



# GENICON CS LEGAL MUSINGS

The Fornightly Legal Updates !!!

**#MUSINGS 12**

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**CONTACT**

**+91 900 315 3388**

**[www.geniconcs.com](http://www.geniconcs.com)**

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# SECURITIES AND EXCHANGE BOARD OF INDIA

## **Investor Charter for KYC registration agencies**

SEBI has notified Publishing Investor Charter for KYC (Know Your Client) Registration Agencies (KRAs) on their Websites vide circular on May 06, 2025.

Its main purpose is to facilitate investor awareness about activities involving KRAs for Investor Service Requests

### **Key Services Provided by KRAs to Investors include:**

- KYC Registration and Modification, involving verification and validation
- Providing online access to track KYC Status
- Allowing investors to update their KYC information through any intermediary and enabling KRAs to promptly disseminate these updates to linked intermediaries
- Sending Alerts (SMS/Email/physical) to investors regarding their KYC records
- Verification of KYC attributes against official databases
- Assigning a KYC status based on verification
- Implementing safeguards for Data Protection, Privacy, Security, and Confidentiality



## Investors have the Right to:

- Assurance of privacy and protection for KYC data
- Verify and ensure that their KYC information is accurate and updated
- Access a prompt grievance redressal mechanism
- Avail guidance from the KRA on KYC processes
- Access the KRA's policies (privacy, use of information, website)
- View their KYC status online and make updates through an intermediary
- Delink their KYC record through an intermediary upon account closure
- Apart from this, Dos and don'ts for investors along with Grievance redressal mechanism are also provided.

**For further reading:** <https://www.sebi.gov.in/>



## **Securities Appellate Tribunal In the matter of V.Shankar Vs SEBI**

The Subject matter of the adjudication: **whether company secretary is responsible for the correctness of the financials of the company as he also signs off the financials.**

### **Key facts of case:**

- Deccan Chronicle Holdings Ltd (DCHL) has announced buy-back of shares on May 06, 2011.
- Company Secretary (CS) of Deccan Chronicle Holdings Ltd (DCHL) signed off on the buy back of shares and certified that the company has enough funds to complete the buy back.
- The CS has signed the above mentioned disclosure relying on the signed financials of the company.
- Later it turned out that, the financials are mis-stated and company does not have the money to buy back the shares.
- SEBI penalised the CS and imposed Rs.10 Lakhs penalty.
- On appeal, SAT overturned the order stating that the CS cannot be expected to go through and audit the financials for its veracity when it is already signed by a practicing Chartered Accountant and the Board of Directors of the company.







## ROC ADJUDICATION ORDERS

### **1. Failure to disclose RPT in board report – In the matter of BGR Mining & Infra Limited**

- The attachment AOC-2 to the board report has missed the lease rentals paid which were RPTs for 3 financial years.
- The company and the directors were penalised ₹ 4L for 2016-17, ₹ 7L for 2017-18 and ₹ 7L for 2018-19.
- The company was directed to pay 18 Lakhs in total for missing RPT disclosures in board report.

### **2. Violation in acceptance of deposits – In the matter of Indur Avenues Private Limited**

- The company had the practice of refunding deposits with interest and the auditor failed to capture the data in his audit report.
- The auditor failed to check for the compliance of section 73 and section 76 as directed in the CARO order.
- A penalty of ₹ 30,000 is imposed on the auditor.

# ROC ADJUDICATION ORDERS

## **3. Failure to appoint CFO – in the matter of Sutara Roads & Infra Limited**

- For non-appointment of CFO, the maximum penalty is fixed at ₹ 5 Lakhs. But RoC has imposed a penalty of ₹ 9.87 Lakhs on the company and ₹ 5.37 Lakhs on all the three directors individually.
- The period of violation is from 15/08/2022 to 20/12/2023 – 493 days.
- RD modified the penalty on appeal and ₹ 5 Lakhs is imposed individually on the company and the directors.

## **4. Violation in disclosures of dues to MSMEs in the financial statements. – in the matter of Stanley OEM Sofas Limited**

- Deloitte Haskins & Sells were the statutory auditors of the company for the financial year 2019-20.
- The statutory auditors have failed to capture the amount due to MSMEs along with their interest components in the financial statements.
- The statutory auditors have also failed to capture the RPTs in the financial years 2018-19, 19-20 & 20-21. The salient terms of the contracts were also not captured in AOC-2.
- The auditors have also failed to disclose the names of related parties.
- The auditors were penalised.





# RESERVE BANK OF INDIA

## Framework on formulation of regulations

**The key highlights are as follows:**

Purpose and Scope: The Framework lays down the broad principles for formulating and amending Regulations by the Reserve Bank of India (RBI)

Public Consultation: A significant component is the mandatory public consultation before a Regulation is issued. At least 21 days are provided for stakeholders and the public to submit comments.

Impact Analysis: The Bank is required to conduct an impact analysis of the Regulation before finalizing it, to the extent feasible.

Amendments and Review: Significant amendments to existing Regulations must follow the public consultation and impact analysis process.

Non-Applicability and Exemptions: The Framework does not apply to certain types of Regulations, including internal, administrative, or organizational matters, procedural matters without substantive change, and Regulations issued to specific entities rather than being general in nature.

