

July 2020  
195<sup>th</sup> Edition



Mysuru Chapter  
**e-Magazine**

**Vision**

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

**Motto**

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## From the Desk of Chairman

**CS Parvathi K R**  
*Chairperson*  
*Mysuru Chapter*

**Dear Professional colleagues,**

Greetings from the Mysuru Chapter of ICSI!!

Greetings and wishes to all our students of ICSI on the occasion of Students Month 2020. We have got overwhelming response for the various activities scheduled through online platform for academic and skill development. Wish you all the best!

Though the pandemic continued to spread, and we are facing multiple challenges, nothing could hold us on to conduct the activities. With the support of our members and HOD's from various Colleges, we could reach out to many students and members through online platform and conduct career awareness programmes and professional development programmes.

I also extend my heartfelt thanks to our members for attending Annual General Meeting of the Chapter in person and made the event successful.

It is our humble request - "Stay Safe! Keep Healthy! Support to the great extent!"

Feel free to share inputs, feedback and suggestions to continue this journey of growing together!



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Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

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(Under the jurisdiction of Ministry of Corporate Affairs)

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## CAREER AWARENESS PROGRAM

Chapter organized two Career Awareness Programs during the month through online mode. The details are as follows

Sl no	Date	College name	Name of the Speaker	No of Participants
1	08.06.2020	SDM&MMK College for Women	CS Phani Datta D N N. Dhanabal	60
2	20.06.2020	Seshadripuram First Grade College	CS Vijaya Rao N. Dhanabal	99



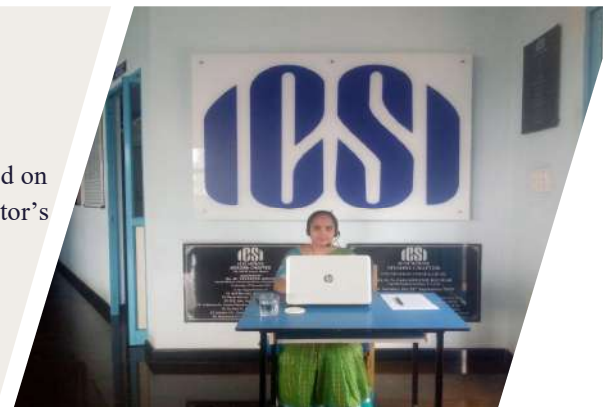
## Webinar on ICSI-Auditing Standards

On 25th June, 2020 Chapter organized a webinar on ICSI- Auditing Standards for the Members. CS Pracheta M., PCS & Past Member of Auditing Standard Board was the speaker for the session. The speaker dealt in detail all the four auditing standards released by the ICSI. The speaker also talked about the Guidance notes on these standards. It was a good interactive session. CS Parvati K R Chairperson welcomed the participants and introduced the speaker. CS Harsha A., Secretary proposed the vote of thanks.



## ANNUAL GENERAL MEETING

The annual general meeting for the financial year 2019-2020 of the Chapter has been conducted on 26th June 2020. Chairperson CS Parvati K R welcomed the members. The activity report, auditor's report & financials of the chapter has been placed before the members for discussion. CS Vijaya Rao, Vice Chairperson proposed the vote of thanks.



# Labour Laws Compliances and Audit



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## **DEFINE: Labour Laws, Compliance and Audit terms:**

**Labour Laws:** Labour Laws means set of rules, guidelines, procedures etc. which deal with the labour and employment related matters which includes wages, pension, insurance of employees and dispute redressal etc. It mediates the relationship between workers, employing entities, trade unions and the government. These Laws came into existence to maintain Industrial and Social relationship between worker and employer.

**Compliance means** “adhering to rules and regulations”. It refers to obeying all the applicable laws, regulations and guidelines for business and corporate management. Compliance is a process to fix responsibility on the shoulder of the Company to maintain transparency and promote Corporate Governance.

**Audit:** Audit refers to a Compliance Check Mechanism to ensure efficient and effective Corporate Governance. It is a process to conduct inspection and examination via verification of information and records maintained by the organization.

## **Labour Law Compliances:**

Labourers are the backbone for every organization and are also covered in the Concurrent List of the Constitution of India. Labour Laws are framed to provide decent working conditions and improved quality of life of workers, ensuring India without child labour in hazardous sectors and enhancing employability through employment services and skill development on a sustainable basis.

## **Importance of Labour Law Compliance**

Organizations in India must carry out Statutory Compliance under various applicable Labour Laws in India. It is a process to conduct due diligence. A compliant entity will promote Corporate Governance, reduce disputes / prosecutions, timely filing of return and maintenance of Statutory Records. Compliance will help to avoid strict penalties specified by the Labour Laws.

## **Compliance Management Framework: A Step towards Compliance Mechanism**

A Compliance Management Framework shall be established by the Organization to ensure Compliance on time without any delay and penalty.

This Framework will help to reduce Non - Compliance Risk via:

Prevent through	Detect through	Respond through
<ul style="list-style-type: none"> <li>• Policies and Procedures</li> <li>• Risk and Assessment</li> <li>• Training</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring</li> <li>• Audit</li> <li>• Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Inspection &amp; Investigation</li> <li>• Communication</li> <li>• And Improvements</li> </ul>

Labour Law compliance in India is mainly focused on safeguarding the protection of the rights of employees in the organization securing the rights of the workers and labour at large. Labour Law Compliance plays a vital role in Corporate governance to keep their businesses safe and secured from any legal prosecution / proceedings.

### Audit under Labour Laws:

Audit, a check mechanism, process to carry out due diligence under labour legislations to examine, detect Non - Compliance and suggest corrective measures for better compliance management. This leads to better Governance and value creation for the organization and to avoid any unwarranted legal actions against the organization and its management.

### Scope of Labour Audit

The scope of Audit under Labour Law is much wider. It should cover all labour legislations applicable to an industry / factory. Under Audit process a thorough check of the company's policies and procedures is required with the goal of preventing prosecutions / lawsuits. Scope of labour law audit will certainly differ from business to business.

