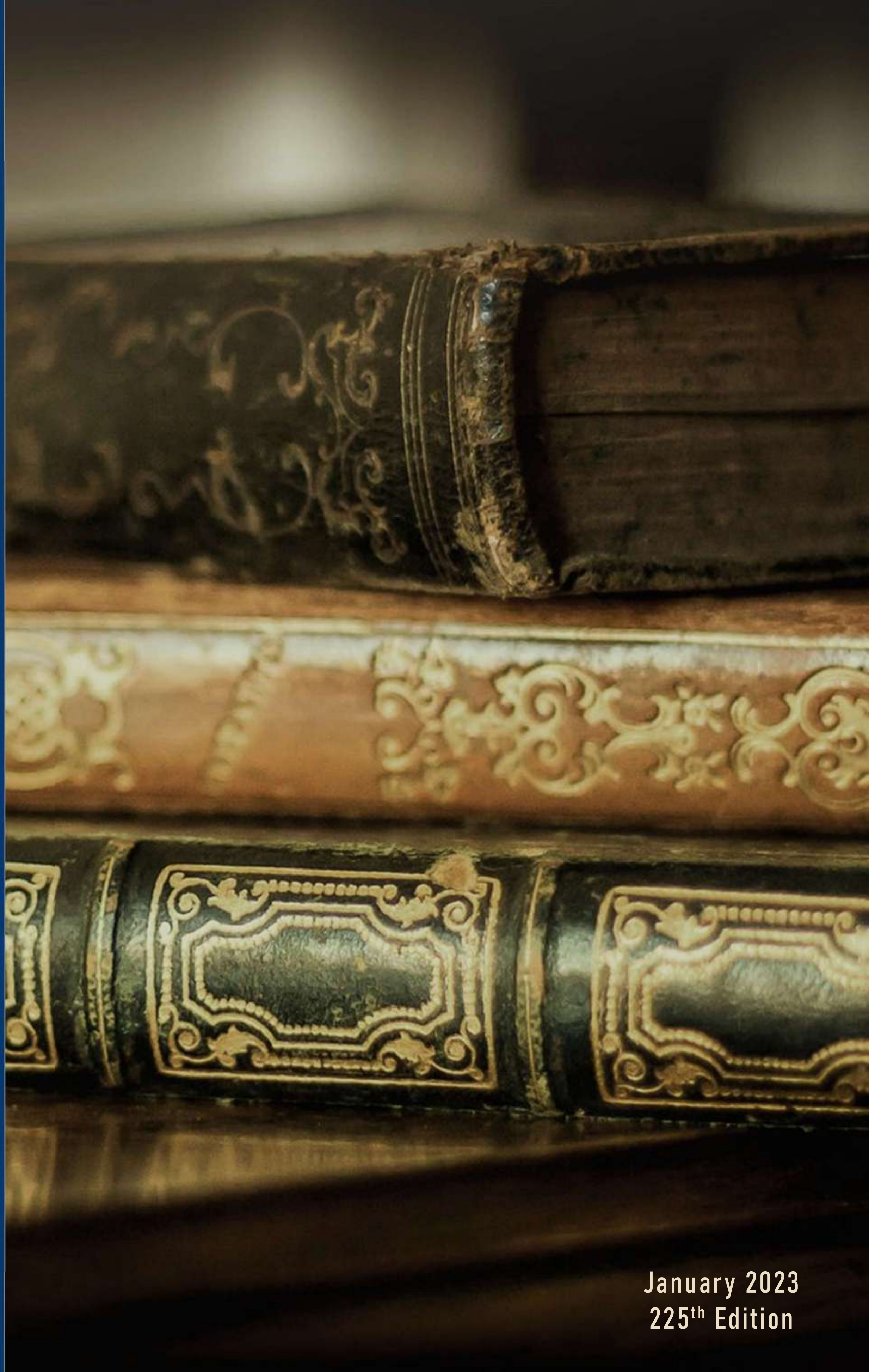
SIRC MYSURU CHAPTER

e-Magazine



January 2023

225th Edition

Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। speak the truth. abide by the law.

Mission

"To develop high calibre professionals facilitating good corporate governance"

Inside this Issue

ARTICLES

COLUMNS

From the Desk of Chairman

CS A HARSHA
CHAIRPERSON
MYSURU CHAPTER

Dear Professional Colleague

A very happy New Year to one and all. I Am excited to share with you all my last write up as the Chairperson of ICSI Mysuru Chapter. It was a great experience serving the students and members of the Chapter. Feelings of gratitude and pride towards the love, affection and the way you all supported me. Am happy to announce that for the first time in the History of Mysore, SIRC Convocation ceremony was held by the Mysore chapter on 8th January 2023. It was a successful and most cherished event of my tenure. The New MC team played a very vital role in the success of the event and each and every member of the new committee took up the role and did their best .Am happy to have received appreciations from the President, Central committee members, SIRC Chairman, Guests and participants. Team efforts paid off….

It was a great experience attending SIRC conference and Inaugural of the Memorial on 6th January at Chennai. Memorial is an e-book which would be circulated to all the members in an e- form which will have the details of the SIRC chapter, Chairperson and the various events organised by them as a memorial of their journey. This was only in the region of SIRC with great efforts taken by our SIRC Chairman Sri CS Shekhar Babu .They also felicitated the Chairpersons of all the last 4 years . Happy delighted to be under such leadership.

I'm very thankful to each and every one of you for your support and encouragement. It makes me believe that SKY is the limit. My journey as a Chairperson had lot of learnings, fun, suspense and finally a happy ending. I enjoyed each and every phase of my journey and have no complaints and no regrets. My heart is filled with lots of fond memories and the feelings of gratitude. My best wishes to the new team. May they reach new heights. My best wishes to all of you, Stay healthy and happy always. MICHAMMI DUKKADAM.(Sorry if I have hurt anybody knowingly or unknowingly).

"AS WE WORK TO CREATE LIGHT FOR OTHERS, WE NATURALLY LIGHT OUR OWN WAY " – Mary Anne Radmecher

THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

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Disclaimer

Chapter Activities

Career Awareness Program

Chapter organized one Career Awareness Program during the month. The detail are as follows.

SI No	Date	College Name	Resource Person	No. of Students
1	02.12.2022	BTL PU College	CS Harsha A	50

Article

A Non Detail Story about Banks

CS Priti Astarag Pattnaik
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> "Apart from deploying in loans the Bank is also required to invest in various Government Bonds, securities, deposit with RBI, with other Bank etc., by which it not only earns income in the form of interest or profit on sale, but also to safe guard the money depositors at the time of adversity, to ensure the repayment to the depositors"

PART 2

Day to Day Operations in a Bank

The Basic of the banking business is taking deposits from depositors and lending it to the borrowers in a profitable way. The Bank earns its profit from the interest earned on the loans less of the interest expended (i.e. paid to depositors on their deposits) and operating expenses.

