Filed on Time

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Why Compliance Matters, and What the Law Asks of Every Company in India

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For everyone who has ever filed on time, and for those learning to.

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CHAPTER 1

The System Is Not Taking Your Name

A Cheque That Would Not Clear

The call came on a Tuesday morning in September 2017, from the State Bank branch on Old Pune–Mumbai Road. My client made corrugated cartons in Bhosari, the kind that hold refrigerator compressors and two-wheeler spares on their way out of the industrial belt, and in nineteen years of business he had never missed a delivery date. He was standing at the counter with a cheque for a paper supplier. The amount was ₹3,80,000. The cashier had looked at her screen, looked at him, and pushed the cheque back across the counter.

'Madam, they are saying my DIN is not active,' he said. 'What is DIN?'

He knew what it was, of course. He had obtained his director identification number years earlier, when he converted his proprietorship into a private limited company, and he had signed forms bearing it ever since. What he meant was something closer to: how can eight digits I have never thought about stop me paying for paper?

The answer lay in a second company. In 2011 he and a cousin had incorporated a small private limited company to bid for a packaging contract with a public sector undertaking. The ten-

der was withdrawn. The company never traded, never opened more than a token bank account, and after its filings for 2012–13 it simply went quiet. Nobody closed it. Nobody filed for it either. It sat in the Registrar's records the way an unpaid electricity connection sits in a municipal ledger: forgotten by the owner and remembered by the system.

Two provisions of the Companies Act, 2013 then did exactly what they say. Section 248 allows the Registrar of Companies to remove a company from the register if it has not carried on business for two immediately preceding financial years and has not applied for dormant status. Section 164(2)(a) provides that a person who is or has been a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years is not eligible to be reappointed as a director of that company, or appointed in any other company, for five years. The section contains no test of intent. It asks only whether the documents arrived.

In 2017 the Ministry of Corporate Affairs decided, for the first time at scale, to act on these provisions together. The Registrars issued notices under Section 248 through the spring and early summer, and by September roughly 2.26 lakh companies had been struck off. The Ministry then published lists of directors disqualified under Section 164(2), totalling about 3.09 lakh people, and deactivated their DINs on the MCA21 portal. Banks were asked to restrict operations on the accounts of struck-off companies. The disqualification did not stay with the dormant company. It followed each director into every board on which he sat, which is how a tender vehicle that had done nothing since 2013 reached into a working carton business and froze its signatory.

The scale was announced as a campaign against shell companies, and some of those 2.26 lakh entities undoubtedly were shells, kept alive to move money that could not explain itself. I do not doubt that. But I spent the following six months in the of-

fices of the other kind: a retired engineer in Aundh who had resigned from a family company in 2014 without anyone filing his DIR-11; two sisters in Kothrud whose late father's firm had never been wound up; and a caterer in Pimpri who had lent his name to a friend's venture and could not remember signing anything. Their files looked, to the portal, exactly like the shells. A database records filings, not reasons.

My client eventually recovered his DIN, through a scheme the Ministry introduced the following year, and that recovery belongs to a later chapter. That Tuesday he wanted only to know whether his supplier would be paid by Friday. I told him it would not. Then I asked him to read me exactly what the cashier had said.

'Sir, the system is not taking your name.'

What the Word Means in Law

'Compliance' is used loosely in Indian boardrooms. I have heard it mean honesty, caution, paperwork, the person who handles paperwork, and once, from a promoter in Wakad, 'the madam who says no'. For the purposes of this book it means something narrower. **Compliance is the performance of an obligation imposed on an identified person by a statute, rule, regulation or notification, by a stated date, in a form that can later be proved.** The obligation has a legal source, it falls on someone in particular, and it leaves a document behind. If any of those elements is missing, whatever is being discussed may still be worthwhile. It is simply something else.

The narrowness matters because three neighbouring ideas are constantly confused with it.

Ethics is the question of what a business ought to do. The law answers part of that question and leaves the rest alone. My carton maker was, by any ordinary standard, an ethical man: he paid his suppliers, his workers and his taxes, and he had never knowingly told the state anything untrue. His dormant com-

pany was nonetheless in default for three years, because Section 92 of the Companies Act, 2013 requires an annual return every year whether or not the company has anything to report, and Section 137 requires financial statements to be filed with the Registrar in the same way. Good character does not file an MGT-7. The reverse also holds. A company can be scrupulously compliant and still behave badly in ways no statute reaches.

Governance is the system by which a company is directed and supervised: who decides, who checks the decision, and how the board learns what management is doing. Parts of it are written into law. Section 149 requires certain companies to appoint independent directors, and Section 177 requires certain companies to constitute an audit committee. Much more of it is recommended rather than required, in codes, committee reports and the habits of well-run boards. Where governance has been legislated, it becomes compliance. Where it has not, it remains advice, however sensible. Throughout this book I mark the boundary each time: 'the Act requires' means a court or a Registrar can act on it; 'I advise' means I think you should, and nobody will penalise you if you do not.

Risk management is the discipline of anticipating loss and deciding what to do about it. The Act touches it at one precise point. Section 134(3)(n) requires the board's report to include a statement on the development and implementation of a risk management policy. The legal obligation is to make the statement. Nothing in the clause requires the policy to be any good, and I have read board reports in which the paragraph was copied, typing errors included, from the previous year's report of a different company. That paragraph was compliant. Whether the company managed its risks is a separate matter, and usually a more expensive one to discover.

One further distinction catches people out. Compliance is not the same as filing. A return lodged on time that contains false figures is a fresh default, and a serious one: Section 448

makes a knowingly false statement in any return, report, certificate or financial statement punishable under Section 447, the fraud provision. Satyam's annual filings reached the Registrar on schedule for years. The record was punctual and wrong. The law requires the document to arrive, and it requires the document to be true, and it treats the second requirement as far graver than the first.

The definition I am using is therefore deliberately unromantic. It does not ask whether a company is admirable, well led or prudent. It asks whether the obligations that bound it were met, by the people they bound, on the dates the law fixed, and whether a stranger opening the file years later could see that they were. In 2017 the Ministry asked exactly that question of every company on the register, and it read the answers mechanically.

When I explained this to the carton maker that week, he was quiet for a while. Then he said, 'So the company was honest, only it was not present.'

The Default Cascade

The first consequence of a missed filing is almost nothing at all, and that is what makes it dangerous. A company that fails to lodge its AOC-4, the form by which financial statements reach the Registrar, within thirty days of its annual general meeting is not stopped, warned or visited. The portal simply records the delay and begins to count. Under the Companies (Registration Offices and Fees) Rules, 2014, as amended with effect from 1 July 2018, every late form carries an additional fee of ₹100 for each day of delay, on top of the normal filing fee, with no upper limit. The same applies to the MGT-7 or MGT-7A annual return, due within sixty days of the AGM.

A hundred rupees a day sounds like a parking charge. It is meant to. Consider a small private company with a nominal capital of ₹1 lakh whose director forgets both forms for a single

year. The normal fee for each is a few hundred rupees. A year late, each carries roughly ₹36,500 in additional fees. The two forms together, for one year of forgetting, cost about ₹73,000 before anyone has been penalised for anything. I have had clients pay that sum without argument, because it arrived as a portal figure and not as a demand from a person.

The second consequence is the penalty itself, which is a separate thing from the fee. Section 137(3) of the Companies Act, 2013, in its form after the 2019 amendment, makes the company liable to a penalty of ₹10,000 and a further ₹100 for every day the default continues, up to ₹2 lakh, and makes the managing director, the chief financial officer or, failing them, the directors personally liable to the same daily rate up to ₹50,000. Section 92(5) does the same for the annual return. These penalties are adjudicated by an officer of the Registrar, not a magistrate, a shift whose significance belongs to the final chapter. For present purposes the point is arithmetical. The fee and the penalty run in parallel, and the penalty falls partly on individuals.

The third consequence changes the nature of the problem. If the default continues for three consecutive financial years, Section 164(2)(a) disqualifies every person who was a director of the company during that period from being appointed or reappointed a director of any company for five years. Section 167(1)(a) then makes the disqualified director vacate office. Since the proviso inserted by the Companies (Amendment) Act, 2017, he vacates it in every company except the defaulting one, which is to say the healthy companies lose him and the sick one keeps him. The Ministry gives effect to this by flagging the DIN, and a flagged DIN cannot sign an e-form. The director cannot file the very returns that would cure the default.

From there the cascade leaves the Ministry's portal and enters other people's systems. A bank that operates a company account on the authority of a board resolution will check that its signatories are validly in office. When the Registrar's master

data shows a director disqualified, the mandate fails, as it did for the carton maker at the counter. Lenders review sanctioned limits. Insurers ask questions at renewal. None of these institutions has any interest in the original AOC-4. They are reading the record, and the record says the signatory has no authority.

The last link is usually the one that costs real money. Public procurement asks bidders to declare that no director is disqualified and to supply current company master data. In 2018 a sheet-metal fabricator in Bhosari MIDC, a client I had not yet acquired, was declared technically non-responsive on a municipal tender worth about ₹1.4 crore. His bid was the lowest. One of his three directors also sat on the board of a defunct trading company in Nigdi that had not filed since 2014–15, and the tender committee had downloaded the MCA data and seen the flag. He showed me the rejection letter some months later. It ran to four lines, and it did not mention the price.

Who Reads the Record

The carton maker's first instinct, once the shock had passed, was to ask who had complained about him. Nobody had. That was the part he found hardest to accept. He had imagined a rival, or a disgruntled former employee, or an officer with a grudge, because a consequence that large seemed to need a person behind it. There was no person. There was a database, and a great many people who consult it without ever announcing themselves.

The first of them is the lender. When a cooperative bank on Laxmi Road considers a working-capital limit for a small company, the credit officer does not begin with the proprietor's handshake. She downloads the company master data, reads the last three AOC-4 filings, and checks the register of charges, because Section 77 of the Companies Act, 2013 requires every charge over company assets to be registered with the Registrar in Form CHG-1 within thirty days of its creation. A charge that

was never registered is, for most purposes, invisible to the liquidator, and a lender who relies on it may find itself an unsecured creditor. The officer has never visited the factory. She is lending against the file.

The second is the auditor, who is a stranger by design. Section 141 disqualifies from the role anyone with a close financial or personal tie to the company, and the effect is that the person certifying the accounts arrives knowing nothing the documents do not tell him. He reads the minutes, which Section 118 requires to be kept and signed, and which are presumed to be evidence of what they record. If a loan was approved at a board meeting that was never minuted, the auditor has no way to know that the board approved anything at all.

The third is the employee, who reads the record without usually thinking of it as one. A machine operator in Bhosari who opens the passbook attached to her Universal Account Number on the provident fund portal is checking, month by month, whether her employer deposited what it deducted from her wages. She cannot see the company's books. She can see whether the deposit arrived. I have sat with workers who trusted an employer completely until the passbook showed a gap of seven months, and after that trusted nothing the employer said.

The fourth is the tax officer, who now reads almost entirely by machine. TDS deducted by a company appears in the payee's Form 26AS only if the company has deposited it and filed its quarterly return. Input tax credit claimed by a buyer under GST depends on the seller's GSTR-1, a dependency the seventh chapter follows to a textile trader in Kolhapur. In both systems, one party's filing becomes another party's evidence, and a single silence propagates down the chain.

None of these readers was in the room when the company made its decisions. Each of them acts on what the room wrote down. This is the sense in which I call compliance the

company's memory: it is memory kept for people who have no other access to the past.

The recurring dates introduced in this chapter are few but foundational. The AOC-4 falls due within thirty days of the annual general meeting, the MGT-7 or MGT-7A within sixty days of it, and any charge must be registered in CHG-1 within thirty days of creation. Every later chapter adds to this short list.

The idea that a company owes strangers a written account of itself is not modern, and it did not begin with a portal. In 1850 the Governor-General in Council passed Act XLIII, the first general statute in India allowing joint stock companies to register, and its central demand was that their particulars be lodged where outsiders could read them. It was modelled on an English Act of 1844, which had itself been passed after a parliamentary committee spent two years examining fraudulent companies. The registry began, as most of Indian company law would, as an answer to a failure.

CHAPTER 2

From 1850 to Satyam: How Indian Company Law Was Written

A Privilege with Conditions

Of all the favours a legislature can grant a merchant, the strangest is permission to fail without paying his debts in full. Limited liability means that if a company collapses, its shareholders lose what they put in and nothing more; the creditors, who may have supplied goods on thirty days' credit, absorb the rest. Put that baldly and it sounds like a licence to cheat. The nineteenth-century legislators who granted it thought so too, which is why they attached a price. The price was disclosure.

The 1850 Act did not confer limited liability at all. Act XLIII allowed a joint stock company to register, to sue and be sued through a public officer, and to hold property in a manner the old law of partnership made awkward. Its members remained personally liable for the company's debts. What the statute added was a registrar and a set of particulars: names of shareholders, the amount of capital, the purpose of the undertaking. Registration was the bargain's first half, offered before anyone had decided what the second half should be.

The second half arrived seven years later. England had passed its Limited Liability Act in 1855 and consolidated the position in 1856. India followed with Act XIX of 1857, which per-

mitted companies to register with limited liability but kept banking and insurance outside its scope, on the reasoning that institutions holding other people's deposits should not be allowed to shrug off their losses. That exclusion lasted until Act VII of 1860. Even then the word 'Limited' had to appear at the end of the company's name, painted on its premises and printed on its letters. The law did not trust strangers to find out for themselves. It made the company announce its own reduced exposure every time it asked for credit.

That suffix is still with us. Section 4(1)(a) of the Companies Act, 2013 requires a public company's name to end with 'Limited' and a private company's with 'Private Limited'. I have explained its purpose to clients more often than almost any other provision, usually in response to some version of a question a garment exporter from Kondhwa once asked me across this desk.

'Madam, limited means nobody can touch my house, no?'

It means a creditor cannot reach his house for the company's debts unless he has signed a personal guarantee, which, as he had for his overdraft, nearly every small-company promoter in Pune has done. The word protects him far less than he imagines. It protects his suppliers rather more, because it tells them in advance whom they are dealing with.

Borrowed Statutes

For the next half-century Indian company law moved in step with English law, usually a few years behind it. The Indian Companies Act of 1866 (Act X) reproduced much of the English Companies Act, 1862. A further consolidating Act followed in 1882. The Indian Companies Act, 1913 (Act VII of 1913) was modelled closely on the English Companies (Consolidation) Act, 1908, and it governed Indian companies for forty-three years, including the whole of the swadeshi enterprise movement, two world wars and Partition.

It would be easy, and partly true, to call this a colonial import fitted badly to local conditions. The 1913 Act said very little about the institution that actually ran Indian industry: the managing agency, a firm (often a family partnership) that controlled a group of companies under contract, drew commission on their sales and frequently answered to nobody but itself. English law had no equivalent to borrow from, so the Act was largely silent. The silence lasted until the Indian Companies (Amendment) Act, 1936, which placed the first statutory limits on managing agents' terms and dealings, after two decades of complaints from shareholders who had discovered that owning a company and controlling it were different things.

In September 1913, a few months after the Act received assent, the People's Bank of India in Lahore suspended payment. Over the following two years dozens of Indian banks failed alongside it.

The colonial statute had no answer to them. Bank collapses were handled as ordinary liquidations, depositors queued for whatever the official liquidator could recover, and a law written specifically for banking companies did not arrive until the Banking Companies Act, 1949, thirty-six years after Lahore.

Permission Required

Independence changed the purpose of company law. It did not happen overnight. In 1950 the government appointed a committee under C. H. Bhabha to review the 1913 Act, and its report of 1952 became the basis of the Companies Act, 1956, which came into force on 1 April 1956 with 658 sections. That length was itself a statement. The 1913 Act had largely assumed that shareholders could look after themselves once disclosure was made. The 1956 Act assumed they could not, and that the state should do much of the looking.

The surrounding policy explains why. The Industries (Development and Regulation) Act, 1951 already required a li-

cence to establish or substantially expand an undertaking in a scheduled industry. The Industrial Policy Resolution of April 1956, adopted the same month the new Companies Act took effect, reserved whole sectors for the state. Capital was scarce, foreign exchange scarcer, and the planners in Delhi wanted to decide where both went. Company law became one of their instruments. A private enterprise could exist, but it would ask permission at most of the points where it might otherwise have used its own judgement.

The Act asked often. Section 269 required central government approval to appoint a managing or whole-time director in a public company above a certain size. Sections 198 and 309 capped total managerial remuneration at 11 per cent of net profits and made the government the arbiter of anything above the prescribed limits. Section 370, later replaced by Section 372A, restricted loans and investments between companies in the same group. These were provisions about control, not honesty, and the distinction matters for what came later. A director could comply with every one of them and still keep two sets of books.

Even so, the 1956 Act was rewritten in response to scandal from its first decade. The Dalmia–Jain group affairs, investigated by the Commission of Inquiry headed by Justice Vivian Bose, produced a report in 1962 describing the movement of funds between group companies, an insurer and a bank in terms that made the managing agency system look less like a business model than a conduit. The Companies (Amendment) Act, 1963 followed, enlarging the government's powers to investigate and, under Section 408, to appoint its own directors to a company being run oppressively. The managing agency itself was abolished with effect from 3 April 1970 by the Companies (Amendment) Act, 1969. An institution that the 1913 Act had barely noticed was ended by statute fifty-seven years later, on a fixed date.

I came into practice in 2002, when the 1956 Act still governed everything and most of the licensing that justified its approvals

had been dismantled in 1991. The result was a statute built for one economy operating in another. Approvals the planners had once needed were still demanded by forms nobody had redesigned. Before MCA21 went live in 2006, a balance sheet went to the Registrar on paper as Form 23AC, with copies, and a clerk at the counter would occasionally return a filing because the stamp of the company's seal had smudged across a signature. The seal itself was not optional until the Companies (Amendment) Act, 2015.

What the 1956 Act never quite managed was to make a company's numbers trustworthy. It had amended its provisions on auditors, on loans to directors, on inter-corporate deposits, more than two dozen times by 2013. It had a Department of Company Affairs, a Company Law Board and an inspection power. It had, in short, every mechanism for supervising what a company was permitted to do, and comparatively few for checking whether what a company said about itself was true.

A retired chartered accountant from Sadashiv Peth, who had audited textile mills in the 1970s, put it to me once with some satisfaction. 'Those days, government was checking everything. Only nobody was checking the cash.'

Riding a Tiger

The letter was dated 7 January 2009, a Wednesday, and ran to about four pages. Ramalinga Raju, founder and chairman of Satyam Computer Services, then the fourth-largest information technology company in India, addressed it to his own board of directors and copied it to the Securities and Exchange Board of India and the stock exchanges. It is an odd document to reread. Parts of it read like a balance sheet, parts like a confession, and one sentence has become the only line from Indian corporate history that most people can quote.

The figures came first. As at 30 September 2008, Satyam's books showed cash and bank balances of ₹5,361 crore. Of that,

Raju wrote, ₹5,040 crore did not exist. Accrued interest of ₹376 crore was fictitious. Debtors were overstated by ₹490 crore, and a liability of ₹1,230 crore, which he described as funds he had arranged personally, did not appear in the accounts at all. The quarter's operating margin, reported at 24 per cent of revenue, had in fact been about 3 per cent. The gap, he explained, had begun small years earlier and had grown each quarter because every inflated figure required a larger one to sustain it. Then the sentence: 'It was like riding a tiger, not knowing how to get off without being eaten.'

The share price fell by more than three-quarters that day. The government suspended the board on 9 January, using its powers under Sections 388B and 408 of the Companies Act, 1956 (the same Section 408 that the 1963 amendment had written after the Dalmia–Jain inquiry), and nominated its own directors. Raju was arrested the same evening. In April 2009 Tech Mahindra won the auction for the company. A special court in Hyderabad convicted Raju and nine others in April 2015.