The Audit exhaustively covers the Rules and Legislations applicable to the client's industry or business enterprise and entails the following:

- Identification of all legislations governing the functioning of the company with special reference to the concerned business segment.
- Review of prevailing system, practices and level of compliance governing the business segment
- Evaluate, analyse and assess the compliance program in an environment of continually changing needs and emerging risks and lead towards a 100% legally compliant company.
- Produce a comprehensive audit report and gap analysis including risk analysis.
- Implementation of an effective compliance system - provide required guidance and necessary facilities, provide options and recommendations to diminish or eliminate the risk wherever possible in the areas of legal obligations.
- Suggestions for monitoring, self-audits and reporting system as part of MIS.

### Benefits of Labour Audit

#### A. Benefits to the Labour/Employee

- Boost the morale of the workers/employees to a large extent;
- It increases social security of workers/employees;
- It helps to inculcate on workers/employees a sense of belongingness towards their employers;

- It ensures timely payment of wages, gratuity, bonus, overtime, compensation etc of the workers;
- Timely payment of entitlements certainly reduces the absenteeism in the establishment.

### B. Benefits to Employer

- It helps to increase productivity in view of lower absenteeism in the establishments. Higher the productivity, higher will be the profits;
- Employer reputation in the Industry/business world certainly increases;
- Strict compliance of labour legislations is ensured by every establishment, which, in turn, reduce or even eliminate penalties/damages/fines/ that may be imposed by the government;
- Co-operation and good understanding helps to improve labour relations. The Congenial atmosphere is indispensable for good corporate governance;
- It also helps in preventing strikes, lock outs etc.

### How to conduct Audit under Labour Laws:

Let's have a quick look over Audit Process:

Step 1: Understanding of the Business of the Company, Location, Activities etc.

Step 2: Prepare a list of all Labour Laws applicable to the Organization

Step 3: List out the Relevant Checklist for applicable Labour Laws.

Step 4: Need to check basic details related requirement of canteen, creche, rest room etc.

Step 5: Conduct a check on Key appointments like appointment of welfare officer, safety officer, Factory Medical Officer.

Step 6: Find out the responsible officials for Compliance under the Labour Laws.

Step 7: Conduct the audit

Step 8: Examine the documents and verify the information provided by the Company.

Step 9: Seek Clarification, wherever required.

Step 10: Prepare an Audit Report post Compliance Check and send it to the management of the Organization.

### Compliance Overview of some Acts under Labour Laws:

Sl no	Name of the Act(s)	Compliance particulars
1	<b>Factories Act, 1948</b>	<ul style="list-style-type: none"> <li>• Annual returns and half year returns submitted on time with correct details</li> <li>• All story statutory registers are maintained</li> <li>• Appointment of Safety Officer, Welfare Officer, if applicable, and its qualification matching as per the act</li> </ul>



		<ul style="list-style-type: none"> <li>• Canteen, Creche, rest room facilities are available</li> </ul>
2	<b>Contact Labour Act, 1970</b>	<ul style="list-style-type: none"> <li>• First check if this act is applicable to factory and to contractor. General rule say it is applicable for more than 20 contract workers. But it differs from state to state</li> <li>• Principal Employer Registration, all contractors are listed on RC</li> <li>• Contractor have valid License</li> <li>• Contractor have submitted all dues like PF, ESIC, PT, LWF on time.</li> </ul>
3	<b>Payment of Gratuity Act, 1972:</b>	<ul style="list-style-type: none"> <li>• Gratuity are paid to employees who have left the organization after completing the 5 years of service</li> <li>• Company has authorized one managerial personnel in the organization to receive all notice, letter, communication, etc.</li> </ul>
4	<b>Payment of Bonus Act, 1965</b>	<ul style="list-style-type: none"> <li>• Bonus are paid on time. Returns submitted, registers are maintained</li> </ul>
5	<b>Payment of Wages Act, 1936 and Minimum Wages Act, 1948:</b>	<ul style="list-style-type: none"> <li>• All registers are maintained</li> <li>• Payment of Wages are done on time.</li> <li>• Wages are paid above minimum wages.</li> </ul>
6	<ul style="list-style-type: none"> <li>• <b>Provident Fund (PF)</b></li> <li>• <b>Employees State Insurance Corporation (ESIC)</b></li> <li>• <b>Professional Tax (PT)</b></li> </ul>	<ul style="list-style-type: none"> <li>• Company have issued UAN, ESIC card to all employees</li> <li>• All dues paid on time</li> </ul>
7	<b>Industrial Standing Order</b>	<ul style="list-style-type: none"> <li>• Standing orders are certified from Certifying officer</li> <li>• All the provision of standing orders are complied with.</li> </ul>
8	<b>Apprentices Act, 1961</b>	<ul style="list-style-type: none"> <li>• Birth proof of apprentice should be kept</li> <li>• Medical certificate of apprentice by Medical Practitioner is required</li> <li>• Regular attendance registers are required for checking working hours, overtime leave and holidays.</li> <li>• Agreement letter and joining letter is to be kept</li> </ul>

		<ul style="list-style-type: none"> <li>• Stipend statement is requested by the employer</li> <li>• Attendance register should be maintained</li> </ul>
9	<b>Equal Remuneration Act, 1976</b>	<ul style="list-style-type: none"> <li>• Remuneration Slips for some Men and Women working in the Organization</li> <li>• Certified copies of registers as per Form No. D under Rule</li> </ul>
10	<b>Employees Compensation Act, 1923</b>	<ul style="list-style-type: none"> <li>• The mode of payment of compensation by company in case of injury of the employee by accident arising in course of the employment should be disclosed by submitting the required document. For eg. in case of Payment is being made by Cheque the copy of Cheque is Required or any other document through which payment Can be Cross verified.</li> <li>• Register of Notice of Accidents should be maintained</li> <li>• The Documentary Proof of the Reporting document to the commissioner in case of fatal injury in Form E as per Section 10B read with Rule 11</li> <li>• Copy of receiving the compensation by the Commissioner are Required also copies of Form No - A as per Section 8(1) read with Rule 6(1)</li> <li>• Certified copies of Form D is applicable as per Section 8(2) read with Rule 9</li> <li>• Copies of Form K, L, M and copies application submitted to the commissioner. (On settlement of compensation amount in between company and workman, company executed a memorandum of agreement with the workman in Form No. K, L or M, as the case, may be and submitted such agreement along with an application to register it to the Commissioner, as prescribed in Rule 48)</li> </ul>
11	<b>The Child Labour (Prohibition and Regulation) Act, 1986</b>	<ul style="list-style-type: none"> <li>• The copies of sent notice to the inspector is required as per Section 9 (Here the occupier sends notice to inspector whether or not the child is employed or permitted to work)</li> <li>• List of Child Labourers employed under the Act and reasons thereof in a written declaration</li> <li>• Certified copies of Form-A under Section 11 mentioning the particulars of children employed</li> </ul>

		<ul style="list-style-type: none"> <li>• Copies of Notice containing abstracts of Section 3 and 14 displayed under Section 12</li> </ul>
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### Labour Law Audit provisions forms Part of Board Report & Secretarial Audit Report (Form MR-3)

Labour Law Audit Report forms part of Clause (f) of Section 134 (5) of the Companies, Act, 2013 and SECRETARIAL AUDIT REPORT (in Form MR-3) pursuant to section 204(1) of the Companies Act, 2013 and Rule 9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014.