The business of Banking is not as simple as it looks. Apart from legal and regulatory compliances the Banks need to follow various ratios and contentiously monitor various business parameters. For example, if we take the two parameters that are the deposits and loans, the bank needs to continuously regulate the amount of deposit it should accept and the maximum loan it can lend. If it accepts deposit more than a certain level, it will have to spend more on interest on deposits than the interest earned on loans there by running in to a loss. Therefore, the Bank must continuously regulate its deposit book as well as the loans to ensure that the moneys accepted as deposits are deployed in most profitable way.

Apart from deploying in loans the Bank is also required to invest in various Government Bonds, securities, deposit with RBI, with other Bank etc., by which it not only earns income in the form of interest or profit on sale, but also to safe guard the money depositors at the time of adversity, to ensure the repayment to the depositors. In order to understand this we should know the important ratios and parameters that a Bank follows to run the business smoothly.

CD Ratio or Credit Deposit Ratio

The Bank calculates the Credit Deposit Ratio. There is no specific standard for an ideal CD Ratio. Every Bank tries to maintain a sound CD ratio on regular basis. A low CD ratio implies low credit growth. Whereas a high CD ratio is dangerous for the existence of the Bank if not controlled at the early stage.

CRR- Cash Reserve Ratio

This is a statutory requirement for the Bank to maintain a certain minimum amount of deposit with the Reserve Bank of India. At present it is 4%. That means the bank needs to put an amount equal to 4% of its NDTL i.e. Net Deposit and Time liability, with the Reserve Bank of India. Section 18 of the BR Act speaks about CRR.

NDTL or Net Deposit and Time liability is equal to Demand and time liabilities (i.e. deposits) of a bank less the deposits in the form of assets held with other bank.

NDTL is the sum of Demand Liabilities (e.g. current deposits, cash certificates and cumulative/recurring deposits etc.), Time Labilities (e.g. fixed deposits) and other Demand and time liabilities (e.g. liabilities which are not covered in above two types of liabilities e.g. interest accrued on deposits etc.).

Statutory Liquidity Ratio (SLR)

Statutory Liquidity Ratio or SLR is a minimum percentage of deposits that a commercial bank has to maintain in the form of liquid cash, gold or other securities. Presently banks are required to maintain SLR @18% of the NDTL (Net Demand and Time Liabilities).

The SLR is maintained in the form of cash with Scheduled commercial Banks and Government Securities etc.

SLR and CRR are the two control measures in the hands of RBI for regulating the flow of fund in and out of the market which is directly related to the Credit Growth and Inflation. Section 24 (2A) of Banking Regulation Act, 1949 provides for the SLR. By increasing the SLR & CRR percentage the RBI sucks out the fund from market and by decreasing it allows more funds for lending in the market.

NPA- Non Performing Asset

In simple Non Performing assets are the Bad loans in the Books of a Bank. Each Bank has internal policy for the maximum NPA. The RBI has specified the maximum limit of NPA after which the Bank falls in to Prompt Corrective Action category and Bank is subjected to various restrictions. Bank is required to create provision against NPA in different category assets. The Bank is required to maintain provision for NPA as per IRAC (Income Recognition and Asset Classification) Norm prescribed by RBI.

Gross NPA is calculated as percentage of total NPA to average advances. Net NPA is calculated as Gross NPA less provision created for NPA.

The Provision Coverage Ratio (PCR) indicates Provision made against gross NPA. Higher PCR indicates better financial position of the Bank against contingency situation viz. NPA accounts becoming completely irrecoverable.

Asset Liability Management

In Banking Books Loans and Advances made by the Bank constitute the Assets of the Bank and the Deposits mobilised from public forms the Liability of the Bank. The asset and liability of the Bank are dynamic on day to day basis. The Bank needs to ensure that if has sufficient fund to run the show. That means in a particular day there will be inflow of fund in the form of deposit collection, and loan repayment by customers and outflow of fund through deposit withdrawal and loan disbursement. Hence the bank needs to manage its assets and liabilities to ensure the availability of adequate fund for daily business.

For liquidity management the Bank prepares a statement called Statement of Structural Liquidity. The statement is made to determine the negative mismatch of asset and liability for different time buckets and to ensure that Net Cumulative Negative Mismatch, if any, should not exceed the outflows of the respective time bucket as per the RBI norms as well as internal policy of the Bank. The time buckets taken ranges from 1 day up to 5 years. If the bank finds that the negative mismatch for any particular time bucket is exceeding the prescribed limit then it changes in the product line (mainly deposit products) to match the fund flow for the period.

For example to address the negative mismatch in 1 -3 Years bucket the Bank may increase the interest rate on deposit product with maturity period 1-3 years to attract more deposit for that period to counter the funds outflow. Or the bank may also make investments which mature in 1-3 years to meet the fund requirement.

Another statement called Dynamic Liquidity statement for a future period is prepared by the Bank to estimate the fund position i.e. surplus/deficit for a future period say 3 months. The Bank needs to prepare contingency funding plan keeping in view the fund position as per the Dynamic Liquidity Statement.

The Bank also makes Stress Testing based on simulation or presumptions of extreme fund situations viz. excessive outflow or decreased inflow of fund.

In order to manage in such extreme situations Banks need to have a contingency funding plan on continuous basis.

Risk Management

Risk Management is an important function in any organisation. All banks are required to have a Risk Management Department. A Risk Manager heads the department under direct reporting to Managing Director and Risk Management Committee of the Board. The Risk Management Department does various calculations to asses, manage and mitigate the risk likely to adversely affect the bank's business. Various risks affecting the Bank are Credit Risk, Liquidity Risk and Operational Risk like fraud and embezzlement, Market Risk, Interest Rate Risk, People and Reputation Risk etc. The Reserve Bank of India by regulations ensures the independency and reactiveness of the Risk Management function in a Bank.

Internal Audit

The internal Audit function in a Bank consists of Concurrent Audit and Risk Based Audit. The internal Audit in the bank is an in-house operation usually taken care by the Internal Audit department of the Bank or out sourced audit firm. They audit the transactions and operations of the Bank to ensure that the activities are carried out in compliance with the internal policies if the Banks. While concurrent audit involves immediate audit of the daily transactions, the Risk Based audit involves an audit of the transactions from the Risk angle.

Customer Service and Grievance Redressal

As per the RBI guidelines Banks are required to designate a Grievance Redressal Cell at the head office level. Bank needs to have Customer Service Committees at the Board and Branch Level. There are time lines prescribed in RBI guidelines which the Bank need to follow in addressing customer complains. The suggestions and complaints received by the Bank area reviewed by the Customer Service committees.

Human Resource Development

Being in service industry, human resource is the major source for the very existence and growth of a Bank. In banking industry HR function is the most important function. Every bank focuses on Capacity Building of the staff. For capacity building and improving knowledge of employees in the compliance and regulatory aspects the Banks provide trainings to its staff as an ongoing process. Most of the Banks have in-house training departments. Apart from regular training banks also sponsors employees to attend conference/ trainings/seminars/workshops organised by organisations such as CAB, RBI, NBARD, BIRD, IBA etc.

