

# eMagazine



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### Vision

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

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सत्यं वद। धर्मं चर। इत्येते तेन लोकेः श्रेयते इत्यु तेन लोकः।

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**CS VJ Balakrishnan**

Chairman,  
Mysore Chapter

**-: Editorial Team:-**

CS Vijaya Rao

CS Sherene

CS Pracheta M

CS Phani Datta

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Dear Professional Colleagues,

Greetings!

I am happy to interact with you again through the monthly eMagazine. Glad that India has moved up thirty places to have its spot in the top 100 in the World Bank's latest ranking on ease of doing business. The Major reforms in the corporate sector was pivotal in gaining this glory. This, we hope, will invite global participants to create and open new business opportunities which in turn will boost our economic growth.

During the month of October 2017, Chapter conducted seven career awareness programs in Mysore & Hassan districts and benefited more than 800 students. More than 100 Members and Students participated in the inauguration of the Golden Jubilee year of ICSI that was celebrated at hotel Paivista on 04<sup>th</sup> October, 2017. The Chapter is planning to organize a one day seminar during the month of December 2017 the details of which will be circulated soon. We look forward to your active participation

Thank you

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# Chapter Activities

## CAREER AWARENESS PROGRAM

Chapter has conducted seven career awareness programs during the month. The details are as follows.

S No.	Date	College Name	Addressed By	No. of Participants
1	12.10.2017	Bright PU College, K R Nagar	CSManjunath S,	120
2	12.10.2017	Government First Grade Womens College, K R Nagar	CSManjunath S,	180
3	25.10.2017	Basudev Somani College	CSManjunath S,	140
4	26.10.2017	Haranhalli Institute of Higher Education, Hassan	CSManjunath S,	120
5	26.10.2017	Government First Grade College, Hassan	CSManjunath S,	100
6	30.10.2017	Mahajana PG Centre	CSManjunath S,	80
7	31.10.2017	Teresian College	CSManjunath S,	99



Government First Grade College, Hassan

## INAUGURATION OF GOLDEN JUBILEE YEAR



The inauguration of Golden Jubilee year of the Institute of Company Secretaries of India held on 04<sup>th</sup> October, 2017 at Hotel Pai Vista, Mysore. CS Pracheta M., Vice Chairperson of the Chapter welcomed the gathering. Shri Pavan Ranga, Director, N R Group was the Chief Guest of the Program. In his Inaugural address, Shri Pavan Ranga, complimented The Institute of Company Secretaries of India (ICSI) for attaining institutional excellence and being a torch bearer for the cause of Good Corporate Governance for the last 50 years.



He also added on this momentous occasion, urged the Institute and its stakeholders for selfless dedication towards attaining the Country's vision of 'New India'.

CS Manjunath S, Secretary of the Chapter presented the journey of CS profession. The event also witnessed felicitation of renowned Company Secretaries as well as Past Chairman of Mysore Chapter of ICSI for their distinguished contribution towards the profession and the Institute. CS Veerash M.J, Treasurer of the Chapter delivered the Vote of Thanks.



## Corporate Governance - Learning's from an inspiring Indian epic - Ramayana

### Introduction

Governance is needed in each and every field of human activity, be it any form of organization, business and corporate, defence, sports etc. It is not something that is developed recently; rather it has been practiced since the evolution of the concept of society. Need for governance exists anytime a group of people come together to accomplish an end. Though the governance literature proposes several definitions, most rest on three dimensions: authority, decision-making and accountability. The concept of "governance" is not new. It is as old as human civilization. Simply put "governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. In earlier days, kings used to administer and govern their kingdoms, since then the process of evolution of modern corporate governance theory has started with great scholars contributing to the knowledge base. The concept of corporate governance in every country has ancient connections, which has its base derived from the governance principles. In India there is a great deal of similarity in the governance structures of the ancient kingdoms and modern corporations. The ancient Indian ethos which has stood the test of time can help in building a sustainable model of corporate governance.

### Corporate Governance: An overview

Corporate governance is most often viewed as both the structure and the relationships which determine corporate direction and performance. Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government and the community. Since

corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosures.

Corporate Governance is the interaction between various participants (shareholders, board of directors, and company's management) in shaping corporation's performance and the way it is proceeding towards. The relationship between the owners and the managers in an organization must be healthy and there should be no conflict between the two.

Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society. Corporate governance is not an abstract goal, but exists to serve corporate purposes by providing a structure within which stockholders, directors and management can pursue most effectively the objectives of the corporation.

### Ramayana's tips for Corporate Governance

India can justifiably boast of a long history of culture, tradition and values. Scriptures of Indian origin are a treasure trove of nuggets of wisdom. These continue to be relevant in the current context and also find ready application in the field of business management and administration.

Ramayan, the saga of Rama's life written by Valmiki, is widely acclaimed as among the greatest of all Indian epics. The narrative is regarded as a veritable treatise on social sciences, offering lessons that transcend both time and space. Valmiki Ramayana has lessons in all aspects of human life. It

also has lessons in politics, economics, sociology, psychology, management, human values, and ethics and so on.

The epic tale of Ramayana has time and again been cited as a vast collection of values and learning's. Various situations from the Indian mythology's renowned tale offer lessons for the modern day executive to handle work and management related challenges.

Here are some of the areas where Ramayana inspires us and offers great wisdom in the realm of corporate governance.

### **Values and Ethics**

Sticking to some core values which are steeped in righteousness eventually leads to success. The main protagonist, Rama, is depicted in Ramayana as an epitome of virtue. He is an ideal king, an ideal son and a pragmatic person. He sets high ethical standards in warfare and invariably sides with dharma, or righteousness. Sri Rama, who never deviated or deviates from the words he had and has given. He (Sri Rama) even mentioned to Sta (Aranya Kanda 2.1.6), "I have promised to protect the rishis (sages) of Dandaka forest, I can give up my life, even you O Sta, as well as Lakshmana, but I cannot swerve from my promise". (2.1.7 Yuddha Kand) Sri Rama also demonstrated this value when he accepted Vibheeshana, the brother of Ravana who came for protection.

