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Mysuru Chapter
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Vision
"To be a global leader in promoting good corporate governance"

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

Mission
"To develop high calibre professionals facilitating good corporate governance"

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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 !!

COVID-19 has affected whole world and continuing. It may be the high time for all of us to take necessary steps and measures to live along with it and continue to deliver in our respective area to the maximum extent by using all means of communicating and working platform.

Our Institute has taken various measures for the professional development, health and safety of members and students which we all are evidencing through live webinars by eminent personalities in various fields, interactive sessions etc.,

We are planning to conduct few programmes by end of this month by using technology platforms as per the guidelines of Head Quarters.

We wish all the best for the students for their June 2020 Examination which is scheduled to be commenced from 6 July 2020 onwards.

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!

Thank you.

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भारतीय कम्पनी सचिव संस्थान
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Conducting Annual General Meeting (AGM) by companies through Video Conferencing (VC) or Other Audio-Visual Means (OAVM)

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After receiving various representations and in view of the continuing restrictions on the movement of persons at several places in the country, MCA has on May 05, 2020 vide General Circular No.20/ 2020 provided relaxation to companies to conduct the Annual General Meeting (AGM) of their members through Video Conferencing (VC) or Other Audio Visual Means (OAVM), during the calendar year 2020 which the companies are required to conduct as per Section 96 of the Companies Act, 2012 (the Act) , subject to the fulfilment of various requirements discussed below.

A. Conducting AGM for companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility:

Framework provided in para 3 -A of EGM Circular - I that is Circular No.14/2020 dated April 08, 2020 is explained as below for easy reference for the reader for conducting AGM

"The Notice for AGM shall make the following disclosure

1. Detailed manner and framework of conducting the AGM as per this Circular

2. How to access the meeting

3. How to participate in the meeting

4. Helpline number through Registrar & Share Transfer Agents or technology provider or otherwise for the members who need assistance with using the technology before or during the meeting

5. Notice of the meeting to be prominently displayed on the website of the company and for listed company intimation to be given to the stock exchanges.

(a) In case it is unavoidable then EGM was allowed to be conducted by VC or OAVM. However to read this in this Circular 20 with reference to conducting AGM it should be read that in the AGM only four Ordinary Business as per Section 102 (2) (a), to be transacted and items of special business as per Section 102 (2) (b), which are considered to be unavoidable by the Board, may be transacted. Further the entire proceedings of the meeting to be recorded and such recorded transcript shall be maintained in the safe custody by the company. The public company to upload the recorded transcript on the website of the company, if any.

(b) While deciding the time for AGM through VC or OAVM, the management shall keep in mind the convenience of different persons positioned in different time zones in the globe. For that reason, the management must know and check the list of its shareholders with their addresses and ensure availability of its Directors, Independent Directors, Nominee Directors and Auditors.

(c) The Company to ensure and provide proper teleconferencing facility as follow :

i. Arrangement for two-way communication through teleconferencing or WebEx for the ease of participation by the members and the participants are allowed to pose the question concurrently or given time to submit their questions in advance on the email of the company; and

ii. Capability of system of hosting up to 1000 members to participate on first come first serve basis principle and the large Shareholders holding 2% or more shareholding, Promoters, Institutional

Investors, Directors, Key Managerial Personnel, Chairperson of Audit Committee, Nomination and Remuneration Committee and Stakeholders and Relationship Committee and the Auditors must be allowed to attend the meeting without restriction of first- come- first- served basis principle.

(d) The facility of joining the meeting shall be kept open at-least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time of the AGM.

(e) Before the actual date of AGM, the facility of remote e-voting shall be provided in accordance with as per Rule 20 of the Companies (Management and Administration) Rules, 2014.

(f) The Members who attend through VC or OAVM are counted for the purpose of reckoning quorum under Section 103 of the Act.

(g) Member who is present in the meeting through VC or OAVM and who has not cast his vote on resolution through remote e-voting and is otherwise not barred from the voting shall be allowed to vote through e-voting system provided during the meeting and not by show of hands.

(h) Unless the Articles of Association of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed as follow :

i. If there are less than 50 members present, the Chairman shall be appointed in accordance with Section 104 of the Act, that is by show of hands ; and

ii. if there are equal to or more than 50 members present, then the Chairman shall be appointed by a poll conducted through e-voting system during the meeting.

(i) The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of voting during the meeting held through VC or OAVM.

(j) Proxies as per section 105 of the Act, cannot be appointed for participation in the AGM conducted as per this Circular. However, the Authorised Representative in pursuance of Section 112 and Section 113 of the Act are deemed to be member of the company and are entitled to exercise same rights and powers as the member could exercise and hence appointment of Authorised Representative for participating in the AGM held through VC or OAVM is allowed.

(k) At least one Independent Director (where the company is required to appoint) and the Statutory Auditor / Secretarial Auditor or their authorized representative who are also qualified to be the Statutory Auditor / Secretarial Auditor, as the case may, shall attend such meeting through VC or OAVM.

(l) The company to encourage the Institutional Investors who are members of the company, to attend and vote in the AGM through VC or OAVM.

(m) The Notice for AGM shall make the following disclosure

i. Detailed manner and framework of conducting the AGM as per this Circular

ii. How to access the meeting

iii. How to participate in the meeting

iv. Helpline number through Registrar & Share Transfer Agents or technology provider or otherwise for the members who need assistance with using the technology before or during the meeting

v. Notice of the meeting to be prominently displayed on the website of the company and for listed company intimation to be given to the stock exchanges

(n) If the Notice for AGM has been served prior to 05th May, 2020, being the date of Circular, than the Company with the consent of not less than 95% of members in number who are entitled to vote, issue a fresh Notice with shorter duration with detailed disclosure as mentioned in the above point (m).

(o) All Resolutions passed in AGM conducted through this mechanism of VC or OAVM shall be filed with the Registrar of Companies within 60 days of meeting, clearly indicating therein that the mechanism provided in these Circulars along with other provisions of the Act and Rules were duly complied with during such meeting.

The manner and mode of issuing notices provided in sub-para (i)-A of EGM Circular – II that is Circular No. 17/ 2020 dated April 13, 2020 is explained as below for easy reference for the reader for conducting AGM

a) The company to comply with Rule 18 of the Companies (Management and Administration) Rules, 2014 and the Notice of AGM may be given to the members only through the email registered with the Company or Depository Participants or Depository

b) The Company to give a Public Notice by way of advertisement as per Rule 20 (4) (v) of the Companies (Management and Administration) Rules, 2014 and the same to be published at least once in vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having wide circulation in that district and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and shall specify in the advertisement the following information

i. a statement that the AGM is proposed to be conducted through VC or OAVM in compliance with applicable provisions of the Act / Rules and these Circulars;
ii. the date and time of the AGM to be conducted through VC or OAVM;
iii. availability of Notice of AGM on the website of the company and the stock exchange for listed company;
iv. the manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting;
v. the manner in which the members who have not registered their email addresses with the company can get the same registered with the company;
vi. the manner in which the members can give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means;
vii. any other detail considered necessary by the company

c) The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business at the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable the members to participate and vote on the items being considered in the meeting.

1. In the AGM through VC or OAVM, the company can transact only the Ordinary four Business Items and those Special Business Items which are considered to be unavoidable by the Board, may be transacted.
2. Financial Statements (including Board's Report, Auditor's Report or other documents required to be attached therewith), shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company and to all other persons entitled to receive the same.
3. Public Notice for AGM should be published with details as mentioned in point (b) above.
4. In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.
5. Quorum: In case, the company has received the permission from the relevant authorities to conduct its AGM at its Registered Office, or at any other place as provided under section 96 of the Act, after following any advisories issued from such authorities, the company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OAVM, so as to allow other members of the company to participate in such meeting. All members who are physically present in the meeting as well as the members who attend the meeting through the facility of VC or OAVM shall be reckoned for the purpose of quorum under section 103 of the Act. All resolutions shall continue to be passed through the facility of e voting system.

B. Conducting AGM for companies which are not required to provide the facility of e-voting under the Act

1. Practically AGM may be conducted through the facility of VC or OAVM only by a company which has in its records, the email addresses of at least half of its total number of members, who
   i. in case of a Nidhi, hold shares of more than Rs.1000/- in face value or more than 1% of the total paid-up share capital, whichever is less;
   ii. in case of other companies having share capital, who represent not less than 75% of such part of the paid-up share capital of the company as gives a right to vote at the meeting;
   iii. in case of companies not having share capital, who have the right to exercise not less than 75% of the total voting power exercisable at the meeting.