Operations

Every Bank has Operation function/department, which has vicarious responsibility to see all operational matters are dealt in compliance to the applicable guideline. The department looks in to functions such as KYC, product implementation, some part of IT function, logistics, establishment and infrastructure, Lockers, ATMs etc. Depending on the size of the Bank the scope of functions of this department varies.

Apart from the above major functions the Banks also deal in Foreign Exchange through its Forex department. Many Banks provide Insurance service in association with some insurance company, Mutual Fund related services/ fund manager services, and Demat Services. Most of the Banks offer Safe Deposit Locker facility to the public. Banking Regulation Act, 1949 contains provisions on various matters relating to Safe Deposit Lockers.

Compliances

Each Bank shall have a Compliance officer. The Reserve Bank of India has specified the eligibility norms/experience required for the Compliance officer position. Compliance is an independent function and the Compliance officer should directly report to the Managing Director. The Compliance officer is responsible for complying with the RBI guidelines, Instructions and other regulatory and compliance provisions submitting a number of returns with RBI.

Company Secretary

As per the Dr. Ganguly Committee report, the Company Secretary has important fiduciary and Company Law responsibilities. The Company Secretary is the nodal point for the Board to get feedback on the status of compliance by the organisation in regard to provisions of the Company Law, listing agreements, SEBI regulations, shareholder grievances, etc. Banks should therefore consider appointing qualified Company Secretary as the Secretary to the Board and have a Compliance Officer (reporting to the Secretary) for ensuring compliance with various regulatory / accounting requirements.

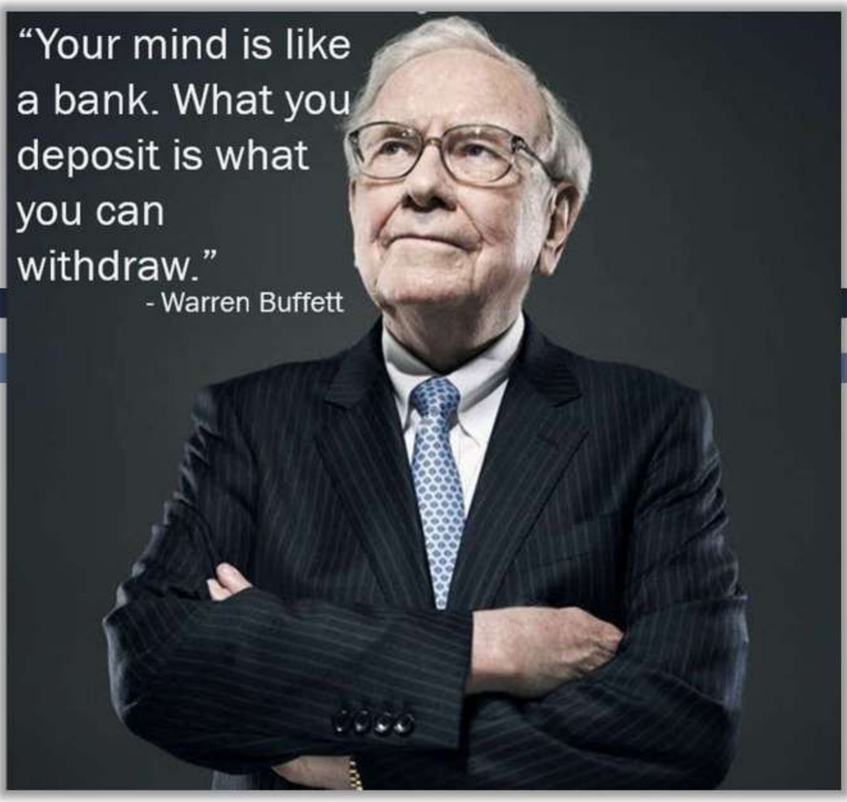
Board of Directors

Section 10 A of the Banking Regulation Act, 1949 prescribes the provisions relating to the constitution of the Board of a Bank. As per the scheme of the act the majority of the directors of the Bank should have experience and knowledge in specified fields and should not have substantial interest(defined in section 5(ne) of the BR Act). A director of the Bank can continue to hold the office for not more than eight years. The spirit of the guidelines does not permit reappointment after such retirement except in exceptional circumstances and in the best interest of the Bank. The Board forms various committees to supervise the delegated functions. The Maximum age limit of any Non-executive Director is 75 years except for few banks, where it is fixed 70 years age. The Board is required to consider the matters contained in the calendar of review prescribed by the Reserve Bank of India which enumerates the list of matters covering whole operations of the Bank.

Managing Director/CEO and Chairman

Like any other company Bank's do have Managing Director &/ Chief Executive Officer. In BR Act, 1949 the word Managing Director has the same definition as in Companies Act. Bank is either managed by a Managing Director or a Full Time Chairman of the Board. If the Bank is having a Managing Director it can appoint a Part time Chairman.

Banking is a very big subject where there are various legal aspects along with procedures and Practices. There are many more aspects, operations in Banking, which is not possible to cover in this article. Nonetheless the information provided here hopefully shall give a non-detail idea about the Banks.



Article

Digital Personal Data Protection Bill, 2022

The Ministry of Electronics and Information Technology (MeitY), a Government Agency, has released the Digital Personal Data Protection Bill, 2022 (hereinafter referred to as DPDP Bill, 2022).

The Supreme Court's (SC) landmark judgment in the case of Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors1 upheld the right to privacy of citizens under article 21 of Indian Constitution. This case was around the violation of biometric information of citizens through the Aadhar card scheme which was used for various other purposes. SC's pronouncement referred to the right of citizens to seek for judicial relief in case of breach of data privacy rights.

Justice Srikrishna Committee was constituted on Data Protection, which proposed draft personal data protection bill, 2018 to the Join Parliamentary Committee (JPC). The JPC shared its report with revised version of law as The Data Protection Bill, 2021 which was later withdrawn. The Digital Personal Data Protection Bill, 2022 is now released.

Currently, there are no legislations governing data protection in India, though some of the provisions of the bill are covered in other legislations / acts like the Indian Contract Act, 1872, Information Technology Act, 2000, Indian Penal Code 1860, Copyright Act and the clauses pertaining to data protection can be found in various sector specific legislations in Health, Banking, and Telecommunication sectors.

As a customary, we all ensure to include Confidentiality clauses in the contracts we enter into.

Practices around the globe:

According to the UNCTAD's report on data protection and privacy legislation worldwide dated 14.12.2021, 71% of the countries have a data protection legislation in place. 9% of the countries are with draft legislation, 15% of the countries with no legislation and 5% of the countries with no data2.

137 out of 194 countries had put in place legislation to secure the protection of data and privacy.