### **Transparency, Integrity and Fairness**

In Ramayana King Dasharatha, instead of using his powers of king, called all his ministers and asks their consent for giving the responsibility to his elder son Rama to rule Ayodhya for the benefit of the people as he has grown old and can't carry the burden of righteousness shows the highest level of transparency, integrity, fairness, honesty, justice in decision making process. Though king Dashratha could use the power of king and as per rajtantra (monarchy) there were no need to ask any suggestions from the mantrigana/ sabhasad but wanted to know what his citizens want and what is their views for prosperity and happiness for all. Therefore, he followed democratic way of decision making process where all citizens should get involved for their and their kingdoms development (2.2.9, 2.2.10, Ayodhya Kand)

### **Good administration**

In Valmiki Ramayana, on the eve of Sri Rama's coronation, King Dasharatha summoned Rama and tendered wholesome and mature advice on Administration based on his experience. King

Dasharatha said although you are a storehouse of virtues, but I wish to offer some friendly advice to you out of sheer affection. Resorting to even greater humility (than before), constantly keep your senses under control. Avoid vices born of lust and anger (Ayodhya kand 2.3.41). The importance attached to personal discipline and farsightedness in matters of efficient administration will be evident from the shloka 2.3.41 – 2.3.45, Ayodhya kand, Valmiki Ramayana, wherein Dashratha advise Rama to rule according to both the direct method - to make a tour of one's dominions and ascertain things personally, to invite direct petitions from one's subjects, hear their grievances and decide their cases on their own merits, and the indirect method – Ascertaining the conditions and loyalty of one's own people and the relative strength and intentions etc., of the neighboring states through a network of spies of governance

### **Believe in people**

Sri Rama had a complete trust and confidence that Hanuman will be successful in finding out whereabouts of Sta and Sri Rama) gave his ring to Hanuman to be handed to Sta. Ever since the day Hanuman met Sri Rama and Lakshmana on the slopes of Rishyamuka hill, Sri Rama had been greatly impressed by the wisdom of Hanuman. Sri Rama also had great confidence and trust in his army of vanaras (monkeys) and their ability to defeat Ravana's army and recover Sta. (2.3.47 Uttara kand). Good governance requires a very positive approach towards all people and belief in the innate ability and motivation of the people as there is an infinite potential in every person. In this Shlok, Rama says to the entire kingdom persons that if I say anything which is wrong, brethren, don't be afraid to correct me.

### **Control and vigilance**

The management of any organization must develop an effective control and vigilance system tailored to its goals and resources. According to Sri Rama, the king (manager) once decides to do something should act quickly basing on the information gathered - kaccid artham vinishcitya laghu muulam mahaa udayam, kShipram aarabhase kartum na diirghayasi raaghava. (Ayodhya Kanda, 2.1.19). The king (manager) must have no mercy for the people engaged in wrong doing against the king (management) and the kingdom. Sri Rama has advised kings (managers) to eliminate such people who are cunning, conflict creators, highly ambitious and apt in politics and are engaged in plotting against the king or the manager -upaaya kushalam

vaidyam bhRitya samduuShaNe ratam; shuuram aishvarya kaamam ca yo na hanti sa vadhyate (Ayodhya Kanda, 2.1. 29).

### **Selection of Managers**

Since the efficiency of the management depends upon the integrity and the working knowledge of the officers, Sri Rama was very particular about their selection and placement. But conversant as he was with human psychology, he was somewhat skeptic about the rationality of human behaviour when exposed to great temptation by virtue of their holding high offices. Therefore, he emphasised the need for setting up inspection machinery to keep a constant watch on them (Ayodhya Kanda, 2.1.15) – “I hope that ministers who are valiant like you, learned, masters of their senses of noble birth and skilled interpreting internal sentiments by external gesture, are assigned to you” (kaccid aatma samaaH shuuraaH shrutavanto jita indriyaaH, kuliinaaH ca ingitajnaaH ca kR itaaH te taata mantriNaH)

### **Decision making**

Sri Rama has clearly stated that the decisions should not be taken alone. To encourage organizational democracy and to avoid the limitations like lack of information, discovering alternatives to the problem, choice of rational solutions, multi objective solutions generation and other organisational variables such as philosophy of the organisation, power structure, existence of informal power groups, etc. a collective decision-making process should be evolved. According to him even one wise, valiant sagacious and efficient minister alone can cause to secure a great prosperity to the king or to one who enjoys royal authority (Ayodhya Kanda, 2.1.28 – eko apy amaatyo medhaavii shuuro dakSho vicakShaNaH raajaanam raaja maatram vaa praapayen mahatiim shriyam. The decision-making group should consist of experienced and intelligent people with positive attitude.

The secrecy of the decisions taken and the information gathered are of vital importance for the king so he has advised to maintain secrecy in administration to the extent that it cannot be guessed from the outward activities and the behavior of the officials and the king “The source of victory for kings indeed comes from a concealed counsel by ministers, who are well-versed in political sciences and who can hide their thoughts within themselves.” (mantra vijaya muulam hi raajnaam bhavati raaghava susamvR ito mantra dharair amaatyaiH shastra kovidaiH , Ayodhya kand 2.1.16)

### **Welfare of the stakeholders**

In Valmiki Ramayana, the idea of the welfare of the state and the subject, including the idea of happiness and prosperity, peace and bliss of the people has been explained very lucidly. The first and foremost duty (dharma) of the king is said to be the protection of people, their property and livelihood. kaccit te dayitaaH sarve kR iShi go rakShajjiivinaH, vaartaayaam samshritaH taata loko hi sukham edhate. teShaam gupti pariihaaraiH kaccit te bharaNam kR itam rakShyaa hi raajnaa dharmeNa sarve viShaya vaasinaH (Ayodhya Kanda, 2.1.47-48),

