Genicon

Excel in Solutions

2026

LEGAL MUSINGS

THE FORTNIGHTLY LEGAL UPDATES !!!

16TH MAY, 2026

#MUSINGS 36

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Meet our Minds

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Many Minds , One Mission !!!

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MCA: ROC ADJUDICATION ORDERS

1. In the matter relating to GARUDA AEROSPACE LIMITED

Violated provision

Violation of Section 149(4) of the Companies Act, 2013, which requires every listed public company and prescribed classes of public companies to appoint a minimum number of independent directors. If violation of 149(4), it attracts penalties under Section 172, whereby the company and every officer in default are liable to a penalty of ₹50,000, along with ₹500 per day for continuing default, subject to a maximum of ₹3,00,000 for the company and ₹1,00,000 for each officer.

Brief Facts

- GARUDA AEROSPACE LIMITED became an unlisted public company with effect from 01.04.2025.
- As the company's turnover exceeded ₹100 crore, it was required to appoint a prescribed number of Independent Directors under Section 149(4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- However, the company failed to appoint the Independent Directors within prescribed time and the default continued for 218 days spanning from 1.04.2025 to 05.11.2025.

Penalties Imposed

Company: Rs. 1,59,000

Officer in Default: Rs. 1,00,000

Officer in Default: Rs. 1,00,000

MCA: ROC ADJUDICATION ORDERS

2. In the matter relating to SODECIA INDIA PRIVATE LIMITED

Violated Provision

Violation of Section 203(5) of the Companies Act, 2013 read with Rule 8A of the Appointment and Remuneration of the Managerial Personnel Rules, 2014. Section 203(5) provides that if failure to comply with the provisions relating to appointment of Key Managerial Personnel, such company shall be liable to a penalty of Rs. 5,00,000 and defaulting directors will face a penalty of Rs. 50,000 and if the default is a continuing one,then a penalty of ₹1,000 for each day capped at Rs. 5,00,000.

Brief Facts

- The company approached the National Company Law tribunal seeking approval for reduction of share capital under Section 66 of the Companies Act, 2013.
- Violation noticed by the Regional Director (Southern Region).
- It was reported that the company failed to appoint a Whole-Time Company Secretary despite meeting the paid-up share capital requirements.
- This default spanned approximately 11 years across two periods: Block 1 from 09 June 2014 to 20 June 2019 (1,837 days) and Block 2 from 25 August 2019 to 31 March 2025 (2,045 days).
- A Whole-time Company Secretary was eventually appointed with effect from April 1, 2025.

Penalty imposed

Company: Rs. 10,00,000 (Rs. 5,00,000 per default period)

Officer in default (Director): Rs. 10,00,000 (Rs. 5,00,000 per default period)

SEBI CIRCULARS

1. ‘Significant Indices’ under SEBI (Index Providers) Regulations, 2024

SEBI has notified the regulatory framework for Index Providers in the securities market through the SEBI (Index Provider) Regulations, 2024 to foster transparency and accountability in governance and administration of Indices in the securities market.

These regulations shall apply to the Index Providers administering “Significant Indices” consisting of securities listed on recognized stock exchanges in India. “Significant Indices” are Indices administered by an Index provider which are tracked or benchmarked by domestic mutual fund schemes that have cumulative AUM, i.e., Assets Under Management, exceeding limits as may be specified from time to time.

A Benchmark or Index based on listed securities shall be treated as a “Significant Index” if the daily average cumulative AUM tracking such Index across mutual fund schemes exceeds ₹20,000 Crore for each of the past 6 months ending on 30th June and 31st December each year. Further, an Index included in the list of “Significant Indices” shall continue to remain in the list unless such index fails to meet specified threshold for a consecutive period of 3 years.

Accordingly, SEBI has issued Annexure- A containing the list of ‘Significant Indices’ as per the terms of Regulation 2(1)(u) of IP Regulations for the period from 01 June 2025 to 31 December 2025, which can be accessed via the link:

https://www.sebi.gov.in/legal/circulars/may-2026/-significant-indices-under-sebi-index-providers-regulations-2024_101271.html

SEBI CIRCULARS

SEBI further directed that within 6 months from the date of this circular, Index Providers providing any of the "Significant Indices" listed in Annexure-A shall apply for registration. However, this requirement shall not apply if the "Significant Indices" provided by the Index Provider are either Indices notified by the Reserve Bank of India (RBI) as "Significant Benchmarks" or "Authorized Benchmarks" under directions issued under Section 45W of the RBI Act, 1934.