Note – the company to check both the things and not one, (a) 50% of number of members and (b) having threshold of holding of shares or voting power

2. The company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the company.

Framework provided in para 3 -B of EGM Circular – I that is Circular No.14/2020 dated April 08, 2020 is explained as below for easy reference for the reader for conducting AGM

a) In case, it is unavoidable then EGM was allowed to be conducted by VC or OAVM. However to read it with Circular 20 with reference to conducting AGM it should be read that in the AGM only four Ordinary Business as per Section 102 (2) (a), to be transacted and items of special business as per Section 102 (2) (b), which are considered to be unavoidable by the Board, may be transacted.
Further the entire proceedings of the meeting to be recorded and such recorded transcript shall be maintained in the safe custody by the Company. The public Company to upload the recorded transcript on the website of the Company, if any.

b) While deciding the time for AGM through VC or OAVM, the management shall keep in mind the convenience of different persons positioned in different time zones in the globe. For that reason, the management must know and check the list of its shareholders with their addresses and ensure availability of its Directors, Independent Directors, Nominee Directors and Auditors.

c) The Company to ensure and provide proper teleconferencing facility as follow :
   i. Arrangement for two-way communication through teleconferencing or webex for the ease of participation by the members and the participants are allowed to pose the question concurrently or given time to submit their questions in advance on the email of the Company; and
   ii. Capability of system of hosting upto 500 members or members equal to the total number of members of the Company, whichever is lower, to participate on first come first serve basis principle. The large Shareholders, holding 2% or more, Promoters, Institutional Investors, Directors, Key Managerial Personnel, Chairperson of Audit Committee, Nomination and Remuneration Committee and Stakeholders and Relationship Committee and the Auditors may be allowed to attend the meeting without restriction of first- come- first- served basis principle.

d) The facility of joining the meeting shall be kept open at-least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time of the AGM.

e) The Members who attend through VC or OAVM are counted for the purpose of reckoning quorum under Section 103 of the Act.

f) Unless the Articles of Association of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed as follow:
   i. If there are less than 50 members present, the Chairman shall be appointed in accordance with Section 104 of the Act, that is by show of hands; and
   ii. if there are equal to or more than 50 members present, then the Chairman shall be appointed by a poll conducted through e-voting system during the meeting.

g) At least one Independent Director (where the company is required to appoint) and the Statutory Auditor / Secretarial Auditor or their authorized representative who are also qualified to be the Statutory Auditor / Secretarial Auditor, as the case may, shall attend such meeting through VC or OAVM.

h) Proxies as per section 105 of the Act, cannot be appointed for participation in the AGM conducted as per this Circular. However, the Authorised Representative in pursuance of Section 112 and Section 113 of the Act are deemed to be member of the Company and are entitled to exercise same rights and powers as the member could exercise and hence appointment of Authorised Representative for participating in the AGM held through VC or OAVM is allowed.

i) The Company to encourage the Institutional Investors who are members of the Company, to attend and vote in the AGM through VC or OAVM.

j) The Notice for AGM to include a designated email address of the company so that the members can cast their vote through such designated email address, whenever a poll is demanded during the AGM on any resolution.

k) The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly followed by the Company and also due safeguards shall be taken by the Company with respect to authenticity of email address(es) and all the other details of its members.

l) During the AGM through VC or OAVM facility, where a poll on any item is required, in such case the members shall cast their vote on the resolutions only at such stage on items considered in the meeting by sending email to the designated email address circulated by the Company through their email address(es) which are registered with the Company. Such voting is not allowed to be sent by email in advance to the Company before the meeting is actually held through VC or OAVM facility.

m) The Chairman may decide to conduct a vote by show of hands if the members present in the meeting are less than fifty (50). If the demand for poll is made by any member in accordance with Section 109 of the Act then the procedure mentioned above in point (l) shall be followed.

n) The meeting may be adjourned for the purpose of counting votes and be called later to declare the result.

o) The Notice for AGM shall make the following disclosure:

   i. Detailed manner and framework of conducting the AGM as per this Circular
   ii. How to access the meeting
   iii. How to participate in the meeting
   iv. Helpline number through Registrar & Share Transfer Agents or technology provider or otherwise for the members who need assistance with using the technology before or during the meeting
   v. Notice of the meeting to be prominently displayed on the website of the Company.

p) If the Notice for AGM has been served prior to 05th May, 2020, being the date of Circular, than the Company with the consent of not less than 95% of members in number who are entitled to vote, issue a fresh Notice with shorter duration with detailed disclosure as mentioned in the above point (o).

q) All Resolutions passed in AGM conducted through this mechanism of VC or OAVM shall be filed with the Registrar of Companies within 60 days of meeting, clearly indicating therein that the mechanism provided in this Circular along with other provisions of the Act and Rules were duly complied with during such meeting.

The manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular – II that is Circular No. 17/ 2020 dated April 13, 2020 is explained as below for easy reference for the reader for conducting AGM

a) The Notice of AGM may be given to the members only through the email registered with the Company or Depository Participants or Depository.

b) Notice of meeting to be displayed on the website of the Company, if any.

c) In order ensure that all members are aware that AGM is proposed to be conducted in compliance with the Circular 20, it shall do the following:

   i. Contact all its members whose email address are not registered with the Company, over telephone or any other mode of communication for registration of their email address before sending the Notice for AGM to all its members; or

   ii. where the contact details of any of the members are not available with the Company or could not be obtained even after making efforts as above , it shall cause a Public Notice by way of an advertisement to be published, immediately at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the Company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions and specifying in the advertisement, the following information:

      a. that the Company intends to convene AGM through VC or OAVM in compliance with applicable provisions of the Act / Rules and this Circulars and for that purpose the Company proposes to send Notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice;

      b. the details of the e-mail address along with the telephone numbers on which the members may contact for getting their e-mail addresses registered for participation and voting in the AGM.

   iii. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the Company to enable the members to participate and vote on the items being considered in the meeting.

d) AGM called through VC or OAVM, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

Note: How to decide Unavoidable, with the situation or better governance. It is very subjective

e) Owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's Report, Auditor's Report or other documents required to be attached therewith), such statements shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

f) The companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

C. General compliances of disclosure and inspection of documents by the members

The companies referred to in paragraphs (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/certain Registers by the members, or authorizations for voting by bodies corporate, etc as provided in the Act and the Articles of Association of the company are made through electronic mode.

D. Application to Registrar for extension of time to hold AGM till December 31, 2020

The companies which are not covered by the General Circular No. 18/2020, dated April 21, 2020 (that is those companies whose financial year is not ending on December 31, 2019) and are unable to conduct their AGM in accordance with the frame work provided in this Circular are advised to prefer applications for extension of AGM at suitable point of time before the concerned Registrar of Companies under section 96 the Act.

Note: This year considering the Pandemic, MCA should have graciously allowed exemption to corporate from making any application to the Registrar of Companies for extension of time in holding AGM till December 31, 2020. The relaxation should be proactive and not Push from the industry and corporate but a Pull from Government to demonstrate inclusive partnership between the business community and the government

Conclusion: Section 96 require companies to hold AGM in maximum six months from the date of closure of the FY. This Circular giving framework about conducting the AGM through VC or OAVM facilities under the current situation of Pandemic and Social Distancing and the manner/ mode of issuing Notice of AGM to members & issuing Public Notice in the Newspaper is a welcome and timely move from MCA. With this relaxation, the management and compliance team can plan to conduct the AGM this year with clarity. MCA has vide Circular No.18/2020 dated April 21, 2020 gave relaxation to the companies whose financial year ended on December 31, 2019, extending the time for convening AGM on or before September 30, 2020 (nine months from the end of FY) . Similar extension was expected from MCA for the companies whose financial year ended on March 31, 2020 to convene AGM on or before December 31, 2020 (nine months from the end of FY) without making any Application to the concerned Registrar. However, in this Circular 20/ 2020 dated May 05, 2020, MCA has under para 5 specifically mentioned that the companies who could not conduct its AGM through VC or OAVM need to apply to the Registrar for extension of time for AGM. Let's hope that MCA relax this requirement and give such extension of time soon, otherwise this year Registrar's office will be flooded with such Application by companies requesting extension of time in holding AGM by December 31, 2020.

Vacation of office due to non-attendance of Board Meetings and Board Sub-Committee Meetings

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A. Vacation due to non-attendance of Board Meetings

Section 167 of the Act of 2013 (CA13) which came into force w.e.f. 1st April 2014 correspondence to Section 283 of the erstwhile Companies Act of 1956 (CA 56).