According to Sri Ram the fourteen vices which makes a leader ineffective are, lying, short tempered, fearful, laziness, licentious, autocratic, keeping unwise counselors, denouncing the wise and learned people, delayed action on earlier decisions, non-secrecy, taking action on all the opposition party at a time, to cease all public interest programs, immoral and capricious. The reference of ten important matters relating to the state craft have been mentioned in Ayodhya Kanda, 2.1.68–70 (dashapaMchachaturvargaan saptavargaM cha tattvataH, aSTavargam trivargaM cha vidyaastisrashcha raaghava. indndriyaaNaam jayaM buddhyaM SaaDguNyaM daivamaanuSam, kR ityaM viMshativargaM cha tathaa prakR itimaNDalaM. yaatraadaNDavidhaanaM cha dviyonii saMdhivigraha, kachchhidetaan mahaapraajNa yathaavadanumanyase)

### **Dealing with Competitors:**

This is the stage where Ravana's minister Vibhishana advises Ravana about three ways to deal with powerful opponent seek peace with him or appease him with gifts or try to sow seeds of dissension among his forces. PramatteShv abhiyukteshu daivena prahateshu ca |Vikramaas taata sidhyanti pariikShya vidhinaa kR^itaaH ||Balaani aparimeyaani viiryaaNi ca nishaa caraaH |PareShaam sahasaa avaGYaa na kartavyaa kathancana (Ayodhya Kand 2.1.52). Moreover, Vibhishana also conscious Ravana about hanuman who has proved his greatness by Crossing Ocean. The basic intention is not to underestimate the competitor's strength, the management, counselors and advisors of the Company always renders advices which are in the best interest of the Company.

### **Be cautious of Yes-men!**

Ravana is a highly learned and accomplished person. One of the reasons for his downfall is to neglect the advice of nay-sayers. His wife,

Mandodari, brother Vibheeshana and grandfather Malyavaan – all advise him to return Sita to Rama. Instead, he chooses to listen to his courtiers who play on his ego and pride and advise him not to do so. A couplet in *Sundara Kanda* of *Ramcharitmanasa* clearly advises us to ignore the advice of a paid deputy, a doctor and a teacher who speak positively out of either fear or expectation of a gain. A king who acts upon such motivated advice loses his kingdom, his body and his righteousness (dharma) as well. Sachiv Vaid guru tini Ju, Priya Bolehi Bhaya Asa Raja Dharama Tana Tini Karu Hoei Begihi Nasa (5.37 Sunderkanda.)

#### **Fairness in dealings:**

When Bharat meets Rama in forest (the famous 'Bharat Milap') Rama is in delicate situation. He has to advice his younger brother on being a good king where he said 'Ensure that the thief who has been caught, interrogated and proved to be is not let off by someone who is greedy for money'. kachchit te dayito sarve krshi go rakshy jeevinah| vaarta yaam sanshritaah taat loko hi sukham edhate| (2.1.71,Ayodhya kand) It is due responsibility of Top Managers of the organisation to take proper due diligence in case of any fraud or any kind of scams to declare anyone as culprit as the onus is on top managers that why they are declared as culprit and also to be given equal opportunity to be heard to the guilty person. Top Managers make sure that no innocent person should be blamed and punished in such matters as it will badly affect the reputation of the organisation.

#### **Segregation of Duties:**

Rama further guided his younger brother by saying that 'superior servants are assigned superior works only, mediocre servants in mediocre works and inferior servants in inferior works.' Kaccin mukhyā mahatsu ēva madhyamēsu ca madhyamāḥ |jaghan'yāḥ ca jaghan'yēsu bhr̥tyāḥ karmasu yōjitāḥ (Ayodhya kand 2.1.82) .Segregation of work properly is equally important and it should be as per the level of management. A lower level management may be wise but can't take the decision of top level managers. If there is proper segregation of duties then this will help the organisation to achieve its mission successfully.

#### **Maximum Benefit with Minimum Cost:**

In Bharat Milap Rama makes understood to Bharat that he will launch an undertaking, which has maximum benefit with minimum coast and indeed do not delay it further. Kaccid artham viniścītya laghu mūlam mahā udayam | kṣīpram ārabhasē kartum na dīrghayasi rāghava. (Ayodhya kand 2.1.62) The organisation implementing such culture and policy of maximum benefits at minimum cost has longer sustainability and higher reputation. Moreover, it also attracts large number of investors, talented and creative employees and also a good consumer market. As cost is a main factor which can largely affects the profitability of the company.

#### **Conclusion**

India can justifiably boast of a long history of culture, tradition and values. Scriptures of Indian origin are a treasure trove of nuggets of wisdom. The Valmiki Ramayana is rich with several lessons on corporate governance.. It is important today, that instead of copying the western system or ideas in our business, we revisit our ancient treasures like Ramayana with an inquisitive mind to explore and evolve a structure of corporate governance relevant for India. The lessons from Ramayana are relevant even today and can be integrated into the modern context of corporate management towards realizing the ultimate aim of achieving progressively enhanced sustainable value for all the stakeholders.

#### **References**

- Arjoon, S (2005). Corporate governance: An ethical perspective. *Journal of Business Ethics*, 61 (4), 343–352.
- Barlett A. and David,P.: 2000, 'Can Ethical Behaviour really exist in Business?', *Journal of Business Ethics*, 23, 199–209
- Chakraborty,D. (2006) 'Is an Indian ethics of virtue possible?'.*Jurnal of Human Values*, Vol. 12. Delhi, India: Sage Publications.
- Pathak, P., Singh, S, &Anshul, A. (2016). *Modern Management Lessons from Ramayana*.
- *Purushartha: A Journal of Management Ethics and Spirituality*, 9(1).
- *Ramcharitmanas*, Goswami Tulsidas, Gta Press Gorakhpur, India.
- *Valmiki Ramayana ( Vol.1) Ayodha Kanda*, pg 441- 449), Gta Press Gorakhpur, India



## **Takeover Code 2011, Concept Appraisal, Procedures and Disclosures (PART -2)**

(Continued from last edition .)

### **Introduction:**

**In our previous part of the article, we have emphasized on the requirement, origination of Takeover Code and framework how it works in the contemporary world, now we will concentrate on** impending strategy rather than immediate financial gains, more often financed with equity than debt, consolidation in the Banking and Financial Industry, construction with appropriate Legislation(s) and various applicable functional development thereafter.