Those are the facts most readers remember. What interests me professionally is the three weeks before the letter, because they show the board doing exactly what the 1956 Act asked of it, and that turned out to be nothing like enough.

On 16 December 2008 Satyam's board approved the acquisition of two companies controlled by Raju's family, Maytas Properties and Maytas Infrastructure, for about 1.6 billion US dollars. The board included distinguished independent directors, among them a Harvard Business School professor and a former cabinet secretary. Institutional investors revolted within hours, and the deal was withdrawn the next morning. With hindsight the purpose is fairly plain: a related-party acquisition would have turned cash that did not exist into land that did. In the following fortnight several independent directors resigned. None of them had known, and Raju's letter said so expressly. That was precisely the difficulty. A board that approves a ₹7,000

crore related-party transaction on the strength of cash balances nobody has independently confirmed is formally competent and practically blind.

The auditors faced a harder question. Price Waterhouse had signed Satyam's accounts for years. The fictitious balances were supported by fixed deposit receipts and bank confirmations, and the investigations that followed (by the Central Bureau of Investigation, by the United States Securities and Exchange Commission, which fined the firm 6 million dollars in 2011, and by SEBI, whose order of January 2018 barred Price Waterhouse network firms from auditing listed companies for two years) turned on one point of procedure. Had the auditors obtained those confirmations directly from the banks, or had the documents reached them through the company? An auditing standard is a long text. The question it came down to in Hyderabad was who had carried the envelope.

I remember the following March, the close of the 2008–09 financial year, better than most. Clients who had never asked about audit procedure telephoned to ask whether their own bank confirmations went direct. A tiles distributor in Kothrud, whose turnover was perhaps ₹12 crore, wanted to know whether his auditor would now demand originals of every deposit receipt. I told him the auditor should always have done so. He was quiet for a moment.

'Madam, Satyam had originals also.'

The Answer in Sections

The Companies Act, 2013 received the President's assent on 29 August 2013, and most of its substantive provisions came into force on 1 April 2014. It runs to 470 sections and seven schedules. Read in isolation it can look like a lawyer's attempt to anticipate everything. Read beside the Satyam letter it looks more like a list of replies.

Take the auditors first. Section 139(2) forbids a listed company, and certain larger unlisted ones, from appointing an individual as auditor for more than one term of five consecutive years, or an audit firm for more than two such terms. Rule 5 of the Companies (Audit and Auditors) Rules, 2014 extends the rule to unlisted public companies with paid-up capital of ₹10 crore or more, private companies with paid-up capital of ₹50 crore or more, and any company with public borrowings of ₹50 crore or more. A five-year cooling-off period follows. The reasoning is plain: familiarity is the condition in which envelopes stop being checked. Section 144 bars the auditor from providing a list of other services, including accounting and investment advisory work, to the company it audits. Section 143(12) obliges the auditor who has reason to believe a fraud is being committed by officers or employees to report it to the central government where the amount is ₹1 crore or more. The Act now asks the auditor a question the 1956 Act never put so bluntly: what did you suspect, and whom did you tell?

Then the board. Section 149(4) requires every listed public company to have at least one-third of its directors independent, and Section 149(6) defines independence by a series of exclusions (no pecuniary relationship of a disqualifying kind, no recent employment, no relatives in the promoter group). Schedule IV sets out a code of conduct that reads, in places, like a rebuke addressed to the December 2008 meeting. Independent directors are to 'seek appropriate clarification or amplification of information' and to 'ascertain and ensure' that the company has adequate vigil mechanisms. Section 177 places related-party transactions before an audit committee with an independent majority, and Section 188 requires prior approval, in some cases by shareholders with the interested party barred from voting. Maytas would have had to pass through all of it.

The Act is also careful, in Section 149(12), to limit an independent director's liability to acts committed with their knowl-

edge attributable through board processes, or with their consent or connivance, or where they failed to act diligently. That is a statutory floor. Whether a director reads the bank confirmations personally is a governance ceiling, and I advise my larger clients' independent directors to ask for them. The law does not require it.

Fraud itself acquired a definition. Section 447 defines it broadly, to include acts and omissions intended to gain undue advantage or to injure the interests of the company, its shareholders or creditors, whether or not any wrongful gain or loss actually results. Where the fraud involves at least ₹10 lakh or one per cent of turnover, whichever is lower, the punishment is imprisonment of six months to ten years and a fine of at least the amount involved, up to three times that amount. Where public interest is involved, the minimum term is three years. Section 447 is what the Act points to when it wants to show its teeth.

The Serious Fraud Investigation Office had existed since 2003, set up by executive resolution after the Naresh Chandra Committee's report on corporate audit. It had investigated Satyam without any statute of its own. Section 211 gave it one, and Section 212 gave it powers of arrest. Sahara's answer is quieter and sits in Section 42 with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014: a private placement may now be offered to no more than two hundred persons in a financial year. Sahara's two companies had placed their convertible debentures with roughly three crore investors and called it private. The Supreme Court disagreed on 31 August 2012.

Nearly every section I have mentioned was written for a company that had already done something wrong. A founder in Baner, two weeks from incorporation, put it to me more briefly when I showed him the index.

'So which of these is for us?'

Section 7. And the reservation form that comes before it.

CHAPTER 3

Birth Certificate: Incorporation and the First Hundred and Eighty Days

Choosing a Vehicle

Two laptops and a printed spreadsheet arrived at my office on a wet Thursday in July 2024, carried by two founders who had resigned from the same Hinjewadi services firm on the same Friday. They were building appointment software for diagnostic laboratories, and they had already rented a desk in a co-working floor on Baner Road at ₹9,500 a month. They had not yet decided what, in law, they were.

The spreadsheet had three columns: private limited company, one person company and limited liability partnership. Someone on a founders' forum had filled in the rows for them with cost estimates. Most of those estimates were wrong in a way that matters. They counted the fees of incorporation and left out the obligations that follow it, which is rather like costing a wedding by the price of the invitations.

'We just want the cheapest one that looks serious,' the younger founder said.

There is no such thing in the abstract. Each vehicle is a set of promises made to strangers, and the right choice depends on which strangers the founders expect to meet.

The one person company

The one person company, defined in Section 2(62) of the Companies Act, 2013, allows a single natural person to hold all the shares and enjoy limited liability. It was introduced to coax sole proprietors into corporate form. Rule 3 of the Companies (Incorporation) Rules, 2014 requires the member to be an Indian citizen, and since the amendment of 1 April 2021 a non-resident Indian may also form one, provided the member has stayed in India for at least 120 days in the preceding financial year. A nominee must be named at incorporation, someone who will step in as member if the founder dies or becomes incapacitated. One individual may be a member of only one such company.

For my two founders the question settled itself. An OPC has one member. They were two people with equal claims, and neither intended to be the other's nominee.

The limited liability partnership

The LLP is governed by a separate statute, the Limited Liability Partnership Act, 2008, and it is lighter in several respects. It needs at least two designated partners, one of them resident in India. It holds no board meetings and no annual general meeting, and under Rule 24 of the LLP Rules, 2009 its accounts need audit only if turnover exceeds ₹40 lakh or contribution exceeds ₹25 lakh. Its annual filings are two forms: Form 11, the annual return, due by 30 May, and Form 8, the statement of account and solvency, due by 30 October.

The drawback is structural. An LLP has no shares. It cannot issue employee stock options, and a venture fund that wants a preference share with a liquidation right has nothing to buy. Foreign investment into an LLP is permitted only in sectors that allow it at one hundred per cent under the automatic route with no performance conditions attached, and many investors will

simply ask the founders to convert before they invest. I have handled that conversion under Section 366 of the 2013 Act. It is possible. It is also a second incorporation, paid for twice.

The private limited company

A private company under Section 2(68) restricts the transfer of its shares, caps its membership at two hundred and may not invite the public to subscribe to its securities. Section 3(1)(b) requires at least two members, Section 149(1)(a) at least two directors, and Section 149(3) that one director has stayed in India for 182 days or more in the previous calendar year. There has been no minimum paid-up capital since the Companies (Amendment) Act, 2015.

What the private company commits you to is the subject of the rest of this book: an auditor from the first month, four board meetings a year, an AGM, annual filings with the Registrar and directors who answer personally when those filings stop. The Act requires all of this whatever the turnover. My advice to founders who expect to raise equity within two years is to accept the weight now, because the alternative is to accept it later, with a deadline set by an investor's term sheet.

The elder founder ran his pen down the third column and crossed out two rows.

'Fine. Private limited. What do we call it?'

They had a name. They had registered the domain in March. They had not yet checked whether the Registrar would allow them to use it.

SPICe+ in Practice

The name they had registered as a domain was a coined word, which helped. Rule 8 of the Companies (Incorporation) Rules, 2014 forbids a name identical with, or too nearly resembling, an existing company or LLP. The rule disregards plural forms,

punctuation, spacing, the words 'private' and 'limited', and the substitution of one letter that sounds like another. Rule 8A lists words that need a regulator's letter before they can be used at all, among them 'bank', 'insurance' and 'stock exchange'. Section 4(2) adds a broader bar on names that are undesirable or that suggest a connection with the government. A founder who types a name into the MCA's search box and finds no match has learned very little. The search does not show registered trademarks, and the Registrar does check them.

Name reservation now happens inside the incorporation form itself. SPICe+, the Simplified Proforma for Incorporating Company Electronically Plus, has two parts. Part A proposes up to two names. Once approved, a name is held for twenty days, within which Part B must be filed. Founders can also skip Part A and propose a single name directly in Part B, which saves a step and risks the whole application on one word.

Part B does a great deal at once. A single submission allots director identification numbers to up to three proposed directors who do not have one, and it incorporates the company. It also obtains PAN and TAN from the Income Tax Department, registers the company with the EPFO and ESIC, and in Maharashtra registers it for professional tax. Linked to it are the electronic memorandum (INC-33), the electronic articles (INC-34), and AGILE-PRO-S (INC-35). That last form carries the applications for GSTIN, which is optional, and for a bank account, which is not. Each subscriber and director signs a declaration in INC-9 as well. Under Section 7(1)(c) of the Companies Act, 2013, each first director also declares that he or she is not disqualified. A company with authorised capital up to ₹15 lakh pays no MCA filing fee for SPICe+, though Maharashtra stamp duty on the memorandum and articles is still collected through the portal.

The integration is real, and it is a genuine improvement on what I filed in 2002. There were separate forms then, physical stamps, and a trip to the Registrar's office at Akurdi with a folder

that had to be tied with string. But integration also means one mismatch can stall six registrations together.

The errors that send a SPICe+ form back are rarely errors of law. When I have been asked to rescue someone else's application, the recurring causes have been these. The director's name was spelled one way on the PAN card and another on Aadhaar, often a dropped middle name or a father's name entered in full on one and as an initial on the other. The utility bill offered as proof of registered office was more than two months old. The no-objection letter from the owner of the premises was unsigned, or signed by a tenant with no right to give it. The digital signature certificate belonged to the right person but had expired between drafting and filing. The objects clause read like a brochure. The Registrar returns such a form marked for resubmission, with a remark that is usually accurate and occasionally oracular. One I received in 2023 said, in full, 'Please clarify the main objects.' The objects were three lines long and concerned the manufacture of corrugated boxes.

My Baner founders had one problem of the ordinary kind. The elder founder's PAN, issued when he was nineteen, gave his surname with a single 'a' that his passport and Aadhaar both doubled. The portal pre-fills from the PAN database and validates against it, so the form would not proceed. He could have corrected the PAN through the NSDL process, which takes some weeks. Or he could carry the old spelling into the company's records and live with it on every bank form for the next decade.

He chose the correction. The application went in on 9 August 2024, and on the second working day after it came back with a single remark from the Central Registration Centre about the co-working agreement on Baner Road. Clause 14 of that agreement prohibited 'use of the premises as the registered office of any entity'.

'But they advertise it,' the younger founder said. 'It is on their website. Registered office address available.'

It was, at ₹2,000 a month extra, under a different agreement.

The Clock Starts

They signed the second agreement, paid the ₹2,000, and resubmitted with the new no-objection letter on 14 August. The certificate of incorporation was issued on 21 August 2024. It carried a corporate identity number twenty-one characters long, the PAN and TAN printed beneath it, and a date that mattered more than anything else on the page. From that date several statutory periods begin to run at once, and none of them waits for the founders to notice.

The first is the auditor. Section 139(6) of the Companies Act, 2013 requires the board to appoint the company's first auditor within thirty days of incorporation. If the board fails to do so, it must inform the members, who then have ninety days to appoint one at an extraordinary general meeting. The first auditor holds office until the conclusion of the first annual general meeting. Before appointment, the auditor must give written consent and a certificate that he or she is eligible under Section 141, which excludes, among others, a relative of a director and anyone indebted to the company beyond a modest limit. The younger founder's cousin was a chartered accountant in Aundh. He was also, it emerged, the younger founder's brother-in-law. That ended the conversation.

Whether Form ADT-1 must be filed for a first auditor is a point on which practitioners differ, because Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014 speaks of intimation after appointment at a general meeting, and a first auditor is appointed by the board. The Act does not settle it in plain words. I file ADT-1 anyway. It costs a small fee, and a future investor's lawyer will look for it.

The second period also runs for thirty days. Section 173(1) requires the first board meeting to be held within thirty days of incorporation. In this company's case that meant by 20

September 2024. The first meeting does unglamorous work. It takes note of the certificate and the constitutional documents, appoints the auditor, and authorises the opening of a bank account. It also receives each director's disclosure of interest in Form MBP-1, which Section 184(1) requires at the first meeting a director attends, and the declaration of non-disqualification in DIR-8. The minutes of that meeting are the company's first entry in its own memory. I drafted them on 3 September, and the founders signed in the co-working space's meeting room, which they had booked for an hour and used for twenty minutes.

'That's it?' the elder founder asked.

'That's the first one. There are three more this financial year.'

The third period is the longest and the one most often forgotten. Section 10A, inserted by the Companies (Amendment) Act, 2019, provides that a company incorporated after November 2018 with share capital may not commence business, or exercise any borrowing powers, until a director has filed a declaration in Form INC-20A within 180 days of incorporation. The declaration confirms that every subscriber to the memorandum has paid the value of the shares he or she agreed to take, and it must attach proof of that payment. For my founders, by my count, the deadline fell on 17 February 2025.

The consequences of missing it are set out in the section itself. The company is liable to a penalty of ₹50,000, and every officer in default to ₹1,000 for each day of default, up to ₹1 lakh. More seriously, Section 10A(2) allows the Registrar, if he has reasonable cause to believe the company is not carrying on business, to begin proceedings to strike it off under Section 248. That is the same mechanism that removed about 2.26 lakh companies in 2017. A company that signs a client contract and raises an invoice before filing INC-20A has, strictly, commenced business in breach of the Act. I have seen a start-up discover this during due diligence, when the investor's counsel set the INC-

20A date beside the date of the first invoice and asked for an explanation in writing.

Subscription money, under Section 56(4)(a), must also be matched by share certificates issued within two months of incorporation. The founders had subscribed for 5,000 shares each at ₹10, a total of ₹1,00,000. The proof that INC-20A requires is a bank statement showing that money arriving in the company's own account.

On 3 September 2024, the company had a board, an auditor, a PAN and a TAN. It did not yet have a bank account.

A Home the Law Can Find

The bank was a private lender on Baner–Pashan Link Road, chosen because its branch was a ten-minute walk from the co-working space. Its current-account checklist ran to two pages. It wanted the certificate of incorporation, the memorandum and articles, the company's PAN, the board resolution authorising the account, the KYC of each director, and proof of the registered office. The relationship manager read the no-objection letter twice and then telephoned the co-working operator to confirm that the company really sat on the third floor. It did, in the sense the law means, which is not the sense the founders meant. They sat wherever there was a free desk.

Section 12(1) of the Companies Act, 2013 requires every company to have, within thirty days of incorporation and at all times after, a registered office capable of receiving and acknowledging all communications addressed to it. In practice, for companies incorporated through SPICe+, the address is verified at incorporation and Form INC-22 is needed only when the office moves. The office is not a formality. Since the 2019 amendment, Section 12(9) allows the Registrar to physically verify it, and Rule 25B of the Companies (Incorporation) Rules, 2014 requires that verification to be done in the presence of two independent witnesses. If the company is not found there, the Registrar may

begin proceedings to remove its name under Section 248. I have known an inspector to arrive at a residential flat in Pimple Saudagar and be told by a maid that 'company people are not here, only Aunty.'

The office has outward duties too. Section 12(3) requires the company's name to be painted or affixed outside every office in legible letters, and its name, registered address and corporate identity number to appear on its letterheads, invoices and official publications. The co-working operator supplied a small acrylic plate for the lobby board. The founders received their account opening kit on 11 September 2024. Each paid ₹50,000 into the company's account the next morning.

The registered office is also where the company keeps its memory in the formal sense. Section 88 requires a register of members in Form MGT-1. Section 170 requires a register of directors and key managerial personnel, Section 189 a register of contracts in which directors are interested in Form MBP-4, Section 186 a register of loans, guarantees and investments in Form MBP-2, and Section 85 a register of charges in Form CHG-7, even when the company has never borrowed a rupee. Under Section 94 these registers are kept at the registered office unless the members resolve otherwise. They may be maintained electronically. They may not be left blank.

The elder founder asked why a company with two shareholders, both sitting at the same table, needed a register to tell it who owned it. The answer is that the register is not written for them. It is written for the investor, the bank and the tax officer who will arrive later and who have no way of knowing what the founders agreed over coffee. Folio 1 in their register of members records 5,000 equity shares of ₹10 each, fully paid, allotted to the elder founder. Folio 2 records the same for the younger. Share certificates in Form SH-1 were issued on 15 October 2024, five days inside the two-month limit, and INC-20A, with the bank statement attached, went in on 4 October.

Calendar. For a company incorporated on 21 August 2024 the first deadlines run as follows: the first auditor and the first board meeting by 20 September 2024; share certificates by 20 October 2024; the Section 10A declaration in INC-20A by 17 February 2025; three further board meetings before 31 March 2025, with no gap longer than 120 days; and, because the first financial year closes on 31 March 2025, the first annual general meeting under Section 96(1) by 31 December 2025.

That last date is nine months beyond the end of a year that had barely begun. The founders wrote it on the meeting-room whiteboard in green marker. Somebody else erased it the following week.

The acrylic plate is still in the lobby, fourth row from the top, between a drone-survey firm and a company that sells organic jaggery. It reads, in full, the name, the words 'Private Limited', and a corporate identity number no visitor has ever stopped to read.

CHAPTER 4

The Annual Rhythm: Boards, AGMs and the Registrar

Minutes as Evidence

Page forty-one of the minute book of an auto-components company in Chakan is blank except for a heading, a date and a list of the directors present. The date is 14 November 2022. The company machined brackets and housings for two-wheeler manufacturers along the Talegaon road, employed a little over three hundred people across two shifts, and had a turnover that year of roughly ₹180 crore. It also had a board that met. That was never the difficulty. The difficulty was that nobody wrote down what the board decided until a bank asked to see it.

The Companies Act, 2013 is specific about how often a board must meet. Section 173(1) requires the first meeting within thirty days of incorporation and, after that, a minimum of four meetings every year, with no more than one hundred and twenty days between two consecutive meetings. Both limbs bind. A company that holds four meetings in April, May, June and February has met four times and still broken the law, because the gap between June and February is longer than the statute permits. Small companies and one person companies are allowed less, one meeting in each half of the calendar year

with at least ninety days between them under Section 173(5), but the Chakan firm was neither.