Both the said sections deal with vacation of office of director on various grounds. Of the numerous grounds mentioned therein, one of the grounds deals with non-attendance of board meetings leading to vacation of office.

Section 167(1) (b) of CA 13 which corresponds to Section 283 (1) (g) of CA56 lays down that the office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board.

Background for the introduction of 167(1)(b)

The lawmakers seems to have accepted the recommendations in toto made in the J.J. Irani Committee Report on Company Law dated 31.5.2005, under Point No.20 of the said report titled "Vacation of office by the Director", where in a continuous period of one year was suggested.

The only difference being 12 months in place of the recommended continuous period of one year has been incorporated in Sec.167(1)(b)

Key Challenges (Period of 12 Months)

At first reading the prescribed period of "12 Months" seems to be clear and easy to understand, however when we try and fit the same into a director's attendance, the devil in the wordings of "12 Months" reveals itself.

Unfortunately, there is no clarification from MCA or in Rules made under as on date. So, it is left to Company law practitioners to ensure compliance while keeping intact both the letter as well as the spirit of the law.

Let's us try and frame the issues at hand.

First Issue - Period of 12 Months:

a. The period of 12 months has no beginning and hence it would be difficult to label the same as financial year (April to March Period) or calendar year (January to December period), even though both these cover a period of 12 months.
b. Financial year U/s.2(41) of the CA13 means the period ending on 31st day of March every year. So, the coverage is from 1st day of April to 31st day of March?
c. Or should we consider the same to ensure its synchronization with the requirements of Section 173(1). Section 173(1) deals with "Meetings of Board" and provides that a Company shall hold a minimum of four Board Meetings every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

Second Issue- Definition of “Month”

Lets us look at the meaning of “Month” as defined in various sources-

a. Companies Act and Rules thereunder

   -The Act or the rules made thereunder have not clarified what “Month” stands for.

b. Cambridge Dictionary definition of "Month"

   -A period of about four weeks, especially, one of the twelve periods into which a year is divided. And here year stands for calendar year from January to December.

c. Section 3(25) of the General Clauses Act, 1897

   -“month” shall mean a month reckoned according to the British calendar.

d. Court Judgments

   i. A study of the various judgements passed by the High Courts of the land, especially on income tax matters, have held deferring views on the definition of "Month". Some of the High Courts have also held that the definition of a "Month" as provided in the General Clauses Act can only be assigned if there is nothing repugnant in the context.

   ii. However, it is also worth noting that there are numerous judgements of various High Courts, related to income tax matters were in deferring views have been held by the Honorable Courts on the definition of a month and held that meaning under the General Clauses Act can only be assigned if there is nothing repugnant in the context.

   iii. The Courts have also held that the term "month" must be given the ordinary sense of the term of thirty days of period and not as provided U/s. 3(35) of the General Clauses Act.

   iv. Supreme Court in the matter of Bibi Salma Khatoon Vs. State of Bihar [2001(7) SCC 197] while considering the three months limitation period had calculated the said period by referring to the meaning given by Halsbury's Law of England.

Inferences based on above:

The word “Month” not having a clear definition, can we take the liberty to interpret the “12 Months” period as provided in Section 167(1)(b) to mean 360 days (30*12) irrespective of whether it is calendar or financial year? Further it seems that the law makers have intentionally not used “Financial Year” even though there is a specific definition assigned to it U/s. 2(41) in the Act and hence for us to allude to 12 Months as a Financial or Calendar Year would not be in line with the stated intentions.

Any attempt to do so, may severely limit the non-compliance to a period to period and thereby restrict its applications and defeat the intentions altogether in certain situations, which would play foul to the intentions of the law makers.

Author’s Views

In the absence of requisite clarifications/directions and on the presumption that companies would hold the minimum number of Board Meetings as prescribed under section 173(1) of CA 2013 every year in a manner so that it covers both financial as well as calendar year and further ensuring that not more than 120 days shall elapse between two Board Meetings.

The period of 12 months shall run from the date of the first meeting from which a Director absents himself, without seeking leave of absence till the lapse of 12 months therefrom.

Now let's look through a practical real-world scenario-

Scenario 1:

1. For the Financial Year 2019-20, the Board of a Company held four board meetings ensuring its compliances with the requirement of Sec.173(1) of CA13 on the following dates- 9th February 2019, 24th May 2019, 9th August 2019, 13th November 2019 and 12th February 2020.
2. One of the Directors after attending the 9th February 2019 Board Meeting did not attend any of the subsequent Board Meetings of the Company. He had sought leave of absence and provided copy of his incapacitation due to medical grounds.

Here the period of 12 months would commence from 24th May 2019 and end on 24th May 2020 and hence he will not incur any disqualification during the Calendar year 2019 or during the Financial Year 2019-20 under Section 167 (1) (b) of CA 13.

Further it is immaterial how many Board Meetings are held during the said period of 12 consecutively running months.

Scenario 2:

The situation remains the same, and he did not attend the 9th February 24th May and 9th August meeting.

So, his period of absence would start on 9th February 2019 and end on 9th February 2020, and thereby bringing his term in office to end on 9th February 2020 under section 167(1)(b)?

Apparently not since there was no Board Meeting on 9th February 2020.

However, if he fails to attend the 12th February 2020 meeting, he will attract the provisions of the said section, even though the period of 12 months will be extended.

Another way of looking at would be , 12 months, means 12 whole months irrespective of the dates contained therein , so February 2019 to end of February 2020 would constitute 12 months and hence even if a Board meeting is held on the last date of the 12th month and a director attends the same, he would escape the rigor of this section.)

Scenario 3: Covid 19 Situation

There is no impact or relaxation for non-attendance from Board Meetings due to Covid-19, even if the director concerned has tested Covid 19 positive. Simply for two reasons-

a. The period under consideration is fairly long of twelve months and hence a director can't seek relief from under Covid-19 and escape vacation of office;
b. Secondly the Covid-19 relaxations as issued till date deals only with the manner of holding meetings and has not dispensed with the need of holding meeting. Hence, he is required to attend the same in the manner allowed under the said relaxation.

Deciding Triggers

In my view while considering the period of 12 months we should also not overlook the meetings held during the period, since non-attendance of Board Meeting is the primary trigger and if no meetings are called by the Company during a period of 12 months, a director can't be removed under this section.

B. Vacation due to non-attendance of Board Committee Meetings

There is no denying the fact, the importance of the regulators place on Board sub-committees and this is substantially manifested under the Companies Act 2013 and rules made there under as well as under the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 and even the Secretarial Standards (SS-1) on Meeting of the Board of Directors, which is appliable in equal force to statutory Sub-Committees of the Board as well.

Now lets look at the key regulatory requirements related to statutory sub-committees of the Board-

Sl. No	Board Committee's	Companies Act of 2013	SEBI (LODR) 2015
1	Audit Committee	Section. 177 R/w. Rule 6 Cos (Meeting of Board & its Power) Rules 2014	Regulation 18
2	Nomination & Remuneration Committee	Section 178(1), R/w. Rule 6 Cos (Meeting of Board & its Power) Rules 2014	Regulation 19
3	Stakeholders Relationship Committee	Section 178(5)	Regulation 20

Further the revised SS-1 states that the standards are equally appliable to statutory Board Committees on and from October 1, 2017.

The intent of the legislators while framing the provisions of Section 177 and 178 is quite evident and quite elaborate as well, covering all key areas like composition, structure, qualifications, responsibilities, etc. Further they have oversight on many critical corporate activities like-

a. Appointment, re-appointment and removal of Directors and their Compensation
b. structure;
c. Key senior managerial appointments, re-appointments, removal and compensation structure;
d. Performance evaluation of Board, its members and of the KMP's;
e. Oversight on the financial reporting process and ensuring the financial statements is correct, sufficient and credible;
f. Recommendations on appointment, remuneration and terms of appointment of Company Auditors.
g. Stakeholders' grievances and their timely resolution.

Since most of the crucial and critical matters in a life of a Company are deliberated at the first level by the aforementioned Committees and their recommendations then taken up/ ratified by the Board, it is more so important that such critical Board-Committees have proper attendance, without which the purpose of having these committees would to a great extent get diluted and the intent of the legislators would be lost.