The existence of an efficient and smooth-functioning market for takeovers plays an important role in the economic development of a country. It is a widely recognized fact that one of the key elements of a robust corporate governance regime in any country is the existence of an efficient and well-administered set of Takeover Regulations. Regulations on takeovers seek to ensure that the takeover markets operate in a fair, equitable and transparent manner. To protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors need a fair, equitable and transparent framework to protect their interests and to provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investments. However, in India it was only in the 20th century that the concept of takeover took birth but even then the concept of hostile takeovers was not known to anybody. **This concept emerged when Swaraj Paul started efforts to takeover Escorts Ltd. and DCM Ltd. He was the first hostile raider among the raiders of Indian stock market.** Although Paul could not succeed in his efforts because the incumbents fend him off by using the

technicalities of rules governing non-residents, this created a need for a Takeover code.

This need was further stressed in 1990s when the Government initiated the Policy of Liberalization and Globalization which resulted in growth of Indian Economy at an increased pace, and it created a highly competitive business environment, which motivated many companies to restructure their corporate strategies by including the **tools of Mergers and Takeovers**. Thus while the possibility of takeover of a company through share acquisition is desirable in new competitive business environment for achieving strategic corporate objectives, there has to be well defined regulation so that the interest of all concerned are not jeopardized by sudden takeover threats.

**In the light of then present circumstances, the need for some law to regulate takeover was strongly felt. Moreover to achieve its objectives as stated in SEBI Act, 1992, SEBI enacted SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 in exercise of powers conferred under section 30 of the Act which laid down a procedure to be followed by an acquirer for acquiring majority shares or controlling in another company, so that process of takeover is carried out in a fair and transparent manner.**

Thereafter, these regulations have been amended a number of times to address the changing circumstances and needs of corporate sector. In 1997 SEBI Takeover Code has been rechristened by enacting SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 substituting SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 and indirect acquisitions, exemptions from open offer obligations, offer price calculations and competing offers which was then open for public comments. After considering the



public comments and further to discussion, the report has been modified to the present form i.e. SEBI (SAST) Regulations, 2011 substituting the SEBI (SAST) Regulations, 1997.

## Practical Overview

### A. Khaitan Electricals Limited Case:

In the case of Khaitan Electricals Limited Case (Target Company) where Promoter & Promoters group were holding 60,12,166 equity shares constituting 52.28% of total paid up capital of the Target Company. They further intend to acquire additional 5,75,000 equity shares constituting 5% of total share capital of the Target Company in Financial Year 2011-12 under Regulation 3(2) of SEBI (SAST) Regulations, 2011. Further they are desirous to increase their shareholdings by additional acquisition of 5% in each FY till 2015 without making Public Announcement by way of open market purchase in normal segment on the Exchange under Regulation 3(2) of the SEBI (SAST) Regulations, 2011.

#### Issues were involved:

1. Can the Promoters of the Company acquire additional 5% (5,75,000 shares) during the financial year 2011-12 as per Regulation 3(2) of SEBI (SAST) Regulations, 2011?
2. Can the Promoters further acquire additional 5% as per Regulations 3(2) of the SEBI (SAST) Regulations 2011 in each financial year 2012-13, 2013-14, and 2014-15 till reaching the level of 75% shares capital of the Company?

It was held that as per Regulation 3(2) of SEBI (SAST) Regulations, 2011 if the acquirer shareholding is between 25% total number of shares or voting rights of the Target Company and the maximum permissible non-public shareholding limit, then acquirer may acquire additional 5% of the total number of shares or voting rights of the Target Company in a financial year without making public announcement subject to the shareholding of the Acquirer should not breach maximum public shareholding limit.

In this regard to holding 58.28% shares and further increase of holding, it is clarified that "any financial year" mentioned in Regulation 3(2) should be read as "every financial year". Therefore the promoters of the Company are eligible to acquire additional 5% shares in every financial year without making

any public announcement subject to the fulfillment of other conditions mentioned therein.

### B. Daiichi Sankyo Company Limited v Jayaram Chigurupati & others

Ranbaxy Laboratories Limited (RLL) entered into share purchase agreement with the promoters of Zenotech Laboratories Limited (ZLL) (Target Company) on October'03,2007 for acquiring 27.35% shares of "ZLL" at a price of Rs.160 per share. Further, on the same day, the Board of Directors of "ZLL" has agreed to issue 54,69,538 Equity Shares to "RLL" at a price of Rs.160 per share. Pursuant to the above acquisition, RLL made the public announcement to the shareholders of "ZLL" to acquire upto 20% shares at a price of Rs.160 per share which closed on January 15, 2008 and the last date for payment is January 28, 2008. On the completion of above acquisition, "RLL" holds 46.79% shares of "ZLL".

2. On June 11, 2008, Daiichi Sankyo Company Limited (Acquirer/Appellant) has entered into Share Purchase Agreement and Share Sale Agreement with promoters of RLL and RLL to acquire 34.81% stake of the PUC of "RLL" at a price of Rs.737 per share. Further, the agreement also provides the allotment of 46,258,063 (11.03%) Equity Shares and 23,834,333 warrants of RLL to Appellant at a price of Rs.737 per share. Pursuant to the above acquisition, on June 14, 2008, the Appellant has given public announcement to the shareholders of "RLL" to acquire 20% of paid up capital of RLL at a price of Rs.737 per share. The remaining 48,020,900 equity shares held by the Sellers were acquired by the Appellant on November 7, 2008, taking the shareholding of the Appellant to 63.92%.

#### Issues were involved:

- i. Whether RLL being the subsidiary of Appellant would be treated as PAC with the Appellant and the price of Rs. 160 per share paid by RLL to the shareholders of ZLL should be considered for determining the offer price?
- ii. Whether the offer of Rs. 113.62 per share made by the Appellant for the acquisition of shares of ZLL was fair and lawful?