Notice and quorum come next. Section 173(3) requires at least seven days' written notice to every director, at the address the director has registered with the company, and a meeting called at shorter notice to transact urgent business is valid only if at least one independent director attends, where the company has one. Section 174 fixes the quorum at one third of the board or two directors, whichever is higher. Secretarial Standard SS-1, issued by the Institute of Company Secretaries of India and given statutory force by Section 118(10), fills in the detail the Act leaves out, from how the agenda is circulated to how a director's interest in an item is recorded.

Then there are the minutes. Section 118(1) requires them to be prepared and signed within thirty days of the meeting. Section 118(8) gives them their weight: minutes kept in the prescribed manner are evidence of the proceedings they record. That clause carries more consequence than any other in the section. Once minutes exist, the meeting is presumed to have happened as written, and the burden falls on anyone who says otherwise. When they do not exist, a board resolution is whatever the directors can collectively remember, and directors are frequently in disagreement on that point.

In March 2023 the Chakan firm applied to renew a working-capital limit of ₹22 crore. The bank's credit officer asked for a certified true copy of the resolution authorising the borrowing. The managing director said the board had passed it on 14 November. The chief financial officer agreed. The company secretary, who had joined in January, opened the minute book and found page forty-one.

'It was passed, madam,' the managing director said to me. 'Everyone was there.'

I did not doubt him. Neither did the bank, particularly. But a credit officer cannot lend ₹22 crore against a memory, and min-

utes written four months late and signed as though they were current are a different matter altogether. Section 118(12) treats tampering with minutes as an offence carrying imprisonment of up to two years. The page stayed blank. The board met again on 28 March 2023 and passed the resolution afresh, with a company secretary taking notes at the table, and the renewal was sanctioned nine days later than the old limit expired.

The Meeting the Shareholders Are Owed

The board meets as often as it chooses above the minimum. The members meet once a year whether anyone wants to or not. Section 96(1) of the Companies Act, 2013 requires every company other than a one person company to hold an annual general meeting within six months of the close of its financial year, and never more than fifteen months after the previous one. For a company whose year ends on 31 March, that means 30 September. The first AGM is treated more generously: it must be held within nine months of the close of the first financial year, which is why the Baner founders could write a December date on their whiteboard.

An extension exists, and people overestimate it. The Registrar may allow up to three further months "for any special reason", but only on an application in Form GNL-1 made before the original deadline expires, and never for the first AGM. A company that remembers on 2 October has nothing left to apply for. In my experience the special reason is usually an audit that has not finished, and the Registrar grants it often enough that clients come to regard it as automatic. It is not automatic. It is a discretion, and it costs a filing fee and a letter explaining why the accounts are late.

Notice runs to twenty-one clear days under Section 101, meaning the day of dispatch and the day of the meeting are not counted. Shorter notice is possible for an AGM only if members holding at least ninety-five per cent of the voting power consent

in writing. With the notice, Section 136 entitles every member to copies of the audited financial statements, the auditor's report and the board's report, so that a shareholder walks in having read what the directors propose to adopt. Section 102 adds an explanatory statement for any business beyond the ordinary four: adopting the accounts, declaring a dividend, appointing directors in place of those retiring by rotation, and appointing or fixing the pay of auditors. Secretarial Standard SS-2 governs the rest, down to how a chairman is chosen if the designated one fails to arrive within fifteen minutes.

The Chakan firm's financial year 2022–23 closed on 31 March 2023, three days after the board passed its borrowing resolution for the second time. The audit dragged. A physical count of finished housings at the Talegaon road warehouse did not match the ledger by about eleven thousand pieces, and the auditors would not sign until someone explained the difference. Through August the company secretary sent reminders. Nobody filed GNL-1. The accounts were signed on 19 October, nineteen days after the AGM should have been held.

'We'll hold it in November, it's only one month,' the chief financial officer said.

He was right about the arithmetic. Section 99 makes every officer in default liable to a fine of up to ₹1 lakh, and up to ₹5,000 for each day the default continues. Section 97 allows the National Company Law Tribunal to call the meeting itself if any member asks. No member asked. The shareholders were the managing director's family and one private equity fund, and the fund's nominee director had been on leave since September.

The AGM was held on 23 November 2023. By then the Act had already started counting the days for two other forms.

The Annual Filings: AOC-4, MGT-7/MGT-7A and the Small Forms That Cause Large Trouble

The AGM is a meeting. The filings that follow it are the record the Registrar actually reads, and they run on their own clocks.

Section 137(1) of the Companies Act, 2013 requires a company to file its adopted financial statements with the Registrar within thirty days of the AGM, in Form AOC-4, with the board's report and the auditor's report attached. Larger and listed companies file in XBRL, a tagged format that lets the Ministry's software read the balance sheet line by line. Section 92(4) requires the annual return within sixty days of the AGM, in Form MGT-7. The annual return is a different document from the accounts. It records who owned the shares on the last day of the year, who sat on the board, how many times the board and its committees met, and who attended. Small companies and one person companies file the shorter MGT-7A. A company with paid-up capital of ₹10 crore or more, or turnover of ₹50 crore or more, must have its return certified by a company secretary in practice in Form MGT-8, which is how I come to read a great many of them.

The detail that caught the Chakan firm sits in two provisos. Where an AGM is not held, both sections run the clock from the date on which it *should* have been held, and the company must attach a statement of the reasons. The AGM was due on 30 September 2023. AOC-4 was therefore due on 30 October, and MGT-7 on 29 November. Holding the meeting on 23 November restarted nothing.

From 31 October the additional fee accrued at ₹100 a day under the Companies (Registration Offices and Fees) Rules, 2014, and since the 2018 amendment that fee has no ceiling. Penalties sit on top of it. Section 137(3) exposes the company to ₹10,000 plus ₹100 a day, capped at ₹2 lakh, and each officer in default to the same daily rate capped at ₹50,000. Section 92(5) mirrors those figures for the annual return. None of these sums ruins a

company with a ₹22 crore credit line. What ruins it is what the unfiled forms switch on later.

Then come the small forms, which clients forget precisely because they are small.

DIR-3 KYC, under Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014, is the director's own confirmation of identity, mobile number and email. It falls on the individual, not the company. Miss the due date and the portal marks the DIN 'Deactivated due to non-KYC', and reactivation costs ₹5,000. DPT-3, under Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014, is due by 30 June each year and reports money the company has received that is not share capital, including loans from directors that most founders do not think of as deposits at all. MSME-1 is half-yearly, due on 30 April and 31 October, and is required of any company owing a micro or small supplier for more than forty-five days.

The Chakan firm bought castings from about thirty workshops in Bhosari and Chikhli, several of them registered on Udyam. Its MSME-1 for April to September 2023 was due on 31 October, the same morning the AOC-4 fee began to run. The company secretary had both on her list. She had no one to approve either. And the private equity nominee, still on leave, had let his own DIR-3 KYC lapse on 30 September.

When he returned in December, the portal would not let him sign anything.

Event-Based Filings: Changes in Directors, Charges, Capital and Registered Office

The annual forms run on the calendar. A second set runs on events, and these have no fixed date at all: the clock starts whenever something happens inside the company, usually something the board regarded as good news. The usual period is thirty

days. Most of the trouble comes from the fact that nobody told the person who files.

A change in the board goes to the Registrar in Form DIR-12 within thirty days, under Section 170(2) of the Companies Act, 2013, whether a director has been appointed, has resigned or has died. A director who resigns may file DIR-11 himself. I advise that he do so, because the company has no particular incentive to tell the Registrar he has gone, and his name stays attached to its defaults until it does. Changes in capital follow the same pattern. An increase in authorised capital is filed in SH-7 within thirty days under Section 64. An allotment of shares is reported in PAS-3, and where the shares were issued on private placement, Section 42(9) shortens the period to fifteen days. A special resolution, and certain board resolutions listed in Section 117(3), go in MGT-14 within thirty days of being passed. A move of registered office within the same city or town needs only a board resolution and Form INC-22 within thirty days under Section 12(4). A move to another state needs the Regional Director's confirmation and is a different matter altogether.

Charges deserve the most care. A charge is the security a company gives a lender over its assets, and Section 77 requires it to be registered in CHG-1 within thirty days of its creation. Late filing is permitted only within a further window and on payment of additional, then ad valorem, fees, a scheme the 2019 amendment tightened considerably. The real sanction lies elsewhere. Under Section 77(3), an unregistered charge is not taken into account by a liquidator or any creditor. A bank whose charge is not on the Registrar's record is, for practical purposes, unsecured. When the loan is repaid, Section 82 requires the company to report satisfaction in CHG-4, also within thirty days, and clients forget this one more often than any other form I see, because by then the bank has stopped asking.

The borrowing resolution the Chakan firm had passed twice in March 2023 was a special resolution under Section 180(1)(c),

authorising borrowings beyond its paid-up capital and free reserves. Its MGT-14 was filed on time, because the bank had insisted on seeing the challan before sanction. The bank then raised the working capital limit to ₹22 crore and took a fresh hypothecation of stock and book debts on 2 June. The modification went in CHG-1 within the month, signed by the managing director.

The trouble came in January 2024. The private equity fund, tired of waiting for its nominee, replaced him. The board accepted his resignation on 11 January and appointed his successor the same afternoon. DIR-12 required a director's digital signature, and the managing director was in Stuttgart negotiating a supply contract. The other executive director's DIN showed active. The portal accepted his signature, then rejected the form, because the company itself was now flagged for its overdue annual filings. The prefilled field returned a single line: 'Company is not eligible to file this form.'

Calendar

The managing director landed in Mumbai on 19 January and drove straight to Chakan. AOC-4 went in on 2 February 2024, ninety-five days late, and MGT-7 on 6 February. The additional fees together came to a little over ₹16,000. DIR-12 for the new nominee followed on 8 February, twenty-eight days after the event, which made it the only form of the season filed within time. Nobody in the room remarked on this.

What the Chakan firm lacked was never knowledge of the forms. Its company secretary could have recited them. It lacked a year laid out in advance, with a name against each date. The year runs on the financial year, which the Act fixes as April to March under Section 2(41), and it looks roughly like this.

April opens with the half-yearly MSME-1 for October to March, due on 30 April. The first board meeting of the new financial year, usually in May, is where each director gives Form

MBP-1 disclosing interests in other entities under Section 184(1), and where the board approves the audited accounts and the directors' report, once the auditors have finished. DPT-3 falls due on 30 June. A second meeting in July or August approves the AGM notice, which must reach members at least twenty-one clear days before the meeting under Section 101. The AGM itself must be held by 30 September. DIR-3 KYC falls due on the same date for every director holding a DIN. The Ministry has notified a move to a three-yearly cycle for this form, to be phased in during 2026; until it applies to a given director, the annual date stands. Where the AGM appoints or reappoints the auditor, ADT-1 is due within fifteen days of it. AOC-4 follows within thirty days of the AGM, so by 30 October for a company that meets on the last permitted day, and MSME-1 for April to September is due on 31 October. MGT-7, or MGT-7A for a small company or a one person company, follows within sixty days of the AGM, so by 29 November. A third board meeting usually sits in November to take the half-year numbers, and a fourth in February to look at the budget and the coming year's audit. Between any two of these four meetings, Section 173(1) allows no more than 120 days. A small company may instead hold one meeting in each half of the calendar year, at least ninety days apart, under Section 173(5). After every meeting the minutes must be signed within thirty days, as SS-1 requires, and event-based forms run alongside all of it on their own thirty-day clocks.

That is the statutory floor. I advise clients to work back from every date by a fortnight and to put a single person's name, not a department's, beside each line. The Act does not require either. It does require someone to be answerable when a date passes, and it has its own view about who that person is.

In March 2024 the Registrar issued an adjudication notice under Section 454 for the late annual filings. The managing direc-

tor read it twice at his desk, then turned to the company secretary.

'It is saying officer in default,' he said. 'Which officer?'

CHAPTER 5

The Officer in Default: Directors and Their Duties

The Number That Follows You

Eight digits, issued once, held for life. A director identification number, the DIN, is the state's way of knowing that the man who signed a balance sheet in Chakan in 2019 is the same man who signs a loan guarantee in Nashik in 2026, whatever his letterhead says in between. Before the managing director's question about which officer can be answered, the law needs to be able to say who the officers are. The DIN is where that begins.

Section 152(3) of the Companies Act, 2013 forbids anyone from being appointed a director without a DIN. Section 153 sets out how one is applied for, and Section 155 prohibits an individual from holding more than one. The application is made in Form DIR-3 under Rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014, or, for the first directors of a new company, inside the SPICe+ form itself. The number is tied to a PAN, an Aadhaar number for Indian residents, a passport for foreign nationals, a mobile number and an email address. It does not lapse when a directorship ends. A person who resigned from his only board in 2015 still has the DIN he was given, and it will still be his in 2045.

For several years after 2006, when DINs were first introduced under the 1956 Act, the Ministry of Corporate Affairs knew less about its directors than a cooperative bank knows about its depositors. Addresses went stale. Mobile numbers belonged to former clerks. Some numbers belonged to people who had died. In July 2018 the Ministry inserted Rule 12A, requiring every individual holding a DIN to file a KYC return each year. The form is DIR-3 KYC for a first filing or a change in particulars, and the shorter DIR-3 KYC-WEB where nothing has changed. The due date is 30 September. The rule applies to every DIN allotted on or before 31 March of that financial year, whether or not its holder sits on any board.

I filed my own on the first morning the form opened in 2018, mostly to see what my clients would see. The portal asked for a one-time password on my mobile and another on my email, and then timed out. The second attempt went through.

A director who misses 30 September does not commit an offence. What happens is administrative, and it is quick. The DIN is marked 'Deactivated due to non-filing of DIR-3 KYC', and it can be reactivated only by filing the form with a fee of ₹5,000. While it is deactivated, no form that requires the director's signature can be filed. This is what caught the private equity nominee at the Chakan firm, whose lapsed KYC sat quietly until the day the company most needed him on the record. The rule is mechanical, and that is its whole effect. No officer at the Registry reviews a deactivated DIN or forms a view on whether its holder meant well.

In late 2025 the Ministry indicated that it intends to move the KYC requirement to a three-yearly cycle. As at 1 January 2026 I advise clients to treat the annual date as binding until amended rules are actually notified. A proposal is not a rule, and a deactivated DIN costs more than an unnecessary filing.

The KYC tells the state who a director is and where to find him. It says nothing about what he owes. That comes from a dif-

ferent provision, one most directors in my experience have never read, although they are bound by it from the day they sign DIR-2. It runs to seven sub-sections, and the shortest of them is one sentence long: 'A director of a company shall not assign his office.'

Seven Sub-sections

Section 166 of the Companies Act, 2013 is the first place in Indian statute where a director's duties were written down at all. Before 2013 they existed, but they lived in judgments, most of them English, applied by Indian courts with the confidence of long habit. The 2013 Act codified them. It did so briefly, and the brevity is deceptive.

Sub-section (1) requires a director to act in accordance with the company's articles. This sounds like housekeeping, and mostly it is, until a board approves a borrowing beyond a limit the articles set, or appoints a director by a procedure the articles do not permit. The articles are a contract the director has agreed to. Most directors I meet have never seen a copy.

Sub-section (2) is the duty of good faith. A director must act 'in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.' The English model, Section 172 of the Companies Act, 2006, asks a director to promote the members' interests and, in doing so, to 'have regard to' employees and the community. The Indian drafting places all of them in one sentence, in one list. Commentators still argue about whether this creates enforceable duties to employees or merely permits a director to consider them. As at 1 January 2026 no Indian court has settled the question in a way I would rely on.

Sub-section (3) carries the most weight in practice. A director must exercise his duties 'with due and reasonable care, skill and

diligence' and must exercise independent judgement. The two halves do different work. Care is about effort: reading the papers, attending the meetings, asking for the information that is missing. Independence is about whose view the director is expressing. A nominee director appointed by an investor is still bound by it, and the investor's instructions are no defence if the vote harms the company.

In 2021 a client of mine, a retired engineer who sat on the board of a Satara food-processing company as a favour to its founder, told me he signed the financial statements each year 'after seeing the total only'. He was not dishonest. He was precisely the director Section 166(3) was written about.

Sub-section (4) forbids a director from placing himself in a situation where his direct or indirect interest conflicts, or may conflict, with the company's. The words 'possibly may' do the damage. Actual harm is not required.

Sub-section (5) prohibits undue gain or advantage, whether to the director or to his relatives, partners or associates. A director found to have made such a gain must pay an amount equal to it to the company. It is the only clause in the section that names its own remedy in money.

Sub-section (6) bars assignment of office and declares any assignment void. Sub-section (7) prescribes the punishment for contravening the section: a fine of not less than ₹1 lakh, which may extend to ₹5 lakh.

Five lakh rupees, for a breach of good faith that might cost a company several crore. The fine is not where the real liability sits, and the Act knows it. When the engineer from Satara asked me what the worst outcome could be, I told him to read Section 2(60) before he asked again. He said, 'That is the definitions section, no?'

Who Gets Prosecuted

It is. And that is the point of it. Section 2(60) of the Companies Act, 2013 defines the 'officer who is in default', and dozens of penal provisions elsewhere in the Act borrow the phrase rather than naming anyone themselves. When a section says that 'the company and every officer of the company who is in default shall be liable to a penalty', the reader must turn back to the definitions to learn whose name will appear on the notice. Section 166(7) does not borrow it; its fine falls on the director who breached the duty. Most of the Act does.

The definition is a list of seven categories, and its order tells you something. First come whole-time directors. Second, key managerial personnel: the managing director or chief executive, the company secretary, the whole-time director and the chief financial officer, as Section 2(51) defines them. Only where a company has no key managerial personnel does the third category apply. Then the board may specify one or more directors who consent in writing to carry the liability, and if it specifies nobody, every director is an officer in default. Small private companies, which are not required to appoint a company secretary or a chief financial officer, fall into this third category more often than their directors realise. In my experience, almost none of them has passed the specifying resolution. Every director is exposed.

The fourth category reaches below the board. It covers any person who, under the immediate authority of the board or a key managerial person, is responsible for maintaining, filing or distributing accounts or records, and who authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent the default. The accounts executive who was told to file the AOC-4 and did not may fall within it. So may the manager who knew he had not. The fifth captures the shadow director, any person whose instructions the board is accustomed to follow, with an express exception for those advis-

ing 'in a professional capacity'. I have relied on that exception, privately, more than once. The seventh concerns share transfer agents and merchant bankers in matters of share issue and transfer.

The sixth is the one that matters most to an ordinary director. It makes every director an officer in default for a contravention of which he became aware 'by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same', or which occurred with his consent or connivance. Knowledge, under this clause, can be proved by paper. The director who received the board agenda, attended the meeting and said nothing has, as far as the record is concerned, known. Minutes then become evidence against the people who signed them, and silence in the minutes reads as assent.

This was the answer to the managing director at Chakan. The Section 454 notice named the company, the managing director and the company secretary, all key managerial personnel, and it named the chief financial officer, who had signed nothing late but had held the audit file through the summer. It did not name the independent directors. They had attended no meeting at which the missed AGM was discussed, because no such meeting had been held.

The managing director read the list twice and said, 'So the ones who did nothing are safe.'

Independent Directors after IL&FS

Not safe, exactly. Protected, in that instance, by a sub-section that was written for them and is narrower than most of them believe.

Section 149(12) of the Companies Act, 2013 provides that an independent director, and a non-executive director who is not a promoter or key managerial person, is liable only for acts of omission or commission by the company which occurred with

his knowledge, attributable through board processes, and with his consent or connivance, or where he had not acted diligently. The first three conditions mirror the sixth category of Section 2(60). The fourth does not. 'Had not acted diligently' turns the shield back on its holder, because a director who never asked why the AGM was late may find that his ignorance is itself the failure. The Chakan independent directors escaped because no paper reached them. Had the auditor's delay been reported at a board meeting in August and minuted without comment, I would have given them a different answer.