The J.J. Irani Committee Era of 2005

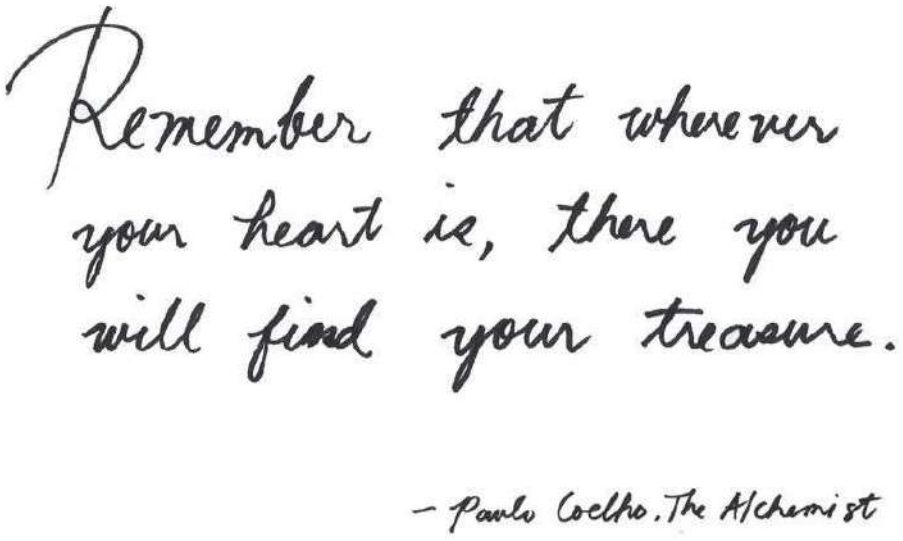
The J.J. Irani Committee Report of 2005 had done an exhaustive recommendation for the need for having certain Board Committees. Going further the Committee had recommended the constitution of Audit, Remuneration and Stakeholder's Committee. The Committee although apostilling on having such sub-committees of the Board as part of the Corporate Governance and over-sight function but did not make any recommendations on meeting attendance as it had done in the case of Board Meetings.

The 1956, 2013 and 2020 Era

We all agree that the era of 1956 and of 2013, is dramatically different as compared today. The onerous responsibilities and expectation on Board members and their performance, ever changing demands on corporate governance requirements indicative of the regular amendments both in the Companies Act as per as LODR 2015 bear testimony to that.

Author's Views

Considering the statutory intent may be its time to bring attendance to statutory Committee Meetings at par with Board Meetings, if not more.



A Peep into the nuances of the ACCOUNTING PROCESS under Revaluation model of Ind AS 16 - PROPERTY, PLANT AND EQUIPMENT.

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Prologue:

A critically closer look at the provisions of Ind As 16 read with IAS 16 vis-a-vis the -"Revaluation Model" of accounting for Property, Plant and Equipment (PPE) suggests that it is a methodical and purposive process by which the carrying value (cost minus accumulated depreciation minus accumulated impairment loss) of the tangible assets is aligned with the significant movement either upwards or downwards in tune with their FAIR VALUE, which according to Ind As 113/IFRS 13 is a market-based measurement and not an entity-specific measurement. Though revaluation is done on a class –by- class basis of assets, its accounting is done on asset- by- asset basis. This article, in fact, humbly attempts to focus on the accounting aspects of Revaluation model enshrined in the Ind As 16, the new avatar of the IFRS converged Accounting standard 10– Property, Plant and Equipment. The earlier Accounting Standard AS-10 –Accounting for Fixed Assets was revised and rechristened Property, Plant and Equipment" vide Notification G.S.R. 364(E) dated 30th March 2016.

ANALYSIS:

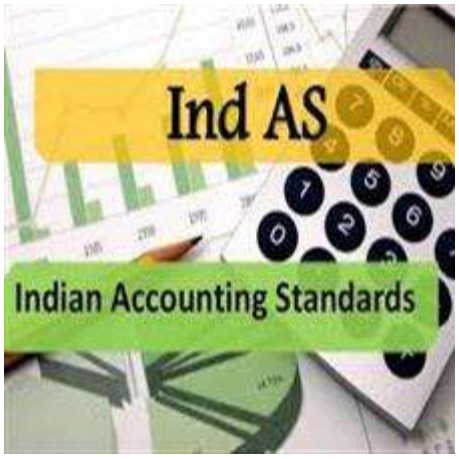
Earlier, though the "AS-10- Accounting for Fixed Assets" required fixed assets to be initially recorded at Cost, it had permitted their revaluations too vide its Para 13. To provide additional guidance, the Institute of Chartered Accountants of India had issued a Guidance note entitled "Guidance Note on treatment of Reserves on revaluation of Fixed Assets". (now withdrawn) In my earlier Article (Revaluation of depreciable Assets- A hitch in accounting and disclosure vis-à-vis Para 13.3 of Accounting standard-10) appearing in the e-magazine of the Mysore chapter of ICSI- Edition 128- September 2014, I had the opportunity of examining the accounting treatment in respect of revaluation of Fixed Assets, their substituted carrying amount, adjustments to the depreciation accumulated on the date of the revaluation and the consequential disclosure in the Financial Statements of entities.

This Article earnestly attempts to examine the accounting entries required to be passed to comply with the Paragraphs 39 and 40 of Ind As 16/ and IAS 16, reading as under:

Quote- Ind AS 16:

39. If an asset's carrying amount is increased as a result of a revaluation, the increase shall be recognized in other comprehensive income and accumulated in equity under the heading of revaluation surplus. However, the increase shall be recognized in profit or loss to the extent that it reverses a revaluation decrease of the same asset previously recognized in profit or loss.

40. If an asset's carrying amount is decreased as a result of a revaluation, the decrease shall be recognized in profit or loss. However, the decrease shall be recognized in other comprehensive income to the extent of any credit balance existing in the revaluation surplus in respect of that asset. The decrease recognized in other comprehensive income reduces the amount accumulated in equity under the heading of revaluation surplus.



Unquote:

It is pertinent to note here that the above said prescriptions are replica of the ones found in Paragraphs 39 and 40 of the IAS 16 (International Accounting Standard 16 -Property, Plant and Equipment)

Incidentally, the following views expressed by Messrs. John Hogget, Lew Edwards, John Medlin, Kerryn Chalmers, Andreas Hellmann, Claire Beattie and Jodie Maxfield in their celebrated Book "Financial Accoungting-9 e-(2015) at page 641/642 deserve careful attention.

When in a future period or periods, the initial revaluation adjustments accounted for reverse, the revaluation Increase (Decrease) should be offset against the previous revaluation Increase (Decrease) in respect of that asset.

1) For reversal of an initial revaluation increase credited to revaluation surplus, the decrease in an asset's carrying amount shall be recognized in Other Comprehensive Income to the extent of any credit balance existing in the Revaluation Surplus in respect of that asset. The decrease recognized in other comprehensive income is debited to a Loss on Revaluation (OCI) account, which is transferred to the Other Comprehensive Income account at the end of the reporting period. The OCI Account is then closed to reduce the amount accumulated in the Revaluation

Surplus for that asset. However, the Revaluation Surplus for that asset can only be written down to the extent that it had been previously written up.

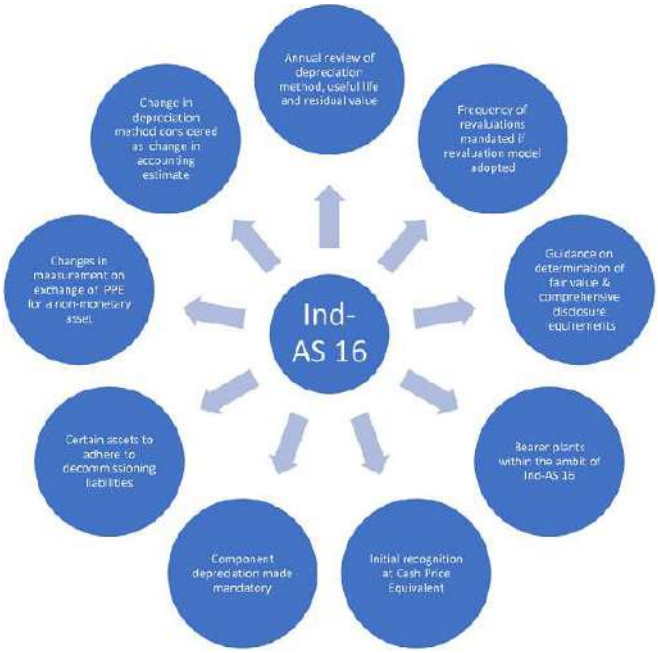
Similar views are expressed by Prof (Retd) Deegan Craig Michael in his monumental Book "Australian Financial Accounting" -7 e- at Page no. 214, reading as under:

Quote:

With respect to a class of assets, reversals of previous revaluations should, as far as possible, be accounted for by the entries that are the reverse of those bringing the previous revaluations to account. For example, where a revaluation decrement reverses a previous increment or (cumulative increment) for an individual asset, it would be debited to revaluation surplus previously credited for that asset, rather than being debited to the period's profit of loss.