**It was held by the Supreme Court that:**

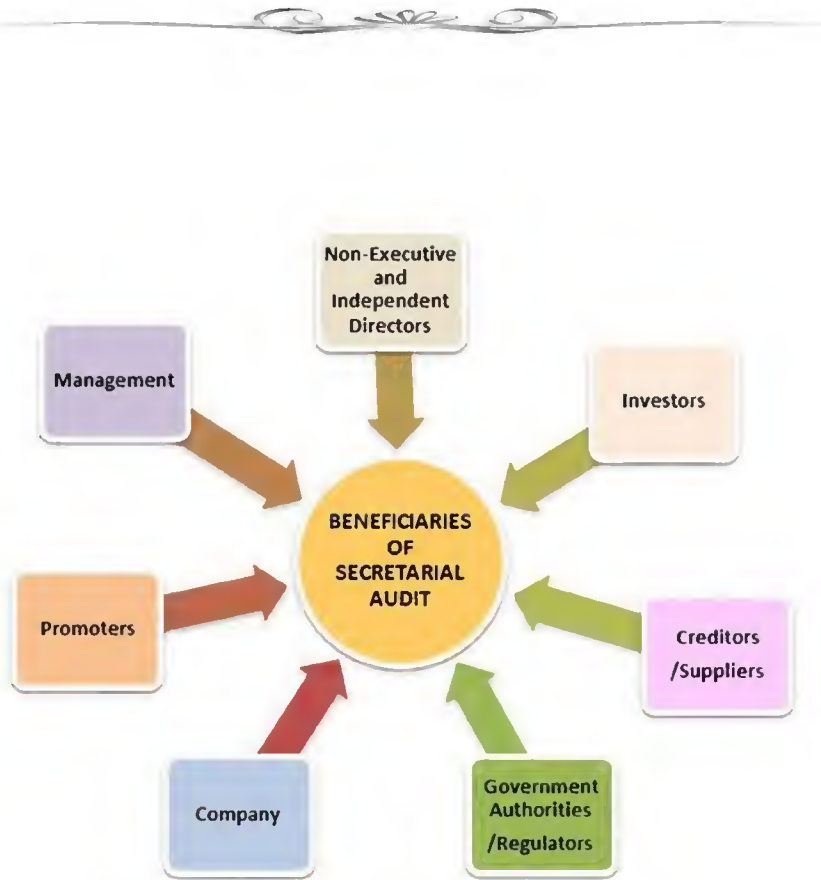
A) The concept of 'persons acting in concert' under Regulation 2(e)(1) is based on a target company on one side, and two or more persons acting together with a common objective or purpose of substantial acquisition of shares etc. on the other. As long as there is no shared objective of substantial acquisition of shares of a target company, there can be no question of persons acting in concert.

B) But the mere fact that two companies are in a holding-sub subsidiary relationship would not mean, without anything more, that the two companies are 'persons acting in concert'.

C) For the application of Regulation 20(4)(b), it is not relevant or material that the Acquirer and the

other person, who had acquired the shares of the target company on an earlier date, should be acting in concert at the time of the public announcement for the target company. The relevant time is the time of purchase of shares of the target company.

D) Therefore, Supreme Court held that RLL was not acting in concert with the Appellant either from the date of SPA or SSA or even after becoming a subsidiary of the Appellant and the acquisition of the shares of the Target Company by RLL in January 2008 did not come within the ambit of Regulation 20(4)(b). Thus the offer price in the Public Announcement for the Target Company shares made by the Acquirer/Appellant was correctly worked out and was fair and lawful.





“Health is wealth”, is the ancient saying which depicts the importance of health in our daily life. Food and health are closely related. Food is considered just as powerful as medicine. In fact, there is a shloka (writings of the ancient texts of ayurveda) that says “food is medicine when consumed properly.”

Today in the era of super markets and hyper markets, most of us consume the foods that are either packed or frozen. So, how to determine whether the food is fresh or stale? Well, here is an online solution for this problem i.e. [EAT BY DATE](#).

Eat by Date is a group of contributors from the kitchen and classroom communities who set out to answer the question, “How long does food *really* last?” From the best ingredients to the ordinary, they provide you with a diverse and informative perspective on food shelf life, food

safety, expiration dates, recipes, substitutions, food storage and more. The site is focused on helping you **save money**, **eat healthy**, and debunk the myth of expiration dates on food.

### How to use the site:

The site has long list of menu ranging from dairy products to fruits and vegetable. Use the search function or click a picture below to learn about your favorite foods and beverages.

So next time you are to buy any canned foods check the site for eating them healthy.

Apart from this, the website also contains useful articles and blogs on food & health, eating habits etc...

The site gives the details about the food you selected something like this:

### Example: Dry Fruits

Dried Fruit Expiration Date

(Unopened)	Pantry	Fridge	Freezer
	Past Printed Date	Past Printed Date	Past Printed Date
<b>Raisins</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Dried Cranberries</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Craisins</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Dried Cherries</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Dried Apricots</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Dried Mangoes</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Dates</b> last for	3-12 Months	1-2 Years	Indefinite
<b>Dried Blueberries</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Dried Plums</b> last for	6-12 Months	1-2 Years	Indefinite
<b>Banana Chips</b> last for	1-2 Months	--	--
<b>Figs</b> last for	3-12 Months	1-2 Years	Indefinite
<b>Chocolate Cherries</b> last for	2-3 Weeks	6 Months	1 Year
(Opened)	Pantry	Fridge	Freezer
<b>Open Dried Fruit</b> lasts for	3-6 Months	6-12 Months	1* Years

# Living Room



Once upon a time two brothers who lived on adjoining farms fell into conflict. It was the first serious rift in 40 years of farming side by side, sharing machinery, and trading labor and goods as needed without a hitch.

Then the long collaboration fell apart. It began with a small misunderstanding and it grew into a major difference, and finally it exploded into an exchange of bitter words followed by weeks of silence.

One morning there was a knock on John's door. He opened it to find a man with a carpenter's toolbox. "I'm looking for a few days' work," he said. "Perhaps you would have a few small jobs here and there. Could I help you?"