Section 134(5)(f):

*“the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”*

All Applicable laws includes, Compliance under Labour Laws.

#### Under Clause (vi) of Form MR-3:

I/we have examined the books, papers, minute books, forms and returns filed and other records

Maintained by ..... (“The Company”) for the financial year ended on \_\_, \_\_\_\_\_

According to the provisions of:

(VI)..... (Mention the other laws as may be applicable specifically to the company)

#### And also, this statement is required to give under Form MR-3

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Therefore, Compliance Audit under Labour Law is much needed to ensure proper Compliance check. As it forms part of Mandatory reports and disclosure under the provisions of Companies Act 2013.

### Role of Company Secretaries - Kingpin of Corporate Governance

Company Secretaries, Members of ICSI, are the Kingpin of Corporate Governance. Under section 203 of the Companies Act, 2013, Company Secretary has been defined as KMP’s i.e. Key Managerial Personnel, means person who is in-charge of maintaining the high standard of Corporate Governance by abiding laws and regulations in timely complied manner. In other countries, Company Secretary is called as Corporate Secretary as he is responsible to take care of all the compliances with statutory and regulatory requirements.

List of few Compliance Matters that can be undertaken by a Company Secretary under Labour Laws are as follows:

- Registration under various applicable Labour legislations - State / Central.
- Submission of various returns under various laws in a time bound manner.
- Maintenance of appropriate registers and records about employees of the organization under various labour legislations.

- Ensure adequate steps /measures has been taken to prevent from Non - Compliance.
- Draft employment agreements between the employer and employee and also specific non-disclosure agreements if required.

Compliance Check requirements and due diligence in the matters related to Labour Laws in the Corporate Sectors needs a close watch and proper guidance and laws / regulations should be followed by the Company Secretaries / Company Secretaries in Practice. All the records and disclosures should be made properly and kept in the custody of Properly Authorized Officer of the Company, generally Company Secretaries are Authorized for the same.

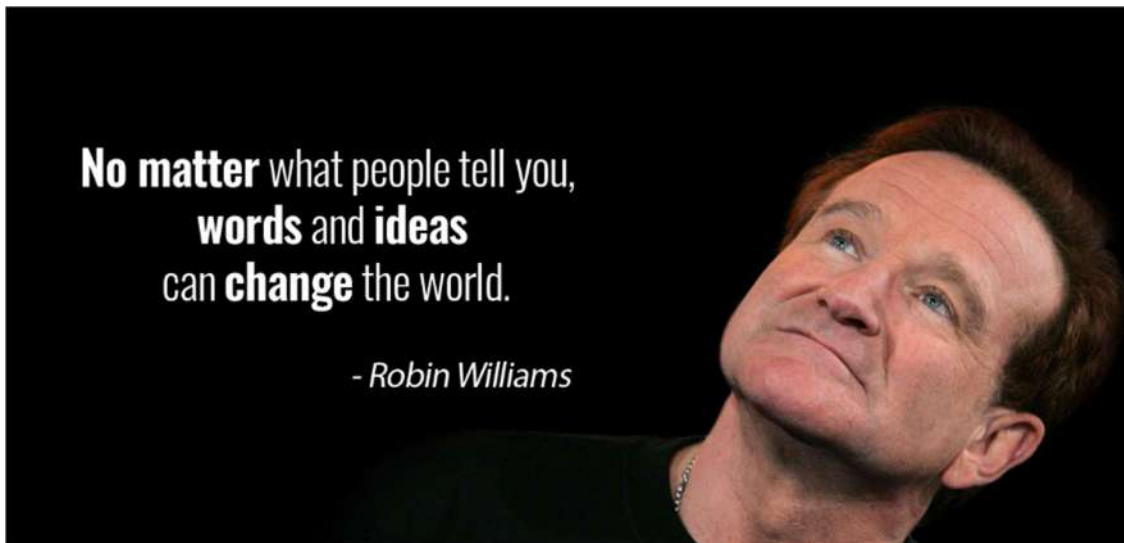
### **Conclusion:**

Labour Law Compliance Audit is a thorough check of the company's policies and procedures with the goal of preventing prosecutions or lawsuits. A Company Secretary in Practice by virtue of his knowledge and expertise in Laws is competent enough to render services in ensuring the compliance of various Labour Laws. Objective of Labour Laws Compliances and Audit is to protect the interests of Labour, industry / stakeholders and promote Corporate Governance, reduce disputes / prosecutions, timely filing of return and maintenance of Statutory Records.

**At the end I would like to quote that:**

**"Together we can, Together we will"**

**!!Stay Home, Stay Safe!!**



# Key clauses in Employment agreement



**CS Nisvitha, BA.LLB**  
company Secretary  
Email ID: nishvitha@gmail.com

In India, the rights and obligations of the employee and employer are governed under the employment agreement and labour legislations. As an industry practice, every Company executes two types of documents with the employee:

- a) Offer letter is executed prior to joining of an employee. This document provides the basic details regarding date of joining, salary and other benefits, mandatory documents to be submitted on the day of joining, notice period etc.,
- b) Employment agreement is executed after joining the Company.