Unquote:

Now, with the above, it needs no emphasis that the revaluation increase is required to be recognized first in "Other Comprehensive Income" disclosed as – Revaluation Gain in the "Statement of Other Comprehensive Income" (SOCI) and then accumulated in equity under the heading of "Revaluation Surplus" in Balance Sheet. This SOCI is nothing but an extension or a part of the Statement of Profit and Loss, which, in turn, is an Account per se subordinate to the Accounting cycle or process of Accounting. While in India it is so, in other countries which have adopted IFRS, it may be a separate statement or a part of single Income statement integral to Financial Statements.



With due respect to any contrary view one may be entitled to hold, incontrovertibly there can be no denial of the fact that SOCI is also an account whether it is a part of P & L Account or a separate statement. It may not be out of place to mention here that the prescribed contents of statement of Comprehensive Income detailed in Ind As 1 strengthen this view since the Gains, Incomes, Losses are always transferred to Profit and Loss Account by means of Closing Entries at the year-end as a part of Accounting cycle, like they are transferred to Statement of Other Comprehensive income, albeit, inter-alia some other items also find place therein as detailed below:

a. Changes in revaluation surplus (see Ind AS 16, Property, Plant and Equipment and Ind AS 38, Intangible Assets)
b. Remeasurements of defined benefit plans (see Ind AS 19, Employee Benefits);
c. Gains and losses arising from translating the financial statements of a foreign operation (see Ind AS 21, The Effects of Changes in Foreign Exchange Rates)
d. Gains and losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with paragraph 5.7.5 of Ind AS 109, Financial Instruments;
    i. Gains and losses on financial assets measured at fair value through other comprehensive income in accordance with paragraph 4.1.2A of Ind AS 109.
e. The effective portion of gains and losses on hedging instruments in a cash flow hedge and the gains and losses on hedging instruments that hedge investments in equity instruments measured at fair value through other comprehensive income in accordance with paragraph 5.7.5 of Ind AS 109 (see Chapter 6 of Ind AS 109);
f. For particular liabilities designated as at fair value through profit or loss, the amount of the change in fair value that is attributable to changes in the liability's credit risk (see paragraph 5.7.7 of Ind AS 109);
g. Changes in the value of the time value of options when separating the intrinsic value and time value of an option contract and designating as the hedging instrument only the changes in the intrinsic value (see Chapter 6 of Ind AS 109);
h. Changes in the value of the forward elements of forward contracts when separating the forward element and spot element of a forward contract and designating as the hedging instrument only the changes in the spot element, and changes in the value of the foreign currency basis spread of a financial instrument when

excluding it from the designation of that financial instrument as the hedging instrument (see Chapter 6 of Ind AS 109)

The above said points draw elephantine strength from the views expressed by M/s John Hogget, Lew Edwards, John Medlin, Keryn chalmers , Andreas Hellman , Claire Beattie and Jodie Maxfield in their celebrated Book ' "Financial Accounting- 9 e at Page 640 , reproduced below

Quote;

At the end of the reporting period, if the entity is required to prepare general purpose financial statements, the gain on revaluation is reported as part of other comprehensive income (OCI). The authors recommend that, in addition to the Profit or Loss Summary account, another account called the Other Comprehensive Income Summary account (OCI Summary) be used as part of the closing process (for earlier discussion of the closing process, see chapter 5). The gain on revaluation can then be transferred to the Revaluation Surplus account.

The OCI Summary account is used as part of the closing process to accumulate every item which is included in the OCI as required by accounting standards. It is then cleared by transferring the balance to appropriate reserve accounts entitled Revaluation Surplus.

Unquote:

More pertinent and obvious fact is the Other names for Profit and Loss

Account include income statement, Earnings statement, Revenue statement,

operating statement, statement of operations and statement of financial performance. These being synonyms with the same intent, purpose, substance and function, conform to the primordially cardinal principles of Double Entry Book-keeping, though different terms are used in different jurisdictions. To substantiate this view again, one may consult Eric Kohler's Dictionary for Accountants which contains the following entry at its page No. 345:

Quote:

Profit & Loss account is a Ledger account to which balances of accounts reflecting revenues, income, profits, expenses and losses are periodically transferred. Its balance the net income or net loss for the period is transferred to retained earnings (earned surplus) or other suitable proprietary account.

Unquote:

To additionally buttress the above said view, we find an entry in Page No.88 defining a "Closing entry" as under:

Quote:

A periodic entry or one of a series of periodic entries by means of which the balances in revenue and expense accounts and the nominal elements of mixed accounts are adjusted for the purpose of financial statements. At the end of the fiscal year, a final closing entry eliminates the year's revenue and expense (nominal) accounts, their net total being carried to retained earnings (earned surplus) or other proprietorship accounts.

a. An entry usually annual, uniting separately maintained nominal elements of a split Ledger account.
b. An entry having the effect of balancing an account, a set of accounts or a Ledger.

Unquote:

Further support to the above said views can be drawn from the following too:

Williams Pickles – "Accountancy"- Revised by James Lafferty- (5th Edition 1982) at Page No. 0502 states that "Trading and Profit & Loss Account (as its name implies) is an Account and its construction conforms to the rules of double entry.

1. The formal Profit & Loss Account may be a copy of the account in Ledger or a summarized version of it. (Page No.43- para 4.6- Introduction to Accounting for Business studies by F. P Langley- 3rd Edition 1978) states that "The profit and loss account in the general ledger has the purpose of closing off revenue and expense accounts on balance day. This closing off is necessary because balances in such accounts are not relevant to the following accounting period.

Drawing logical support from and strengthened by the above said views/points, it is hoped that the following illustration will adequately explain the recording of the book-keeping entries required to be passed, which regretfully, is given a short shrift in many Text books, Reference books (be it Indian or foreign, barring a very few), ICAI's Educational material on Ind As 16, Articles, Video lectures, and PPTs. Candidly, this prompted me to reduce my thoughts into writing this Article with an accent on the process of accounting and elicit the views of my co-professionals for a better understanding.

(TO BE CONTINUED WITH ILLUSTRATIONS)

RBI Initiatives to Shield the Economy & Curbing Opportunistic Takeovers

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- **Coronavirus Disease 2019 (COVID-19)**

Coronavirus Disease 2019 (COVID-19) is a Pandemic disease as declared by World Health Organization (WHO) and was identified in Wuhan, China, and is now being spread throughout the world. Government of India has declared Lock-down in various states and for corporate sectors, employees and employers both are advised to work from home.

- **Reserve Bank of India (RBI) Overview:**

RBI was established on 1st day of April 1935 in accordance with the provisions of the Reserve Bank of India Act, 1934 and the Central Office of the RBI was initially established in Kolkata but was moved to Mumbai in 1937.

"Preamble of RBI

To regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage; to have a modern monetary policy framework to meet the challenge of an increasing complex economy, to maintain price stability while keeping I mind the objectives of growth"

The RBI plays a vital role in economic growth of the country and it regulates and supervise banks and other financial institutions.

In view of the situation arising due to COVID-19 pandemic and extended lockdown period, The RBI needs to formulate modern monetary policy framework to meet the challenges due to COVID19 outbreak and to maintain price stability while keeping in mind the objective of economic growth.

- **RBI initiatives to safeguard economy:**

Reserve Bank of India (RBI) governor Mr. Shaktikanta Das, has conducted two press conference so far and has taken giant decisions to boost & safeguard the Indian Economy dated 27th March 2020 and 17th April 2020 respectively.

The main agenda behind RBI decision is:

i. to mitigate impact of COVID-19,
ii. to revive growth and
iii. to preserve financial stability

Key highlights of RBI Decision taken during Press Conferences

1st Press Conference dated 27.03.2020	2nd Press Conference dated 17.04.2020
1. Repo rate reduce - 0.75% : new rate 4.4% 2. Reverse repo rate reduces by 0.90% 3. CRR reduced by 100 basis points to 3%. ₹ 1.37 trillion of liquidity to be injected 4. Home loans - 3 months relaxation 5. Much awaited 3months Moratorium on term loan across all financial institutions 6. OMOs are ongoing, LTROs are done. Regulatory moratoriums are done. 7. ₹ 1,00,000 crore 3-month bill auctions, first tranche of ₹25,000 crore auction starts today. 8. ₹3,74,000 lakh crore into the system. 9. Min daily CRR balance reduced from 90% - 80% till 30/06/2020 10. Total liquidity injection 3.4% of GDP	1. Launch of TLTRO 2.0 worth Rs 50,000 crore. 2. India expected to post a sharp turnaround in FY22 with 7.4% growth, as per IMF 3. Announced a rate cut of 75 basis points. 4. Reverse repo rate is being reduced by 25 bps from 4% to 3.75% under Liquidity adjustment facility (LAF) 5. The TLTRO option of Rs 25000 crore is to be conducted today (April 17) 6. NPA classification will exclude 90-day moratorium period. 7. LCR requirement of scheduled commercial banks being brought down from 100 percent to 80 percent with immediate effect and this shall be restoring to 90 percent by October 2020 and 100 percent by April 2021. 8. Period of resolution plan for NPAs to be extended by 90 days. 9. Loans given by NBFCs to commercial real estate to get same relief. 10. ₹50,000 crore special finance facility to be provided to financial institutions such as Nabard, Sidbi, NHB 11. ATM operations stood at 91%, no downtime on internet and mobile banking

A statement given by RBI Governor –

"Need of the hour is to do whatever is necessary to shield the domestic economy from the pandemic."