Africa and Asia show different level of adoption with 61 and 57 per cent of countries having adopted such legislations. The share in the least developed countries in only 48 per cent.

"-As per latest amendment, an entity covered under categories specified under sec 10(23C) of Income Tax Act, 1961 may undertake CSR activity on behalf of the Company."

CS Indu H S, *B Com, FCS, MBL*
Company Secretary at Centum Electronics Limited
Email Id: Indu.sundaresh@gmail.com

The data privacy legislations enacted by different countries have paved way for protection of data and any breaches under the provisions provided in the legislations lead to consequences of huge financial penalties. The Bureau of Indian Standards (BIS) has introduced I17428 for data privacy assurance. This standard provides framework to establish, implement, maintain and update data privacy management practices. The International Standards Organization (ISO) 27701 provides the framework for Privacy Information Management System.

As early as 1980, Australia enacted the data privacy act and Germany much before 1970's. Each country's legislation covers in entirety data protection and have adopted rules favorable to all at large. For instance, under the data privacy act of Singapore, the residents have an option to register for do not call registry to avoid unsolicited telemarketing messages/calls. The organizations regularly check to ensure that the numbers to which they are sending telemarketing messages are not registered in the Registry.

In the current times, we evidence several instances of data breach incidents. Information security is paramount. Information is an asset and safeguarding the same by laying appropriate controls is crucial for an organization's success. The data breach incidents occurred have resulted in illegal and unauthorized access to the personal information / confidential information of the clients / customers. The November 2022 ransomware attack at All India Institute of Medical Sciences (AIIMS) compromised personal data of around 40 million patients which included sensitive information was put to sale on dark web. The hackers demanded extortion of money against the data held by them.

Organizations should implement best industry practices in maintaining the data by implementing Anonymization, Pseudonymisation, Encryption and such security procedures to ensure secured business environment. Information is monetized by the hackers causing reputational loss to organizations.

Organizations should conduct periodic privacy impact assessments for gaining proficiency in protecting their data. A Privacy Impact Assessment (PIA) 3 is conducted by an organization to review its own processes to determine how these processes affect or might compromise the privacy of the individuals whose data it holds, collects, or processes.

A PIA is typically designed to accomplish three main goals:

- Ensure conformance with applicable legal, regulatory, and policy requirements for privacy.
- Identify and evaluate the risks of privacy breaches or other incidents and effects.
- Identify appropriate privacy controls to mitigate unacceptable risks.

A privacy impact report seeks to identify and record the essential components of any proposed system containing significant amounts of personal information and to establish how the privacy risks associated with that system can be managed. A PIA will sometimes go beyond an assessment of a "system" and consider critical "downstream" effects on people who are affected in some way by the proposal.

As per the explanatory note to DPDP bill issued by MeiTY, presently, there are over 76 crore (760 million) active internet users (Digital Nagriks) and over the next coming years this is expected to touch 120 crore (1.2 billion). India is the largest connected democracy in the world and is amongst the highest consumers and producers of data per capita amongst the countries.

With the advent of technological advancements, it is all the more important to secure personal data. Setting the context on need for data protection let us know the facets of the DPDP bill introduced.

Purpose: processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process personal data for lawful purposes. Lawful purpose means any purpose which is not expressly forbidden by law.

Applicability: Processing of digital personal data

- **within India where such personal data is collected**

Online and

Offline, in digitized mode.

- Outside India

For profiling of, or activity of offering goods or services to Data Principals within the territory of India

Non applicability:

- Non-automated processing of personal data;
- Offline personal data;
- Personal data processed by an individual for any personal or domestic purpose; and
- Personal data about an individual that is contained in a record that has been in existence for at least 100 years.

The bill is divided into six chapters and one schedule. The key terms included in the DPDP bill include Data, Personal Data, Person, Personal Data Breach, Processing, Data Fiduciary, Data Fiduciary Officer, Data Principal, Data Processor, and Data Protection Officer.

"Data" means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by humans or by automated means;

"Personal data" means any data about an individual who is identifiable by or in relation to such data;

- Person: an individual;
- a Hindu Undivided Family;
- a company;
- a firm;
- an association of persons or a body of individuals, whether incorporated or not;
- the State; and
- every artificial juristic person, not falling within any of the preceding sub-clauses;

"Personal data breach" means any unauthorized processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction of or loss of access to personal data that compromises the confidentiality, integrity or availability of personal data.

"processing" in relation to personal data means an automated operation or set of operations performed on digital personal data, and may include operations such as collection, recording, organization, structuring, storage, adaptation, alteration, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction; both online and offline.

“Data Fiduciary” means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data;

Data Fiduciary Officer: means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data;

“Data Principal” means the individual to whom the personal data relates and where such individual is a child includes the parents or lawful guardian of such a child;

“Data Processor” means any person who processes personal data on behalf of a Data Fiduciary;

“Data Protection Officer” means an individual appointed as such by a Significant Data Fiduciary under the provisions of this Act;

Framework:

Serving notice:

The Data Principal shall be served with an itemized notice seeking consent for processing data. The notice shall contain the contact details of the data protection officer and option to the data principal to access the data maintained by the data fiduciary. The notice can be a separate document or an electronic form, or part of the document through which personal data is collected.

The consent provided by the data principal shall be freely given, specific, informed and unambiguous indication of wishes by which the consent is a clear affirmative action, signifying agreement to process personal data for the purpose mentioned in the notice. The data principal is free to withdraw the consent provided at any time along with right to correct, erase, nominate. The data fiduciaries shall obtain fresh consent from the data principal though consent is obtained prior to the enactment of the act. The data principal has the right to know about personal data including the availability of information at one place the identities of all the Data Fiduciaries with whom the personal data has been shared along with the categories of personal data so shared.

Deemed consent: Data Principal is deemed to have given consent if:

Data principal voluntarily provides personal data

- For the performance of any function under any law, or the provision of any service or benefit to the Data Principal, or the issuance of any certificate, license, or permit for any action or activity of the Data Principal, by the State or any instrumentality of the State;
- For compliance with any judgment or order issued under any law;
- For responding to a medical emergency involving a threat to the life or immediate threat to the health of the Data Principal or any other individual;
- For taking measures to provide medical treatment or health services to any individual during an epidemic, outbreak of disease, or any other threat to public health;
- For taking measures to ensure safety of, or provide assistance or services to any individual during any disaster, or any breakdown of public order;

- For the purposes related to employment, including prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information, recruitment, termination of employment, provision of any service or benefit sought by a Data Principal who is an employee, verification of attendance and assessment of performance;
  - In public interest
  - For any fair and reasonable purpose

Data Fiduciary's obligations

The data fiduciary's obligations are set out in the bill to include implementing appropriate technical and organizational measures to ensure effective adherence with provisions of the act. Protection of personal data by taking reasonable security safeguards to prevent personal data breach. Other obligations include obtaining parental consent in case of personal data relating to children, redressal of grievances, cease to retain personal data once the purpose of collecting the personal information is served.

