi - 110001.***

***Tel: +91-11-23350585, 23350137; +91-11-41526668***

***Disclaimer:***

***This is a newsletter on taxation and regulatory updates. The contents of this email is solely for the purpose of knowledge upgradation and does not constitute professional advice on any manner whatsoever and should not be construed as same. If you do not wish to receive this communication, please notify us by mail/telephone.***