**The following are some of the key essential clauses in the employment agreement:**

## **1. Salary and benefits**

It is very important to provide the details of salary, statutory and any other additional benefits provided by the Employer. The mandatory benefits under law are Gratuity, Provident Fund, Employees' State Insurance (eligible for employees drawing salary less than Rs. 21,000/-). The additional benefits by the employer would be like free transport, Sodexo or food, medical insurance etc.,

## **2. Probationary period**

The employer shall decide the probationary period in order to review the employee's performance. Usually, the probationary period is between three (3) to six (6) months. It is a prudent practise for a Company to review the performance and issue a confirmation letter to the employee at the end of the probationary term. It is recommended for an employer to retain the right to extend the probationary period to further assess the performance. Specifically, mention the termination with notice or without notice in lieu of salary in case of unsatisfactory performance at the end of probationary period. The notice period during the probationary is preferred to be for a short term which may be between 7 days and one month.

## **3. Place of work**

The details regarding place of work/ location of work place must be provided. The Company must retain the right to transfer to its affiliate or subsidiary company or any other work location where the company operates. However, this right can be exercised only if the employee agrees to relocate to other location.

## **4. Confidentiality**

An employee shall have access to data, trade secrets, business plans, and other confidential information of the Company. Employee shall be obligated to maintain the confidentiality of the information during the employment and for reasonable period after the separation from the Company.

## **5. Termination**

The employee shall be immediately terminated on occurrence of the following events:

- I. charged in criminal case for moral turpitude and integrity;
- II. gross negligence and fraud;
- III. false declaration regarding qualification, experience at the time of joining;
- IV. breach of confidentiality; and
- V. Violation of company policy.

## **6. Non solicitation**

The employee must be restricted from soliciting other employees, clients or supplier, either directly or indirectly during and for reasonable period after the separation from the Company.

## **7. Restriction on engaging in any other assignment**

The employee must dedicate his skills and efforts only for the Company. A restriction may be imposed on dual employment and part-time employment which would adversely affect the interest of the Company.

## **8. Non-compete**

The employee must not start/ engage in any business either directly or indirectly competes the business of the Company.

## **9. Representation and warranty**

The employee must represent and warranty that the information provided at the time of joining his employment is true and correct and shall not engage in breach of non-solicitation, non-compete, proprietary rights, or any material breach of terms of employment.

## **10. Governing law**

The employment agreement shall be governed under the Indian law.

## **11. Jurisdiction**

In case of dispute the matter shall be resolved in the court. The jurisdiction of registered office or place of work must be considered.

## **12. Background verification**

Today, most of the companies conduct the background verification (BGV) test of the prospective employee. This enables the company to scrutinize the documents and onboard the right candidate. If BGV of the candidate is negative or unfavorable then, such employee's offer letter can be turndown. However, the prior consent or at least an intimation must be served to the employee regarding the BGV.

### 13. Notice period

Every company can decide upon the notice period based on their organization structure, job profile and standard industry practice. This notice period shall be applicable to an employee post confirmation of his probationary period. The term of notice period must be same for both the employer and employee. An early separation with payment in lieu of notice period must be provided to an employee.

### 14. Description of role

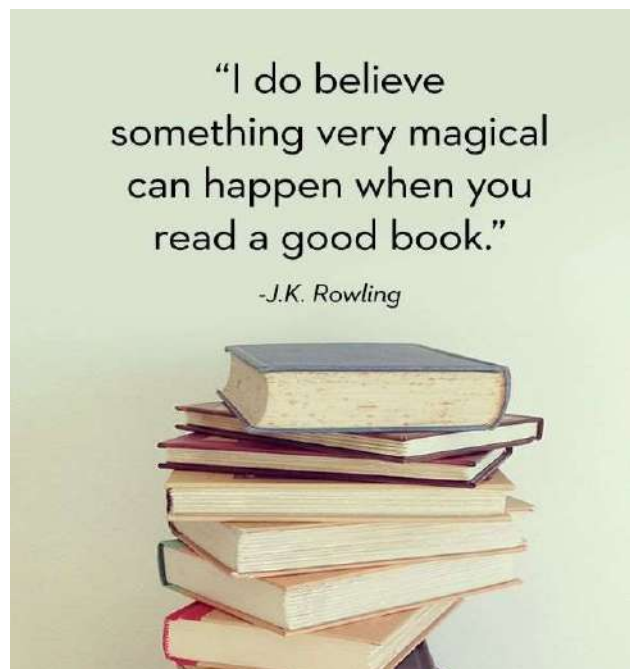
The employee agreement must clearly describe the employee's responsibilities and obligations regarding his/her role.

### 15. Signature

The employment agreement must be signed by employer and employee.

### 16. Mandatory Attachments

- a) Benefits of Maternity Benefit Act: Every organization must provide the benefits under Maternity Benefit Act like
  - a) Work from home;
  - b) Maternity leave;
  - c) creche;
  - d) leave under various scenario like, miscarriage, illness arising during pregnancy, tubectomy operation etc.
- b) Benefits under employee's compensation act in case of death, permanent and temporary disablement.



# Relaxations in Companies Act Compliances due to COVID19



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## Short Summary:

In this editorial author shall discuss about:

- Relaxation given by MCA in Compliances of Companies Act, 2013 due to COVID-19 Situation.
- Amendment made by MCA due to Pandemic Situation in Country. Relaxations from many Due Dates for Filing of Forms, holding of Meetings etc.

There were almost 3 Amendment Rules, 13 Circulars and 2 Notification between March 15, 2020 to June 15, 2020.

## Details of Relaxations:

Date	Relaxations
30 <sup>th</sup> March	Relaxation in Due date of Filing of e-forms with ROC.
19 <sup>th</sup> March	Relaxation in Holding of Board Meeting through Video Conferencing for Restricted Matters
24 <sup>th</sup> March	One Time relaxation for Holding of one Board Meeting with a gap of 180 days
8 <sup>th</sup> April	Holding of EGM and AGM through Video Conferencing
21 <sup>st</sup> April	Holding of AGM till 30 <sup>th</sup> September for Companies whose financial year ended on 31 <sup>st</sup> December, 2019

## 1. RELAXATION IN DUE DATE OF FILING OF E-FORMS WITH ROC.

Ministry has issued CFSS, 2020 on 30th March 2020. This is the biggest relaxation provided by MCA due to COVID-19.

According to this scheme if any Company/ LLP having any form pending for filing with ROC whose due date has been already passed can be file under this Scheme without any Additional Fees till 30th September 2020.