Notification by Central Government to designate a data fiduciary as significant data fiduciary

Any Data Fiduciary or class of Data Fiduciaries may be designated as Significant Data Fiduciary, on the basis of an assessment of relevant factors, including:

- the volume and sensitivity of personal data processed;
- risk of harm to the Data Principal;
- potential impact on the sovereignty and integrity of India;
- risk to electoral democracy;
- security of the State;
- public order; and
- such other factors as it may consider necessary;

The significant data fiduciary's obligations include to appoint a Data Protection Officer, Independent auditor, conducting of data protection impact assessment and periodic audits.

The data protection officer under GDPR is an employee within the organization who is responsible for understanding the GDPR and ensure organization's compliance. The DPO is the main point of contact for the data protection authority. Typically, the DPO has knowledge of both information technology and law.

Exemptions for transfer of personal data outside India:

- for enforcing any legal right or claim;
- performance of any judicial or quasi-judicial function;
- interest of prevention, detection, investigation or prosecution of any offence or contravention of any law

Other key facts:

The penalty given in the schedule is financial in nature. The disputes under the expanse of the bill are proposed to be concluded under the provisions of Alternate Dispute Resolution.

Data protection Board to be set up by the Central Government.

English or any language specified in the 8th schedule to the constitution of India - Data principal may select either English or any language specified in the 8th schedule. The data fiduciary shall give the option to the data principal the option to access the information in English or any language specified in the eight schedule to the constitution of India. The usage of Pronouns her and she have been used in the bill for an individual irrespective of gender.

The OECD's Guidelines Governing the Protection of Privacy and Trans border Flows of Personal Data (the "Privacy Guidelines") are the cornerstone of the OECD's work on privacy 4

They are recognized as the global minimum standard for privacy and data protection. The Government considered the global best practices, including review of the personal data protection legislations of Singapore, Australia, European Union and prospective federal legislation of the United States of America. The Government has also considered our 1 trillion-dollar Digital Economy goals and the rapidly growing innovation and startup eco-system 5.

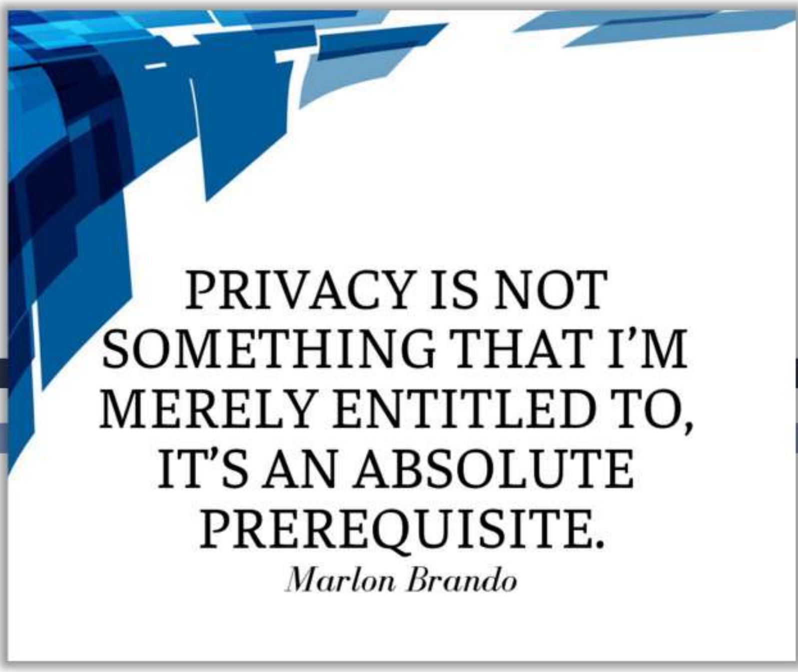
1. https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_26-Sep-2018.pdf

2. https://unctad.org/page/data-protection-and-privacy-legislation-worldwide

3. https://en.wikipedia.org/wiki/Privacy_Impact_Assessment

4. https://www.oecd.org/digital/ieconomy/privacy.htm

5. https://www.meity.gov.in/writereaddata/files/Explanatory%20Note-%20The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022.pdf



Article

Applicability of ESIC Compliance on New Companies

SHORT SUMMARY:

In this editorial author shall discuss about the compliance to be done by every "Newly Incorporated Company with AGILE" with ESI Act. Many questions asked by Companies and Professionals in respect of ESIC Compliances are like:

1. Whether every new company is required to comply with compliances of ESI Act in relation to ESIC?
2. Even if the employee is below the limit of ESI Act, Whether Companies are required to comply with ESIC Compliances?

What is ESI and ESIC:

ESI stands for Employee State Insurance managed by the Employee State Insurance Corporation (ESIC) which is an autonomous body created by the law under the Ministry of Labour and Employment, Government of India.

The ESI scheme was started for Indian workers. The workers are provided with a huge variety of medical, monetary and other benefits under the ESI Act from the contributions made by both the employer and employee towards the ESI Scheme.

Applicability of ESIC:

The ESI scheme is applicable to all factories and other establishments as defined in the Act with 10 or more persons employed in such establishment. The threshold for coverage of establishment is 20 employees in Maharashtra.

The scheme under the act also supports restaurants, motor road transports, newspaper establishments and undertakings, movies and purview theatres, hotels, shops.

Company Law Provisions:

If any new company getting incorporated on MCA Portal (OPC, Private or Public) such company needs to file web form AGILE PRO. In AGILE PRO company have to mandatorily apply for ESIC registration.

Therefore, Every Company getting incorporated in India shall be allotted ESIC registration no. irrespective of number of employees in the Company.

Therefore, every company incorporated in India should have ESIC registration number from the date of Incorporation.

"The question that arise is whether ESIC compliances are applicable to the Company only when it crosses the threshold limit of minimum 10 employees or If the Company having less than 10 employees, whether such company need to comply with the regular returns/ compliances of ESI Act?"

CS Divesh Goyal
Practicing Company Secretary
Email ID: csdiveshgoyal@gmail.com

Question:

Now the question arise is that whether ESIC compliances are applicable to the Company when it crosses the threshold limit of minimum 10 employees. If the Company having less than 10 employees, **whether such company need to comply with the regular returns/ compliances of ESI Act?**

As per the latest circular issued by the ESIC they have mentioned that:

- W.e.f. 15th February, 2022 ESIC has stopped the Registration of New OPC, Private and Public Company on Shram Suvidha Portal of ESIC.
- W.e.f. 15th February, 2022 New Companies shall get the ESIC registration through AGILE PRO form along with Incorporation of the Company.

Note: Practically the newly incorporated Companies will have to comply with the provisions of ESI Act, 1948 when they reach the threshold limit of employment under the ESI Act.