Further, SEBI clarified that an Index Provider already providing "Significant Indices" on the date of the circular may continue carrying on Index Provider activities provided it submits an application for registration within six months from the circular.

2. Advisory on Emerging Artificial Intelligence (AI tools) for vulnerability Detection

SEBI, vide circular dated May 05, 2026, issued to protect the interests of investors in securities and promote the development and regulation of the securities market.
The rapid evolution of emerging technologies including AI-driven vulnerability identification tools like Claude Mythos, may give rise to heightened risk exposure by enabling potential exploitation of existing vulnerabilities using speed and scale, while also raising concerns related to data confidentiality, application integrity and reliability of outputs. Therefore, SEBI emphasized the need for a periodic coordinated approach to manage vulnerability, information sharing and monitoring or assessment.

Accordingly, Securities and Exchange Board of India (SEBI) constituted a task force named "cyber-suraksha.ai" comprising representatives from Market Infrastructure Institutions (MIIs), Qualified Registrar and Transfer Agents (QRTAs), all Qualified Regulated Entities (QREs), and other stakeholders, with the following mandate to:

- Closely examine the cyber security risks posed by AI based models and devise mitigation strategy.
- Facilitate sharing of threat intelligence, best practices on vulnerability management, use cases and playbooks to respond to the threat vector etc.
- Report on a priority basis, cyber incidents or malicious activities.
- Review the cyber security posture of the third party application service providers including empaneled vendors.
- A meeting of the task force cyber-suraksha.ai was convened (with MIIs and QRTAs) to review the risks posed by AI platforms.

SEBI CIRCULARS

Based on the consultation with the said task force, SEBI enclosed an advisory at Annexure-A. This Annexure prescribes various cyber security and risk mitigation measures for Regulated Entities. It can be accessed at:

https://www.sebi.gov.in/legal/circulars/may-2026/advisory-on-emerging-advanced-artificial-intelligence-ai-tools-for-vulnerability-detection_101270.html

RBI/FEMA

1. RBI Notifies Foreign Exchange Management (Authorised Persons) Regulations, 2026

The Reserve Bank of India has notified the Foreign Exchange Management (Authorised Persons) Regulations, 2026 vide Notification No. FEMA 401/2026-RB dated April 30, 2026, published on May 06, 2026, with the objective of rationalizing the existing framework for authorization under the Foreign Exchange Management Act, 1999. The revised regulations aim to improve the delivery of foreign exchange services and ease compliance requirements for authorised persons. Consequent amendments have also been made to the Master Directions – Money Changing Activities and Master Direction – Other Remittance Facilities, while certain A.P. (DIR Series) Circulars have been superseded. The directions have been issued under Sections 10(4) and 11 of FEMA, 1999.

RBI/FEMA

2. RBI Issues Fifth Amendment Directions on Capital Adequacy Norms for Commercial Banks

The Reserve Bank of India has issued the Reserve Bank of India (Commercial Banks - Prudential Norms on Capital Adequacy) Fifth Amendment Directions, 2026, amending the existing Master Direction on Prudential Norms on Capital Adequacy, 2025. The amendment revises the framework relating to the inclusion of quarterly profits in Common Equity Tier 1 (CET1) capital for Commercial Banks. As per the revised provisions, banks may now reckon current year profits for Capital to Risk-weighted Assets Ratio (CRAR) calculation on a quarterly basis, subject to quarterly audit or limited review of financial statements and adherence to the prescribed formula for determining eligible profits. The Directions, issued under Section 35A of the Banking Regulation Act, 1949, have come into force with immediate effect.

TEAMS' CORNER

Perceived inconsistencies between Companies Act and FEMA on the issue of share certificate

According to Companies Act, 2013, Share certificates are generally understood to be issued only after allotment of shares, and allotment ordinarily takes place upon receipt of consideration. Consequently, the name of the allottee is entered in the Register of Members only after such allotment. However, the position is slightly different in the case of subscribers to the Memorandum of Association.