- a) E.g. due date of MSME 1 for the half year ended on 31st March was 30th April. However, if Companies fail to file such form before the due date, they can file such form without any additional fees till 30th September.
- b) E.g. Due date of LLP-11 for the financial year ended 31st March was 30th May. However, if Companies fail to file such form before the due date, they can file such form without any additional fees till 30th September



Only one extra compliance is required to be done by Companies i.e. between October 01, 2020 to March 31, 2021, Companies have to file e-form CFSS with ROC with SRN of all the forms which filed under this scheme after due date.

- **Key Points about Return:**

- a) All the forms of Companies Act except SH-7 and Charge related forms are part of this scheme.
- b) No need to pay any additional fees.
- c) Ministry has issued a list of forms covered under this scheme. [http://www.mca.gov.in/Ministry/pdf/CFSS2020\\_02042020.pdf](http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf)
- d) Ministry has issued FAQ's on the scheme. [http://www.mca.gov.in/Ministry/pdf/FAQCFSS\\_15042020.pdf](http://www.mca.gov.in/Ministry/pdf/FAQCFSS_15042020.pdf)

## **2. RELAXATION IN HOLDING OF BOARD MEETING THROUGH VIDEO CONFERENCING FOR RESTRICTED MATTERS.**

As per Rule -3 of Companies (Meetings of Board and its Power) Rules, 2014, A Company shall comply with the procedure given in this rule, for convening and conducting the Board meetings through video conferencing or other audio-visual means.

As per Rule 4, The following matters shall not be dealt with any meeting held through video conferencing or other audio-visual means-

- I. the approval of the annual financial statements;
- II. the approval of the Board's report;
- III. the approval of the prospectus;
- IV. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the Board under sub-section (1) of section 134 of the Act]; and
- V. The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Provided that where there is quorum presence in a meeting through the physical presence of directors, any other director may participate conferencing through video or other audio-visual means.

### **Circular Dated: March 19, 2020**

For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th September, 2020, the meetings on matters referred to in sub-rule ( 1) may be held through video conferencing or other audio visual means in accordance with rule 3."

However, the above circular provides Relaxation to Companies to hold Board Meeting through video conferencing till September 30, 2020 even for finalization of restricted matters.

### 3. ONE TIME RELAXATION FOR HOLDING OF ONE BOARD MEETING WITH A GAP OF 180 DAYS

The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September.

Accordingly, as a one-time relaxation, the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.

- If Last Board Meeting held on Feb 28, 2020 then what shall be the due date of the next meeting?  
The due date for the next board meeting is August 26, 2020 i.e. 180 days from the last meeting.
- If Last Board Meeting held on January 02, 2020 then what shall be the due date of the next meeting?  
The due date for the next board meeting is June 30, 2020 i.e. 180 days from the last meeting.
- If Last Board Meeting held on December 25, 2019 then what shall be the due date of the next meeting?  
The due date for the next board meeting is June 22, 2020 i.e. 180 days from the last meeting.

### 4. HOLDING OF EGM AND AGM THROUGH VIDEO CONFERENCING

Ministry has issued the following Circulars:

- a) April 08, 2020: [http://www.mca.gov.in/Ministry/pdf/Circular14\\_08042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf)
- b) April 13, 2020: [http://www.mca.gov.in/Ministry/pdf/Circular17\\_13042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf)
- c) May 05, 2020: [http://www.mca.gov.in/Ministry/pdf/Circular20\\_05052020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf)
- d) June 15, 2020: [http://www.mca.gov.in/Ministry/pdf/Circular22\\_15062020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular22_15062020.pdf)

Legally Companies Act, 2013 doesn't specify any provisions for allowing the conduct of members' meetings through video conferencing (VC) or other audio-visual means

Now, MCA has issued above-mentioned Circular, which provides Clarification on Passing Ordinary and Special Resolutions by Companies in EGM/ AGM through Video Conferencing on account of the threat posed by COVID-19.

**According to above mentioned circulars:**

- All type of Companies can hold Extra-Ordinary General Meeting through Video Conferencing till September 30, 2020 as per the process given in the above circulars.
- All type of Companies can hold Annual General Meeting through Video Conferencing till December 31, 2020 as per the process given in the above circulars.

### 5. HOLDING OF AGM TILL 30TH SEPTEMBER FOR COMPANIES WHOSE FINANCIAL YEAR ENDED ON DECEMBER 31, 2019

MCA has issued circular on April 21, 2020 to give relaxation, that if the financial year of any Company ended on December 31, 2019 they can hold Annual General Meeting till September 30, 2020 instead of June 30, 2020.

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## Disclaimer:

The entire contents of this document have been prepared based on the 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 a professional advice and is subject to change without notice. I assume no responsibility for the consequences of 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.**



## Let us be a generous lion....

Once there was a man wanted to go on to spiritual path. He went to forest to meditate and achieve what he was desiring to do. He chose to stay near the village so he can come and get his food easily. One day he saw a crippled fox lying down looking healthy and well fed. He was wondering how this can be possible, the fox which cannot walk how is it getting its food to be so healthy. As he could not figure this out, he went back to his meditation. As it became dark, one ferocious, full grown lion came with a piece of meat and put it next to the fox and left. Fox ate the meat and slept. This happened night after night. He thought this is a divine message from the god telling him something. So, he stopped going to village for food hoping someone will bring the food for him. He waited day after day nothing came, he was on his death bed without the food. At that time another yogi came and asked what happened. He explained the situation and said as god gave him the divine message, he is waiting for someone to give him the food. Then the yogi said “yes, definitely god has given you the divine message. “Why are you choosing to be a crippled fox not a generous lion?”

In our life we keep facing situations like this. Our image is decided on what we do not what we eat or what we wear. It is our generosity, attitude, humility which gives us the recognition. Whatever the situation we are in let us try to do something good to the society and to the needy.

In this difficult time of COVID 19 Pandemic let us be generous lion not a crippled fox.

Stay home and Stay safe. Let us salute our unsung COVID frontline fighting heroes and our solders protecting our border so we can be safe. Let us try to help wherever we can in whatever the way possible.