Latest Clarification by ESIC:

I. In case, the companies registered through the MCA portal are found not coverable as per the statutory provisions of the ESI Act, they need not to make compliance
   - For the next 6 months OR
   - Till they reach the threshold of ESIC coverage

Whichever is earlier.

Dormant Status:

II. If Company doesn't reach the threshold in 6 months, it has to login on the ESIC website to further extend the 'Dormant' mode.

III. In case, it does not extend the same, the registration will automatically activate and the company has to start compliances under the ESIC Act.

IV. If it is not followed by the respective employers, necessary actions under the existing provisions of ESI Act may be taken against the defaulting units.

Action to be taken by Newly Incorporated Companies:

1. Initially the status of registration shall activate. Company has to start compliance with ESI Act within 6 months of Incorporation.
2. Within 6 months Company can make registration number dormant by logging in the system in case they are not immediately coverable under ESI act to avoid defaulter action. ** In one go maximum period it can choose is 6 months.
3. Before expiry of 180 days from the application of dormant status, Company has to login on the ESIC website to further extend the 'dormant' mode.

Screenshot of the Screen:

The screen which will appear at the time of initial login, employer have to tick appropriate box option 1 will appear only on the first login. In the below case the date will be editable and employer can extend the dormant status of the filing of registration.

1. Company has not reached threshold limit for compliance under ESI Act. kindly allow relaxation from filing the monthly return of contribution for the following period from to
2. Kindly extend the relaxation for filing of the return of contribution for the following period from to .as the company has not reached threshold limit for compliance under ESI Act.

Conclusion:

After reading of the Circular of ESIC one can opine that it is mandatory for every company incorporated by AGILE PRO to comply with the compliances of ESIC Act until unless company has applied for Dormant Status of the same every 6 month.

Disclaimer: *The entire contents of this document have been prepared based on relevant provisions and as per the information existing at the time of the preparation. Although care has been taken to ensure the accuracy, completeness, and reliability of the information provided, I assume no responsibility, therefore. Users of this information are expected to refer to the relevant existing provisions of applicable Laws. The user of the information agrees that the information is not professional advice and is subject to change without notice. I assume no responsibility for the consequences of the use of such information.*

IN NO EVENT SHALL I SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR INCIDENTAL DAMAGE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE INFORMATION

GST Updates for January 2023

1. GST payment from Supplier side for ITC availment - Insertion of New Rule 37A

Activity: Availment of ITC by the recipient of Goods/Services on the bills issued by supplier

Compliance Check: Payment of corresponding tax on the outward supplies made by a supplier in Form GSTR3B for such Tax period.

Currently, there is no mechanism of reporting such non-payment by the Supplier to the recipient available in Form GSTR2B.

Recipient has a time limit till 30th September from the end of financial year during which the supplies were made by the supplier to ensure, taxes were promptly paid by the supplier in Form GSTR3B

Implication: Failure from the supplier to make the remittance in Form GSTR3B within the above specified period, recipient has to reverse the Input tax credit on or before 30th November from the end of Financial year during which the supplies are made by the supplier.

However, if the supplier make the remittance in any point in time after the above due date, recipient can re-avail the input tax credit

Plan of Action: Till GST Authorities come with a proper mechanism for tracking the remittance of tax by the supplier, alternative methods of verification has to be kept in place. Also, commercial contracts have to be revisited towards the contingency in ITC reversal has to be examined

2. Declaration of higher Tax in GSTR1 compared to GSTR3B – Rule 88C

Activity: Reporting details of outward supplies higher in GSTR1 for a Tax period when compared to the actual output tax paid vide GSTR3B.

This may happen due to:

- Declaring outward supplies of any of the previous tax periods in the current Tax period, where proper Tax has been duly paid in such earlier Tax period
- Erroneous reporting of advances and adjustment of the same on account of issuing Tax Invoice
- Amendments made to outward supplies of earlier tax period in any subsequent tax period resulting in difference between GSTR1 & 3B

“ -Failure from the supplier to make the remittance in Form GSTR3B within the above specified period, recipient has to reverse the Input tax credit on or before 30th November from the end of Financial year during which the supplies are made by the supplier.”

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Article

w.e.f. 26th Dec'22, Proper officer under GST can seek for clarification vide Form GST DRC01B for the short payment of tax in GSTR3B if any for any Tax period on the common portal and also an email shall be sent to the id provided at the time of Registration or as amended from time to time

Registered person has a choice to either pay the short paid tax Through Form GST DRC03 or provide an explanation in Part-B of Form GST DRC01B. Registered person shall have seven days' time to respond back with the above plan of action.

Compliance check:

Any discrepancy between GSTR1 & GSTR3B for any Tax period has to be justified with proper explanation and supporting documents.

Implication: If no proper reply has been filed vide Form GST DRC01B within the stipulated period of seven days, filing of statement for outward supplies in GSTR1 shall not be allowed to be furnished by such Regd. Person.

Also, if the Proper officer is not satisfied with the justification provided in Form GST DRC01B, instead of making the remittance for the difference noted thereof, such officer has a right to make recovery of such tax as per provisions of Section 79.

However, in our view the above recovery process lacks authority without pursuing due process of Demand & Recovery as per Chapter XV of CGST Act, 2017

Plan of Action:

- Ensure that difference between GSTR1 and 3B are minimal to the extent possible
- Proper justification is kept on record for any clerical error noted in any of the Tax period
- Compliance management should be very effective to ensure timely response is provided for any notices received

3. Verification of ITC for FY 2017-18 and FY 2018-19

Circular No. 183/15/2022-GST Dtd: 27th December, 2022

Supplier have failed to furnish correct details of outward supplies in their Form GSTR1, leading to deficiency or discrepancy in GSTR2A

Discrepancy in Form GSTR2A vs Form GSTR3B is being noticed by tax officers during proceedings such as scrutiny/ audit/ investigation etc.,

Above discrepancy flagged as ineligible credit by the tax officers in the course of their Audit/Scrutiny or enquiry

Availability of ITC was subjected to restrictions and conditions specified in Section 16

Scenarios dealt in the Circular:

- Supplier failed to file R1, but filed form GSTR3B – procedure as per Para4
- Both R1 and 3B filed. Supplier failed to report a particular supply – procedure as per Para4
- Supplier has reported the supply as B2C in R1 - procedure as per Para4

- Supplier has reported wrong GSTN of the recipient – Tax officer of the recipient has to verify the availment of such wrong credit if any for reversal

Para4 of the circular:

Proper Officer shall obtain details of all invoices for the gap between GSTR3B and GSTR2A.

Ascertainment of fulfilment of the following conditions –

i. Possession of a tax invoice
ii. Receipt of goods or services
iii. Payment to the supplier

Also ascertain requirement to reverse ITC as per S.17 or S.18 or availment of ITC within Time Limit as per S.16(4) for the availment of Input tax credit by the recipient.