- **Major Relief given by RBI under Loan Moratorium Scheme:**

i. The RBI announced a 3-month moratorium on all term loans outstanding as on March 1, 2020, as well as on working capital facilities.

ii. Applicable for all term loans in all the segments, irrespective of the segment and the tenor of the term loans

iii. Overdue payments post 1st March 2020 will not be reported to Credit Bureaus/ CRILC for three months.

iv. RBI relief is available for credit card payments subject to few conditions.

v. RBI Initiatives to Curbing Opportunistic Takeovers

vi. Overview of FDI Policy Amendment:

Government of India, Ministry of Commerce & Industry, Department for Promotion of Industry and Internal Trade (DPIIT), FDI Policy Section vide press note 3 (2020 series) dated 18th day of April, 2020 has reviewed the Foreign Direct Investment (FDI) policy and has amended para 3.1.1 of extant FDI policy as contained in Consolidated FDI Policy, 2017 and the same decision will take effect from the date of FEMA notification.

- **Why FDI Policy amendment required:**

i. Stock Market is badly hit and has reacted to recent unpredictability with large drops.

ii. For curbing opportunistic takeovers/acquisitions of Indian companies and to bar automatic investments by neighbouring countries in policy.

- **Comparative Analysis of Amendment in FDI Policy made by Govt. of India**

Current Clause (before change)	**Revised Clause (after change)**
Para 3.1.1: A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, **a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route.** Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.	**Para 3.1.1:** a) A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, **an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.** Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.
	New Clause added: b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the

	restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.

Before amendment, restrictions related to FDI were placed on investment from Pakistan and Bangladesh only which is changed by amendment made by Government of India and now FDI restrictions will cover all countries which shares land border with India like China, Nepal, Burma, Myanmar, Bhutan and Afghanistan including Pakistan and Bangladesh.

Press note is Available at: https://dipp.gov.in/sites/default/files/pn3_2020.pdf

- **Foreign Exchange Management (Non- debt Instruments) (Second Amendment) Rules, 2020.**

The said amendment has been notified by Ministry of Finance in Official Gazette vide Gazette ID no. CG-DL-E-22042020-219107 dated 22nd April 2020, S.O. 1278 (E) and came into force w.e.f. the date of their publication in the Official Gazette i.e. 22.04.2020.

Crux: Rule 6 (a) has been substituted according to the press release given by DPIIT dated 18.04.2020.

Gazette is available at : http://egazette.nic.in/WriteReadData/2020/219107.pdf

- **RBI Liquidity Support to Mutual Funds due to COVID-19**

In wake of the current nationwide lock down of 21 days as directed by Government of India due to issue of Covid-19, a need has been felt to provide Liquidity Support to Mutual Funds.

RESERVE BANK OF INDIA, vide press release 2019-2020/2276 dated 27th April, 2020 has Announces Rs. 50,000 crore Special Liquidity Facility for Mutual Funds (SLF-MF) In view of the situation arising due to COVID-19 pandemic and extended lockdown period.

The scheme is available from April 27, 2020 till May 11, 2020 or up to utilization of the allocated amount, whichever is earlier.

Key Highlights of this Scheme:

1. With a view to easing liquidity pressures on MFs, it has been decided to open a special liquidity facility for mutual funds of ` 50,000 crore
2. Under the SLF-MF, the RBI shall conduct repo operations of 90 days tenor at the fixed repo rate
3. banks can submit their bids to avail funding on any day from Monday to Friday (excluding holidays).
4. The Reserve Bank will review the timeline and amount, depending upon market conditions.

5. Liquidity support would be eligible to be classified as held to maturity (HTM) even in excess of 25% of total investment permitted to be included in the HTM portfolio.

Link of the Circular:

https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR22761B4E43FCBED94A12955FD65458EBEEDA.PDF

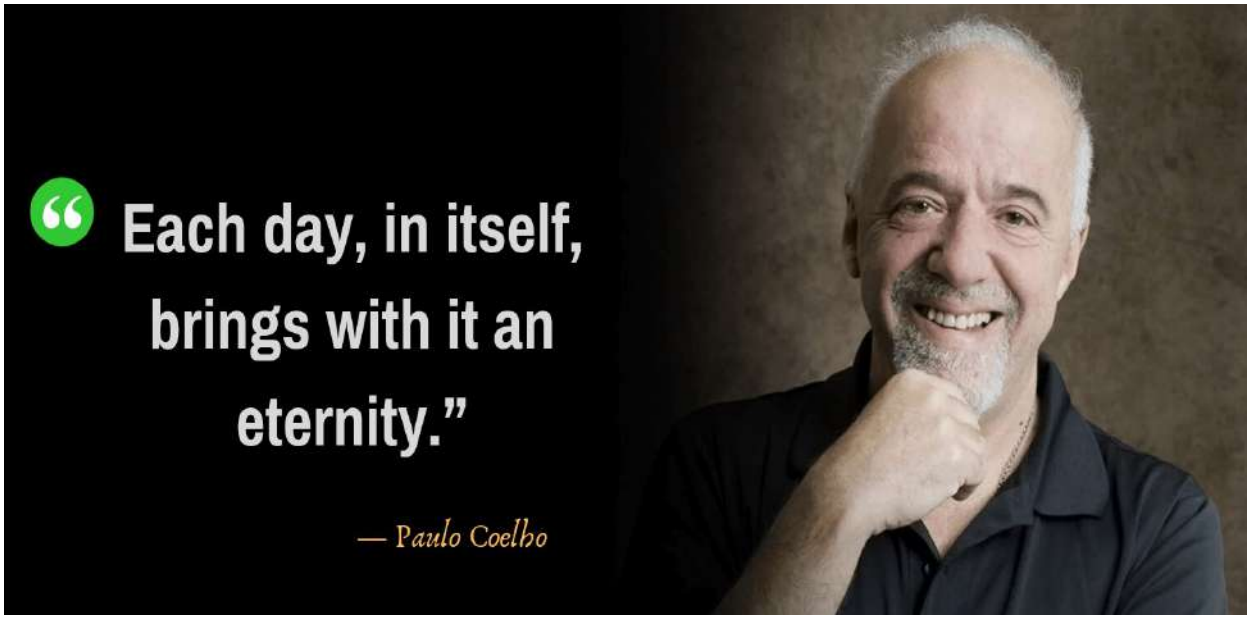
Conclusion

RBI is continuously working to mitigate impact of coronavirus, revive growth and preserve financial stability. Further Indian Government also aimed to safeguard the Corporates via amending the present FDI Policy to safeguard Indian Companies from opportunistic takeovers / acquisitions in the pandemic situation.

At the end I would like to quote that:

"Together we can, Together we will"

We shall follow and abide the regulations and advisories issued by Ministry of Health and other Ministries from time to time and also made contribution towards joining the movement to fight against the spread of the disease



Ethical Finance

Finance for Positive Change

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We can only build a world based on solidarity if wealth is shared equally and used for sustainable development

The perspective

The concept of ethical banking entered the public arena after the onset of the 2008 global financial crisis, with the ample erosion of customers' confidence into commercial banks' financial behavior providing a backdrop. Investors and customers turned to a reliable, more transparent and simple banking alternative—not mainly driven by profit maximization—represented by so-called green, social, ethical or sustainable banks. Ethical banking has recently witnessed a proliferation due to specificities of its business model: Investments mainly in projects which bring societal value added from an educational, cultural, environmental, and/or social perspective; and public commitment towards reconciling economic and financial profitability with active concern for human rights and the environment.