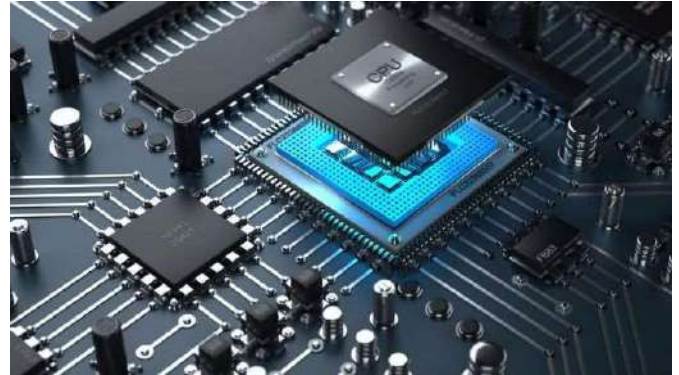
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**TECH NEWS**

## Brain of the Computer



Processor is a chip responsible for all the calculations which a computer makes, from opening a simple file manager to rendering a complex 3d structure. For this reason, the Processor is known as the brain of the computer. Everything a computer does, is the results of complex calculations and algorithms processed by the processor. A processor executes 3 basic functions like receiving input, processing and providing the output. What does that mean?

It means when you press letter “A” in the keyboard that is input, it receives the data, it processes this data and it shows letter “A” on the monitor, which is output. The processor does this work in fraction of a second. The more core a processor has, the more functions it can perform simultaneously without overloading the system, in the laymen’s term, without lagging.

There are many companies which manufacture processors. Two main company’s which manufactures processors are INTEL Corp. and AMD. There is a high probability that your computer has one of these company’s processor.

If you have an Intel computer, have you wondered what is core i3, i5, i7 means?

Those are the cores that processors have, for example core i3 processor has 2 cores, i5 has 4 cores, and i7 has 6 core. If you want high processing power, better battery backup it is recommend getting computer/laptop with i5 processors. If you want it for greater performance for doing work like video editing, coding and high graphics gaming it is better to get the i7 processor, if you want to do basic work for office purpose core i3 processor should be enough. Higher the cores higher the processing speed.

But what does RAM does, to know that wait till next month.





## **IBC V. SARFAESI or SARFAESI in IBC? - Surana Power**

The recent judgment of the NCLAT in Srikanth Dwarakanath v. Bharat Heavy Electricals Ltd. on 18th June, 2020 has caused some hubbub among the observers of insolvency law. Before we come to the consternation that is being expressed, and examine whether the same is justified, let us briefly look at the judgment itself.

CIRP had been initiated in respect of Surana Power Ltd. by the adjudicating authority, viz. NCLT, Chennai Bench, on the basis of a petition under Section 9 of the Insolvency and Bankruptcy Code. No resolution could be approved and hence the Corporate Debtor was ordered to be liquidated.

At this stage the Respondent, BHEL succeeded in arbitration proceedings against the Corporate Debtor and based on the arbitral award the Respondent was granted lien over the equipment and goods lying at the site of the Corporate Debtor and charge over the entirely or partially erected facilities at the site of the Corporate Debtor was created.

The liquidation of the Corporate Debtor could not go forward as the Respondent refused to relinquish its security on the assets, though the other secured creditors, amounting to 73.76% of the secured assets had relinquished their security interest in the liquidation estate. Thus the liquidator was forced to file an application before the Adjudicating Authority seeking permission to sell the assets of the corporate debtor. The application filed by the liquidator was rejected by the Adjudicating Authority on the ground that BHEL is a secured creditor and hence is entitled under Section 52 of the IBC to realize its security interest.

The liquidator filed an appeal against the order of the adjudicating authority on the grounds that

1. the other secured creditors had relinquished their secured interest.
2. The same assets on which the Respondent has a lien are also hypothecated to all other secured creditors.
3. There cannot be different categories of secured creditors.
4. The liquidator is required to undertake the sale of the Corporate Debtor on a slump sale basis which is not possible if the security interest of the Respondent is not relinquished.

Per contra the Respondent relied upon its right under Section 52 of the IBC which, according to the Respondent, was unqualified and unbridled.

The appellant also contended that to permit the Respondent to exercise right under Section 52 of the IBC would imply that it has preference over the charge created in favour of the remaining secured creditors and that such a view would run contrary to the waterfall mechanism contemplated under Section 53 of the Code.

During the pendency of the appeal, the Respondent addressed a letter to the appellant notifying them of their intention to realize the security interested in respect of the secured asset.

The NCLAT referred to Section 13 of the SARFAESI Act, relevant parts of which, read as follows:-

*13. Enforcement of Security Interest. - (1) Notwithstanding anything contained in Section 69 or Section 69-A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*

*(9) [Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than [sixty per cent] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:*

Relying upon this provision, the NCLAT held that the rights under Section 13 could be enforced only upon the acquiescence of secured creditors who hold up to 60% of the value in amount outstanding and on the contrary, in this case, 73.76% of the secured creditors had relinquished the secured interest in favour of liquidation. Hence on that basis the NCLAT held that the Respondent did not have a right to enforce its security interest and directed the liquidation process to continue.

From circumstantial observations in the case, it would appear that the banks had a prior and hence superior charge on the secured assets in the matter. But what is interesting is the application of SARFAESI principles in liquidation under the IBC.

This could lead to a peculiar problem where, a group of inferior charge holders, who realize that the payout in the event of a resolution will not be to their benefit can thwart enforcement by the superior charge holder by refusing to relinquish security. That said in cases where all the secured creditors have an equal charge the principle applied here is not a bad option.





## Opinion to Last Month's Brainy Bits

M/s ABC Ltd., has paid premium on employee related welfare insurance and a special coverage for COVID-19 pandemic as a part of the package. Examine the eligibility of Input Tax credit on the Insurance premium paid for the employee welfare in light of GST provisions

### Facts of the case:

- M/s ABC Ltd. (herein after called as RP) is a registered person under GST
- RP has obtained a medical policy in relation employee related welfare insurance to have a special coverage under COVID19
- RP has also paid GST on the above insurance
- Examine whether RP can avail ITC on the same

### Legal Provision:

Section 16: Eligibility and conditions for taking input tax credit

Section 17: Apportionment of credit and blocked credits.

(5)(b): (b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

....