The Act's requirements are precise. Section 149(4) requires every listed public company to have at least one-third of its board independent. Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 extends the obligation, at a minimum of two, to unlisted public companies with paid-up capital of ₹10 crore or more, turnover of ₹100 crore or more, or aggregate loans, debentures and deposits exceeding ₹50 crore. Section 149(6) sets the tests of independence: no pecuniary relationship of the disqualifying kind, no relative among the promoters, no recent employment with the company or its auditors. Section 149(10) and (11) limit tenure to two consecutive terms of five years. Since 1 December 2019, every independent director must be registered in the databank maintained by the Indian Institute of Corporate Affairs, and most must pass its online proficiency self-assessment. Schedule IV adds a code of conduct and requires the independent directors to meet at least once a year without the executives in the room.

That is the statutory floor. None of it ensures that anyone reads the papers.

IL&FS had independent directors, and distinguished ones. In September 2018 its group companies began defaulting on commercial paper and inter-corporate deposits, and the size of the group's debt became public: over ₹90,000 crore, spread across more than three hundred entities. On 1 October 2018 the

National Company Law Tribunal at Mumbai allowed the government's petition under Sections 241 and 242 and superseded the board in its entirety, replacing it with nominees led by Uday Kotak. It was the first use of that power against a company of such size. The Serious Fraud Investigation Office's later reports, and the forensic audit that followed, described a board which had approved loans to group entities that could not repay, and a risk committee which, by the investigators' account, had seldom met. Whatever the ultimate findings against particular individuals, the structure had been complete on paper. Independence had been certified. Diligence had not been tested.

The government's response, oddly, softened enforcement against non-executives. MCA General Circular No. 1/2020, dated 2 March 2020, instructed registrars not to name independent and non-executive directors in proceedings unless the record showed knowledge through board processes. The circular protects the careful. It also tells the careless what the registrar will look for.

When I explain this to a prospective independent director, I advise him to ask for the last three sets of minutes before he accepts, and to read the dissents. Most boards record none. One retired banker in Kothrud, offered a seat by a Wakad real-estate company, read the minutes, found that every resolution for four years had been 'passed unanimously', and declined the seat with a two-line letter.

Related Party Transactions: Section 188 and the Conflicts the Law Expects You to Declare

The Wakad minutes would have told him something else had he read further, because unanimous boards and related-party contracts tend to keep company. Section 2(76) of the Companies Act, 2013 defines a related party broadly: a director or key managerial person, their relatives as Section 2(77) lists them, any firm

in which a director is a partner, any private company in which a director is a member or director, and several more removed connections. Section 188(1) then names the transactions that need consent when such a person is on the other side. These include the sale or purchase of goods or property, leasing, the availing of services, the appointment of agents, underwriting, and a related party's appointment to any 'office or place of profit' in the company.

Consent comes in two layers. The board must approve by resolution at a meeting, and the interested director, having already disclosed his concern under Section 184(2), may not take part. Where the transaction crosses the thresholds in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, shareholders must approve by ordinary resolution. For most categories the threshold is ten per cent of turnover or net worth, and for an office or place of profit it is monthly remuneration above ₹2.5 lakh. A member who is a related party to that particular contract may not vote on it. One exemption carries most of the weight. A transaction entered into in the ordinary course of business and at arm's length needs none of this, and much argument in boardrooms is really an argument about those two phrases.

In 2021 a machining firm in Chinchwad asked me to review its lease for a godown on the Pune–Mumbai highway. The godown belonged to the managing director's wife. The rent was ₹1,10,000 a month, which the managing director described as 'market only, actually less than market'. That may have been true. Nobody had tested it, though, and no board resolution approved it. The Act does not presume dishonesty here. It requires that the claim be shown. I advised that we obtain two broker quotations for comparable space in Talawade, table them, and record the managing director's withdrawal from the discussion. The quotations came back at ₹1,05,000 and ₹1,25,000. The board approved. The minutes ran to half a page.

Without that half-page, Section 188(3) would have made the lease voidable at the option of the board or the shareholders if they did not ratify it within three months, and would have required the director who authorised it to indemnify the company for any loss. Since the 2020 amendment, Section 188(5) imposes a civil penalty of ₹25 lakh on the responsible director or employee of a listed company and ₹5 lakh in any other company. Approval must then be reported in the board's report in Form AOC-2, so the record outlives the meeting.

For the calendar, these duties recur on fixed dates. Every director files MBP-1 at the first board meeting of each financial year and again whenever his interests change. Every director gives DIR-8, confirming he is not disqualified, in the same season. Each independent director makes his Section 149(7) declaration at that first meeting. DIR-3 KYC falls due by 30 September. The company keeps the register of contracts with interested parties, MBP-4, up to date throughout the year.

The Chinchwad lease was recorded in the ledger under account code 4420. Since 1 April 2023 the accounting software has logged every edit made to that entry, with the user and the date.

CHAPTER 6

Books That Cannot Be Rewritten: Accounts, Audit and Income Tax

Section 128 and the Audit Trail

In May 2024 the statutory auditor of a spice-blending company in Market Yard, Pune, asked to see a purchase entry from 28 March. The invoice was for cardamom from a Kumily supplier. The ledger showed ₹1,48,000. The edit log, a screen the accountant had never opened, showed that the entry had first been posted at ₹4,18,000 and changed on 2 April, three days after the financial year closed, from her login. She was called in. 'Madam, I only corrected the typing mistake,' she said. She was telling the truth: the supplier's invoice read ₹1,48,000, and she had transposed two digits. The correction was proper. What had changed was that the software now remembered the mistake, the correction and the woman who made it, and would go on remembering them for eight years.

The duty to keep books is old. **Section 128(1) of the Companies Act, 2013** requires every company to prepare and keep at its registered office books of account and other relevant papers that give a true and fair view of its affairs, kept on the accrual basis and according to the double-entry system. The board may resolve to keep them elsewhere in India, provided the Registrar is told within seven days. Section 128(5) requires

the books of the eight financial years preceding the current one to be preserved. Rule 3 of the Companies (Accounts) Rules, 2014 allows all of this to be done electronically, so long as the records stay accessible in India and can be retrieved in their original form. Since an amendment of 5 August 2022, a backup must also be kept daily on servers physically located in India.

The newer duty is narrower and much harder to argue with. The Companies (Accounts) Amendment Rules, 2021, notified on 24 March 2021, inserted a proviso into Rule 3(1). After two deferrals it took effect from **1 April 2023**. Every company that keeps its books in electronic form must use accounting software that records an audit trail of each and every transaction, creates an edit log of each change made to the books together with the date of that change, and ensures that the audit trail cannot be disabled. Those last words carry the whole rule. Before April 2023 most popular packages offered an audit log as an optional setting, and in my experience most small companies left it off, usually because nobody had told them it existed, sometimes because it slowed the server.

The rule does not forbid corrections. It requires that they be visible. A ledger may still be amended after the year ends, an invoice reclassified, a provision revised on the auditor's advice. What can no longer be done is to make the earlier version disappear. The auditor checks this as well. Rule 11(g) of the Companies (Audit and Auditors) Rules, 2014 requires him to state in his report whether the software had the feature, whether it operated throughout the year for all transactions, whether it was tampered with, and whether the trail has been preserved as the law requires.

Failure falls on named people. Section 128(6) makes the managing director, the whole-time director in charge of finance, the chief financial officer or any other person charged with the duty liable to imprisonment of up to one year, or a fine of between

₹50,000 and ₹5 lakh, or both. Of the default cascade, this is one of the few links still carrying a prison term.

The Market Yard auditor recorded the cardamom entry in his working papers and moved on. The log entry is still there, timestamped 2 April 2024, 11:52 a.m.

The Statutory Auditor

In 2019 the owner of an injection-moulding unit in Pimpri asked me whether he was obliged to change his auditor. The same chartered accountant had signed his company's accounts since 2005, and a cousin in Mumbai had told him that the law now forbade anyone to audit a company for more than ten years. The cousin was partly right. The company was private, its paid-up capital was ₹4 crore, and its bank borrowings stood at ₹38 crore. It fell outside the rotation rule. Two years later a term loan for a new press took its borrowings past ₹50 crore, and it fell inside.

Section 139 of the Companies Act, 2013 governs appointment. The first auditor is chosen by the board within 30 days of incorporation, as the Baner founders discovered when they had to pass over a brother-in-law. After that, the members appoint the auditor at the first annual general meeting, to hold office from the conclusion of that meeting until the conclusion of the sixth, which amounts to a five-year term. The company informs the Registrar in Form ADT-1 within 15 days of the meeting. Section 141 sets out who may not be appointed: a relative of a director, a person holding securities in the company, a person indebted to it beyond the limit in Rule 10 of the Companies (Audit and Auditors) Rules, 2014, and others whose independence is compromised by money or blood.

Rotation is narrower than people suppose. Section 139(2) applies only to listed companies and to the classes in Rule 5: unlisted public companies with paid-up capital of ₹10 crore or more, private companies with paid-up capital of ₹50 crore or more, and any company with public borrowings from banks, fi-

nancial institutions or public deposits of ₹50 crore or more. For those companies an individual auditor may serve one term of five consecutive years and an audit firm two, followed by five years' cooling off. The Pimpri client's accountant had by then served sixteen years, which included the years before the rule took effect, and had to stand down at the next AGM. He took it well. 'Sixteen years I have seen his stock register,' he said. 'Somebody else can see it now.'

An auditor cannot easily be removed mid-term. Section 140(1) requires a special resolution and the prior approval of the Central Government, sought in Form ADT-2. An auditor who resigns files ADT-3 within 30 days, stating reasons, and the reasons are read.

The auditor's report itself has a second layer. The **Companies (Auditor's Report) Order, 2020**, known as CARO 2020, was notified on 25 February 2020 and applies from 2021–22 onwards. It exempts one person companies, small companies, banking and insurance companies, Section 8 companies, and private companies that are neither holding nor subsidiary companies of a public company and that stay within three limits: paid-up capital and reserves of not more than ₹1 crore, borrowings of not more than ₹1 crore at any time during the year, and revenue of not more than ₹10 crore. Everyone else gets twenty-one clauses.

Several of those clauses check the company against outsiders' records rather than against its own. Clause 3(i)(c) asks whether title deeds of immovable property stand in the company's name. Clause 3(vii) asks about undeposited statutory dues. Clause 3(viii) asks whether income surrendered in a tax assessment was missing from the books. Clause 3(xi) asks about fraud and whistle-blower complaints. Clause 3(ii)(b) applies where working-capital limits above ₹5 crore are secured on current assets, and asks whether the quarterly stock statements sent to the bank agree with the books. If they do not, the auditor must give the details.

For 2022–23, the Chakan auto-components firm's report carried a table under that clause. The quarter ending December 2022 showed a difference of 11,214 housings.

Income Tax: Returns, Advance Tax and the TDS Machinery

In February 2024 a transport contractor from Chikhli rang a tool-room in Bhosari four times in one afternoon. The tool-room had paid him ₹6 lakh in October for carrying dies to a customer in Ranjangaon, and had deducted ₹12,000 as tax at source before paying. That ₹12,000 did not appear in his Form 26AS, the statement the Income Tax Department keeps of tax credited against each permanent account number. His own accountant had told him he would have to pay it twice. The tool-room's accountant, when I asked, said, 'Madam, the money was kept aside only. It was in the account.' It was in the tool-room's account. It had not reached the government's.

The **Income-tax Act, 1961** treats a company as a taxpayer in its own right, separate from its shareholders. A company files its return of income under Section 139(1) whether it has made a profit or a loss. The due date is 31 October following the end of the financial year for a company whose accounts must be audited, which is every company, and 30 November where the company has international or specified domestic transactions requiring a transfer pricing report. Most domestic companies now pay tax at 22 per cent under Section 115BAA, an effective rate of about 25.17 per cent once surcharge and cess are added, in exchange for giving up most deductions and exemptions.

The tax is not paid at the end. Section 208 requires advance tax wherever the year's liability will be ₹10,000 or more, and Section 211 sets the instalments for companies: 15 per cent of the estimated tax by 15 June, 45 per cent by 15 September, 75 per cent by 15 December and the whole by 15 March. The law ex-

pects a company to know, in June, roughly what it will earn by March. Many do not, and the Act prices the uncertainty instead of punishing it. Section 234C charges simple interest at 1 per cent a month on each shortfall in an instalment, and Section 234B charges the same rate where less than 90 per cent of the assessed tax was paid by 31 March. I advise clients to treat the September instalment as the serious one, because by then two quarters of numbers exist and the estimate stops being a guess.

The larger machinery is **tax deducted at source**, usually called TDS. Under Chapter XVII-B the company acts as an unpaid collector for the state. When it pays salaries, rent, professional fees, contractors or interest above specified thresholds, it must deduct tax at the rate the relevant section prescribes (Section 194C, for instance, sets 2 per cent for a contractor who is not an individual or HUF) and deposit it. Rule 30 of the Income-tax Rules, 1962 fixes the deposit date at the seventh of the following month, except for deductions made in March, which may be deposited by 30 April. The company then files quarterly statements: Form 24Q for salaries, 26Q for other payments to residents and 27Q for payments to non-residents, due on 31 July, 31 October, 31 January and 31 May. It issues certificates in Form 16 or Form 16A from the processed statements.

The deductee's credit depends entirely on the deductor's filing. This is the same networked dependence the GST regime would later build into input tax credit, and it existed here first.

The consequences are graded. Tax deducted but deposited late attracts interest at 1.5 per cent a month under Section 201(1A), with part of a month counted as a whole. A late quarterly statement carries a fee of ₹200 a day under Section 234E, up to the amount of tax involved. Failing to deduct at all on a payment to a resident disallows 30 per cent of that expense under Section 40(a)(ia). And Section 276B makes failure to pay deducted tax to the government an offence punishable with rigorous imprisonment of three months to seven years, because

money withheld from someone else's payment was never the company's to keep.

The Bhosari tool-room deposited the ₹12,000 on 9 February 2024 with ₹900 interest for five months, and filed a corrected 26Q. The contractor's credit appeared on 4 March. He rang once more, to say so.

Transfer Pricing and Tax Audit: the Reports that Decide How a Return Is Read

The return a company files under Section 139(1) is a set of figures. Two reports filed before it tell the assessing officer what those figures mean, and in practice the officer reads them first.

The first is the **tax audit**. Section 44AB requires a person carrying on business to have its accounts audited by a chartered accountant, for tax purposes, if turnover exceeds ₹1 crore in the year. The threshold rises to ₹10 crore where cash receipts and cash payments each stay within 5 per cent of the total. Companies already have a statutory audit under the Companies Act, so the chartered accountant reports in Form 3CA rather than 3CB. The substance is in the annexure, Form 3CD, a statement of particulars that runs to forty-four clauses. It is less an opinion than an inventory. It asks whether the company's method of accounting changed, what it paid to related persons under Section 40A(2)(b), whether statutory dues covered by Section 43B were paid before the return date, how much depreciation it claimed and on what. Clause 34 asks whether tax deductible at source was deducted and deposited on time, and whether the quarterly statements were filed. The Bhosari tool-room's ₹12,000 would have surfaced there in any case, nine months later and in front of a stranger. The report is due one month before the return, which for most companies means 30 September. Failure attracts a penalty under Section 271B of half a per cent of turnover, capped at ₹1,50,000. Modest, as tax penal-

ties go. The real cost is that a missing 3CD makes the return look defective, and Section 139(9) allows the department to treat it so.

The second report concerns **transfer pricing**, the prices at which related companies deal with each other. Section 92 requires that any income arising from an international transaction between associated enterprises be computed at arm's length, meaning the price that unrelated parties would have agreed. The concern is plain enough. A subsidiary in Pune that buys components from its parent in Stuttgart at an inflated price moves profit out of India without anyone breaking a contract. Section 92BA extends the rules to specified domestic transactions above ₹20 crore. Section 92D and Rule 10D require contemporaneous documentation: the functions each party performs, the risks it bears, the method chosen, and the comparable companies used to test the price. Section 92E requires an accountant's report in Form 3CEB, due 31 October, one month before the extended return date of 30 November.

I had a client in Hadapsar, the Indian subsidiary of a German pump maker, whose finance controller once told me the group's pricing was 'decided in head office, madam, we just receive the invoice'. That is precisely the sentence the documentation exists to replace. The Act does not require the Indian company to set the price. It requires the Indian company to justify it. Where documentation is not kept, Section 271AA charges 2 per cent of the value of each international transaction. Where the officer asks for documents and they are not produced, Section 271G charges another 2 per cent. Where the 3CEB is not filed at all, Section 271BA adds ₹1,00,000. Groups with consolidated revenue above ₹500 crore and international transactions above ₹50 crore also file a master file in Form 3CEAA, describing the whole group's business to the Indian tax administration.

The Hadapsar company's 2019–20 transactions with its parent were worth ₹63 crore. Its benchmarking study, when the trans-

fer pricing officer asked for it in 2022, used eleven comparable companies. Four had been chosen in Germany. The officer rejected all four, and the adjustment ran to ₹4.1 crore.

From 1961 to 2025: What the New Act Renumbers and What It Leaves Alone

Every section cited so far in this chapter has a retirement date. The Income-tax Act, 2025 received presidential assent on 21 August 2025 and takes effect from 1 April 2026. The Income-tax Act, 1961, amended in nearly every Finance Act for sixty-four years until its numbering had sprouted sections such as 115BAA and 194-IA, will then stop governing new years. It will continue to govern old ones. The law here is still settling: the rules and forms under the new Act were in draft as at 1 January 2026. I state the position once and leave it there.

The largest conceptual change is a single phrase. The 1961 Act taxed the income of a 'previous year' in the following 'assessment year', a pairing that has confused every first-year commerce student since Nehru. The 2025 Act replaces both with the **tax year**, which for a company is the financial year itself. Income earned in 2026–27 is taxed for tax year 2026–27. Nothing about the money changes. The label stops misleading people.

The rest is mostly renumbering and consolidation. The new Act is shorter, with 536 sections arranged in twenty-three chapters, and it moves much of what used to be provisos and explanations into tables. Tax deduction at source, scattered across more than thirty sections from 192 to 196D, now sits largely in Section 393, with the rates set out in tabular form. Tax audit, which practitioners have called '44AB' for so long that the number became a noun, becomes Section 63. Clients will go on saying '44AB' for a decade. I expect to correct them about once a quarter and then give up.

Substance is what the Act leaves alone, and it leaves most of it alone. The company still deducts tax when it pays a contractor and deposits it by the seventh of the following month. It still files quarterly statements, still pays advance tax in four instalments due on 15 June, 15 September, 15 December and 15 March, and still obtains a tax audit report before the return. Arm's length remains the test for transactions with associated enterprises, and the documentation still has to exist before the officer asks for it. The CBDT has described the exercise as simplification without change of policy. Read against the old text, that description is broadly accurate, though 'broadly' is the word a practitioner should keep in mind when a familiar clause turns out to have been redrafted.

The practical burden is that for some years every company will run two numbering systems at once. Returns for 2025–26 will be filed in 2026 under the 1961 Act. TDS for April 2026 will be deducted under the 2025 Act. A notice about 2023–24 will cite the old sections; a notice about 2026–27 will cite the new. The compliance calendar does not care about the renumbering. The person who drafts replies to notices has to keep both statutes open on the desk, and I have already bought a second bookstand.

The Hadapsar subsidiary's appeal against the ₹4.1 crore adjustment was filed before the Dispute Resolution Panel in 2023 under Section 144C of the 1961 Act. It will be decided under that Act whatever happens on 1 April 2026. Its controller rang in January to ask whether the new law helped him. It did not. And none of it touched the tax his company charged on every pump it sold in Maharashtra, which has run since 1 July 2017 on a different statute, through a different portal, on a monthly clock of its own.

