

# ICSI-EIRC NEWSLETTER



EASTERN  
INDIA  
REGIONAL  
COUNCIL

**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

Volume : October-2016 | Issue No. 5

## CHAIRMAN'S MESSAGE



Dear Professional Colleagues,

I hope that you would have celebrated Durga Puja and Diwali with full festive gaudium commemorating the victory of good over evil and had a good time with friends, family, loved ones. I pray to almighty that you be blessed with wisdom, good health and success in all your endeavours. The world is witnessing a period of rapid change and we as professionals need to apply the diversified knowledge that we possess in order to excel in our roles as Corporate Governance Professionals.

Friends, The month of October is a very taxing month on us professionals as we have to file the financial statements and annual returns and in spite of all problems that we encounter while filing, we give our level best to live up to the expectations of our stakeholders.

EIRC of ICSI undertook the Swachh Bharat Mission to commemorate the vision of clean India on Gandhi Jayanti the 02<sup>nd</sup> of October 2016. Upkeeping the mission of cleanliness as shown by Mahatma Gandhi, the members, students and officials at EIRC started the cleanliness drive

Our profession has grown by leaps & bounds in the past decades and have upheld the principles of Corporate Governance, Ethics, fair business practices and so on and to celebrate our esteemed profession, the 48<sup>th</sup> CS day was celebrated on 04<sup>th</sup>

***Asato mā sad gamaya, tamaso mā jyotir gamaya, mṛtyor māmṛtaṃ gamay***

*(Lead me from falsehood to truth, Lead me from darkness to light, Lead me from death to immortality)*

Pavamana Mantra (Bṛhadāraṇyaka Upaniṣad (1.3.28.)

October 2016, The top rankholders and their parents of each stage of the CS programme in June 2016 examinations were invited to Kolkata and they were felicitated by industry honchos.

It is our endeavor to continuously update and enhance the knowledge of our students and members and in line of this, we organized class room sessions on Goods & Services Tax & Appearances before NCLT for both members and students

The EIRC of ICSI would be organising the 27<sup>th</sup> Regional Members Conference, Full day Seminars, Half Day workshops in the coming months. I appeal to all of you to attend these programmes in large numbers and make them successful.

We Company Secretary is a multidisciplinary Professional. Company Secretaries are playing an important role in all segments of the industry. It is a vital link between the Company and its Board of Directors, shareholders, government and regulatory authorities and all other stakeholders. With the increased professionalization of corporate management in the context of modern corporate culture, company secretaries play a key role in guiding and shaping the distinct corporate entity. Though corporate laws is an important function of a Company Secretary, his role does not commence and end with mere compliances of laws. In a decentralized and liberalised environment, the role of Company Secretary assumes greater significance and arduous responsibility. We provide guidance on various strategic, governance and compliance issues in banking sector, financial services, capital market, manufacturing sector.

We have the vision to become a global leader in development of professional specializing in Corporate Governance. We are actively engaged in the research activities in the areas of interest to

corporate sector. The role of Company Secretary continues to evolve. We have been debating and applying the governance principles. As it says "Governance never becomes obsolete. Governance never fails."

We plan to put governance in the corporate culture so that the colossal scandals impacting the countries world-over can be controlled and intensified regulations in the form of disclosures, control mechanisms, regulatory filing, etc. can be implemented.

My message to the young Company Secretaries would be that we as Company Secretary need to be proactive enough to capitalise on the opportunities provided under the various laws and regulations and help lay a cornerstone for a mature culture of compliance. As we know that due to recent amendment in the laws, the role of Company Secretary has been transformed into new dimensions. As a result, we have terrified challenges and tasks in front of us and should spur the professional instinct of a company secretary to identify himself with the whole of business.

I would like to thank everybody for their continued support and feedback which have helped us to march ahead with quality professional development programs for members and students. On behalf of EIRC, I sincerely request you to send your suggestions and feedback from time to time on the activities of EIRC. I assure you, that we at EIRC would give importance to all your suggestions and consider them for implementation in the right perspective.