"Yes," said the older brother. "I do have a job for you. Look across the creek at that farm. That's my neighbor, in fact, it's my younger brother. Last week there was a meadow between us and he took his bulldozer to the river levee and now there is a creek between us. Well, he may have done this to spite me, but I'll go him one better. See that pile of lumber curing by the barn? I want you to build me a fence – an 8-foot fence – so I won't need to see his place anymore. Cool him down, anyhow."

The carpenter said, "I think I understand the situation. Show me the nails and the post-hole digger and I'll be able to do a job that pleases you."

The older brother had to go to town for supplies, so he helped the carpenter get the materials ready and then he was off for the day.

The carpenter worked hard all that day measuring, sawing, and nailing.

About sunset when the farmer returned, the carpenter had just finished his job. The farmer's eyes opened wide, his jaw dropped.

There was no fence there at all. It was a bridge... a bridge stretching from one side of the creek to the other! A fine piece of work with handrails and all – and the neighbor, his younger brother, was coming across, his hand outstretched.

"You are quite a fellow to build this bridge after all I've said and done."

The two brothers stood at each end of the bridge, and then they met in the middle, taking each other's hand. They turned to see the carpenter hoist his toolbox on his shoulder. "No, wait! Stay a few days. I've a lot of other projects for you," said the older brother.

"I'd love to stay on," the carpenter said, "but, I have many more bridges to build."

Source : Internet

## Words Worth Million

*Life is like a game of cards. The hand you are dealt is determinism; the way you play it is free will*

*-Jawaharlal Nehru*



## Export & Deemed Export of Goods under GST Regime Simplified



### Treatment of Exports of Goods

Under the GST Law, export of goods or services has been treated as:

1. Inter-State supply and covered under the Integrated Goods and Services Tax Act (IGST Act).
2. Zero Rated Supply i.e. the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final stage.

### Exports of Goods Compliance

Under new Indirect tax regime, the procedures relating to exports have been simplified to the greater extent.

### Payment of GST

The goods and services can be exported either on payment of Integrated GST or under bond or Letter of Undertaking (LOU) without payment of IGST. In case of goods exported on payment of integrated GST, the exporter can claim the refund after the goods have been exported. In case of goods and services exported under bond or LUT, the exporter

can claim the refund of accumulated Input Tax Credit on account of export.

### Documentation

In case of goods, the Shipping Bill is the only document required to be filed with the Customs for making exports. The requirement of filing the ARE 1/ARE 2 has been abolished.

### Self-Sealing & Self Certification

An exporter who desirous of availing the self-sealing & self – certification, shall inform the concerned Officer at least 15 days in advance before the first movement of a consignment from his factory or warehouse. Once the permission is granted, the exporter shall furnish the only intimation to the jurisdictional Superintendent or Customs each time self-sealing is carried out at approved premises.

Self-Sealing permission once given by the concerned officer shall be valid for export at all the customs stations. The customs formation granting the self-sealing permission shall circulate the permission along with GSTIN of the exporter to all Custom Houses concerned.

Transport document for movement of the self-sealed container by an exporter from factory or warehouse shall be same as the transport

document prescribed under the GST Laws. In the case of an exporter who is not a GST registrant, Way Bill or Lorry Receipt shall be the transport document.

The exporter shall seal the container with the tamper-proof electronic seal of standard specification. Before sealing the container, the exporter shall feed the data such as—

1. The name of the exporter,
2. IEC code,
3. GSTIN number,
4. Description of the goods,
5. Tax invoice number, etc.

The exporter intending to clear export goods on self-clearance shall file the Shipping Bill under digital signature.

### Exemption of Duties

With effect from 1<sup>st</sup> July 2017, the exemption of duties available under Advance authorization scheme, EPOG scheme and duty credit scrips such as MEIS & SEIS schemes shall be restricted only to Basic Customs Duty, Safeguard Duty, Transitional Product-Specific Safeguard Duty and Anti-dumping Duty in respect of goods leviable to IGST.

### Refund Mechanism

#### In case of refund of tax on inputs used in exports

S. No.	Process of Refund	
1.	Refund of 90 %	Will be granted provisionally within seven days of acknowledgement of refund application
2.	Refund of 10%	Will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
3.	Interest @ 6 %	Payable if the full refund is not granted within 60 days.
4.		

#### In the case of refund of IGST paid on exports:

Upon receipt of information regarding furnishing of valid return in Form GSTR-3 by the exporter from the common portal, the Customs shall process the

claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

### Latest Developments - As on 23<sup>rd</sup> October, 2017

GST Network (GSTN) has from 10<sup>th</sup> October 2017 started issuing refunds to exporters for Integrated GST they paid for the month of July, after matching GSTR-3B and GSTR-1.

For August and September, while the initial return GSTR-3B has already been filed, the final return GSTR-1 has not yet been filed. A separate online Application (App) for claiming Integrated GST (IGST) refunds for August and September will be made available on GSTN portal from 4<sup>th</sup> week of October.

For the month of July & August, estimated ` 67,000 crores has accumulated as the Integrated GST (IGST), of which only about ` 5,000-10,000 crores will be due as refunds to exporters.

### Deemed Export

Under section 147, the Government may, on the recommendations of the Council, notify certain supplies of goods manufactured in India as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange.

The Central Government, vide Notification No. 48 / 2017 – Central Tax dated 18<sup>th</sup> October 2017, notified certain supplies as deemed export, namely;

1. Supply of goods by a registered person against Advance Authorization.
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.
3. Supply of goods by a registered person to Export Oriented Unit.
4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/ 2017-Customs, dated the 30<sup>th</sup> June, 2017 against Advance Authorization.

For refund of tax, the application in FORM GST RFD-01, to be filed by the supplier of deemed export supplies in case when the recipient does not avail the ITC on such supplies and furnishes an undertaking. Notification No. 47/ 2017-Central Tax dated 18<sup>th</sup> October 2017.

### Export Oriented Units under GST Regime

EOU will be treated like any other supplier and all the provisions of the GST Laws will apply.

## Benefits

The duty-free imports will be restricted to Basic Customs Duty.

1. Exemption from the additional duties of Customs, if any, under section 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975
2. Exemption from Central Excise duty for goods specified in the Fourth Schedule to the Central Excise Act.

However, IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible to take Input Tax Credit of the said GST paid by its suppliers.

Supply of goods from one EOU to another EOU (i.e. Inter – Unit transfer) will be treated as any other supply.

## Re-Export of Imported Goods

No amendments have been made to the drawback provisions (Section 74 or Section 75) under Customs Act 1962 in the GST regime. Hence, the drawback scheme will continue in terms of both sections 74 and section 75. Option of All Industry Rate (AIR) as well as Brand Rate under Section 75 shall also continue.

Taxes paid at the time of importation of goods, Drawback of the same will be granted.

Drawback of Basic Customs Duty, Additional Duty of Customs (CVD), Special Additional Duty (SAD), paid on the goods imported prior to 1<sup>st</sup> July 2017 will be paid even if the re-export is made after 1<sup>st</sup> July 2017.

Similarly, in respect of the goods imported after 1<sup>st</sup> July 2017, Basic Customs Duty, Integrated GST, Compensation Cess will be paid and Drawback of all of these would be paid on re-export of such imported goods.

## Imports by SEZs

Authorised operations in connection with SEZs shall be exempted from payment of Integrated GST. Hence, there is no change in operation of the SEZ scheme.

However, if drawback is claimed by Domestic Tariff Area (DTA) supplier, the claim needs to be filed with the jurisdictional Customs Authorities.

## Relief Package Announced in 22<sup>nd</sup> GST Council Meeting held on 6<sup>th</sup> October 2017

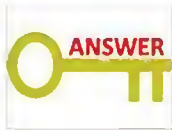
1. The concept of merchant or manufacturer exporter would become irrelevant under the GST regime. Further, Merchant exporter (Trader) allowed procuring goods from a domestic supplier on payment of GST @ 0.1%.
2. Exporters holding Advanced Authorization/ EPCG and EOU's are allowed to import/procure goods from domestic supplier without payment of GST;
3. However, said reliefs are in temporary in nature. It is proposed to introduce "E-Wallet" as permanent relief w.e.f 1<sup>st</sup> April 2018. Under "E-Wallet Relief" notional amount will be credited for exporter as an advance refund for payment of GST. Later, this advance shall be adjusted with balance refund due after export.
4. To compensate the loss incurred on sale of duty credit scrips such as MEIS & SEIS the GST on sale/ purchase, is reduced from 5% to 0%;
5. Specified banks and Public Sector Units (PSUs) are being allowed to import Gold without payment of IGST.

Source : CBEC Notifications



A Manufacturer purchases 100 Nos Travel Bags & 300 Nos T-Shirt with the Brand Name of his business and distributes the same amongst his Authorised Dealers. Out of the total purchase some Bags & T-Shirts are distributed amongst the employees. Such Manufacturer has paid Rs.2,00,00 as SGST & CGST to the supplier. Examine the eligibility of ITC under GST on such procurement.

Please send your opinion to, [newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com)



## Opinion To Last Month's Brainy Bits

To answer the situation, **below facts** need to be thoroughly examined:

- Mr.A got the COP for the practice from the ICS in the state of Karnataka and assuming no other place he has is practice or branches
- Bank of Baroda calls for "Expression of Interest" and qualifications of eligibility is set on the basis of Experience & No.of years in practice rather than Place where COP has been obtained from ICS
- Professional expertise gained from the ICS curriculum has no Geographical boundaries
- Members position their practice at a particular place for permanence in the Professional Business and other factors
- Any professional work involves some amount of work performed on the field for review of Books of Accounts & relied upon documents. However, the same gets concluded post the Desk Review and other Analytical review which is usually carried out the Place of Business of the Professional called Address mentioned for obtaining COP
- Banker has no restriction on conclusion of the Professional work to be performed and delivered in a Particular state, rather compliance from law point of view alone is required

### **Provision of GST law:**

- Place of Supply as governed by Section 12(2) of IGST Act, 2017
- Definition of Casual Taxable Person, Principal Place of Business read with Section 22 of CGST Act, 2017

### **Examining the GST Provision:**

- Mr.A who is a Practising CS, exercises the work assigned by the Bank in his Professional Capacity and he empanels with the Bank from the Place of Business where COP has been permitted. Further work performed by Mr.A doesn't originate & conclude within the state of Tamil Nadu without the basic element of Ground work and Desk Review conducted at his Place of Business
- Mr.A on the basis of Exemption specified in Section 22 of CGST Act, 2017 shall be obtaining Registration under GST
- Mere visit to TN from the state of Karnataka, doesn't cause Mr.A to be a Casual Taxable Person for rendering the Taxable Services in the State of TN for the reason work assigned to Mr.A shall be at his Place of Business as per the Appointment letter of Professional Engagement at Karnataka
- Secretarial work undertaken by Mr.A shall be for the whole Bank having its Operations across India and as such the logic of Performance of the Professional work can't be assigned to all the States where Bank has its operational activities and calling for registration to be obtained by Mr.A in all such states

### **Conclusion:**

Mr.A has to charge IGST on the Bank for the Professional work undertaken if he/she is registered under GST





## Employee Inventions/ Intellectual Property and Ownership



Today, it is common place to find the below clause in an employment agreement:

*“..intellectual property created by the employee in the course of the employee s employment, or in relation to a certain field, is owned by the employer.*

As we inch towards a world where incorporeal property is as valuable (or in some cases more valuable) than the corporeal property one owns, it is of utmost importance to understand who has the ownership rights over the same and guard it effectively. An intellectual property (“IP”) is the result/ creation of one’s mind and labour, aided no doubt by the resources one has access to. In this context it is paramount to know who owns the IP created in the course of work or outside the scope of work – Employer or Employee? What may be assignable by the employee to the employer and what may be not? Is the employee entitled for compensation in the event of assignment?

The answers are found in a mix of subject matter legislations, case laws and in contract law. In fact, a well drafted employment agreement has a clause on IP ownership and protection, in addition to a clause providing for protection of confidential information. In this context let us analyze the primary IP rights (Patents and Copyrights), in the context of employment, for a better understanding on what rights can/ cannot be legally assigned to the employer and the terms of such assignment.