CHAPTER 7

One Nation, Many Returns: Goods and Services Tax

A Shop in Shahupuri

Shirting fabric travels about thirty kilometres from the powerloom sheds of Ichalkaranji to the wholesale lanes of Kolhapur, and for most of the last century the tax on it travelled with it more or less by rumour. A trader I advise, who sells suiting and shirting from a narrow shop in Shahupuri, remembers paying octroi at the city limits, Maharashtra VAT on his sales, and a central excise duty that someone upstream had paid and that he could never quite see. In October 2023 he received a notice from the state GST office proposing to reverse ₹3,12,000 of input tax credit he had claimed in 2021–22. He had paid every rupee of that tax to his supplier. The supplier had not paid it to the government. Under the law that replaced octroi and VAT, that was now his problem too.

The reasons are structural.

Three Taxes on One Invoice

Goods and Services Tax began on 1 July 2017, after the Constitution (One Hundred and First Amendment) Act, 2016 gave Parliament and the state legislatures concurrent power to tax the same supply under the new Article 246A. That concur-

rency is the source of most of the confusion. GST is three taxes collected through one portal and computed on one invoice.

When the seller and the buyer are in the same state, the supply is intra-state and attracts Central GST under the Central Goods and Services Tax Act, 2017 and State GST under the Maharashtra Goods and Services Tax Act, 2017, in equal halves. Fabric taxed at 5 per cent carries 2.5 per cent CGST and 2.5 per cent SGST. When goods cross a state line, the supply is inter-state and attracts a single Integrated GST under the Integrated Goods and Services Tax Act, 2017, which the Centre collects and later apportions to the consuming state. The test is the place of supply, worked out under Sections 10 to 13 of the IGST Act, and the physical route is not always the deciding factor. A Kolhapur trader who invoices a buyer in Belagavi, eighty-odd kilometres south across the Karnataka border, charges IGST. The same bale sold to a tailor in Sangli carries CGST and SGST.

Who Must Register

Section 22 of the CGST Act requires registration once aggregate turnover in a financial year crosses a threshold. For a supplier dealing only in goods in Maharashtra, that line is ₹40 lakh. For services it is ₹20 lakh. Section 24 then removes the threshold altogether for certain people, among them anyone making inter-state supplies of goods, casual taxable persons and those selling through e-commerce operators who collect tax at source. A weaver with ₹15 lakh of turnover who sends a single consignment to Surat must register.

Registration is by state, against the business's PAN, through Form GST REG-01. The result is a fifteen-character GSTIN whose first two digits name the state. Maharashtra's is 27. A company with a factory in Chakan and a depot in Hosur holds two registrations, files two sets of returns and is, for GST purposes, two persons. Section 25(4) says exactly that, and I have watched fi-

nance controllers refuse to believe it until the second set of notices arrived.

The Shahupuri trader registered on 1 July 2017, the first day it was possible. His GSTIN began with 27. So did his supplier's, issued the same week, from an address in Ichalkaranji that by 2023 belonged to a mobile repair shop.

The Return Cycle

The design rests on a simple idea that the portal enforces with some rigidity. The seller declares the sale first, and the buyer's claim follows from that declaration. Everything else in the return cycle hangs off that order.

The seller's declaration is GSTR-1, the statement of outward supplies required by Section 37 of the CGST Act. It lists every invoice issued in the period: invoice by invoice for sales to other registered businesses, and in summary for sales to consumers. A monthly filer submits it by the 11th of the following month. A business with aggregate turnover up to ₹5 crore may opt into the Quarterly Return Monthly Payment scheme, file GSTR-1 by the 13th of the month after the quarter, and upload its business-to-business invoices in the intervening months through an optional Invoice Furnishing Facility, so that its customers are not kept waiting.

GSTR-3B is the return that actually discharges tax. It is filed under Section 39, and it summarises outward liability, claims input tax credit and sets one against the other. The difference is paid in cash from the electronic cash ledger. Monthly filers file by the 20th. Quarterly filers in Maharashtra file by the 22nd of the month after the quarter and pay tax in the first two months by the 25th through challan PMT-06. Late filing attracts a fee of ₹50 a day (₹20 for a nil return), subject to caps, and unpaid tax carries interest at 18 per cent a year under Section 50.

Between those two returns sits GSTR-2B. It is a statement the portal generates on the 14th of each month from the GSTR-1s of

everyone who sold to you. It is not filed. It is read. From 1 January 2022, Section 16(2)(aa) has made a supplier's invoice appearing there a condition of claiming credit on it. Since the July 2025 tax period the liability that GSTR-1 carries into GSTR-3B can no longer be edited downward in the return itself. Any correction now goes back through GSTR-1A.

The Shahupuri trader filed monthly, punctually, through a tax practitioner on Station Road. 'Every month 20th, madam, never missed,' he said, and the portal history confirms it. His supplier had filed GSTR-3B for some months of 2021–22 and GSTR-1 for none of them. The trader's return had been right. His supplier's silence made his claim unsupported.

The annual return, GSTR-9, is due by 31 December after the financial year ends. It is currently optional for businesses with turnover up to ₹2 crore. Above ₹5 crore, Section 44 also requires GSTR-9C, a reconciliation statement setting the audited financial statements against the year's returns. Since 1 August 2021 it has been self-certified by the taxpayer rather than certified by an accountant, a change that moved the signature without moving the responsibility. Under amendments made by the Finance Act, 2023 and brought into effect on the portal in 2025, GSTR-1, GSTR-3B and GSTR-9 can no longer be filed once three years have passed from their due dates. I advise clients to treat that as a door that closes, because it does.

Calendar. GSTR-1 for monthly filers is due on the 11th of each following month, and for quarterly filers on 13 July, 13 October, 13 January and 13 April. GSTR-2B becomes available on the 14th. GSTR-3B for monthly filers is due on the 20th, and for quarterly filers in Maharashtra on the 22nd of the month following each quarter, with PMT-06 payments by the 25th in the intervening months. GSTR-9, and where it applies GSTR-9C, is due on 31 December.

When the notice reached Shahupuri, the trader's own 2021–22 GSTR-9 had been filed nineteen months earlier. Table 8A, the

line that compares credit claimed against credit reported by suppliers, showed a difference of ₹3,12,000. Nobody had read it.

Input Tax Credit

Input tax credit is the mechanism that makes GST a tax on value added rather than a tax on every transaction in a chain. A business that pays GST on what it buys may set that amount against the GST it collects on what it sells, and it remits only the difference. Without credit the tax would cascade, stacking on itself at each stage until the final price carried several layers of levy. With credit, each business in theory pays tax only on the margin it adds.

The conditions are in Section 16(2) of the CGST Act, and they are cumulative. The buyer must hold a tax invoice. The invoice must appear in GSTR-2B under clause (aa). The goods or services must actually have been received. The tax charged must, under clause (c), have been **actually paid to the government** by the supplier. The buyer must have filed its own GSTR-3B. Four of these conditions sit within the buyer's control. Clause (c) sits entirely with someone else.

That is the uncomfortable centre of the system. A buyer who pays the supplier in full, by bank transfer, against a proper invoice, has handed over the tax. Whether the tax then reaches the exchequer depends on whether the supplier files and pays. If it does not, the credit is liable to be reversed in the buyer's hands, with interest under Section 50(3) at 18 per cent a year on credit wrongly availed and utilised. Since 1 October 2023, Rule 37A of the CGST Rules has made the reversal self-executing in one respect. Where a supplier has not filed GSTR-3B for an invoice by 30 September following the financial year, the buyer must reverse the credit itself by 30 November, and may reclaim it only if the supplier later files and pays.

Section 16(4) adds a time limit from the other direction. Credit for a year must be claimed by 30 November of the follow-

ing year or the date of the annual return, whichever is earlier. A buyer who waits for a delinquent supplier to correct itself can therefore lose the credit to the calendar as well.

The law here is not fully settled. In Suncraft Energy (2023), the Calcutta High Court held that the department could not deny credit on a mismatch alone without first proceeding against the defaulting supplier, and the Supreme Court declined to interfere in December 2023. Other benches have been less sympathetic to buyers who cannot show that their supplier was genuine. I tell clients that the argument exists and that it costs a writ petition to make.

The Shahupuri trader received his show cause notice in Form DRC-01 in July 2024, under Section 73, for 2021–22. It demanded ₹3,12,000, interest and a penalty of ten per cent of the tax. He brought me the purchase invoices, the bank statements showing each payment to Ichalkaranji, the transport receipts and a photograph of bales stacked in his godown. All of it was real.

'I paid him GST also, madam. Where it went?'

The portal could not tell him. It showed only a supplier GSTIN whose registration had been cancelled suo motu in March 2023 for continuous non-filing, and a last known contact number that rang through to a man who sold phone covers.

E-Invoicing and E-Way Bills

The Shahupuri trader's papers held one document he had not thought to mention. Every consignment of bales from Ichalkaranji, a drive of some thirty kilometres, had moved under an e-way bill generated against the supplier's GSTIN. He had kept the printouts in a plastic sleeve because the truck drivers handed them over. They turned out to be the strongest evidence he had that the goods were real, because the state had recorded their movement at the moment it happened.

That is the purpose of the two systems this section describes. Both shift the state from reading returns after the month ends to

watching transactions as they occur.

The e-way bill comes from Section 68 of the CGST Act, 2017 and Rule 138 of the CGST Rules. Before goods worth more than ₹50,000 are moved, an electronic document must be generated on the e-way bill portal. Part A records the invoice, the parties and the value. Part B records the vehicle. Maharashtra has set its own threshold for movement within the state at ₹1 lakh, so a consignment can need an e-way bill in Karnataka and not need one in Kolhapur, a point that has misled more than one driver at Kognoli. Validity runs at one day for every 200 kilometres for ordinary cargo. Goods found moving without a valid e-way bill may be detained under Section 129, and release requires a penalty of 200 per cent of the tax payable. Officers at a checkpost do not argue about clerical errors for long. They weigh the truck.

E-invoicing reaches further back, to the invoice itself. Under Rule 48(4), a business whose aggregate turnover has exceeded ₹5 crore in any financial year since 2017–18 must report each business-to-business invoice to an Invoice Registration Portal. The portal validates it, returns an Invoice Reference Number and a signed QR code, and only then is the invoice valid. The threshold has fallen in stages, from ₹500 crore in October 2020 to ₹5 crore from 1 August 2023. Once a business has crossed it, the obligation does not lapse when turnover falls. Thresholds, in GST as elsewhere, switch on more readily than they switch off.

The consequence of skipping the step is severe and easy to overlook. Rule 48(5) treats an invoice issued without an IRN as **not an invoice at all**. The buyer holding it cannot claim credit, however faithfully it has paid. Since 1 April 2025 a business with turnover of ₹10 crore or more must also report each invoice within thirty days of its date, after which the portal refuses it. I have watched an accounts executive in Bhosari try to register forty-one invoices on the thirty-second day. The portal rejected every one with the same error code.

The registered invoice then populates the seller's GSTR-1 and Part A of the e-way bill automatically. One entry now feeds three records, which is efficient and also unforgiving, because an error in the first is copied into the other two before anyone checks it.

The Ichalkaranji supplier had never crossed ₹5 crore and issued paper invoices. Its e-way bills were the only trace it had left on a government system. When I set them beside the trader's bank statements, the amounts matched to the rupee, consignment by consignment, for eleven months of 2021–22.

September 2025: The Rate Change and the Return

On 3 September 2025 the GST Council, at its fifty-sixth meeting, agreed to collapse most of the old four-slab structure into two principal rates, 5 per cent and 18 per cent, with a separate rate of 40 per cent for a short list of goods the Council regards as luxuries or harmful. The 12 and 28 per cent slabs largely disappeared. The rate notifications were issued on 17 September and took effect on 22 September 2025, a Monday, which gave businesses five days to change their billing software. Tobacco products were held back at their old rates and cess until the compensation borrowing is repaid. Textiles moved substantially: man-made fibre and yarn came down to 5 per cent, and the ceiling for ready-made garments at the lower rate rose from ₹1,000 to ₹2,500 a piece.

A rate change looks like a pricing matter. For the person who files, it is a dating problem. Section 14 of the CGST Act, 2017 decides which rate applies when a supply straddles the change, by comparing three dates: when the goods were supplied, when the invoice was issued and when payment was received. Where two of the three fall after 22 September, the new rate generally applies; where two fall before, the old one does. An advance received on 15 September against goods delivered and invoiced on 25 September is taxed at the new rate, and the earlier receipt

voucher has to be adjusted. The September 2025 GSTR-1 of most businesses therefore carried the same product at two rates, split at the twenty-first of the month. Those that invoiced on accounting software updated on the twenty-second filed cleanly. Those that updated on the twenty-sixth issued four days of invoices at the wrong rate and then spent October issuing credit notes to correct them.

Input tax credit raised a quieter question. Where an output rate falls but the supply stays taxable, the law does not require credit already taken to be reversed; reversal under Section 17(2) arises only where supplies become exempt. A trader who bought fabric at 12 per cent and now sells it at 5 per cent may, however, find credit piling up faster than output tax can absorb it. That is the inverted duty structure, and the refund route under Section 54(3) exists for it. I advise clients in that position to file the refund claim rather than let the balance sit in the electronic credit ledger as an asset nobody can spend.

The dates that recur are fixed. GSTR-1 is due by the eleventh of the following month for monthly filers and the thirteenth after the quarter for those in the quarterly scheme. GSTR-3B is due on the twentieth for monthly filers; quarterly filers in Maharashtra file by the twenty-second. Rule 37A reversals fall due by 30 November, which is also the last date for claiming the previous year's credit under Section 16(4). GSTR-9 and, above ₹5 crore, the reconciliation statement in GSTR-9C are due by 31 December. A business above ₹10 crore has thirty days to register each invoice.

The Shahupuri trader's appeal did not succeed. The adjudicating officer accepted that the bales were real and confirmed the reversal anyway, because the tax had never reached the government. He paid ₹3,12,000 with interest in February 2025 and verified his suppliers' filing status every month after that. His first invoice at the new 5 per cent rate on synthetic fabric was dated 22 September 2025. When he brought it to me, he had a

second question, about the eleven men who load his trucks at the godown.

'Madam, now they are saying I need ESI also?'

CHAPTER 8

Employer of Record: Labour Codes, Provident Fund and POSH

Twenty-Nine Laws into Four

Until 21 November 2025, the answer to the Shahupuri trader's question depended on which statute you opened first. The Employees' State Insurance Act, 1948 would have told him one thing about his loaders, the Minimum Wages Act, 1948 another, and the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 a third, each with its own definition of who counts as an employee and what counts as a wage. I kept a shelf for them. It sagged.

On that date the Central Government brought into force four codes that between them absorb twenty-nine central labour laws. The Code on Wages, 2019 replaces four: the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The Industrial Relations Code, 2020 replaces three, among them the Industrial Disputes Act, 1947, which generations of Indian lawyers learned to read before they learned to drive. The Code on Social Security, 2020 takes in nine, including the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, the Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961. The Occupational

Safety, Health and Working Conditions Code, 2020 swallows the remaining thirteen, the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 among them.

The arithmetic is tidy. The substance is less so. Most of the old obligations survive inside the new codes, renumbered and occasionally reworded, and an employer who complied with the old law is not suddenly in default under the new one. Some changes are real, though. The most consequential is a single definition of **'wages'** in Section 2(y) of the Code on Wages. It excludes certain allowances but adds back whatever portion of those exclusions exceeds half of total remuneration. For a company that kept basic pay deliberately low and loaded the rest into allowances, provident fund and gratuity are now calculated on a larger number. Fixed-term employees become eligible for gratuity after one year of continuous service rather than five. The codes also introduce single registration and electronic returns in place of the parallel registers that inspectors once counted by the kilogram.

Now the caveat, stated once. Labour sits in the Concurrent List of the Seventh Schedule to the Constitution, and the codes leave much of the working detail to rules framed by the Centre and by each state. At 1 January 2026 those rules are still being finalised, Maharashtra's included. Where the new rules are not yet in place, the transitional provisions preserve the existing rules and notifications to the extent they are consistent with the codes. In practice this means a Pune employer currently reads the new code for the obligation and, quite often, an old rule for the form and the fee. The Act requires compliance with both. I advise clients to keep the old shelf until the state notification arrives, and to stop treating it as history.

None of this changed the answer to the trader's question. The threshold for ESI coverage was ten employees under the old Act and remains ten under the Code on Social Security. He em-

ployed eleven loaders, two counter salesmen and a nephew who kept the accounts.

'Fourteen, madam,' he said, counting on his fingers. 'From when?'

Two Funds, Two Thresholds

The honest answer was: from the day the tenth person joined. ESI coverage attaches to the establishment once it employs ten or more persons, and it does not wait for the employer to notice. The trader worked it out on a calendar behind his counter. The tenth loader had been hired in Shravan of 2023, which made the arrears roughly two years old.

The Employees' State Insurance scheme covers employees whose monthly wages do not exceed **₹21,000**. Above that line an employee falls outside the scheme, though anyone covered at the start of a contribution period stays covered until it ends. Since 1 July 2019 the employer contributes 3.25 per cent of wages and the employee 0.75 per cent, and the employer deducts the employee's share from pay and deposits both. The employee receives medical care at ESIC dispensaries and hospitals, cash benefit during sickness, maternity benefit and, after an employment injury, disablement benefit. Eleven loaders lifting bales of suiting are the people the scheme was drafted for.

Provident fund switches on later, at **twenty employees**. The employer and the employee each contribute 12 per cent of basic wages and dearness allowance; out of the employer's share, 8.33 per cent of wages up to ₹15,000 goes into the Employees' Pension Scheme and the balance into the provident fund account. An establishment below twenty may join voluntarily. The trader, at fourteen, was not required to, and I said so.

'Only ESI then.'

'Only ESI. For now.'

Both deposits fall due by the **15th of the following month**. The provident fund contribution is paid through an electronic

challan-cum-return on the EPFO portal, which also uploads each employee's wages against a Universal Account Number, the twelve-digit number that follows a worker from employer to employer. ESI contributions go through the ESIC portal against each employee's insurance number. Late payment carries interest, and both statutes allow damages on top, which under the old provident fund law ran on a graded scale that rose with the length of delay. The codes carry the substance of these provisions forward. The rules that will set the new rates are among those still awaited.

The feature I find most useful is the one employers think about least. **The employee can see both accounts.** Any worker with a UAN can download a passbook showing every contribution, month by month, with the name of the establishment that paid it. An insured person can look up his ESI contribution history on the ESIC portal or its app. A deduction from salary that never reached the fund is visible to the person it was taken from, and to anyone he chooses to show it to, a labour inspector included.

In 2019 a machinist from a Bhosari press shop came to see me about a home loan. His employer had deducted provident fund for seven years. His passbook showed four years of deposits and then nothing. He had not checked it because the payslip said the money was gone, and it was, just not to the fund. Under the old law, failure to deposit an employee's deducted share attracted prosecution, and the Indian Penal Code treated the retained money as entrusted property. The employer paid within the month.

The machinist kept the passbook printout folded inside the payslip that had lied to him.

The Floor Under the Payslip

Before the codes, minimum wages in India applied only to 'scheduled employments', a list of trades that each state had no-

tified over decades and amended unevenly. A clerk in an office that appeared on no schedule had, strictly, no statutory minimum at all. Section 5 of the Code on Wages removes the list. **Every employee is now entitled to the minimum rate of wages** fixed by the appropriate government, and Section 9 empowers the Centre to set a national floor wage below which no state may fix its own rate. Maharashtra's rates still vary by zone and by skill category, and they are revised through a variable dearness allowance twice a year. The employer must check the current notification. The rate printed on last year's poster in the canteen does not count.