**CS Sandip Kumar Kejriwal**  
Chairman



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### List of Activities organised by EIRC from 1.10.2016 to 31.10.2016

Date	Programme / Activity
1.10.2016	Peer Review Training Programme
2.10.2016	Swachhta Yatra
2.10.2016	Hunar ki Khoj 3
2.10.2016	Investor Awareness Programme
4.10.2016	48th CS Foundation Day Celebration
19.10.2016 to 27.10.2016	53rd EDP Batch
20.10.2016	113th MSOP Batch
31.10.2016	Half Day Workshop exclusively for Students on GST and Appearances before NCLT on

### List of Activities organised by Chapter under EIRC from 1.10.2016 to 31.10.2016

<b>Hooghly Chapter</b>	
02.10.2016	Half Day Workshop on "Penalties & Prosecution under Companies Act,2013 and Preparation and Submission before NCLT/RD"
02.10.2016	Half Day Workshop on "Compliance of Companies Act,2013 with Limit Sections and Annual Reports"
<b>Ranchi Chapter</b>	
01.10.2016	Seminar on "Goods & Service Tax"
04.10.2016	CS Day celebration
24.10.2016 To 25.10.2016	3rd 2-days Induction Programme
31.10.2016	Pledge taking ceremony on Rastriya Ekta Diwas
<b>Patna Chapter</b>	
02.10.2016	Swachhta Abhiyan

#### Disclaimer

While every effort has been made and care has been taken in preparation of this newsletter and to ensure its accuracy at the time of publication, EIRC of ICSI assumes no responsibility for any errors which despite all precautions may creep in. ICSI-EIRC does not own any responsibility for the information and views published in the journal which are of the contributors.



**SWACHHTA YATRA on 02.10.2016**



CS Sandip Kejriwal, Chairman participating in Swachhta Yatra with students and officials



Participants taking Pledge for cleanliness



CS Sandip Kejriwal, Chairman administering oath of cleanliness to participants. Shri DVNS Sarma, Regional Director and Dr. Tapas Roy, Assistant Director are also seen

**HUNAR KI KHOJ 3 on 02.10.2016**



Members and students participating in activities during the programme

**INVESTOR AWARENESS PROGRAMME on 02.10.2016**



CS Sandip Kejriwal, Chairman (Extreme right) addressing the participants of IAP



CS Arani Guha interacting with participants

**53RD EDP BATCH from 19.10.2016 to 27.10.2016**



Best Participants of the EDP batch



CS Sandip Kejriwal, Chairman presenting EDP certificates to participants

**48TH CS FOUNDATION DAY CELEBRATION on 04.10.2016**



(L to R); CS Sandip Kejriwal, Chairman, EIRC; Shri Rajesh Sharma, Council Member (Govt Nominee), ICSI; CS Mamta Binani, President, ICSI; CS Santosh Agrawala, Council Member, ICSI and CS Dinesh Chandra Arora, Secretary, ICSI on the occasion of 48th Foundation Day Celebration



CS Mamta Binani, President, ICSI addressing the participants. Chief Guest, Shri Derek O'Brein, Hon'ble Member of Parliament and other dignitaries present on the dais

**Half Day Workshop on GST 31.10.16**



CS Mohan Ram Goenka, addressing the delegates at the workshop.

**113th Management Skill Orientation Programme Batch**



Shri B. Mohanty, ROC, West Bengal addressing the participants in the inaugural session.



Shri Alok Samantrai, Regional Director (Eastern Region) addressing the participants in the inaugural session



Shri Alok Samantrai, Regional Director (Eastern Region); Shri B. Mohanty, ROC, West Bengal along with Regional Council Members at the Inaugural session



Group Photograph of the participants of 113th MSOP batch

Shikha Gupta, B.Com, F.C.S., L.L.B.  
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## Matters to be approved by ordinary resolution, special resolution through postal ballot and through board resolution