*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.*

**MHA Order No.40-3/2020 -DM-I(A) Dtd: 15.04.2020**

Clause 5 of Annexure II - "Medical insurance for the workers to be made mandatory"

### Conclusion:

Life Insurance and Health Insurance coverage for an employee has been kept outside the purview of Input tax credit under GST vide Section 17. However, a proviso has been inserted in the above restriction stating that no ITC shall be disallowed, if the expense to be incurred by employer is of an obligation to perform under any law for time being in force. Accordingly, unless there is a law in force for mandating the health/medical insurance ITC shall not be allowed.

Attention is drawn to Guidelines issued by Ministry of Home Affairs vide above Order has stipulated few guidelines to be mandatorily followed for operation during the lock down period i.e.14th April 2020 up to 3rd May 2020 for the entities to operate. One of such condition stipulated for ensuring Medical Insurance coverage for an employee as mandatory.

To conclude if RP has availed the Medical Insurance during the period intervening the above lockdown where the instructions issued by MHA are in vogue, RP can claim the ITC. Point is to be noted that only Medical Insurance shall be allowed for ITC and no other life policies having annuity etc., shall be considered for ITC availment



## Regulatory Updates

Compiled by:

**Matruka B M**

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### Companies Act, 2013

#### Updates on Amended Rules

MCA has amended Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, which shall be known as Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020.

The following proviso shall be inserted in rule 4, sub-rule 3, clause (i) of the Principal rules;

#### "Provided that in case of a -

- a. Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or
- b. Subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government Company,

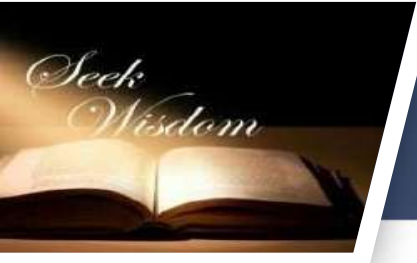
a duly notarized indemnity bond in Form STK-3A shall be given by an authorized representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company;"

MCA has released the format of Form STK-3A, which is to be drawn on stamp paper of appropriate value.

Rules Companies (Removal of Names of Companies from the Register of Companies) Amendment, 2020, dated 29th June 2020.







### Commentary on Independent Directors- Series-23 - Part III - Appointment Procedure and other related matters etc.

Provisions: Section 149, 150 and 152 of the Companies Act, 2013 ('the Act') r/w Schedule IV of the Companies Act, 2013 and Companies (Appointment and Qualification of Directors) Rules, 2014 ('Rules').

#### 1. Manner of Appointment:

##### I. Aspects to be considered at the time of appointment:

- a. The candidate must fulfill the independency criteria as defined u/s 149(6) of the Act read with Rules; None of the member of the management shall influence while selecting the Independent Director; and Board of Directors shall carry out proper diligence on the skill, experience and knowledge of the Independent Director;
- b. Proposed appointee must have DIN; he must not be disqualified u/s 164 of the Companies Act and a declaration in this regard in Form-DIR-8 has been taken;
- c. he has given his consent to act as director in Form-DIR-2 to the Company;
- d. Consent letter in Form-DIR-2 is not mandatory for Government Companies (where appointment is made by Central Government/State Government) and Section-8 Companies.
- e. ID shall register his name in ID Data Bank of IICA as maintained in line with Section 150 r/w Rule-6 of The Companies (Appointment and Qualification of Directors) Rules, 2014 and pass relevant self-assessment test;
- f. The Company and Independent Director shall abide by the provisions of Schedule-IV of the Act.

##### II. Specific Disclosures in Explanatory Statement annexed to the General Meeting

###### Notice:

- a. Justification for choosing the appointee for appointment as independent director (Section 150(2));
- b. a statement from the board, the independent director fulfills the conditions specified in the Act and the rules made thereunder and such independent director is independent of the management.

##### III. Mode of Appointment:

- a. The independent directors shall be appointed by the members at the general meeting (Section 152(2) of the Act);
- b. However, considering the time required for convening the General Meeting and the requirement of independent directors on the board, a reasonable interpretation can be drawn that, the board of directors may appoint such independent director as additional director in accordance with the provisions of Section 161(1) of the Act and thereafter at the immediate next General Meeting held after his/her appointment, members shall confirm his appointment as Independent Director, by

stating that his/her term commencing from the date of appointment by the board of directors. In other words, waiting to appoint an ID till the next General Meeting might result in the company not having required number of ID till the next General Meeting. Reliance can be placed on filling up of intermittent vacancy of ID and woman which gives power to Board.

- c. As the word "shall" is used, the approval from the members is mandatorily required;
- d. As there is no specific resolution has been prescribed for appointment, it can be construed that, for appointment Ordinary Resolution can be passed by the members of the Company. However, re-appointment can be made only by passing Special Resolution (Section 149(10));
- e. Appointment/re-appointment can be made for maximum two consecutive term of five years.

#### **IV. Formalization of Appointment - Issue of Letter of Appointment:**

After the appointment, the independent director shall be given a formal letter of appointment which shall specify:

- The term for which he is being appointed;
- The expectations of the Board and of the board level committees in which such independent director is expected to give his services and its tasks;
- The fiduciary duties and liabilities that are attached to such appointment;
- Provision for Directors and Officers ( D & O ) Insurance, if any;
- The code of business ethics that is expected to be followed by the director;
- The list of actions that the independent director should not do;
- Details about the remuneration, mentioning periodic fees, reimbursement of expenses for his participation in the Board meeting or any other meeting and profit-related commission, if any; and
- Such other aspects, if any.

#### **V. Inspection of documents:**

The terms and conditions of appointment of independent directors shall be kept open for inspection at the registered office of the company by any member during normal business hours and shall also be posted on the company's website, if the company is having website.

## **2. Declaration by Independent Director:**

### **I. Declaration relating to fulfillment of independency criteria as stated u/s 149(6):**

- At the first board meeting in which he participates as a director after his appointment;
- At the first Board Meeting in every financial year;
- Whenever there is any change in the circumstances that may affect his status as an independent director.
- Declaration stating that his name is registered in ID data Bank of IICA and he has passed relevant self-assessment test and renewed the his name in data bank from time to time.

### **II. Declaration in Form-MBP-1:**

- At the first board meeting in which he participates as a director after his appointment;
- At the first Board Meeting in every financial year;

- Whenever there is any change in the disclosures that already made, then at first Board Meeting held after such change.