What is ethical finance:

Finance is neither good nor bad. It is a tool to achieve an end, which can be speculative (causing negative externalities) or it can be more collective and supportive of the general well-being of the many (in which case it will cause positive externalities). The problem is that today 'Finance' has lost its core role, as a means to support and promote economic activities and has invaded the social and democratic spheres.

Ethical finance is the offering of financial services with focus on principles of fairness, objectivity and transparency. Ethical finance, the one that really is, is defined by its purpose: to whom will money be loaned, and, what will it serve? Ethical finance is a term used to describe those kinds of finances which apart from focusing on financial return, also give importance to environmental, social and governance factor commonly known as ESG factors. Thus, ethical finance can be understood as a tool that seeks to maximize the positive externalities. Ethical finance is aimed at developing a fair and equitable relationship between humanity and environment. This reflects an increasing recognition of the importance and value attributed by investors, both institutional and retail, to delivering measurable positive environmental and social impact on a sustainable basis.

It is also difficult to find a real definition distinguishing exactly what it is that sets an ethical bank apart from a conventional bank. Ethical banks are regulated by the same authorities as traditional banks and have to abide by

the same rules. While there are differences between ethical banks, they do share a common set of principles, the most prominent being transparency and social, civic and environmental aims of the projects they finance.

An ethical bank, also known as a social, alternative, civic, or sustainable bank, is a bank concerned with the social and environmental impacts of its investments and loans. Ethical Finance or ethically orientated finance begins by asking questions and gaining answers about the consequences of economic actions; with particular reference to productive or financial consequences that effect human life, communal good and the natural environment in terms of human and economic development. Beginning with such questions, ethically orientated finance distinguishes itself from traditional finance by initiating research into new ways of living economic situations. It offers a commitment to assigning a human, social, environmental and collective evaluation of money. Savings are invested following precise socially and environmentally responsible criteria, thus financing activities promoting human, social and environmental aspects and evaluating projects with two-fold criteria: economic and social.

Market Development

Ethical or socially responsible investment is a complex and ever – evolving concept. It has a long history but there has been a paradigm shift in its focus. It has evolved from an ethical movement in the 1960s and 70s, where religious and charitable trusts and organizations avoided investment in companies manufacturing tobacco, alcohol, arms and ammunitions, etc. to a mainstream financial strategy in the 1990s, where individual and institutional investors use environmental, social and governance or ESG criteria to screen projects for investment purposes. Since the concept evolved independently, at different time periods in different nations around the globe, it has been the subject of different terms and viewpoints; and no universal terminology and definition seemed to prevail over the years.

Ethical finance and investment is growing momentum, globally and nationally, at an exceptional pace. Previously, it was principally the remit of specialist finance providers and investors supporting enterprises with an environmental or social purpose, now it has morphed into the mainstream with an ever-increasing recognition of the importance and value of taking ESG factors and values into account. It has been estimated by the Global Ethical Finance Forum that there are over $27 trillion worth of assets under management globally on an ethical basis. This reflects a huge and growing market, with more retail and professional investors recognizing that ESG factors have a material role to play in determining risk and reward.

RAISON D'ETRE

Ethical finance has brought in the new benchmark of externality. Any investment has to be evaluated on risk factor and profit along with externality. In other words, any financing or investment will not only be assessed in economic terms but also on what impact it has on society and the environment. This benchmark strengthens the financial model and make it more sustainable.

The role of an ethical bank is to work for the common good and ensure the right to receive credit through a banking activity consisting in raising funds and reallocating them in the form of credits for cultural, social and

environmental projects. Through their activity, ethical banks promote social inclusion, sustainable development, development of social economy and social entrepreneurship. Ethical banks also help raising public awareness on the role of money and the failure of the economy based on short-term approaches and profit as the only objective.

Values promoted by Ethical Finance

Initially ethical finance used to focus on the negative controls, viz. imposing restrictions on the investment and finance in sectors such as weapons, nuclear, animal testing, alcohol and so on. But of late, the core idea has shifted on the positive impact of ethical finance. A list of key values identified by European Federation of Ethical and Alternative Banks (FEBEA) in 2012 for the ethical finance criteria are as follows:

Origin of money: Ethical financial institution does not accept dirty money. Any source of money which is illegal, speculative and coming from highly polluting activity are termed as dirty money.

Destination of money: Ethical financial institution performs lending activity which is poised towards creating positive societal and environmental impacts. It is done by lending to the weaker section of the society, low income earners and by promoting social integration and employment in the disadvantaged areas.

Criteria and values for the use of money: Ethical financial institution maintains transparency in disbursing of loans. There is a systematic flow of information between ethical financial institution and its customers.

Objective of the ethical financial institution: The objective of ethical financial institution is not to seek only profit; though minimal profit is required for sustaining the institution. Most part of the profit are reinvested in the social cause or objective of the financial institution.

Challenges of Ethical finance:

The first and foremost challenge is that there is no structured methodology through which it can be identified that finance is ethical or sustainable or not. Thus, there arises risk of attracting investment on ethical terminology, but the sole motive of investment may not be exactly ethical financing.

There is a possible class conflict for corporate managers, investors, charities and finance providers who want to adhere to ethical finance. They face potential conflicts from their corporate duties and their commitment to comply with the ethical finance.

The ever-increasing demand for investment responsibility is a fertile ground for the development of ethical financial products. Nevertheless, it currently covers less than 2% of financial assets. Indeed, despite the fact that these subjects find an increasingly favorable echo in a large part of the population, speeches have difficulty in taking action. Ultimately, saving and investment behavior remains very traditional.

The financial illiteracy of the large chunk of population is also a key the obstacle which prevents ethical banking to become broadly recognized as a new banking approach.

Conclusion

Ethical finance is a fairly broad term. It is considered one of several forms of alternative finance. It is a term that encompasses any financial system that embraces environmentally and socially conscious practices. The key to ethical finance is deciding on a common set of principles and sticking to them no matter what. Maximizing long-term economic value creation, addressing real needs, while considering all costs (including negative externalities) and stakeholders, all this if done right can make the world we live in more sustainable. Ethical finance institutions should ensure that their governance systems are capable of holding those in charge accountable for fulfilling the institution's ethical commitments. To sum up , once the right governance systems are in place, there is no doubt that the three key grounds- moderation, human dignity and common good upon which the ethical financial institutions are founded can significantly help re -establish the missing traditional foundations of the financial business namely responsibility, prudence, trust and honesty

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Delhi Diaries

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Halliburton Offshore Services Ltd. V. Vedanta Limited and Anr. - *Force Majeure*

There has been a significant amount of discussion in legal circles that the COVID-19 pandemic and the resultant lockdown or shutdowns world over constitute force majeure events that would impact the performance of obligations under various contracts. Not only is there broad agreement on the point that it does constitute a force majeure event in many circumstances, but it has also been institutionally acknowledged with the Finance Ministry of India even putting out a notification as early as 19th February 2020 clarifying that the pandemic would be treated as a natural calamity for the purposes of Manual for Procurement of Goods by the Finance Ministry. This notification has been buttressed by a further notification dated 13th of May, 2020 issued by the Procurement Policy Division of the Department of Expenditure, under the finance ministry which states that in view of the restrictions on movement of goods, services and manpower, on account of the lockdown, it may not be possible for parties to meet their contractual obligations and as such date for completion of contracts which were to be completed on or after February 20, 2020 will stand extended by another 3-6 months without imposition of any costs or penalties.

This brings us to a crucial question – How will force majeure affect contracts between private parties and what is the scope and consequences of the recognition of the pandemic as a force majeure event.

The Delhi High Court in Halliburton Offshore Services Inc. v. Vedanta Limited and Anr. had occasion to consider this issue in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996. The respondent, which is involved in the development of oil blocks in Rajasthan, by way of a global tender, selected and engaged the Petitioner, Halliburton for development of the three fields. In terms of the contract between them, the Petitioner provided several performance guarantees, liquiated damages and advance bank guarantees.

As a result of the lockdown announced by the Hon'ble Prime Minister on 24th March, 2020 and brought into effect by notification of the Ministry of Home Affairs under the Disaster Management Act, the industrial activities came to a complete stand still. This resulted in the the entire activities with respect the aforementioned blocks to cease. The Petitioner issued letters on 18th and 25th March, 2020 to the Respondent invoking the force majeure clause under the respective contracts and seeking benefit under the same. However, the Respondent refused to entertain the Petitioner and instead responded to the Petitioner saying that it reserved the right to terminate the contract. Hence the Petitioner moved the Delhi High Court by way of an application under Section 9 of the Arbtiration and

Conciliation Act, inter alia seeking a stay on the encashment of 8 bank guarantees provided by the Petitioner to the Respondent.