### Matters by ordinary resolution

Sl. No.	Chapter	Section	Particulars
1.	Chapter II	Section 4(5)(ii)	Where an incorporated company applies for change of name and after reservation of name, it is found that name was applied by furnishing wrong or incorrect information.
2.	Chapter II and IV	Section 13 Read with section 61(1)	A limited company having a share capital may, if so authorized by its articles, alter its memorandum to increase its authorized share capital, consolidate and divide all or any of its share capital into shares, conversion of shares into stock or vice-versa and cancellation of shares by passing an ordinary resolution
3.	Chapter II	Section 16(1)	Rectification of name of the company upon direction of Central Government (power delegated to Regional Director).
4.	Chapter IV	Section 43 (a) (ii) Read with Rule 4	Issue of equity shares with differential rights
5.	Chapter IV	Section 62(1)(b)	Issue of share capital under employees stock option scheme (applicable to private company)
6.	Chapter IV	Section 63(2)(b)	Issuing fully paid-up bonus shares
7.	Chapter IV	Section 65	Unlimited company to provide for reserve share capital on conversion into limited company
8.	Chapter V	Section 73(2)	Acceptance of deposits
9.	Chapter X	Section 139	Appointment of Auditor
10.	Chapter X	Section 148(3)	Remuneration of cost auditors
11.	Chapter XI	Second Proviso to Section 149 (1) (b)	Appointment of Woman director in prescribed class of companies
12.	Chapter XI	Section 151	Appointment of small shareholder director
13.	Chapter XI	Section 152(2)	Appointment of Director
14.	Chapter XI	Proviso to section 152(5)	Appointment of Independent Director
15.	Chapter XI	152(7)(b) (iv)	Appointment of retiring director at adjourned meeting subject to conditions

16.	Chapter XI	Section 160	Regularization of additional director (section applicable to companies other than private companies)
17.	Chapter XI	Section 161(2)	Appointment of alternate director an private companies
18.	Chapter XI	Section 169(1) &(2)	Removal of director before the expiry of his term and appointment of somebody in his place
19.	Chapter XII	Section 188	Approval of related party transactions above the threshold limit as prescribed under Rule 15(3)
20.	Chapter XII	Section 191 (1) (b) (iv) Read with Rule 17 e 15(3)	Payment to director for loss of office etc. 15(3)
21.	Chapter XII	Section 192(1)	Restrictions on non-cash transactions involving directors

**Matters through special resolution**

Sl. No.	Chapter	Section	Particulars
1.	Chapter II	Section 5(4)	Alteration of articles for the provisions of entrenchment: <ul style="list-style-type: none"> <li>Ⓢ By private company: to be agreed by all member</li> <li>Ⓢ By public company: to be agreed by a special resolution.</li> </ul>
2.	Chapter II	Section 12(5) Read with Rule 28	Shifting of Registered office outside the local limit within the same state.
3.	Chapter II	Section 13(1) and(4) Read with Rule 30	Shifting of Registered office from one state or Union territory to another state.
4.	Chapter II	Section 13(1)	Save as provided in Section 61, alteration of provisions of Memorandum of Association of a company.
5.	Chapter II	Section 13(8) Read with Rule 32	Change in object clause where money raised from public through prospectus and still has any unutilized amount out of the money so raised.
6.	Chapter II	Section 14	Alteration of/in articles of association of the company amount out of the money so raised.
7.	Chapter II	Section 14(1)	Conversion of private company into public company and vice-versa.
8.	Chapter II	Rule 7	Conversion of Private Company into One Person company.
9.	Chapter II	Rule 21	Conversion of Section 8 company into any other kind of company.
10.	Chapter III	Section 27(1) read with Rule 7	Variation in terms of contract or objects in prospectus.
11.	Chapter III	Section 41	Issuing Global Depository Receipt
12.	Chapter III	Section 42 Read with Rule 14	Making of private placement of securities
13.	Chapter IV	Section 48(1)	Variation of Shareholder's Rights

14.	Chapter IV	Section 54(1) Read with Rule 8	Issue of Sweat Equity Shares
15.	Chapter IV	Section 55(2) Read with Rule 9(1) (a)	Issue of preference shares
16.	Chapter IV	Section 62(1)(b) Read with Rule 12(4) and (5)	Issue of share capital to employees under employees stock option scheme and variation of terms thereof. (Exempted for private companies)
17.	Chapter IV	Section 62(1) (c) Read with Rule 13 (1)	Issue of share capital to persons other than existing members and employees i.e. on preferential basis
18.	Chapter IV	Section 62(1) (c) Read with Rule 13(2)	Where the allotment of securities on preferential basis not completed within 12 months from the date of passing the special resolution
19.	Chapter IV	Section 66(1)	Reduction of Share Capital
20.	Chapter IV	Section 67(3)	Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees.(Special Resolution would not be required in case of those private companies- (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.)
21.	Chapter IV	Section 68(2)(b)	Where the buy-back is exceeding the prescribed limit empowering the board
22.	Chapter IV	Section 71(1)	Issue of convertible debentures
23.	Chapter V	Section 76(1) read with Rule 2(1)(e)	Consent for acceptance of deposits from public u/s 76(1) beyond limits u/s 180(1) (c)
24.	Chapter VII	Proviso to Section 94(1)	Keeping of registers and copies of annual return at a place in India other than registered office subject to prescribed condition
25.	Chapter X	Section 139(9)(c)	Appointment of auditor other than retiring Auditor
26.	Chapter X	Section 140(1)	Removal of auditor appointed under Section 139 before the expiry of his term
27.	Chapter XI	Proviso to Section 149(1) (b)	Appointment of director above the threshold limit of fifteen
28.	Chapter XI	Section 149(10)	Re-appointment of independent director for a term upto five consecutive years after the expiration of term of five consecutive years
29.	Chapter XI	Section 165 (2)	Specifying a lesser number of companies in which a director may act as director
30.	Chapter XII	Section 180 (1)	Restrictions on powers of board (Exempted for private companies)