The code also fixes when wages are paid. Under Section 17, monthly wages fall due before the seventh day of the following month. An employee who is removed, dismissed, retrenched or who resigns must be paid within **two working days**. That last rule surprises more employers than any other. In October 2025 the owner of a small architecture practice in Kothrud told me that full-and-final settlement 'takes forty-five days, madam, everybody does like that'. Everybody may well have. The code does not.

Gratuity is the larger sum and the one employers forget to provide for. Section 53 of the Code on Social Security makes it payable when employment ends after five years of continuous service, whether by retirement, resignation, death or disablement. Death and disablement need no minimum service, and fixed-term employees, as noted above, qualify after one year. The formula is fifteen days' wages for each completed year, with a month treated as twenty-six working days. Last year a supervisor retired from the Pimpri moulding unit after twenty-two years, on last-drawn wages of ₹38,000 a month. The arithmetic ran as follows: ₹38,000 multiplied by fifteen, divided by twenty-six, multiplied by twenty-two, came to ₹4,82,308 after rounding. The statutory ceiling is ₹20 lakh. Payment is due within thirty days of the amount becoming payable, and interest runs after

that. The unit had made no provision in its books, which its auditor had remarked on twice. It paid from the overdraft.

Hours sit in the Occupational Safety, Health and Working Conditions Code, 2020. Section 25 limits a worker in an establishment it covers to eight hours a day, with weekly limits and rest intervals, and overtime is paid at **twice the ordinary rate of wages**. Shops, offices and most service businesses in Maharashtra also answer to the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017. That Act requires registration for an establishment with ten or more workers and a simple intimation below that number. It sets daily and weekly limits, a weekly holiday, and conditions on which women may work at night with their consent and with transport and security provided. The state has amended these limits more than once, and I advise reading the version in force on the day, not the one a colleague remembers.

The trader had registered his shop under the 2017 Act in 2018, when he employed seven people. The certificate was still on the wall above the cash drawer, and it said seven.

A Committee Before the Complaint

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is shorter than either code and more often ignored. Section 4 requires **every employer to constitute an Internal Committee by written order** at each office or branch with ten or more employees. The ten counts everyone: permanent, temporary, contract, trainee, intern. The presiding officer must be a woman employed at a senior level. At least two members must come from among the employees, preferably people committed to the cause of women or with experience in social work or legal knowledge. One member must come from outside, from a non-governmental organisation or someone familiar with the issues of sexual harassment. At least

half the committee must be women, and no member may serve more than three years. Below ten employees, or where the complaint is against the employer himself, the complaint goes to the Local Committee constituted by the district officer under Section 6.

The Act wants the committee to exist **before anyone needs it**. A complaint must ordinarily be made within three months of the incident, extendable by another three. The inquiry must finish within ninety days, and the report must follow within ten. These timelines assume the forum is already in place, already trained, and already known to employees. Section 19 requires the employer to display the penal consequences of sexual harassment and the order constituting the committee somewhere conspicuous, and to hold awareness programmes at regular intervals.

In February 2023 the human resources manager of a payments software firm in Hinjewadi Phase 2 telephoned me on a Friday evening. The firm had forty-three employees. A junior developer had emailed a written complaint against a team lead that afternoon, addressed 'To the Internal Committee', and copied the HR manager because she could find no committee to send it to. There was none. The firm had grown from six people to forty in eighteen months, and nobody had thought about it. 'We have a policy, madam. It is in the handbook.' The handbook named a committee of three, two of whom had left.

We constituted the committee by board resolution the following Tuesday, with a written order under Section 4. Finding an external member at four days' notice was the hardest part. A lawyer who served on several committees in Kharadi agreed, after asking pointedly when the order had been signed. The committee was lawful from that date, and the complaint fell within time, so the inquiry could proceed. The complainant's first question to the presiding officer was whether a committee formed after her complaint could be fair to her. It was a reasonable

question. The committee spent its first sitting answering it. I am not sure it fully succeeded.

The Supreme Court took a dim view of this kind of afterthought in *Aureliano Fernandes v. State of Goa* (2023), observing that many bodies had not constituted committees at all a decade after the Act, and directing governments and employers to comply. Section 26 sets a fine of up to **₹50,000** for failing to constitute the committee, doubled on repetition, with possible cancellation of a licence or registration.

The paper trail runs annually. Section 21 requires the committee to prepare an annual report, and Rule 14 of the 2013 Rules specifies its contents: complaints received, complaints disposed of, cases pending beyond ninety days, workshops held, action taken. The employer forwards it to the district officer. A company also states in its board's report, under Rule 8(5)(x) of the Companies (Accounts) Rules, 2014, that it has complied with the provisions relating to constitution of the committee. The Hinjewadi firm's director had signed that sentence in its 2021–22 board's report. Nobody, including the director, had checked it.

Calendar

The employer's dates run on a monthly pulse, with a few heavier beats in the year. Wages for a monthly wage period must be paid before the seventh day of the following month under Section 17 of the Code on Wages, 2019. Provident fund contributions, both the employee's share deducted from salary and the employer's own, are due by the fifteenth of the following month through the electronic challan-cum-return on the EPFO portal. ESI contributions fall due on the same day, the fifteenth, and the contribution periods run from April to September and from October to March. That second detail matters more than it looks: an employee whose wages rise above ₹21,000 during a period stays covered until the period ends.

Maharashtra adds two state obligations of its own. Professional tax deducted from salaries is paid monthly, by the last day of the month, by an employer whose liability in the previous year reached ₹50,000; smaller employers pay once, by 31 March. Labour Welfare Fund contributions are calculated on the June and December payrolls and paid by 15 July and 15 January.

The annual beats are fewer but less forgiving. Statutory bonus, for those eligible, must be paid within eight months of the close of the accounting year, which for most companies means by 30 November. The POSH annual report goes to the district officer once a year; the 2013 Rules fix no date, and district offices in Pune have in my experience asked for it on a calendar-year basis, by the end of January. The board's report carries its sentence on the Internal Committee whenever the accounts are approved. Gratuity has no calendar. It has a trigger, and thirty days to meet it.

One caution belongs here, stated once. The four Labour Codes took effect on 21 November 2025, but Maharashtra's rules under them were still being finalised when I wrote this, and some forms, portals and returns that the old Acts required have neither been abolished nor replaced. I advise clients to keep filing under the old forms until the department publicly says otherwise, and to keep the acknowledgements.

The Kolhapur trader had his answer by the end of the call. He employed eleven loaders, two shop assistants and an accountant, and every loader earned below ₹21,000. The ESI threshold is ten. He had crossed it some time in 2023 without noticing, which is how most people cross it. We registered him the following week, deposited contributions from the date of registration, and wrote to the corporation explaining the period before it. He also amended his Shops and Establishments registration. The new certificate said fourteen.

The Hinjewadi firm filed its first POSH annual report in January 2024. It ran to two pages. Under complaints received it

said one; under complaints disposed of, one; under pending beyond ninety days, nil. Under workshops held it listed three, all in the eleven months after the committee was formed. The director signed it himself this time, after reading it.

The report has one other line, under a heading the Rules do not require. The firm had begun to speak of a public issue within four years, and its chief financial officer had asked me what changes when strangers can buy your shares on a Monday morning and sell them by Tuesday. I wrote his question at the bottom of my file note. The answer is the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and it is not short.

CHAPTER 9

Trading in Public: SEBI and the Listed Company

Who You Are Telling

'Who exactly are we telling?' the chief financial officer asked.

He had come to Prabhat Road in December 2025 with a merchant banker's presentation, forty-odd slides that showed a line climbing from right now to listing in 2027 or 2028. The firm in Hinjewadi had grown since the POSH episode. It now employed a little over seventy people, processed payments for several hundred small merchants, and had two venture investors on its register. His question was the right one, and the presentation did not answer it.

A private company tells things to people who come and ask. The Registrar receives the AOC-4 and MGT-7 once a year. The bank asks for the borrowing resolution when the limit is renewed. A shareholder who wants the minutes of a general meeting may inspect them under Section 119 of the Companies Act, 2013. Every one of these readers is known, few in number, and able to pick up the telephone. Even the investors in the Hinjewadi firm, who had negotiated information rights into their shareholders' agreement, received their monthly management accounts because a contract said so. The statute did not require it.

A listed company tells things to people it will never meet. The moment its shares are admitted to trading on the National Stock Exchange or BSE, its readers become anyone with a demat account and a phone. They are a retired schoolteacher in Sangli, a mutual fund desk in Lower Parel and an algorithm in Singapore. None of them can ask. All of them are pricing the shares, every second the market is open, on whatever the company has said and whatever it has failed to say. **The law's concern shifts from whether the record exists to whether everyone receives it at the same moment.**

That shift is the whole design of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which practitioners call LODR. They are made by the Securities and Exchange Board of India under the SEBI Act, 1992, and they sit on top of the Companies Act rather than replacing it. A listed company still holds its board meetings under Section 173 and its AGM under Section 96. It also takes on a second regulator with a different temperament. The Registrar of Companies is interested in whether a form was filed. SEBI wants to know when you knew, and when you told.

I explained the difference to the CFO with an example from his own business. Suppose the firm's largest merchant, which then accounted for about a fifth of its volume, gave notice to terminate. As a private company, the firm would tell its venture investors at the next monthly call and its bank at the next renewal, and there would be no breach in waiting. As a listed company, the loss of a contract of that size would very probably be a material event under Regulation 30, and the disclosure clock would start when the company learned of it. For an event that originates outside the company, the outer limit is twenty-four hours. For a decision of its own board, it is thirty minutes from the close of the meeting. A week's delay would not be a lapse in courtesy. It would be a week in which some people traded on knowledge that others lacked.

He asked whether a listing on the SME platform, which his bankers favoured, would be gentler. In some respects it would. Regulation 15(2) exempts companies listed on the SME exchange from the corporate governance provisions in Regulations 17 to 27, so there is no mandatory quota of independent directors under LODR and no quarterly governance report, and Regulation 33 allows half-yearly rather than quarterly results. That is the statutory floor for a small listed company, and it is lower. Regulation 30, though, applies in full. The insider trading regulations apply in full. The schoolteacher in Sangli is just as unable to ask.

He closed the presentation at slide nineteen, where the line began to climb.

'So the forty-three days we take to close the books,' he said. 'That becomes a problem.'

It does. Regulation 33 gives a main-board company forty-five days from the end of each quarter to publish its results, and the board must approve them first.

LODR in Practice

Forty-five days sounds generous until it is broken into its parts. The books must be closed, the statutory auditor must carry out a **limited review** (a lighter examination than a full audit, but one that ends with a signed report the company cannot publish without), the audit committee must examine the figures, and the board must approve them. For the fourth quarter, Regulation 33 allows sixty days, because the annual accounts are audited in full. A company that takes forty-three days merely to close has left itself two days for everything else, and auditors do not work at that speed for anyone.

Approval is not the end of it. Once the board has approved the results, the company must send them to the exchange within thirty minutes of the meeting closing. I acted in 2019 for a listed forging company in Chakan whose board rose at 5.40 in

the evening. The company secretary then discovered that the PDF uploaded to the exchange portal was the draft with the auditor's tracked comments still visible in the margin. The corrected file went up at 6.23. The exchange's query arrived the next morning and asked, politely, for an explanation of the forty-three minutes. Nobody at the company had thought of the board meeting as the moment the clock started. Since then I have advised every listed client to keep the final results file open on a second laptop in the boardroom, with the upload screen loaded, before the chairperson reaches the item on the agenda. The regulations do not require this. It is a recommendation.

Governance has its own quarterly return. Regulation 27(2) requires a compliance report on corporate governance within twenty-one days of the end of each quarter, in the format SEBI prescribes. It states whether the board is composed as Regulation 17 demands. That means at least half independent directors where the chairperson is an executive, at least one third where the chairperson is non-executive, and at least one woman director. It also states whether the audit, nomination and remuneration, and stakeholders' relationship committees under Regulations 18 to 20 met, and with what quorum. The report is mostly a grid of yeses. Its value lies in the one cell that says no, because the company has to explain that cell in public, and the explanation remains on the exchange's website for anyone who looks.

Regulation 30 is where most of the difficulty sits. It divides events into two groups in Schedule III. Those in Part A are deemed material, so no judgement is involved. They include acquisitions, changes in directors or auditors, fraud by promoters or key managerial personnel, and the outcome of board meetings on results and dividends. Those in Part B are disclosed only if they are material. Before July 2023 that word was left largely to the company's own policy, and companies interpreted it gen-

erously in their own favour. SEBI's amendment notified on 14 June 2023 set a quantitative test. An event is material if its value exceeds the lowest of two per cent of turnover, two per cent of net worth or five per cent of the three-year average of absolute profit or loss after tax. A company may still treat a smaller event as material under its board-approved policy if a qualitative judgement points that way. It may not treat a larger event as immaterial.

The same amendment fixed the clocks. Thirty minutes applies to a board decision. Twelve hours applies to an event that emanates from within the company without a board decision. Twenty-four hours applies to anything that arises outside it. The merchant's termination notice in the CFO's hypothetical would fall into the last category, and the clock would start when the notice reached someone at the company who could understand what it meant. The regulations do not ask whether that person told the managing director. They ask when the company knew.

The CFO made a note on the back of slide nineteen and turned it over.

'Our largest merchant sends notices to a Gmail address,' he said. 'The founder's. From 2019.'

Insider Trading: Information, Windows and the Database

The Gmail address mattered more than he thought, though not for the reason he feared. A termination notice from the largest merchant is not only a Regulation 30 event. Until the company discloses it, it is **unpublished price sensitive information**, which Regulation 2(1)(n) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 defines as information about a company or its securities that is not generally available and that would, once known, be likely to move the share price materially. The regulation lists the obvious cases: financial results, dividends, changes in capital structure, mergers and acquisitions, and changes in key managerial personnel. An amendment noti-

fied in March 2025, in force from 10 June 2025, lengthened that list so that it now tracks much of Schedule III to LODR. The two sets of regulations were written to meet in the middle. Something that must be disclosed quickly is, until that moment, something nobody may trade on.

Regulation 4 prohibits an insider from trading while in possession of such information. Regulation 3 prohibits anyone from passing it on, except for legitimate purposes, the performance of duties or the discharge of legal obligations. An **insider** is either a connected person (a director, an employee or a professional adviser with access) or anyone else who happens to hold the information. The second limb catches the driver who overheard a call and the brother-in-law who was told at dinner.

'So the founder's inbox is an insider,' the CFO said.

'The founder is. The inbox is evidence.'

The law asks the company to produce that evidence in advance. Regulation 3(5), inserted with effect from 1 April 2019, requires the board of every listed company to keep a **structured digital database** recording the name and PAN of each person with whom unpublished price sensitive information has been shared, along with the nature of what was shared. Regulation 3(6) requires the database to be maintained internally, with time-stamping and an audit trail that prevents tampering. It is the same principle as the edit log in the accounts. A record that can be quietly corrected does not count as a record.

In 2022 I reviewed the arrangements of a listed engineering company in Pimpri. Its database was an Excel workbook that the company secretary updated on Fridays from memory and emailed to himself. It held forty-one entries for the year. The board pack for a single acquisition had gone to more than forty people, counting the bankers, the valuers and two drivers who delivered printed copies to the independent directors' homes. The workbook had no time-stamps and no audit trail, and Friday was four days too late for any trade made on Tuesday.

The company bought software within the month. The regulations do not name a product, and I do not recommend one. They do require that the entry be made when the information moves.

Trading windows are the bluntest instrument. Clause 4 of Schedule B requires the company to close the window for designated persons and their immediate relatives from the end of every quarter until forty-eight hours after the results are declared. The compliance officer may close it at other times, ahead of a merger or a fundraising, for instance. When the window is open, trades above the threshold in the company's code need pre-clearance. A designated person who buys may not sell within six months, since Schedule B prohibits such contra trades. Regulation 7(2) requires promoters, directors and designated employees to disclose trades exceeding ₹10 lakh in a calendar quarter within two trading days, and the company must then inform the exchange within a further two.

Insiders who hold information permanently, such as a founder who always knows how the quarter is going, can trade under a **trading plan** under Regulation 5. This is a schedule disclosed in advance, which cannot be changed and which takes effect only after a cooling-off period. The 2024 amendments reduced that period to 120 calendar days.

The penalties sit in the SEBI Act, 1992 rather than the regulations. Section 15G sets a minimum of ₹10 lakh and a maximum of ₹25 crore or three times the profit made, whichever is higher. In the orders I have read, the profit is usually small. The trades are timed to the day.

The CFO asked how SEBI would ever know about a trade placed from a relative's account in Nashik.

'Phone records,' I said. 'And the database you will have built.'

The BRSR: Reporting What the Balance Sheet Leaves Out

The last obligation on the CFO's slides was the one he had expected least, because it appeared to have nothing to do with money. Regulation 34(2)(f) of LODR requires the top 1,000 listed companies by market capitalisation to include a **Business Responsibility and Sustainability Report** in their annual report. SEBI prescribed its format by circular dated 10 May 2021. It was voluntary for 2021–22 and mandatory from 2022–23. Before that, a smaller group of companies had filed a Business Responsibility Report, which was shorter. I have read several dozen of those, and most of them could have been exchanged between companies without anyone noticing.

The BRSR is harder to fill with boilerplate. It is built around the nine principles of the National Guidelines on Responsible Business Conduct, which the Ministry of Corporate Affairs issued in 2019, and it has three sections. Section A asks for general disclosures: locations, employees by gender and category, subsidiaries, CSR applicability. Section B asks what policies the company has and who on the board is responsible for them. Section C works through the nine principles one at a time. Each has **essential indicators** and **leadership indicators**. The essential ones are compulsory. The leadership ones are voluntary, and here the distinction between the Statutory Floor and the Governance Ceiling appears on the face of the form. Energy consumed per rupee of turnover, water withdrawn, waste generated, the share of permanent workers covered by health insurance and complaints received under the POSH Act are essential. Life-cycle assessments of products are leadership. I advise clients to complete the essential indicators completely and well before they attempt any leadership indicator at all. A board that reports scope 3 emissions and leaves its gender pay data blank has its priorities the wrong way round.

Then there is assurance. SEBI's circular of 12 July 2023 created **BRSR Core**, a subset of key indicators that must be independently assured. A further circular of 28 March 2025 changed the requirement from 'reasonable assurance' to 'assurance or assessment' and pushed the timetable back. The top 150 companies began with 2023–24, the top 250 with 2024–25, and the requirement extends to the top 500 for 2025–26 and the top 1,000 for 2026–27. Disclosures about the company's value chain, meaning its significant suppliers and customers, apply to the top 250 on a comply-or-explain basis from 2025–26. That part is still settling, and I expect it to change again before it becomes mandatory.

'We will not be top thousand for years,' the CFO said.

The cut-off moves every year, because SEBI uses market capitalisation as at 31 March, and a company that enters the list stays bound for three years after it drops out under Regulation 3(2). In March 2024 the thousandth company had a market capitalisation of a few thousand crore. A payments firm that lists well and grows can reach that figure sooner than its board assumes. The data, though, cannot be gathered later. Electricity bills, attrition figures and complaint registers for the reporting year have to exist during that year. The BRSR records only what the company has already written down.

The calendar, for a listed company, adds the following to everything in the earlier chapters. Quarterly financial results go to the exchange within forty-five days of the end of each of the first three quarters under Regulation 33, and audited annual results within sixty days of the year end. The shareholding pattern under Regulation 31 and the corporate governance report under Regulation 27(2) are each due within twenty-one days of the end of every quarter. The trading window closes on the last day of each quarter and reopens forty-eight hours after results. The annual report, with the BRSR inside it, goes to the exchange no later than the day it is dispatched to shareholders. Regulation 30

events have no date at all, only the thirty-minute, twelve-hour and twenty-four-hour clocks.

The CFO photographed the whiteboard. On his way out he stopped at the door with his laptop bag half zipped.