### **3. Remuneration to Independent Director:**

- I. Remuneration can be drawn subject to Provisions of Section 197 and 198 of the Act;
- II. He/she shall not be entitled to any Stock Options;
- III. May receive remuneration by way of sitting fees for participation in the Board or committees or for other purposes as may be approved by the board of directors;  
However, sitting fees payable to independent director shall not be less than sitting fees payable to other directors.
- IV. He/she is eligible for reimbursement of expenses for participation in the Board and other meetings;
- V. He/she is eligible for profit related commission as may be approved by the members in a General Meeting.

### **4. Separate Meeting of Independent Directors:**

- I. At least one meeting shall be held in a financial year;
- II. Apart from independent directors, non-independent directors and other members of management shall not attend such meeting;
- III. All the independent directors shall strive to present at such meeting.
- IV. On account of COVID 19, there is no violation if there is no meeting held for the FY 2019-2020 (General Circular 11/2020 dated 24th March, 2020).

#### **Agenda items at the separate meeting of independent directors:**

- I. Review the performance of (a) non-independent directors of the Company; (b) board as a whole; (c) chairperson of the company;  
Performance of the chairperson to be reviewed after taking into account the views of executive directors and non-executive directors.
- II. assess the quality, quantity and timeliness of flow of information between the management of the company and the board.

### **5. Performance Evaluation Mechanism of Independent Director:**

- I. Authority: To be done by the Board of Directors excluding the Director being evaluated. Other independent directors shall also take part while evaluating.
- II. Impact of Performance Evaluation: Based on the performance evaluation, decision shall be taken for extension or continuation of term appointment.

### **6. Re-Appointment:**

- I. The re-appointment of independent director shall be on the basis of report of performance evaluation and subject to fulfillment of independency criteria as stated under the Act;
- II. Re-appointment shall be approved by the members by way of special resolution;
- III. Appointment/Re-appointment shall not exceed 2 consecutive terms;
- IV. Term has not been defined. However, as word is ' up to ..... Five consecutive years ', word up to understood that, there must not be any break between his appointment and first re-appointment. Number

of years of tenure, whether it is lesser than or equal to five is immaterial. Such person has to demit his office, even if his tenure as an independent director in 2 consecutive term is lesser than ten years. he can be re-appointed only after completion of 3 years cooling period. (General Circular 14/2014 dated 9th June, 2014).

V. Such re-appointment shall be disclosed in the Directors' Report.

## **7. Tenure of Independent Director:**

- I. Appointment/re-appointment can be made for maximum unbroken or uninterrupted two consecutive period of five years.
- II. After completion of two consecutive terms, such person shall not be eligible for re-appointment for immediate next 3 years;
- III. During such 3 years he shall not be associated or appointed in the company in any other capacity either directly or indirectly;
- IV. Any tenure of an independent director on or before 01/04/2014 (i.e., date of commencement of this section) shall not be considered as term under this Act;
- V. After completion of 3 years, in case such person fulfills the criteria specified u/s 149 read with schedule IV and other applicable provisions of the Act, he can be appointed as an independent director of the same company;
- VI. Independent Director is not liable for Retirement by Rotation as per Section 152(6) and (7) of the Act.

## **8. Resignation or removal and filling up of intermittent vacancy:**

- I. The resignation or removal shall be as per provisions of Section 168 or 169 of the Act, as the case may be;
- II. Any vacancy created due to resignation or removal shall be filled by the board within three months from the date of such resignation or removal, as the case may be;
- III. Any intermittent vacancy created other than due to resignation or removal shall be filled up by the board at the immediate next board meeting or within 3 months of such vacancy, whichever is later;
- IV. Filling of such vacancy is not mandatory, if the company fulfills the minimum requirement of independent directors without filling such vacancy;
- V. E-form-DIR-12 shall be filed by the company before Registrar of Companies within 30 days from the date of resignation or removal, as the case may be;
- VI. In case of resignation, the resigning director may file e-form DIR-11 before Registrar of Companies within 30 days from the date of his resignation.

## **9. Liability of Independent director:**

- I. Independent director is liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently (Section 149(12))
- II. In view of the express provisions of Section 149(12) of the Act, independent directors should not be arrayed in any criminal or civil proceedings under the Act, unless the fulfillment of Section 149(12) of the Act (General Circular 01/2020 dated 2nd March, 2020).

## 10. Forms

Within 30 days of appointment, the company needs to file Form DIR 12 along with consent letter in Form DIR 2. For IFSC Public Companies appointment to be filed within 60 days of appointment (vide Exemption Notification dated 4th January, 2017).

## 11. Non-Applicability of Schedule IV:

Following aspects as stated in Schedule IV are not applicable in case of Government Companies (2(45)), if such matters are specified by the concerned Ministries or Departments of Central Government/State Government, as the case may be and such matters are complied by such Government Companies:

- I. Roles and Functions of Independent Director - bring an objective view in the evaluation of the performance of board and management; and  
Determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management.
- II. Aspects relating to manner of appointment and re-appointment of independent directors;
- III. Review the performance of non-independent directors and board as a whole and chairperson of the Company; and
- IV. Performance evaluation mechanism of the independent directors.



**"Hard times  
produce your  
greatest gifts."**

- Robin Sharma

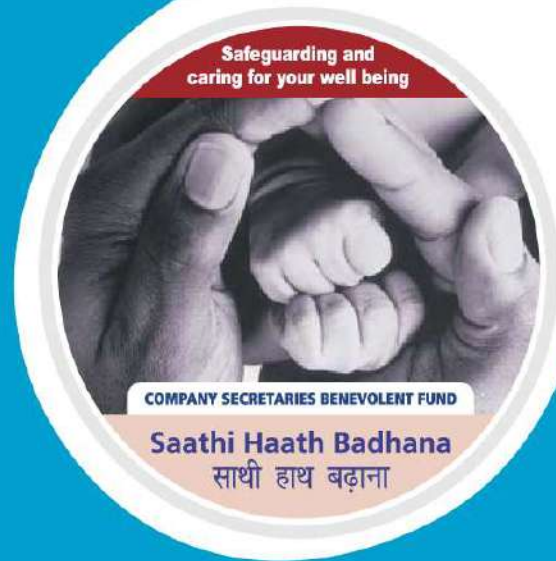


THE INSTITUTE OF  
Company Secretaries of India

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

### 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
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