31.	Chapter XII	Sub-clause (a) (ii) of Proviso to Section 185(1)	The giving of any loan to a managing or whole-time director (Not applicable to certain private companies fulfilling the criteria as specified in the notification granting exemption)
32.	Chapter XII	Section 186(3)	The giving of any loan or guarantee or providing any security or the acquisition exceeding the prescribed limited contained in Section 186(2)
33.	Chapter XIII	Proviso to Section 196(3)(a) Read with Part I (c) of Schedule V	Appointment of person as managerial personnel after the attainment of age of seventy years.
34.	Chapter XIII	Section 197(4)	Determination of remuneration payable to the directors of a company, including any managing or whole-time director or manager, in case of no profit or inadequate profit, if the Articles so require
35.	Chapter XIII	Rule 7(2)(iii) Read with Schedule V	Remuneration payable to managerial personnel by companies other than listed companies and its subsidiary in case of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, for a period not exceeding three years without the approval of Central Government
36.	Schedule V	Part II Section II	To double the limits of remuneration payable by companies having no profit or inadequate profit specified in Section II, Part II of Schedule V without the approval of Central Government.
37.	Chapter XIV	Section 210 (1)(b)	Investigation of affairs of the company
38.	Chapter XIV	Section 212 (1)(b)	The affairs of the company are required to be investigated by Serious Fraud Investigation Office

#### **Matters through postal ballot**

Items of business mandatorily to be transacted through postal ballot:

Clause (a) of sub-section (1) of section 110 read with Sub-Rule 16 of Rule 16 of Companies (management and Administration) Rules, 2014 provides items of business to be transacted only by means of voting through a postal ballot as follows:-

<b>Sl. No.</b>	<b>Applicable Provision</b>
(a)	Alteration of the objects clause of the memorandum and in the case of a company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
(b)	Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
(c)	Change in the place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;



(d)	Change in the objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;
(e)	Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;
(f)	Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
(g)	Buy-back of shares by a company under sub-section (1) of section 68;
(h)	Appointment of director elected by Small Shareholders under section 151 of the Act;
(i)	Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of subsection (1) of section 180;
(j)	Giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186.

#### Matters through board resolution

Sl. No.	Chapter	Section	Particulars
1.	Chapter-IV	First Proviso of Section 68 (2)(ii)	Where Buy-back is authorized by Board, it shall be made by resolution passed at the board meeting
2.	Chapter-IX	Proviso of Section 128 (3)	Inspection of the books of subsidiary shall be done only by the person authorized by a resolution of the Board of Directors
3.	Chapter-XI	Section 161 (4)	Casual vacancy in the Board in a public company shall be filled by the Board of Directors at a meeting of the Board.
4.	Chapter- XI	Section 169(7)	Director is appointed in a casual vacancy at a meeting of the Board in the place of director removed
5.	Chapter- XII	Section 175(2)	Resolution passed by circulation shall be noted at the next Board Meeting or Committee meeting, and made part of the minutes
6.	Chapter- XII	Section 179(3) read with Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014	The Board shall exercise the following powers only by means of resolutions passed at meetings of the Board, namely: a) to make calls on shareholders in respect of money unpaid on their shares; b) to authorize buy-back of securities under section 68; c) to issue securities, including debentures, whether in or outside India; d) to borrow monies*; e) to invest the funds of the company*; f) to grant loans or give guarantee or provide security in respect of loans*; g) to approve financial statement and the Boards report; h) to diversify the business of the company; i) to approve amalgamation, merger or reconstruction; j) to take over a company or acquire a controlling or substantial stake in another company;