As against this, the Respondent contended that the invocation of bank guarantees could be stopped only in the event of fraud and not otherwise and relied upon the judgments of the Supreme Court in U.P.cooperative Federation Ltd. v. Singh Consultants and Engineers (1988) 1 SCC 174, Svenska Handelsbanken v. Indian Charge Chrome (1994) 1 SCC 502, and also leading judgments by the American courts such as Itek Corporation v. First National Bank of Boston 566 Fed Supp. 1210. The Respondent further contended that the work was expected to be completed in early to mid-2019 and that the delay on the part of the Petitioner had not been condoned by the Respondent. After repeated communication between the parties, the Petitioner had undertaken to complete the work by January 31st. Hence, the Respondent contended that the pandemic was merely an excuse.

The Petitioner opposed the same by stating that apart from egregious fraud, there is another ground to stay the invocation of bank guarantees, i.e., special equities which was applicable in cases where refusal to grant stay would result in injustice to the Petitioner. To this end, the advocate for the Petitioner relied upon the judgments of the Supreme Court in Mahatma Gandhi Sahakara Sakkare Kharkhane v. National Heavy Engineering Corp. Ltd. (2007) 6 SCC 470, U.P. State Sugar Corporation v. Sumac International Ltd. (1997) 1 SCC 568.

The Court referred to Himadri Chemicals Industries v. Coal Tar Refining (2007) 8 SCC 110, which laid down the following principles governing the injuncting of invocation of bank guarantees. :-

i. While dealing with an application for injunction in the course of commercial dealings, and when an unconditional bank guarantee or letter of credit is given or accepted, the beneficiary is entitled to realise such a bank guarantee or a letter of credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.
ii. The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer
iii. The courts should be slow in granting an order of injunction to restrain the realisation of a bank guarantee or a letter of credit.
iv. Since a bank guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of bank guarantees or letters of credit.
v. Fraud of an egregious nature which would vitiate the very foundation of such a bank guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.
vi. Allowing encashment of an unconditional bank guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned."

The Court took note of the fact that the Petitioner was working on the project till the imposition of the lockdown, irrespective of any delays, and as such directed a stay on the invocation of bank guarantees with the further direction that it would consider the main issue on a later date. The Order of the Court dated 20th April 2020, is not a final judgment but it is a significant order in the sense that it indicates the position of the law that is likely to prevail pending the return to normalcy.

The world of law as well as the world of business is faced with an unprecedented situation. Various aspects of law will undergo significant change or adapt existing principles to meet the new challenges posed by the unprecedented circumstances. The complete adjudication of such issues may be arrived at only after the lockdown lifts substantively. However, till then the law would have to take measures in such a manner as to not cause prejudice to any party.

Direction to government to not take any coercive action against employers who do not pay wages to workers during lockdown

The Ministry of Home Affairs vide notification dated 29th March, 2020 had inter alia directed that all employers, be it in the industry or in the shops and commercial establishments, shall make payments of wages to their workers at their work places on the due date, without any deduction for the period their establishments are under closure during the lockdown. This had resulted in great difficulty for companies, particularly in the MSME sector which ran into several cash flow issues and would be put to great prejudice if forced to pay wages when there was a lockdown and their business was not continuing. On 15th May, 2020 the Supreme Court in Hand Tools Manufacturers Association v. Union of India considering a batch of petitions filed by companies from across the country challenging this notification and the direction to pay wages thereunder, ordered that the Governments shall not take coercive action against employers who do not pay wages.

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Mr.A is a manufacturer of water tanker to be fitted with a motor vehicle to be used in Agriculture. He has GST input tax being accumulated in his books to higher rate of GST paid on inputs and lower rate of tax applied on the goods supplied. Examine the GST provisions relevant for claiming refund for such GST accumulated in the books.

Opinion to Last Month's Brainy Bits

M/s ABC Ltd., a registered person in the state of Karnataka have to make a Tax Invoice for supply of services to a customer residing outside India. Examine the relevant GST provisions for issuing a Tax Invoice without payment of GST

Facts of the case:

- M/s ABC ltd., (hereinafter referred as "RP") is registered under GST in the state of Karnataka as a regular taxpayer and not opted for payment of tax under Section10 [Composition scheme] of CGST Act, 2017
- RP has rendered a Service to a customer residing outside India and has to issue a Tax Invoice without payment of IGST during April 2020
- RP has not obtained an LUT/Bond for making the Exports without payment of IGST for the FY 2020-21 due to lockdown

Relevant citation:

Section 7 of IGST Act, 2017: Inter-state supply

Section 16 of IGST Act, 2017: Zero Rate Supply

Rule 96A: Export of Goods or Services under Bond or Letter of Undertaking

Provisions laid out in the above rule specifies that prior to Export of Goods/Services obtaining a Bond/LUT is compulsory for export without payment of IGST

Form No. GST RFD11 – Bond/ LUT

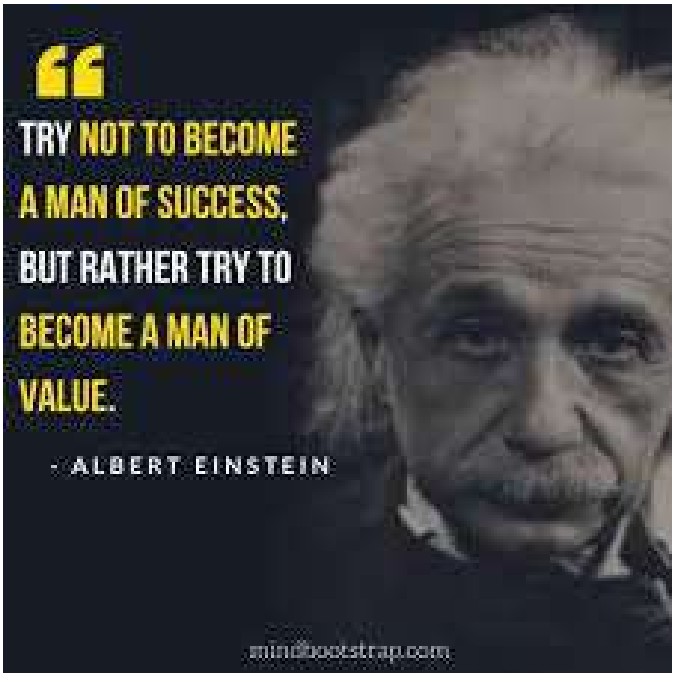
Notification 35/2020 CT dtd:03.04.2020 – Extension of Compliance falling due under GST law between the dates 20.03.2020 to 29.06.2020 upto 30.06.2020 by virtue of powers conferred under Section 168A of CGST Act, 2017

Conclusion:

As per the provisions of GST, obtaining of a LUT/Bond is mandatory as per Rule 96A of CGST Rules, 2017. Obtaining relevant Bond/LUT is online mechanism and the same can be done by filing Form GST RFD11. However, due to COVID-19 the RP has issued a Tax Invoice without payment of IGST under Section 16 of IGST Act, 2017

RP is not in a position to file the relevant form on the GST portal due to the constraint laid out of Work from home and relevant DSC/authorization is not available. RP is permitted to make the Tax Invoice without obtaining LUT/Bond and make good of the compliance for obtaining the LUT/Bond on or before 30.06.2020 as per Notification 35/2020 CT

Accordingly, though obtaining LUT/Bond is a pre-export condition laid out in Rule 96A, by virtue of above notification, RP is permitted to export the service and make good the compliance at a later stage. Relevant circulars are also issued in this regard earlier for condonation of procedural lapsed by the Assessee by the department



Regulatory Updates

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Companies Act, 2013

Updates on Amended Rules

MCA has received several representations from stake holders with respect to difficulty in holding annual general meetings (AGMs) for companies whose financial year ended on 31st December 2019 due to COVID-19 related social distancing norms.

It is hereby clarified that, if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation.

Companies General Circular No. 18/2020, dated 21.04.2020.

In continuation of the Ministry's General Circular No. 7/2020 dated 5th March 2020, MCA has extended the time limit for filing Form NFRA-2, for the FY 2018-19 to 210 days from the date of deployment of this form on the website of NFRA.

General Circular No. 19/2020, dated 30.04.2020.

Considering Covid-19 pandemic and the representations received from the stake holders, MCA has clarified that for rights issue opening upto 31st July, 2020, in case of listed companies, which comply with the SEBI Circular dated 6th may, 2020, inability to dispatch the notice to their shareholders through registered post or speed post or courier would not be viewed as violation of section 62 (2) of the Act.

General Circular No. 21/2020, dated 11.05.2020.