'One more thing, madam. The Singapore fund that came in in 2021. Our earlier CA said there was some RBI form. I don't think anybody filed it.'

CHAPTER 10

Money across the Border: FEMA and Foreign Investment

A Remittance and Its Shadow

Singapore dollars arrived in the payments firm's current account on 19 March 2021, converted at a rate the bank's advice printed to four decimal places. The credit came to ₹11.62 crore. Two days after the conversation at my door, the chief financial officer sent me a folder of scans. It held the remittance advice, the subscription agreement with the Singapore fund, a board resolution of 12 May 2021 allotting compulsorily convertible preference shares, and the PAS-3 return of allotment filed with the Registrar of Companies a fortnight later. The Ministry of Corporate Affairs had been told everything. The Reserve Bank of India, so far as the folder showed, had been told nothing.

His first reaction was relief. The money was clean, the fund was well known, the shares were issued within sixty days of receipt as the rules require, and nobody in five years had complained. 'It is all there only, madam. RBI can see the bank entry.' The bank had certainly reported a foreign inflow. What the Reserve Bank could not see was what the inflow had bought: which Indian company, which instrument, at what price, and whether the price respected the valuation floor that applies

when a resident company issues shares to a person resident outside India.

From Prohibition to Notice

To understand why that gap matters, it helps to know what came before. The Foreign Exchange Regulation Act, 1973 began from prohibition. Any dealing in foreign exchange was forbidden unless permitted, contraventions were criminal, and the burden of proving innocence frequently lay on the accused. It was a statute for a country that counted its reserves in weeks of imports, and in mid-1991 India very nearly ran out.

The Foreign Exchange Management Act, 1999 (FEMA) reversed the default. Its preamble speaks of 'facilitating external trade and payments', and Section 13 makes contraventions civil. The penalty is up to three times the sum involved where that can be quantified, up to ₹2 lakh where it cannot, and up to ₹5,000 for every day a contravention continues. Section 6 separates capital account transactions, which change assets or liabilities across the border (a share subscription, a loan, an overseas subsidiary), from current account transactions such as paying for imports. The capital account is where companies spend most of their FEMA life, and since October 2019 its equity side has been governed by the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, with reporting set out in the companion Mode of Payment and Reporting Regulations of the same year.

The consequence of liberalisation is easy to miss. In most sectors, foreign investment no longer needs anyone's approval in advance. That is the automatic route: the company and the investor agree terms, the money comes in, the shares go out. Permission is granted by default, generally and in advance, to everyone who stays within the published conditions.

So the state learns about the transaction afterwards, and only if someone tells it. Reporting is the price of not having to ask.

The Reserve Bank compiles India's balance of payments and its international investment position partly from these filings, and it checks pricing, sectoral limits and the investor's eligibility against them. A FERA-era officer would have stopped the money at the door. A FEMA-era officer waits for a form, and treats its absence as the contravention.

I have explained this distinction to founders many times, and the response is nearly always the same: if nobody had to approve it, how can it be wrong? The answer is that the approval was conditional, and the filing is one of the conditions. Under the 2019 Regulations, an unreported allotment is an incomplete transaction, however lawful its other parts.

The CFO read the regulation on his phone in my office, scrolling with one thumb. 'So the money is legal,' he said, 'but the shares are not finished.'

'Reported late, they can be finished,' I said. 'Five years late is a different conversation.'

Behind him the window looked onto Prabhat Road, where a courier was arguing with the pharmacist downstairs about a parcel addressed to the wrong floor.

Routes and Caps

The automatic route is general permission, but it is not universal. Schedule I of the Non-debt Instruments Rules lists sectors one by one, and against each it prints two things: a percentage, and a route. The percentage is the sectoral cap, the maximum share of the company that persons resident outside India may hold in aggregate. The route says whether the investment up to that cap may simply happen or must first be approved.

Most of the economy sits at 100 per cent, automatic. Manufacturing does, and so do software, most services and, since 2021, telecom services. Below that the table becomes a map of national anxieties. Defence manufacturing is automatic up to 74 per cent and needs approval beyond it. Private sector

banking is automatic to 49 per cent and needs approval up to 74. Multi-brand retail trading is permitted to 51 per cent, and only with approval. News in print media stops at 26 per cent, and digital news media sits at the same figure, also by approval. A short list is closed altogether, whatever the percentage: lottery, gambling and betting, chit funds, Nidhi companies, the business of real estate (which is different from construction development, which is open), and the manufacture of cigars and cigarettes of tobacco.

The government route is a procedure as well as a permission. Applications go through the Foreign Investment Facilitation Portal maintained by the Department for Promotion of Industry and Internal Trade, which forwards them to the ministry responsible for the sector. The published standard operating procedure contemplates a decision in roughly ten to twelve weeks. In my experience the clock is accurate only for applications that need no clarification, and I have yet to see one of those.

The payments firm's own position was benign. Financial services regulated by a financial sector regulator are permitted at 100 per cent under the automatic route, subject to whatever conditions the regulator itself imposes. A Singapore fund subscribing in 2021 needed no approval on that ground.

There was, however, a second ground, and it is the one founders tend not to know about. On 17 April 2020, in the first weeks of the pandemic and with listed Indian valuations at their lowest, the Department issued Press Note 3 (2020 Series). It is two paragraphs long. An entity of a country that shares a land border with India, or an investor whose beneficial owner is situated in or is a citizen of such a country, may invest only under the government route, in every sector. The countries are China, Pakistan, Bangladesh, Nepal, Bhutan, Myanmar and Afghanistan. Pakistan was already restricted. The note was written about the other six, and principally about one of them. A change in the beneficial ownership of an existing investment

that brings it within the restriction needs approval too. The rule now sits in Rule 6(a) of the Non-debt Instruments Rules.

The note does not define 'beneficial owner'. Practitioners have borrowed thresholds from the money-laundering rules or the Companies Act, regulators have declined to endorse any of them, and the result is that a cautious adviser asks about every layer. A Singapore fund is not a Singapore investor for this purpose until someone has looked through it. Its limited partners matter, and so does the residence of whoever controls its manager. Practice treats Hong Kong as covered, although the note does not name it.

I asked the CFO whether anyone had examined the fund's investor base in 2021, eleven months after the note was issued.

'They gave a side letter,' he said. 'Standard one. Our earlier CA said fine.'

'Does the side letter say where the limited partners are?'

He scrolled for some time. 'It says they comply with all applicable laws.'

That clause appears in nearly every side letter I have read, and it tells an Indian regulator nothing it can verify. He wrote to the fund's counsel in Singapore that afternoon, from my office, and copied me. The question was a single sentence: did any limited partner, or any person controlling the general partner, have a nexus to a country sharing a land border with India as at March 2021?

The reply arrived at 11.40 that night, Singapore time. It ran to four lines, and the second line began with the words 'One LP, approximately 3.2 per cent'.

The FIRMS Filings: FC-GPR, FC-TRS and the annual FLA return

That reply belonged to a later conversation. The question in front of us that week was simpler and more mechanical: what

had the company actually told the Reserve Bank, and when?

Since September 2018, reporting of foreign investment has run through the Foreign Investment Reporting and Management System, known as FIRMS, a portal hosted by the Reserve Bank. A company first registers itself in the Entity Master, then appoints a business user who files the individual forms. The forms do not go to the Reserve Bank directly. They go to the company's authorised dealer bank, the branch that received the foreign money, which checks them and either approves them or sends them back. It is a two-stage process, and most of the delay I see happens at the second stage, because the bank wants documents the founder assumed it already had.

The principal form is FC-GPR, the report of fresh shares issued to a person resident outside India. Regulation 4(1)(b) of the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 requires it within 30 days of the date of allotment. A second clock sits behind that one. The Non-debt Instruments Rules require the shares to be allotted within 60 days of receiving the money, failing which the money must be refunded within the following 15 days. The FC-GPR itself carries the board resolution, a valuation certificate showing that the price was not below fair value, the foreign inward remittance certificate, the bank's KYC report on the investor, and a declaration signed by a company secretary. I have signed a great many of those declarations. The form asks me to confirm, among other things, that the investment complies with the sectoral conditions and the land-border rule. It does not ask whether anyone looked at the fund's limited partners.

FC-TRS covers a different event: the transfer of existing shares between a resident and a non-resident, for example when an angel investor sells to a foreign fund. It is due within 60 days of the transfer or of receipt of the money, whichever is earlier, and the obligation falls on the resident party to the transfer,

not on the company. Founders forget this when they are the sellers. The company's own records then show a non-resident shareholder whom the Reserve Bank has never been told about.

The third filing is annual. Every Indian company that has received foreign direct investment, or made an investment abroad, must file the Annual Return on Foreign Liabilities and Assets by 15 July each year, covering the financial year just ended. The FLA return is filed on its own portal, not through the bank, and may be based on unaudited figures if the audit is not finished. It is the filing most often missed, partly because it is short and partly because it is due in the same fortnight as the first quarter's TDS return, when the accountant is busy with that.

Calendar. FC-GPR falls due 30 days from each allotment to a non-resident, and the allotment itself must take place within 60 days of the money arriving. FC-TRS falls due 60 days from a transfer of shares between a resident and a non-resident, or from receipt of the consideration if that comes earlier. The FLA return is due on 15 July every year for as long as the foreign investment remains on the books.

We logged in to FIRMS together on the CFO's laptop. The Entity Master had been created in February 2021, apparently by the earlier chartered accountant, and then left. The Singapore fund's money had been credited on 4 March 2021 and the shares allotted on 19 March. The FC-GPR had therefore been due on 18 April 2021. There was a draft on the portal, saved but never submitted, with the valuation certificate field blank.

The FLA position was no better. No return had been filed for 2020–21, 2021–22, 2022–23, 2023–24 or 2024–25. Five Julys.

Regulation 5 of the 2019 Reporting Regulations allows a delayed filing to be regularised by paying a late submission fee, a modest formula of ₹7,500 plus a small percentage of the amount involved for each year of delay, provided the delay does not ex-

ceed three years from the due date. The FC-GPR was four years and eight months late.

'So we cannot just pay the fee,' the CFO said.

'Not for this one.'

He closed the draft and looked for a while at the date in the corner of the screen. It read 18/12/2025.

When Filing Is Late: compounding, late submission fees and the cost to a funding round

A delay longer than three years cannot be cured by a fee. The Foreign Exchange Management Act, 1999 treats it as a contravention, and Section 13 makes a contravention punishable with a penalty of up to three times the sum involved where that sum can be quantified. The sum involved here was the whole of the Singapore fund's investment. Nobody seriously expected the Reserve Bank to impose a penalty of that size for an unsubmitted form. The section still permits it, and the next investor's lawyers would read the section, not my expectations.

The route out is compounding under Section 15, now governed by the Foreign Exchange (Compounding Proceedings) Rules, 2024, which replaced the rules of 2000 in September 2024. Compounding means that the contravener admits the contravention and pays an amount the Reserve Bank fixes, and the matter is closed without adjudication. The application goes to the Foreign Exchange Department, carries a fee of ₹50,000, and must be supported by the filing it seeks to regularise. That order of events surprises people. The FC-GPR has to be completed on FIRMS and processed by the authorised dealer bank first, with the bank marking it as filed beyond the late-fee window, and only then can the company ask to be forgiven for its lateness.

The compounding amount follows a published matrix in the Reserve Bank's Master Direction on compounding. It rises with the sum involved and with the length of the delay. For a report-

ing default it is usually a small fraction of the investment. It is never nil, and the Reserve Bank publishes compounding orders on its website, naming the company.

The FLA returns were a separate problem. The portal accepted all five late returns once the CFO's accountant prepared them over the following fortnight, and no fee was demanded. Whether the Reserve Bank will treat five missed Julys as a further contravention is a question I could not answer with confidence, and I told him so. I advised that the compounding application disclose them anyway. A regulator who finds an omission for himself is less generous than one who is told.

The cost that worried the CFO was the round. A Bengaluru fund had issued a term sheet in November 2025 for a pre-IPO round, closing targeted for the end of March 2026. Its diligence questionnaire, which he forwarded to me that evening, had a section headed 'FEMA and RBI Compliance'. Question 7.4 asked for copies of every FC-GPR with the bank's acknowledgement. Question 7.6 asked whether any compounding application was pending or contemplated. Neither question could be answered in a way the fund would like.

'They will put it as condition precedent,' he said. 'Compounding order before closing.'

'Very likely.'

'And how long does RBI take?'

The 2024 Rules contemplate disposal within 180 days of a complete application. A complete application presupposed an acknowledged FC-GPR, and the bank had not yet seen one. March was not realistic. I said so.

The land-border question sat underneath all of this. Press Note 3 of 2020, issued in April 2020, requires government approval where the beneficial owner of an investment is situated in, or is a citizen of, a country sharing a land border with India. It does not define beneficial owner by any percentage, and the government has never clarified whether a 3.2 per cent limited

partner in a Singapore fund is one. The point is unsettled. If the answer is yes, the 2021 investment needed approval it never received, and the problem stops being a late form and becomes the money itself. We drafted the compounding application to disclose the limited partner and leave the characterisation to the Reserve Bank. I do not yet know what it will make of that.

The CFO packed his laptop slowly. At the door he turned back with the diligence questionnaire still open on his phone.

'Section 9 also they have asked,' he said. 'Data protection. Our merchants' KYC, Aadhaar copies, all we are keeping on one shared drive since 2019. Is that also a filing?'

CHAPTER 11

The Widening Circle: Data, Environment and Corruption

Personal Data as a Statutory Duty

No, I told him, it was not a filing, and that was the difficulty. A late FC-GPR can at least be found, dated and confessed. A shared drive holding six years of merchants' Aadhaar copies leaves no draft on any portal. It simply sits there, readable by whoever has the link, until someone asks who that is.

He had read the questionnaire correctly. Its Section 9 was headed 'Data Privacy and Protection'. By coincidence, Section 9 of the Prevention of Corruption Act, 1988 is the provision that makes a company liable for bribes paid on its behalf, and I have since watched two clients confuse the two in the same meeting. That Section 9 comes later.

The statute behind his question is the **Digital Personal Data Protection Act, 2023**, which received presidential assent on 11 August 2023 and then waited more than two years for its rules. The Digital Personal Data Protection Rules, 2025 were notified on 13 November 2025. Read together, they turn something most Indian companies treated as courtesy, or as an IT department's worry, into a duty owed to identifiable people and enforceable by a regulator.

The vocabulary matters. A **data principal** is the individual to whom personal data relates: here, each merchant whose Aadhaar card sat on the drive. A **data fiduciary** is whoever decides why and how that data is processed. A **data processor** handles it on the fiduciary's instructions. The payments firm was a fiduciary. The cloud company hosting its drive was a processor. The Act places the obligations on the fiduciary and does not let it pass them down by contract.

Those obligations are few in number and heavy in practice. Section 5 requires a notice to the data principal setting out what data is collected and for what purpose. Section 6 requires consent that is free, specific, informed, unconditional and unambiguous, given by clear affirmative action, and as easy to withdraw as it was to give. Section 8 requires the fiduciary to keep data accurate where it will be used to make decisions, to take **reasonable security safeguards** against breach, to tell the Data Protection Board of India and each affected person when a breach occurs, and to erase data once its purpose is served. The Rules add the detail. A breach must be reported to the Board without delay, with a fuller account within seventy-two hours, and access logs must be kept for at least a year.

The penalties are set out in the Schedule to the Act. Failure to take reasonable security safeguards can attract a penalty of up to **₹250 crore**. Failure to notify a breach, or to meet the additional duties owed in respect of children, can attract up to ₹200 crore. These are ceilings. Section 33 directs the Board to weigh the nature, gravity and duration of the breach and whatever the fiduciary did to mitigate it.

The timing needs stating plainly, once. The Rules came in three stages. The provisions constituting the Data Protection Board took effect on notification in November 2025. Registration of consent managers follows twelve months later, in November 2026. The substantive duties on fiduciaries, including notice, consent, security, breach reporting and erasure, take effect eigh-

teen months after notification, in **May 2027**. Until then, Section 43A of the Information Technology Act, 2000 and the 2011 rules on sensitive personal data continue to apply. The DPDP Act omits Section 43A, but that omission lands with the later phase. So at 1 January 2026 the floor is the old one, and the new floor has a date.

The CFO heard May 2027 and relaxed visibly.

'Then we have time.'

His Bengaluru investors' lawyers did not think so, and nor did I. A diligence questionnaire asks what a company will look like on the day the law bites, not on the day the form was sent. More practically, nobody can re-paper six years of consent in a fortnight before the deadline. The merchants had given their Aadhaar copies in 2019 for KYC under the firm's agreement with its bank. None of them had been told the copies would stay on a drive shared, as it turned out, with forty-one email addresses.

Eleven of those addresses belonged to people who no longer worked there.

Consent to Operate

The payments firm has no chimney and discharges nothing but email, so the next set of obligations did not concern its CFO. They concern most of my other clients. Pimpri-Chinchwad is a town of drains, stacks and effluent pits, and almost every unit in its MIDC estates holds, or ought to hold, a document from the Maharashtra Pollution Control Board without which it may not lawfully run a single shift.

In April 2022 an electroplating shop in Bhosari MIDC, two brothers and twenty-six workers chrome-plating handles for a scooter manufacturer, received a visit from a Board field officer. The officer wanted to see the consent to operate. The elder brother produced it from a plastic folder. It had expired on 31 March 2021. The renewal application, he explained, had been 'given to the consultant only', and the consultant had stopped

answering his phone during the second lockdown. The officer photographed the folder, the effluent tank and the rinse line, and left. Nine weeks later a show-cause notice arrived, followed by a proposed direction for closure.

The law behind that visit is old by Indian regulatory standards. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 forbids anyone from establishing or operating an industry likely to discharge sewage or trade effluent into a stream, well, sewer or onto land without the previous consent of the State Board. Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 does the same for industries in an air pollution control area, and in Maharashtra that means the whole state. The two Acts produce two consents at two stages. A **consent to establish** must be obtained before construction or installation begins. A **consent to operate** must be obtained before production starts, and renewed before it lapses. The Board in Maharashtra issues a combined consent under both Acts, with conditions on discharge quality, stack height, monitoring and waste disposal attached as a schedule that runs to several pages and is, in my experience, the least-read document in any factory office.

How hard the Board looks depends on category. Under the classification issued by the Central Pollution Control Board in March 2016, industries are graded **red, orange, green or white** by their pollution index. Electroplating is red. Red-category units receive shorter consent periods and closer inspection. White-category units, such as assembly of air coolers or manufacture of chalk, are exempt from consent altogether, though not from the general duty not to pollute. A unit that also generates hazardous waste, as every plating shop does, needs a separate authorisation under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Many owners believe the consent covers it. It does not.

The penalties have changed recently. The Jan Vishwas (Amendment of Provisions) Act, 2023 replaced imprisonment for most contraventions of the Air Act with monetary penalties, and the Water (Prevention and Control of Pollution) Amendment Act, 2024 did the same for most of the Water Act, with penalties now running from ₹10,000 to ₹15 lakh, adjudicated by an officer rather than a magistrate. Prosecution remains for failing to pay. A plating shop owner reading that might conclude the risk has shrunk.

It has not, because the penalty was never the weapon that mattered. Section 33A of the Water Act and Section 31A of the Air Act empower the Board to direct the closure, prohibition or regulation of any industry, and expressly to direct the stoppage or regulation of electricity, water or any other service. No amendment touched those sections. The Board does not need to win a case. It writes to the Maharashtra State Electricity Distribution Company, and the supply is cut.