Under the Companies Act, subscribers to the memorandum are deemed to become members of the company upon incorporation itself. Further, Section 10(2) treats the subscription amount payable by such subscribers as a debt due to the company. Although the Act mandates issuance of share certificates within two months from the date of incorporation under Section 56(4)(a), it does not expressly state that subscription money must first be received before issuance of such certificates.

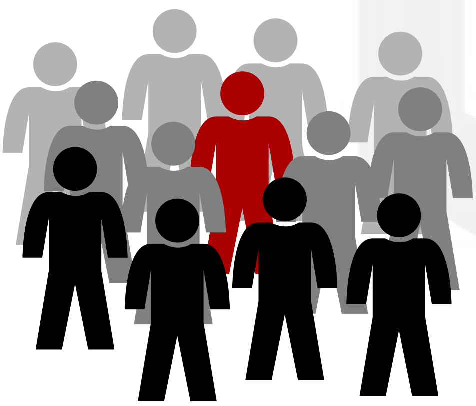
From a corporate governance perspective, issuance of share certificates without actual receipt of subscription money may expose the company to regulatory and practical complications. This becomes more relevant because Section 10A permits receipt of subscription money and filing of INC-20A within 180 days from incorporation.

The position under FEMA is significantly stricter in cases involving non-resident

subscribers. FEMA regulations require that, equity instruments must be issued within 60 days from the date of receipt of consideration and Form FC-GPR must be filed within 30 days from the date of issue of equity instruments.

Accordingly, RBI recognizes issuance of shares only after receipt of consideration. Therefore, in the case of non-resident investors, a company cannot validly issue share certificates before receipt of subscription money.

This creates a practical inconsistency between the Companies Act and FEMA. If a company issue share certificates within two months from incorporation to comply with Section 56(4)(a), it may result in non-compliance under FEMA because consideration has not yet been received.



On the other hand, if the company waits until receipt of foreign remittance before issuing share certificates, which in practice often extends beyond two months due to banking formalities, KYC requirements, and delays in opening bank accounts, the company may technically contravene Section 56(4)(a) of the Companies Act.

The inconsistency arises because the Companies Act conceptually treats subscription money as a debt due from the subscriber, whereas FEMA recognizes issuance of equity instruments only upon actual receipt of funds. In practical terms, subscription money can only be received after the company's bank account becomes operational.

TEAMS’ CORNER

In companies having non-resident subscribers, especially where such subscribers are proposed authorized signatories, opening and activating bank accounts frequently takes additional time. As a result, companies are often exposed to compounding proceedings and other consequences under FEMA and Companies Act despite genuine practical difficulties.

Considering the comparatively stringent nature of FEMA compliance and the regulatory consequences associated with non-compliance, companies generally prefer aligning their process with FEMA requirements and structuring corporate compliances accordingly.

Therefore, to ensure compliance with both Section 56(4)(a) and Section 10A of the Companies Act, 2013, it would be advisable from a corporate governance perspective to treat the subscription amount as a debt due from the subscribers under Section 10(2) of the Companies Act, 2013, and to ensure that such amount is remitted within a reasonable period, preferably within 60 days from the date of incorporation.

At the same time, a regulatory clarification permitting issuance of share certificates within the extended 180-day period prescribed under Section 10A would be beneficial for both categories of companies - those with only resident subscribers as well as those with non-resident subscribers. Such an alignment would help reconcile the procedural requirements under the Companies Act and FEMA, reduce compliance ambiguities, and provide greater operational flexibility while facilitating smoother and more consistent regulatory compliance.

Nemo judex in causa sua

Meaning:

The Latin maxim "Nemo Judex in Causa Sua" translates to "No one should be a judge in his own cause." It is one of the cardinal principles of natural justice and forms the very backbone of a fair judicial and administrative system. The maxim emphasizes that every decision-maker must remain impartial and unbiased while adjudicating a matter..