			<p>k) other matter such as:</p> <ul style="list-style-type: none"> <li>ⓐ to make political contributions;</li> <li>ⓑ to appoint or remove key managerial personnel (KMP);</li> <li>ⓒ to appoint internal auditors and secretarial auditor;</li> </ul> <p><b>Note:-*</b>For Section 8 Companies Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead at a meeting Vide Notification No.G.S.R466 (E) Dated 5th June, 2015.</p>
7.	Chapter-XII	Second Proviso of Section 182 (1)	Sanction for Political contributions
8.	Chapter- XII	Section 184(1)	Board shall take disclosure of every director's interest or concern :-
		read with Rule 9 of Companies (Meetings of Board and its Powers) Rules, 2014	<ul style="list-style-type: none"> <li>i. at the first meeting of the Board in which he participates as a director and</li> <li>ii. at the first meeting of the Board in every financial year or</li> <li>iii. whenever there is any change in the disclosures already made</li> </ul>
9.	Chapter- XII	Proviso of Sub Section (2) and Sub-Section(5)(b) of Section 184	Where a director is not concerned when contract was entered into but becomes interested later on, Board should take his disclosure of interest or concern at the next first Board Meeting after he becomes interested.
10.	Chapter- XII	Section 186(5)	No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
11.	Chapter- XII	Section 188(1) read with Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014	No company shall enter into any contract or arrangement with a related party with respect to certain matters specified in the section unless approval is accorded by resolution at a meeting of Board.
12.	Chapter- XII	Sub- Section(1 ) & (2) of Section 189	Every director shall give notice in writing of such matters relating to him as may be necessary to enable the company to maintain the register which shall be placed at the next Board Meeting.
13.	Chapter- XIII	Section 196 (4)	Appointment of Managing Director or Whole Time Director or Manager
14.	Chapter- XIII	Third Proviso of Section 203(2)	Appointment of Key Managerial Personnel other than Managing Director and Whole Time Director and Manager.
15.	Chapter- XIII	Third Proviso of Section 203 (2)	Appointment of a person as Managing Director, if he is Managing Director or Manger of one other company , at a meeting of the board with the consent of all the directors present at the meeting.
16.	Chapter-XIII	Section 203(4)	Any vacancy in an office of Whole Time Key Personnel shall be filled up by the Board at a board meeting within six months of the date of the vacancy.



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## Resolving Corporate Governance issues in Compensation Agreements: SEBI latest approval in its Board Meeting

SEBI, the capital market regulator in India, had issued a consultative paper regarding the corporate governance issues in Compensation Agreements in order to curb the side agreements entered into by the private equity (PE) firms with top personnel and key managerial personnel (KMPs) of a listed entity. These agreements are entered into without any disclosure or approval from the shareholders and therefore may lead to unfair practices by the KMPs in order to enhance the performance of the company for a particular term in order to make gains for such term.

A Compensation Agreement is an agreement between the PE and the management of the listed entities whereby the PE agrees to share an agreed proportion of the profits above a certain threshold limit made by them at the time of selling the shares, and which are also dependent on the fact that the company attains a performance criteria. Such rewards are a part of the profit earned by such PE through the management's extra effort which in return enables the PE earn such high returns. SEBI felt that these agreements may lead to aggressive measures being adopted by the management of the company which consequently may adversely affect the overall shareholder value of such company.

What SEBI is referring to can be understood by the following example- PE firms make a pact with a promoter to transfer 20% of the profit beyond a 30% internal rate of return on the sale of shares. The extra incentive of 20% is given by the PE as a reward for handling day-to-day business in a way which led to increased returns to the PE.

In order to put a halt to these agreements, SEBI had proposed for a new sub-regulation (6) to regulation 26 of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 (Listing Regulations) :-

*“No employee, including key managerial personnel, director or promoter of a listed entity shall enter into any agreement with any individual shareholder(s) or any other third party with regard to compensation or profit sharing unless prior approval has been obtained from the Board as well as shareholders by way of an ordinary resolution”.*

*“No employee, including key managerial personnel, director or promoter of a listed entity shall enter into any agreement with any individual shareholder(s) or any other third party with regard to compensation or profit sharing unless prior approval has been obtained from the Board as well as shareholders by way of an ordinary resolution”.*

SEBI had also discussed the reasons for coming out with the above mentioned proposals:-

1. There should not be any scope for side agreements, without the approval of board and the shareholders in case of listed companies; and
2. Principle of disclosure and transparency in governance of listed entities would otherwise be hampered.