The brothers were luckier than some. I filed the renewal application with an affidavit explaining the gap, the backlog of consent fees, and fresh analysis reports from an accredited laboratory, and we attended the hearing at the regional office in Pimpri. The Board granted consent in October 2022 with a bank guarantee of ₹2 lakh against compliance with its effluent conditions. The scooter manufacturer's vendor-audit team had, in the meantime, asked for the consent certificate as part of its annual supplier review, and received a photocopy of the expired one with the renewal acknowledgement stapled behind it.

The younger brother still has the closure notice. He keeps it pinned above the rectifier, next to the electricity bill.

The Reporting Entity

The Prevention of Money Laundering Act, 2002 does not bind every company. It binds a defined class called **reporting entities**, and the first thing to establish for any client is whether it

belongs to that class. Section 2(1)(wa) lists them: banking companies, financial institutions, intermediaries such as stockbrokers and depositories, payment system operators, and persons carrying on a 'designated business or profession'. That last category is the one that grows. The government extends it by notification, and has done so steadily: dealers in precious metals and stones in 2020, real estate agents the same year, virtual digital asset service providers in March 2023.

On 3 May 2023 a notification reached me personally. Practising chartered accountants, company secretaries and cost accountants became reporting entities when, on behalf of a client, they carry out specified financial transactions. These include buying and selling immovable property, managing client money or securities, organising contributions for the creation or operation of companies, and buying or selling business entities. Ordinary filing work falls outside it. The day I helped a Kothrud client purchase a going concern, I fell inside it. I registered on the portal of the Financial Intelligence Unit, India (FIU-IND) that June, and I now keep a register I had not kept in twenty-one years of practice.

What the Act requires of a reporting entity sits in Section 12 and in the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. The entity must verify the identity of its clients and of their **beneficial owners**, meaning the natural persons who ultimately own or control them. Since a March 2023 amendment to Rule 9, the threshold for a company is ten per cent of shares, capital or profits, down from twenty-five. It must keep a record of every transaction. Section 12 then requires both the transaction records and the identity records to be preserved for five years after the transaction or, for identity documents, five years after the business relationship ends. It must also report. A **cash transaction report** goes to FIU-IND by the fifteenth of the following month for cash transactions above ₹10 lakh, or a series of connected ones that together cross it. A **sus-**

picious transaction report goes within seven working days of the entity concluding that a transaction is suspicious. Rule 7 requires a Principal Officer to make those reports, and the 2005 Rules require a Designated Director to answer for the whole system. The law asks for a named person twice over.

In August 2023 a jeweller on Laxmi Road telephoned to ask whether a customer who wanted to pay ₹14 lakh in notes for a wedding set should be refused. Refusal is not what the Act requires. It requires identification, a record, and a report. He had assumed, as many do, that the obligation was to police the customer's morals. It is narrower than that, and more tedious. He had no Principal Officer and no FIU-IND registration. His son was appointed to the role the following week, chiefly because he was the only one in the shop who could operate the portal.

Failures are dealt with by the Director of FIU-IND under Section 13, who may issue a warning, direct compliance, or impose a monetary penalty of between ₹10,000 and ₹1 lakh for each failure. Each unreported transaction counts as a separate failure, and banks have received orders running into crores on that arithmetic. Section 70 makes every person in charge of a company's business liable for its contraventions unless they prove they did not know and took all due diligence.

The payments firm's CFO asked whether any of this applied to him. I told him the honest position. His firm holds no authorisation from the Reserve Bank of India as a payment system operator, so in my reading the statutory duty falls on its partner bank, which passes it down by contract. The bank's agreement, which he had not read since 2019, ran to thirty-one pages. Clause 14.3 required the firm to retain merchant KYC 'in a secure manner, accessible only to authorised personnel'.

Section 9 and Adequate Procedures

Until July 2018 Indian anti-corruption law punished people. The Prevention of Corruption Act, 1988 was written around the pub-

lic servant who took a bribe and, more faintly, the individual who gave one. A company could profit from a bribe paid by its liaison agent and remain, as a legal person, untouched. The Prevention of Corruption (Amendment) Act, 2018, in force from 26 July 2018, changed that with a new Section 9.

Section 9 makes a **commercial organisation** guilty of an offence if any person **associated with it** gives or promises an undue advantage to a public servant, intending to obtain or retain business or an advantage in the conduct of business for that organisation. The organisation need not have known. Its directors need not have approved. An associated person is anyone who performs services for or on its behalf, and the Explanation to the section says the question is settled by all the relevant circumstances, not by the label on the contract. Employees are presumed to be associated persons. Agents, consultants and the man who 'handles the department' are caught by function. The penalty is a fine, with no upper limit stated in the Act.

Section 10 then reaches upward. Where the offence is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer, that individual faces imprisonment of three to seven years and a fine.

There is one defence. Section 9(1) allows the organisation to prove that it had in place **adequate procedures**, in compliance with guidelines to be prescribed, designed to prevent persons associated with it from undertaking such conduct. Note the burden: the organisation must prove it. Note also the gap. As at 1 January 2026 the Central Government has not notified those guidelines, more than seven years after the section came into force. Practitioners, myself included, borrow from the guidance issued under the United Kingdom's Bribery Act, 2010, on which Section 9 was plainly modelled. That is a recommendation drawn from analogy, not a statement of Indian law.

In 2023 a civil contractor in Ranjangaon asked me to look at a single ledger head. It was called 'Liaison Expenses', it ran to

₹6,40,000 for the year, and it was paid in round sums to a former municipal employee who arranged building completion certificates for the contractor's industrial sheds. Nobody in the office could say what the money bought. The proprietor's son, who ran the company day to day, said, 'Madam, everyone in MIDC uses him. Without him file does not move.'

I told him what I tell every client in that position. I could not say what the agent did with the money, and neither could he, and Section 9 does not require him to know. It requires him to be able to show what he did to find out. We terminated the arrangement. The company then wrote down what it should have had: a policy forbidding payments to public servants, a written contract for every agent with an anti-bribery clause and an audit right, a register of gifts and hospitality, a rule that no consultant's fee be paid without an invoice describing the work, and a short training session for the site engineers, signed for. None of it guarantees the defence. All of it is evidence, and evidence is the only form good intentions take in a courtroom.

For the calendar, this chapter adds less by date than by trigger. Consents to operate are renewed before expiry, on the Board's application timelines. FIU-IND cash transaction reports go by the fifteenth of the following month, suspicious transaction reports within seven working days of the conclusion that a transaction is suspicious. Data breaches go to the Data Protection Board as the DPDP Rules require, once those provisions take effect. The anti-bribery register and training are reviewed annually, on a date the company sets for itself, because the law has not set one.

The Ranjangaon policy ran to four pages. The son read it at my desk, turned to the last one, and found the line for a signature beneath the words 'Compliance Officer'.

'Madam,' he asked, 'whose name I should put here?'

CHAPTER 12

Filed on Time: Building a Compliance Culture

The Calendar Assembled

Sixty-one dates fit on a single sheet of A3 paper if the type is set at eight points and nobody minds squinting. I know this because in the first week of January 2026 I printed one for the Hinjewadi payments firm, whose chief financial officer had now been through four chapters of this book in person and wanted, reasonably, to see the whole of it at once. The sheet had four columns: the date, the obligation, the statute, and a fourth headed 'Owner'. The first three I could fill from the law. The fourth I left blank, and that was deliberate.

What follows is that company's year as it stood at 1 January 2026, a private company with just over seventy employees, foreign investment on its books and a listing still only in a merchant banker's slides. A manufacturer would have consents to operate where this firm has none; a jeweller would have FIU-IND reports. The shape holds all the same.

Calendar. Every month, tax deducted at source is deposited by the seventh (for March, by 30 April), GSTR-1 is filed by the eleventh, provident fund and ESI contributions are paid by the fifteenth, and GSTR-3B is filed by the twentieth. Every quarter, TDS returns follow by the last day of the month after the quarter

ends, except the fourth quarter, which is due on 31 May. Advance tax falls due on 15 June, 15 September, 15 December and 15 March. MSME-1 goes in by 30 April and 31 October if any supplier registered as a micro or small enterprise remains unpaid beyond forty-five days. DPT-3 is due by 30 June, and the FLA return to the Reserve Bank of India by 15 July. The tax audit report and DIR-3 KYC for every director fall due by 30 September, which is also the last day for the annual general meeting. AOC-4 follows within thirty days of the meeting and MGT-7 within sixty. The income tax return is due by 31 October, or 30 November if transfer pricing applies. GSTR-9 and GSTR-9C go in by 31 December, and the POSH annual report to the District Officer in January. Four board meetings are held across the year, with no more than 120 days between any two. Event-driven filings sit beside all of this: FC-GPR within thirty days of any allotment to a foreign investor, DIR-12 within thirty days of any change in directors. Breach reporting under the Digital Personal Data Protection Rules joins them when those provisions commence.

Two caveats belong on the sheet itself, and I printed them in red. From 1 April 2026 the Income-tax Act, 2025 replaces the 1961 Act, and the section numbers in the third column change even where the dates do not. The Labour Codes are in force, but Maharashtra's rules are not final, so the provident fund and ESI lines still cite forms that will be renamed.

The CFO read the sheet twice. He counted the rows with the cap of his pen, which I have seen many clients do and none admit to.

'Sixty-one,' he said. 'And this is for a company that has not even listed.'

'This is the floor,' I said. 'Listing adds a second sheet.'

He turned the paper sideways, as if the fourth column might fill itself at a different angle. Then he took the pen and, against the first row, the TDS deposit on the seventh, wrote 'Accounts'.

I crossed it out.

One Name per Obligation

'Accounts is a room,' I said. 'It has four people in it and a kettle. The law does not prosecute rooms.'

He took the point more quickly than most. A department cannot be sent a show-cause notice, cannot sign a declaration and cannot be fined. Section 2(60) of the Companies Act, 2013, which defines the 'officer who is in default', is written entirely in the singular. It names the whole-time director, the key managerial personnel, and, where a company has none, the director or directors the board has specified and who have consented in writing to that specification. Failing any such specification, it names every director. It then reaches further down the organisation, to any person who, under the immediate authority of the board or a key managerial person, is charged with maintaining, filing or distributing records and who knowingly permits a default. The statute does not ask which team was responsible. It asks which person.

So I advise that the fourth column hold a name, and only one. Two names on one row produce the outcome I have watched in a dozen companies: each assumes the other has filed. The CFO wrote 'Mrunal' against the TDS deposit, the accounts executive who already prepared the challans, and then paused at DIR-3 KYC.

'Every director has to do their own,' he said. 'So whose name?'

'The person who chases them,' I said. 'The director signs. Someone has to make sure he signs before the thirtieth.'

That distinction took most of an hour to apply across sixty-one rows. The owner of an obligation does not always perform it. The statutory auditor certifies the tax audit report; the owner is whoever ensures the auditor has the ledgers by July. The owner is the person who will notice first if the date passes and who has the authority to do something about it. By the end the

column held seven names. His own appeared nineteen times, which he did not enjoy, and the founder's appeared four times, against the board meetings, which the founder did not yet know.

Ownership without reporting decays within a year, usually at the first resignation. Here the floor and the ceiling must be kept apart. Section 205 requires a company secretary, where the company has one, to report to the board on compliance with the Act and the rules under it. A listed company's board must, under Regulation 17(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, periodically review compliance reports covering all applicable laws. This private company, with paid-up capital under ₹10 crore, was not yet obliged to employ a whole-time company secretary at all. Anything its board received would be governance ceiling, adopted by choice.

I advise one page, tabled at every board meeting, listing only what fell due since the last meeting, what was filed and on which date, what is late, and the owner's name against each late item. It should not be a colour-coded dashboard. Directors who receive forty green cells learn to stop reading, and Section 2(60)'s reference to knowingly permitting a default was not drafted with tired eyes in mind.

The CFO photographed the sheet before he left, then asked for a clean copy with the fourth column filled.

'Print Mrunal's name larger,' he said. 'She has to see it from the door.'

Decriminalisation without Absolution

The managing director of the Chakan firm, whose Section 454 notice arrived in March 2024, had expected to hear the word 'prosecution'. He heard 'penalty' instead, and for about a week he treated the difference as good news. It was, in part.

The Companies (Amendment) Act, 2019 moved sixteen offences out of the criminal courts and into an in-house process

under Section 454 of the Companies Act, 2013. The Registrar of Companies, acting as adjudicating officer, issues a notice, hears the company and imposes a fixed penalty by order. An appeal lies to the Regional Director within sixty days. The Companies (Amendment) Act, 2020 went further. It removed or converted a second batch of offences and inserted Section 446B, which halves the penalty for small companies, one person companies, producer companies and start-ups, subject to a ceiling of ₹2 lakh for the company and ₹1 lakh for each officer in default. The Jan Vishwas (Amendment of Provisions) Act, 2023 carried the same idea across forty-two central statutes, among them the Air Act and the Environment (Protection) Act, where imprisonment for many procedural contraventions gave way to monetary penalties set by an adjudicating officer. A second Jan Vishwas Bill was introduced in August 2025. As I write it has not been enacted, and I do not know what it will finally contain.

What changed is the mechanism. A criminal complaint needed a prosecutor, a magistrate and a court diary measured in years, and for minor defaults it was rarely worth anyone's trouble. An adjudication order needs a Registrar with a portal that flags overdue filings automatically. The Chakan firm's notice came because the system had already counted the days. When I began practice, a late annual return produced, at most, a letter that might be followed by a complaint that might be heard. Now it produces an order, and the order is uploaded to the Ministry's website under the company's name, where any lender's analyst can find it in under a minute.

What did not change is the list of things that still sit outside the decriminalised zone. Fraud under Section 447 remains punishable with imprisonment of six months to ten years. Section 164(2) still disqualifies directors of a company that has not filed for three continuous financial years, and that consequence was never a fine to be converted: it is a bar. Additional fees under Section 403 still accrue at ₹100 per day for each late form. A pen-

alty paid under Section 454 does not cure the default either. The form must still be filed, the meeting still held. If it is not, the penalty notice is followed by another.

So the price of default is lower per instance and paid far more often. That is my reading, and it is an argument rather than a statute. A company that once calculated that prosecution was unlikely now faces a near-certain penalty, smaller than the fear but larger than the filing fee it saved.

The Chakan managing director understood this at the hearing, when the adjudicating officer read out the amounts for the company and then, separately, for each officer in default by name.

'Separately?' he asked.

'Each officer,' the officer said. 'Please check the spelling on the order.'

Coming Back from Default

Most of my working life has been spent on this part of the subject, though no syllabus ever taught it. Clients rarely arrive before a default. They arrive after the bank, the portal or a notice has told them about one.

The law offers three routes back. They are not interchangeable.

The first is the **condonation scheme**, a time-bound amnesty announced by circular. The Condonation of Delay Scheme, 2018 was notified by the Ministry of Corporate Affairs on 29 December 2017 and opened on 1 January 2018. It allowed a defaulting company that had not been struck off to file every overdue document in one sitting. During the window the disqualified directors' DINs were temporarily reactivated so that they could sign. The company paid the normal and additional fees, then filed Form e-CODS 2018 with a fee of ₹30,000. A struck-off company could not use the scheme directly. It first had to be restored by the National Company Law Tribunal under Section

252 of the Companies Act, 2013. The Companies Fresh Start Scheme, 2020, announced by General Circular No. 12/2020 of 30 March 2020, went further. It waived additional fees altogether for documents filed during the window and granted immunity from penalty for the delay. Both schemes have closed. Nobody can say when the next will open, and I advise no client to plan around one.

The second route is **compounding**. Under Section 441, an offence punishable with fine only, or with fine or imprisonment, may be compounded by the Regional Director or the Tribunal before or after prosecution begins. The company admits the default, pays a sum fixed by the authority and the proceedings end. Two limits matter in practice. Compounding is not available for offences punishable with imprisonment only, or with imprisonment and fine together. Nor is it available for the same or a similar offence committed again within three years. Foreign exchange has its own procedure, the Foreign Exchange (Compounding Proceedings) Rules, 2024, administered by the Reserve Bank. The payments firm's application for its missing FC-GPR went in under those Rules. At the time of writing the order has not been issued. The Bengaluru fund's lawyers have written the order into their conditions precedent, which is the first time I have seen a compounding order treated as a closing document.

The third route is **voluntary disclosure**, and it is the cheapest of the three because it comes before anyone asks. Section 73(5) of the Central Goods and Services Tax Act, 2017 allows a taxpayer to pay tax and interest through Form DRC-03 before a show cause notice is issued. If he does, no notice follows for that amount. The Kolhapur trader could have done this in 2023, the year his GSTR-9 already showed the gap, and saved himself a hearing. The Income-tax Act, 1961 has a counterpart in the updated return under Section 139(8A), introduced in 2022. The Finance Act, 2025 extended its window to forty-eight months

from the end of the relevant assessment year. It charges additional tax at rising rates, from 25 per cent of the tax and interest in the first year to 70 per cent in the fourth. Waiting is priced openly.

All three routes share one condition. The company must first know precisely what it has missed, and the date on which it was missed. The spice-blender's edit log, the trader's Table 8A and the payments firm's unsubmitted draft were each a record of exactly that, kept for years before anyone read it.

A client in Talawade once asked me which scheme gave the biggest discount.

'The one where you file on time,' I said.

'That is not a scheme, madam.'

The Rejection Slip

The carton maker from Bhosari came to see me in January 2026, eight years and four months after the cashier told him the system was not taking his name. He had not come about a default. He wanted to know whether his daughter, who had finished a commerce degree at a college in Akurdi and now ran the factory's accounts, could be appointed a director before the next tender season. She could. Section 152 of the Companies Act, 2013 asks for consent in Form DIR-2, a DIN, and a resolution. It does not ask whether her father approves of her handwriting, though he raised the point.

His recovery in 2018 was less dramatic than his crisis. The dormant company had not yet been struck off, so it was eligible for the Condonation of Delay Scheme, 2018. In the third week of January we filed five years of overdue financial statements and annual returns for an entity that had never sold a carton, a rupee of revenue in any year. Each return reported nothing, and each nil return carried its own additional fee. Then came Form e-CODS 2018 and its ₹30,000. His DIN was reactivated for the window, the condonation came through, and in the same year

he and his cousin applied to have the company struck off voluntarily in Form STK-2. It was closed with its paperwork complete. He told me afterwards that it had cost more to bury than it had ever cost to keep alive. That was very nearly true.

What changed afterwards was not his knowledge of the Act. He still could not tell you what Section 164 contains. What changed was that he wrote the dates down and put a name beside each. His AGM is held in the second week of September. The AOC-4 goes in within a fortnight of it, well before the thirty days allowed, and the MGT-7A follows within days. His DIR-3 KYC is done in July, when the portal is quiet. The paper supplier who received the bounced cheque in 2017 still supplies him, and is paid by the seventh of each month, a practice he adopted that October and has not varied. The calendar hangs on the wall behind his desk, a printed sheet from a Bhosari stationer with the obligations marked in green, his daughter's initials against most of them and his own against the rest.

I asked him once why he files early when on time would do. 'On time is the last day,' he said. 'On the last day the portal is slow.' He was right about the portal.

Before he left in January he opened the top drawer of his desk to show me something, as he has done for every new member of staff since 2018. It was the bank's slip from that Tuesday in September 2017, folded twice and soft at the creases. It bears the branch stamp from Old Pune–Mumbai Road, the amount of ₹3,80,000, and a single line in the cashier's ballpoint, written in the space marked 'Reason':

'Authorised signatory DIN not active. Kindly update.'

About the Author

S. Choudhary writes about the rules that shape everyday business life in India. With Filed on Time, Choudhary sets out to make company compliance understandable to general readers as well as practitioners. The book connects the history of Indian corporate law with the practical obligations that companies face today: incorporation and annual filings, tax, labour, securities, foreign exchange and data protection. Choudhary's approach rests on a simple conviction. Compliance is best understood not as paperwork but as a company's written record, one that others will rely on, so it is worth getting right and getting in on time.