In Corporate Governance:

This maxim finds application not only in courts but also in corporate governance, disciplinary proceedings, and administrative actions. Under company law, for instance, directors interested in a particular transaction are generally prohibited from participating in discussions or voting on that matter. Such restrictions are intended to prevent conflicts of interest and maintain fairness in decision-making

A.K. Kraipak v. Union of India:

In A.K. Kraipak v. Union of India, the issue before the Supreme Court was whether a member of a selection board could participate in selecting candidates when he himself was also a candidate for the same post. One of the board members took part in the selection process and was subsequently selected, raising allegations of bias and violation of natural justice. The Court held that such participation was improper and violated the principle of Nemo Judex in Causa Sua, as no person should be a judge in his own cause. The selection was declared invalid, and the judgment became a landmark authority on fairness, impartiality, and the doctrine of bias in administrative law.

WISDOM CORNER

Place of Work is a Place of Worship

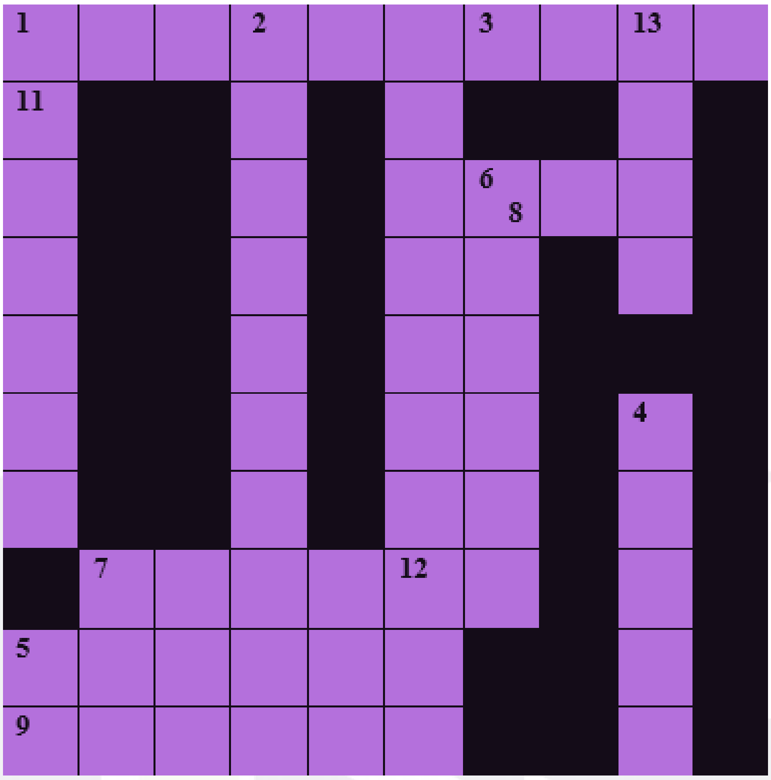
An ardent devotee of Aurobindo Ashram Mother once invited her to his office as he was facing some financial and other constraints and believed that her presence in her office will bring some good fortunes to him.

On his invitation, the Mother came to his office and was walking around. In a particular place near the cupboard, she felt some kind of discomfort and suffocation and asked his devotee "what is inside the cupboard"?. He said the cupboard contains books and some office files. She asked him to open the cupboard. On just opening the door, the books and files, which were kept in an haphazard manner, started falling down one after the other.

Now the Mother turned towards her devotee and said, "the books and files are the important resources of your business, it has life and you earn out of it. But the way you kept it in an unorganised manner, it is suffering silently. Please keep your place of work in an orderly manner. Keep your place like the place of worship. You will prosper."

Moral of the story – "The way we organise well our organisation, will make our organisation well."