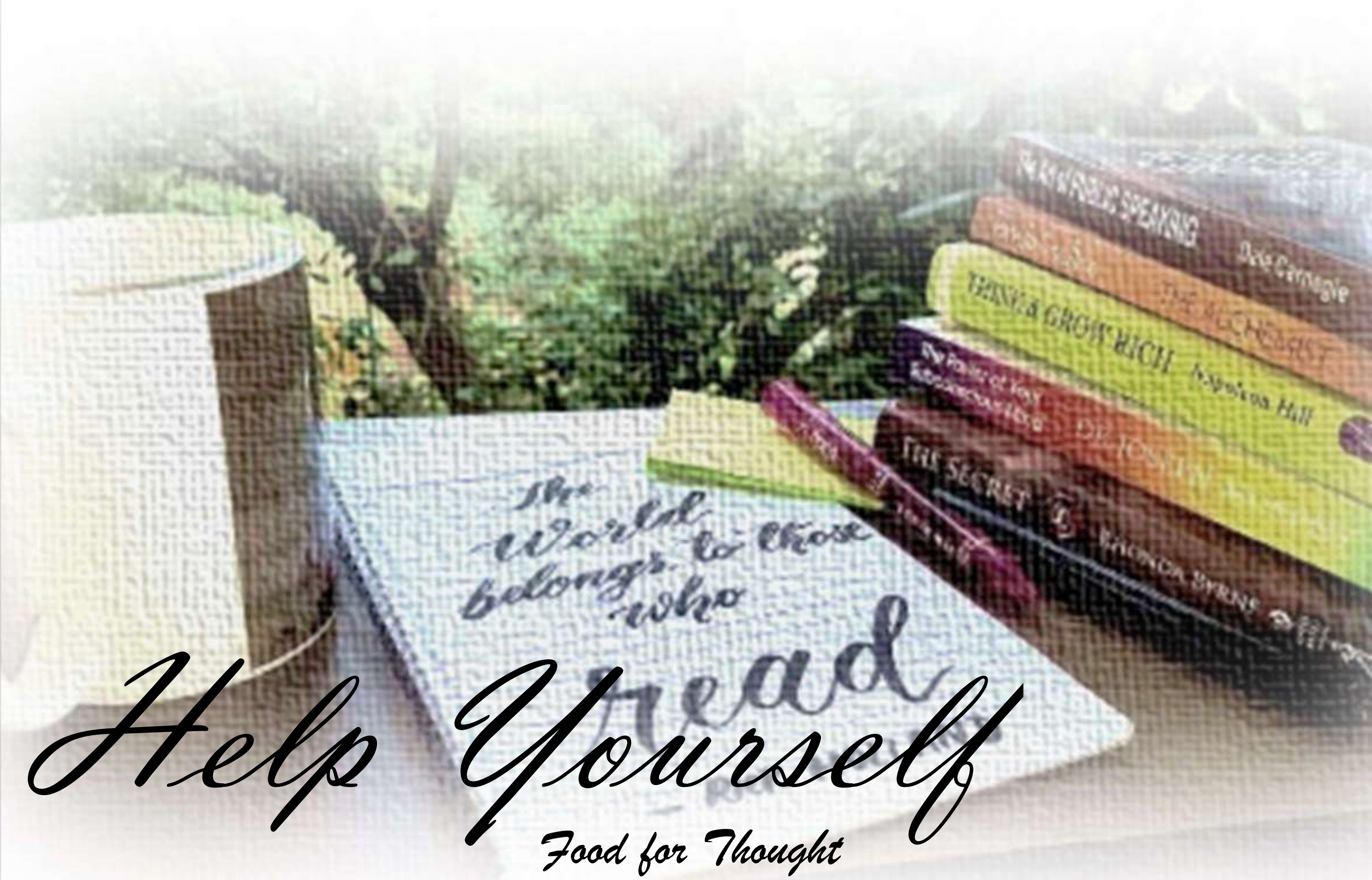
To ascertain payment of tax by the supplier, following action shall be taken by the Officer –

I. If the gap of ITC from a supplier exceed Rs.5lakh, Certificate of a CA/CMA is required to certify the payment of tax on such supply
II. If the ITC is upto 5lakhs, certificate from the supplier is required

Non-applicability of above relaxations for the ITC availed for FY 2017-18 after the due date of furnishing of GSTR3B for Sep'18, since form GSTR2A has been activated after September 2018.

The above Circular has clarified that – ***"clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.***

These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings"



Help Yourself

Food for Thought

You can Achieve More

- Shiv Khera

***Disclaimer**: This article does not endorse any book and is not sponsored by any author or publication. Content shared here is for knowledge and learning purposes only.*

January feels like a fresh start and almost everyone's expectations of themselves, of their dreams and goals are the highest in a year. One way of channelling this brimming energy to take the right actions is through reading books. Books are great friends and teachers, so befriend one asap if you haven't already! So, let's discuss some good picks in this month's edition of 'food for thought.'

If you are here for the first time, this column intends to impart byte sized knowledge from self-help books, biographies, autobiographies and other related genres, relevant specifically to corporate professionals and aspiring professionals. Not every learning that a book enshrines can be fit in here, so writing a summary or a book review is not the aim of this column. The intent is to give you a touch of acquaintance to a book, in every issue of this e-magazine, hoping that it will make you want to grab it and read for yourself. So, help yourself with food for thought.

Firstly, in January, after all the holidays, many of us would be correcting our routine or those of us who already have a sound routine would be trying to enhance it. For both of these purposes and much more,'The 5AM Club' by Robin Sharma is a wonderful choice. The book not only highlights the importance of a good routine in the form of a storyline but also warns us about the detrimental habit of giving in to distractions and losing focus. The book also has soul-stirring quotes throughout that are sure to get you up and going!

'Atomic Habits' by James Clear is a renowned book that talks about the fundamentals of habit building, sticking with them and even breaking bad ones. With excellent facts, examples, practical and realistic techniques, habit formation explained in this book is, in my opinion, very fun, interesting, exciting and uplifting. Furthermore, this book articulates not only about habits but most importantly human behaviours, our environment, influences and more. The book mentions that the beginning of a week, month or year is when we tend to have high energy and spirit, so don't let this pass without benefiting yourself, you'll definitely be thankful to yourself later!

Another Robin Sharma book which I personally feel is a great pick for January is 'The Mastery Manual.' Apart from other takeaways, these books inspired me to start journaling and practicing gratitude. It has many insightful questions to ask yourself and journal on. This has helped me inexplicably in great ways and I'm sure this habit or practice will stick with me for very long. Done in the right manner, with what works for you, it helps you to feel confident, focus on your strengths, enhance your positive attitudes and glow differently!