Therefore, before the board enters into such agreements, there rises a need for scrutiny of the same by the directors and public shareholders through voting on the resolution. SEBI desired public opinion on the proposed amendments to be implemented for corporate governance issues in compensation agreements in case of listed companies.

The reason for SEBI coming up with this proposal can be linked to the exit of certain investors from PVR Limited. An 'Incentive Fee structure' was signed between the MD and the CEO of PVR, and the same was not disclosed to the shareholders or the stock

<sup>1</sup> [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1475575683683.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1475575683683.pdf)

exchanges basis the consideration that no such consideration was to be paid from the books of PVR. The deal struck between the MD and the CEO was that the MD would receive additional 20% of the amount received by the investors in excess of 30% return on their investments. By the current mechanism / strategy deployed in PVR case, the remuneration limits of the managerial personnel as described in the Companies Act, 2013 (which imposes a limitation of 11% of the net profits of the company or the limits specified in Schedule V of the Act depending on the profitability of the company) was also safeguarded as the commission amount was not paid by the company, instead by the PE. SEBI issued a press release on November 23, 2016 whereby on the basis of public comments received thereon, following norms have been revised for such disclosures and shareholders' approval:-

1. *No employee including key managerial personnel, director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing unless prior approval has been obtained from the Board as well as public shareholders.*
2. *All such agreements entered during the past three years from the date of notification shall be informed to the stock exchanges for public dissemination including those which may not be currently valid.*
3. *Existing agreements entered into prior to the date of notification and which may continue to be valid beyond such date shall be informed to the stock exchanges and approval shall be obtained from public shareholders by way of an ordinary resolution in the forthcoming general meeting. The term 'public' shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.*
4. *Interested persons involved in the transactions shall abstain from voting on the said resolution.*

It is pertinent to note that the revised clause of the regulation suggested by SEBI intends to provide for obtaining approval (ordinary resolution) from the “public shareholders”. Quite obvious, in case the promoters are a party to such agreements, it becomes meaningless to include the votes of promoter shareholders while getting such agreements approved.

As is the case in majority of the Indian companies, the promoters hold the major voting power and therefore involvement of such promoters in the shareholders approval shall be of no relevance therefore in order to abstain these promoters from voting, SEBI has given cognizance to only “public” shareholders for the purpose of ordinary resolution.

However, as understood from the context above, it is not always necessary that the promoters are a part of such agreements. Such compensation agreements can be entered by a PE investor on one part and any employee of the company (whether or not a promoter) on the other part. Therefore, where the promoters are not a part of such agreements, their votes should not be left unconsidered. The universal idea of discarding vote of an individual / group is to discard the vote of an “interested party”. Accordingly, the promoters vote should be disregarded only when they are party to the agreement. Also, as per Sub-section 4(c) of section 178 of the Companies Act, 2013 provides –

*Remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.*

This signifies that the NRC committee should take into consideration any incentive pay to directors, KMPs, and SMPs to ensure that it is working towards the working goal of the Company. As these agreements can lead to short term gain for a long term risk to the company, the proposal of such agreements should also be placed before the NRC for its approval to the BOD of the Company.

These arrangements between the company and the PE investors cannot be considered illegal as because these are merely transfer of reward from the PE to the KMPs of the investee company for all the hard work done by the KMPs to enhance the performance of the company and help PE investors earn the desired return. Even though the shareholders, along with the KMPs, will also be gaining from such extra effort put in by the KMPs but without neglecting the fact that the promoters/directors/KMPs/SMPs will be earning extra reward, the same shall be placed before the shareholders for approval.

These amendments in the listing agreement will keep the shareholders and the public at large aware of any such side agreements entered into by the KMPs of the company.

<sup>2</sup> <http://www.sebi.gov.in/sebiweb/home/detail/35234/yes/PR-SEBI-Board-Meeting>

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Edited, Printed and Published by Mr. DNVS Sarma, Regional Director (EIRO), on behalf of ICSI-EIRC House, 3A, Ahiripukur 1st Lane, Kolkata-700 019  
Printed by : Apex Centre, 241, Swarnakar Para Road, Kolkata-700149, Mob. : 98363 42179, E-mail : [somnathapex@gmail.com](mailto:somnathapex@gmail.com)

*If undelivered, please return to :*

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