MUSINGS IN THE MAZE



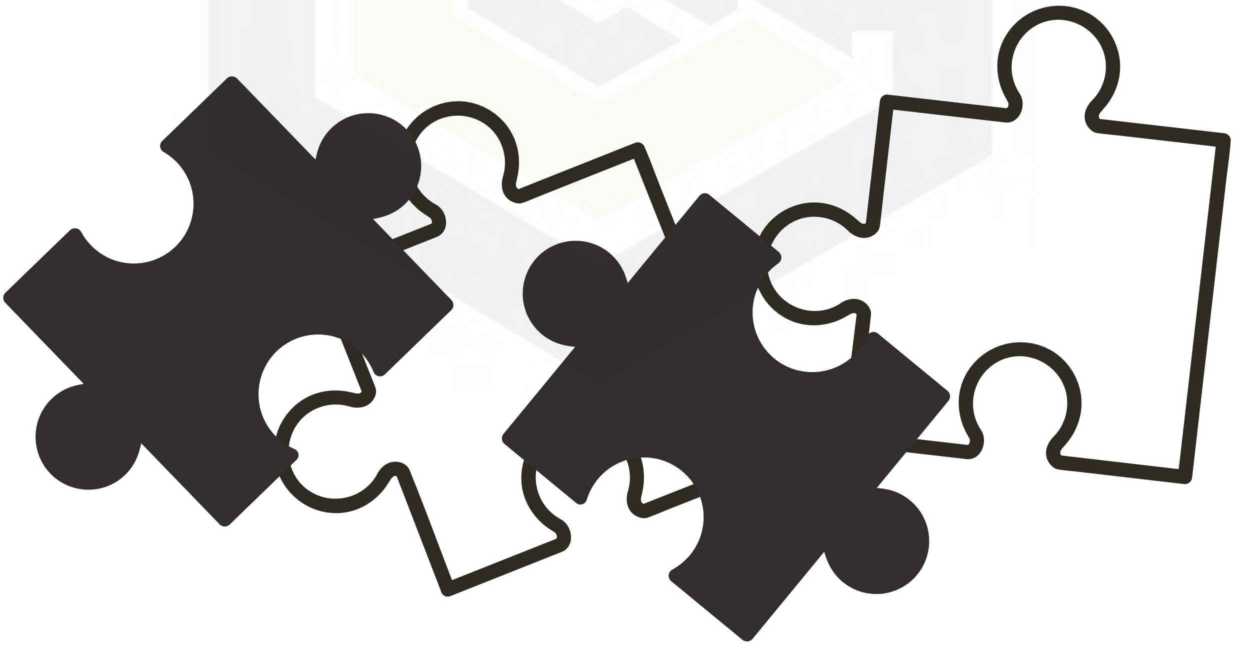
Across Clues

1. A minimum requirement without which a meeting loses its legal strength.
3. The authority empowered to adjudicate major corporate disputes and restructuring matters.
5.A system where securities are held electronically rather than in physical form.
7.A resolution requiring a higher voting threshold due to its significance.
9.The committee responsible for strengthening oversight over financial reporting and internal controls.
8.The electronic participation method legally recognized for conducting meetings remotely.

MUSINGS IN THE MAZE

Down Clues

2. A disclosure made when a transaction may involve influence beyond ordinary business considerations.
4. An independent examination of financial records intended to provide assurance.
6. A mechanism intended to protect individuals reporting unethical conduct within an organization.
10. A governance document recording discussions, decisions, and resolutions of meetings.
11.The process through which a company formally records security created on its assets.
12. The annual event where shareholders exercise important governance rights.
13.A mandatory reporting framework intended to maintain market transparency for listed entities.



COMPLIANCE CALENDAR

Due Date	Form	Description
20.05.2026	GSTR-3B	GST return for the month of April 2026 for the taxpayer with Aggregate turnover upto INR 5 crores during previous year who has opted for monthly filing of GSTR-3B.
22.05.2026	GSTR-3B	Summary of outward supplies, ITC claimed, and net tax payable by taxpayers with Aggregate turnover upto INR 5 crores during previous year and who has opted for Quarterly filinq of GSTR-3B.
30.05.2026	PAS - 6	Reconciliation of Share Capital Report.
30.05.2026	FC-4	Annual Return of the Foreign Companies

COMPLIANCE CALENDAR

Due Date	Forms	Description
30.05.2026	Form 11	Annual Return of LLP
30.05.2026	Form 27D	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending March 31st, 2026.
30.05.2026	Form 24Q/26Q/27Q	Quarterly statement of TDS deposited for the quarter ending March 31, 2025.

Team Genicon CS

wishes

Ms. Veronika M

a joyous and

healthy birthday!

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Mission:
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