Now, talking beyond routines and fresh starts, if you feel you need something more bigger and deeper (the aforementioned books also touch upon every essential and deep aspects of life) you can pick 'The Alchemist' by Paulo Coelho, 'Think Like a Monk' by Jay Shetty, 'Life's Amazing Secrets' by Gaur Gopal Das. Further, something absolutely inspiring like 'Wings of Fire,' a biography of and by Dr. A.P.J Abdul Kalam and Arun Tiwari. There's also 'My Journey' by Dr. Kalam again, a shorter but equally inspiring collection of Dr. Kalam's experiences throughout his well-lived and well-served life. Each of these titles have been discussed in the previous articles of this e-magazine, details of which are given at the end of this article. As already mentioned, only a touch of acquaintance to a book is given here, every month, to inspire you to pick it up and read it for yourself.

For reading articles under this column published previously on books aforementioned:

- The 5AM Club by Robin Sharma - January 2021
- Atomic Habits by James Clear -August 2021
- The Mastery Manual- April 2022
- The Alchemist by Paulo Coelho - December 2020
- Think like a Monk by Jay Shetty- December 2021
- Life's Amazing Secrets by Gaur Gopal Das - October and November 2022
- Wings of Fire by Dr. APJ Abdul Kalam and Arun Tiwari- September 2020
- My Journey by Dr. APJ Abdul Kalam - November 2021

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Regulatory Updates

Column

Companies Act, 2013

Updates on Circulars

MCA is in the process of introducing certain company e-Forms in MCA21 version 3.0, further those e-Forms will not be available in MCA21 version-2 from 07.01.2023 to 22.01.2023.

Therefore, considering the above, it has been decided by the Competent Authority to allow additional time of 15 days, without levying additional fees, to the stakeholders, in cases where the due dates for filing of 45 e-forms (forms which are being introduced on MCA21 version 3.0) fall during the period between 07.01.2023 and 22.01.2023.

MCA has released the complete list of e-forms which are being introduced on MCA21 version 3.0.

General Circular No. 01/2023

MCA has decided, considering the representations received, to allow the companies intending to file Form GNL-2 (filing of prospectus related documents) and Form MGT-14 (filing of resolutions relating to prospectus related documents) during 07.01.2023 to 22.01.2023 on the MCA portal may file such forms in physical mode, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee and procure acknowledgement.

Such filing shall be accompanied by an undertaking that once the filing of such form is enabled on the portal, the company shall file the relevant form in electronic form on MCA-21 portal.

General Circular No. 02/2023

SEBI Act, 1992

Updates on Circulars

Management and advisory services by AMCs to Foreign Portfolio Investors

SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/155 specifies the categories of Foreign Portfolio Investors (FPIs), to which the AMCs may provide management and advisory services in terms of SEBI (Mutual Funds) Regulations, 1996.

AMCs may provide management and advisory services to FPIs operating from International Financial Services Centers (IFSC) and regulated by International Financial Services Centres Authority (IFSCA) and falling under the categories specified in the aforementioned SEBI circular.

it has been decided that, AMCs may also provide management and advisory services to FPIs operating from IFSC and regulated by IFSCA, not falling under the categories specified in the above mentioned circular, subject to the following:

- Such FPI shall be allowed to invest in mutual fund schemes other than the schemes in the category of "thematic" as defined in SEBI Circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017.
- For investment in equity and equity derivative securities listed on recognized stock exchanges in India, such FPI shall not take contra-position for a period of six months from the date of purchase or sale of such securities.

SEBI/HO/IMD/IMD-POD1/P/CIR/2023/005

Introduction of future contracts on Corporate Bond Indices

SEBI has decided to permit Stock Exchanges to introduce derivative contracts on indices of corporate debt securities rated AA+ and above. To start with, the Stock Exchanges are permitted to launch future contracts on corporate bond indices.

The stock exchanges desirous of introducing such contracts shall submit a detailed proposal to SEBI for approval, inter alia, providing details relating to underlying corporate bond index, the index methodology, contract specifications, applicable trading, clearing & settlement mechanism, risk management framework, the safeguards to ensure market integrity, investor protection, surveillance systems, etc.

SEBI has released details and conditions of product design and risk management framework for cash settled Corporate Bond Index Future (CBIF), which covers the following points;

- Permitted Corporate Bond Index
- Contract Value
- Trading Hours
- Tenure of the Contracts
- Quotation and Tick Value
- Contract Expiry
- Daily Settlement Price
- Settlement mechanism
- Settlement Day

- Position Limits
- Price Bands
- Risk Management Framework

SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/11

Participation of AIFs in Credit Default Swaps

SEBI (Alternative Investment Funds) Regulations, 2012 has been amended to allow AIFs to participate in Credit Default Swaps ('CDS') as protection buyers and sellers. AIFs may participate in CDS in terms of the conditions as may be specified by SEBI from time to time. In this regard, the following is specified;

Conditions Applicable to Category I, II and III AIFs for buying CDS:

- Category I AIFs and Category II AIFs may buy CDS on underlying investment in debt securities, only for the purpose of hedging.
- Category III AIFs may buy CDS for the purpose of hedging or otherwise, within permissible leverage as specified in SEBI circular no. CIR/IMD/DF/10/2013 dated July 29, 2013.
- Conditions applicable to Category II and III AIFs for selling CDS:
- Category III AIFs may sell CDS, subject to the condition that effective leverage undertaken is within the permissible limits as specified in SEBI circular no. CIR/IMD/DF/10/2013 dated July 29, 2013.
- Further, Category II AIFs and Category III AIFs may sell CDS, by earmarking unencumbered Government bonds/Treasury bills equal to the amount of the said CDS exposure. Such earmarked securities may also be used for
- maintaining applicable margin requirements for the said CDS exposure. Exposure to CDS undertaken in the aforesaid manner shall not tantamount to leverage.
- Total exposure to an investee company, including exposure through CDS, shall be within the limit of applicable concentration norm as specified in AIF Regulations.

SEBI has also given a list other conditions specifically applicable for transacting in CDS.

SEBI/HO/AFD/PoD/CIR/2023/15

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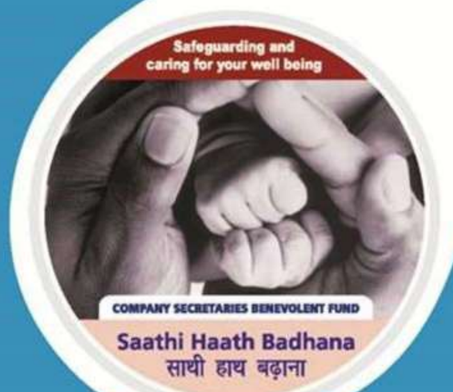
THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CSBF
COMPANY SECRETARIES BENEVOLENT FUND



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

Advantages of enrolling into CSBF

1. To ensure that your immediate family has some financial support in the event of your unfortunate demise
2. To finance your children's education and other needs
3. To ensure that you have extra resource during serious illness or accident
4. Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal (www.icsi.edu) along with Form 'A' available at link https://www.icsi.edu/csbf/home duly filled and signed.

Decide Now! Decide Wise!

Connect with ICSI www.icsi.edu | | Online Helpdesk : http://support.icsi.edu