### **Copyright**

Section 17 of the Copyright Act, 1957 (“Copyright Act”) expressly answers the question at hand. It provides that the first owner of copyright in a work made in the course of employment under a

‘contract of service’ is the employer. It also clarifies that the first owner of copyright in photographs, paintings, cinematographs etc. is the person who commissions such work (i.e. the person at whose instance the work is made and who pays valuable consideration for the same). Where a copyright needs to be assigned in the course of employment, specific royalty or consideration to be paid must be set out in the assignment deed by the parties.

In light of the above, the first owner of a copyright in a work made during the course of employment is always the employer despite the existence or non-existence of a contractual clause. However, if the work was made by a person who was under a ‘contract for service’ (consultant/independent contractor – client contract), as opposed to ‘contract of service’ (employer -employee contract), then one has to refer to the contractual terms to determine the rightful owner of copyright.

Notwithstanding who is the owner of the copyrighted work, the moral rights (rights of attribution and integrity) will continue to vest in the author of the work and these rights are non-assignable/ non-waivable (though there is still some debate as to whether they can be waived and if such waiver is enforceable).

### **Patents**

Unlike copyright, Indian patent law is silent on employee inventions and one has to rely on employment contract (express or implied) and common law. It is examined from his contractual obligations if he ought to hold the patent as a trustee for the employer.

It is pertinent to point that the Bombay High Court recently found that patents filed by an employee would belong to the employee, if the employee was not engaged or instructed to create inventions as

part of his employment. (*Darius Rutton Kavasmaneck v Gharda Chemicals Ltd & ors* (2014) SCC Online Bom 1851). In the said case, it was held that the managing director had no fiduciary duty towards his company, as he was not under a 'duty to invent'.

In light of the above, it is quite common to see that employment contracts contain a clause specifying that ownership of all IP created during the course of employment will be assigned to the employer.

As is clear from above, having an IP ownership and assignment clause in an employment contract is of utmost importance.

Also, as regards a new hire, two additional concerns arise: a) does the new hire own any pre-existing IP? and b) Would the new hire use or disclose any IP of the former employer in the course of employment? A mandatory disclosure would go a long way in ensuring that there is no misuse of another's IP. Insertion of appropriate covenants and warrants would also help the employer in ensuring that no third-party right is infringed.





- Vodafone pegs \$5-billion valuation for 42% stake in Indus Towers
- Bharti Airtel and Tigo merge in Ghana to form AirtelTigo
- Further pruning of rates possible: GST Council member
- FMCG companies want traders to pass on GST gains
- WPI inflation zooms to six-month high of 3.59%; veggies, onion prices soar
- Larsen & Toubro Infotech to acquire Syncordis SA

### **Apple to help India develop anti-spam app after face-off with regulator**

Apple Inc has agreed to give limited help to the Indian government to develop an anti-spam mobile application for its iOS platform

### **Bharat 22 ETF opens for subscription today**

The Bharat-22 exchange traded fund (ETF), which is expected to fetch around Rs 8,000 crore for the government, opens for subscription today, a day after the issue was open for anchor investors. Public investors will get access to the fund till November 17.

### **Shoppers Stop shareholders approve Hypercity's sale to Future Retail**

The company has received 99.35 per cent votes in favour on votes polled through postal ballot and e-voting process for sale/transfer of Hypercity, it said in a filing to BSE.

### **Amazon pumps Rs 2900 crore into its India business in a challenge to rival Flipkart**

This fresh investment is part of Amazon's commitment to put in 5 billion dollars into the Indian market. With this recent investment, Amazon has invested 2.6 billion dollars or Rs 17,840 crore in the current financial year itself, according to regulatory filings with Registrar of Companies.

### **Fortis board clears RHT portfolio acquisition for Rs4,650 cr**

Fortis and RHT have inked a pact proposing the acquisition of all the securities of RHT's entities in India holding, clinical entities and businesses via purchase of securities for an enterprise value of around Rs 4,650 crore, Fortis said in a statement.

### **Suresh Prabhu signals focus on new sectors to boost manufacturing, exports**

Commerce and industry minister Suresh Prabhu has signalled a shift in India's manufacturing and export strategy, with a focus on new emerging sectors such as genomic, while giving a thrust to export of goods that are not currently among the top 10 items shipped out of the country.

### **Delhi has highest number of insolvency professionals**

The Insolvency and Bankruptcy Board of India (IBBI) has registered 263 chartered/cost accountants or company secretaries from Delhi as insolvency professionals (IPs), who are eligible to run troubled companies for a stipulated period. There are a total of 1,107 registered insolvency professionals in India.



## Companies Act, 2013

### Updates on Amended Rules

MCA has amended Companies (Accounts) Rules, 2014 which is to be known as Companies (Accounts) Amendment Rules, 2017. Under this new rule new Form AOC-4 has been introduced. In this new form a new field has been introduced with respect to disclosures in the financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016

***Companies(Accounts) Amendment Rules, 2017, dated 7th November, 2017.***

MCA has amended Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 which is to be known as Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017. According to which The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I.

- Companies listed with stock exchanges in India and their Indian subsidiaries.
- Companies having paid up capital of five crore rupees or above.
- Companies having turnover of one hundred crore rupees or above.
- All companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sectors are exempted from filing of financial statements under these rules.

***Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017 dated 6th November, 2017.***

MCA has introduced Companies (Registered Valuers and Valuation) Rules, 2017. This rule speaks about eligibility, Qualification, experience, functions, disqualification, Registration and related matters of registered valuers.

***Companies (Registered Valuers and Valuation) Rules, 2017.dated 18th October, 2017.***

### Circulars

As per second proviso to Rule 6 of Investor Education and protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, where seven years period as per section 124 is completed during September 7<sup>th</sup>, 2016 to October 31, 2017, the due date for transfer of such shares by companies was October 31, 2017.

***General Circular 12/2017, dated 16th October, 2017.***

### Rules

MCA has designated XV Additional Court, XVI Additional Court of City Civil Court, Chennai, as special courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more.

***S.O.3529 (E), dated 3rd November, 2017.***