## **The Reserve Bank of India (Digital Lending) Directions, 2025**

**The key highlights are as follows:**

Purpose and Scope: These Directions consolidate earlier guidelines and introduce new measures to address concerns in digital lending, such as third-party engagement, mis-selling, data privacy breaches, unfair business conduct, exorbitant interest rates, and unethical recovery practices

Applicability: All regulated entities(REs)

RE's Responsibility for LSPs: When a RE uses a Lending Service Provider (LSP), it must have a clear contractual agreement. REs remains fully responsible and liable for all acts and omissions of the LSP

Data Privacy & Security: Data collection must be need-based, with prior and explicit consent having an audit trail. They are restricted from accessing mobile phone resources like contacts, call logs, files, etc., with limited one-time access for KYC/on-boarding only

Data Storage: LSPs are restricted from storing borrowers' personal information except minimal data needed for their operations. The primary responsibility for data privacy and security lies with the RE. All data must be stored only in servers located within India

Grievance Redressal Mechanism: REs must establish and clearly disclose grievance redressal mechanisms

Reporting Requirements: REs are required to report all Digital Lending agreements they use (own or LSP) to the RBI's CIMS portal by June 15, 2025, and maintain updated lists





# COMPLIANCE CALENDAR

EVENT DATE	AS PER ACT	APPLICABLE FORMS
30/05/2025	SEBI	Statement of Deviation(s) or Variation(s)
30/05/2025	SEBI	Filing of Financial Results with Auditor's Report to Stock Exchanges
30/05/2025	SEBI	Secretarial Compliance Report
30/05/2025	The Companies Act, 2013	PAS-6

# COMPLIANCE CALENDAR

EVENT DATE	AS PER ACT	APPLICABLE FORMS
30/05/2025	The Limited Liability Partnership Act, 2008	Form 11
15/05/2025	Goods & Services Act, 2016	ITC - 03 (For reversal of ITC)







## Pre-incorporation Expenses: Recognition and Claims Process

## Legal Framework for Pre-incorporation Expenses

While the Companies Act, 2013 does not contain explicit provisions addressing pre-incorporation expenses, these expenditures are recognized through established legal mechanisms and precedents. The validity of such expenses stems from their necessity in establishing the company as a legal entity and their contribution to future business operations.

## Qualifying Pre-incorporation Expenses

- Pre-incorporation expenses typically encompass:
- Feasibility report preparation costs
- Project report development expenses
- Market survey and research costs
- Legal fees for drafting foundational agreements
- Incorporation fees and stamp duties
- Costs related to drafting, printing, and advertising the Memorandum and Articles of Association

## **Claim Procedure**

According to Schedule III of the Companies Act, 2013, pre-incorporation expenses must be fully charged to the profit and loss account in the year they are incurred. These expenses should not be capitalized or classified as deferred revenue expenditure on the balance sheet's assets side.

Pre-incorporation expenditure can only be claimed in the first year following incorporation. The expenditure is typically approved and documented in the company's first Board Meeting after incorporation.

## **Promoter Reimbursement Protocol**

Since promoters incur these expenses before the company's legal existence, proper handling typically involves:

- Reimbursement to promoters following incorporation, supported by comprehensive documentation
- Formal recognition of these expenses in company financial records with appropriate disclosure
- Authorization through properly documented board resolutions

## **Documentation Requirements**

To ensure compliance and mitigate risks, companies should maintain:

- Detailed vouchers and invoices for all pre-incorporation expenses

Board resolutions formally approving reimbursement to promoters



- Clear segregation between promoters' personal expenses and legitimate company formation costs
- Transparent disclosure in the notes to financial statements

## Conclusion

Managing pre-incorporation expenses requires careful navigation of legal, accounting, and tax frameworks. Proper documentation, disclosure, and adherence to regulatory requirements are essential to avoid potential disallowance of expenses and associated penalties.

**Note:** Ensure that the pre-incorporation expenses does not exceed the limits prescribed under the income tax act.





# LEGAL MAXIM

## **Inter arma enim silent leges**

"Inter arma enim silent leges" is a Latin expression meaning "In times of war, the laws fall silent." This principle suggests that during war, armed conflict, or national crises, normal legal protections and civil liberties may be temporarily suspended for national security or public order.

This concept has legal significance in many countries, including India, where constitutional provisions allow for rights restrictions during emergencies. Specifically, the Indian Constitution's Article 352 permits the suspension of certain fundamental rights guaranteed under Article 19 when a national emergency is declared.







# WISDOM CORNER

## Cherry Blossom and the Misty Moon

It happened to a very famous Zen woman.

She was on a pilgrimage, and she came to a village at sunset and begged for lodging for the night, but the villagers slammed their doors. They were against Zen.

It was a chilly night, and the elderly woman, homeless and hungry, had no place to stay. She was forced to take shelter under a cherry tree out in the fields. The cold was biting, making it hard for her to sleep, and the night was perilous as well, with wild animals and all.

Midnight stirred her awake-shivering from the bitter cold-and there, in the spring night's expanse, she glimpsed the cherry blossoms in full bloom, their petals glowing like laughter aimed at the haze-veiled moon. Overcome with the beauty, she got up and made a reverence in the direction of the village....

“Through their kindness in refusing me lodging, I found myself beneath the blossoms on the night of this misty moon.”

# WISDOM CORNER

She feels grateful. With great gratitude she thanks those people who refused her lodging, for if they have not, she would be sleeping under an ordinary roof, and she would have missed this blessing — these cherry blossoms, and this whispering with the misty moon, and this silence of the night, this utter silence of the night. She is not angry, she accepts it. Not only accepts it, welcomes it — she feels grateful.

A man becomes a Buddha the moment he accepts all that life brings with gratitude. He is on the Way; he is on Tao; and he IS becoming meditative.


**Osho – “Zen the Path of Paradox”**





# GENICON CORPORATE SOLUTIONS PVT LTD

Corporate Consulting, Legal and  
Secretarial Services

 9003199945

 [www.geniconcs.com](http://www.geniconcs.com)



6th Floor,  
No.672, Temple Tower,  
Anna Salai, Nandanam,  
Chennai - 600035

 [connect@geniconcs.com](mailto:connect@geniconcs.com)



Genicon Corporate Solutions