

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

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# ICSI IMAGES



- 01 >> Meeting of ICSI delegation with Hon'ble Minister for Finance, Corporate Affairs, and Defence – CS R. Sridharan (President, The ICSI) shaking hand with Shri Arun Jaitley (Hon'ble Minister for Finance, Corporate Affairs, and Defence) after presenting the bouquet on behalf of The ICSI delegation.
- 02 >> Hon'ble Minister in conversation with ICSI delegation – Sitting from Left (clockwise): Shri Arun Jaitley (Hon'ble Minister for Finance, Corporate Affairs, and Defence), CS M. S. Sahoo (Secretary, The ICSI), CS R. Sridharan (President, The ICSI), CS Sanjay Grover (Council Member, The ICSI) and CS Sutanu Sinha (Chief Executive, The ICSI).
- 03 >> Meeting of ICSI delegation with Hon'ble Minister of State for Commerce & Industry (Independent Charge), Finance, and Corporate Affairs – Standing from Left: CS Alka Kapoor (Joint Secretary, The ICSI), Ms. M.I. Jamir ( PS to Hon'ble Minister), Smt. Nirmala Sitharaman (Hon'ble Minister of State for Commerce & Industry (Independent Charge), Finance, and Corporate Affairs), CS Sanjay Grover (Council Member, The ICSI), CS R. Sridharan (President, The ICSI) and CS M. S. Sahoo (Secretary, The ICSI).

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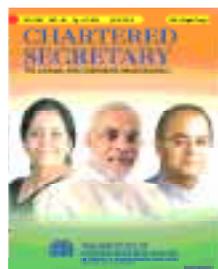
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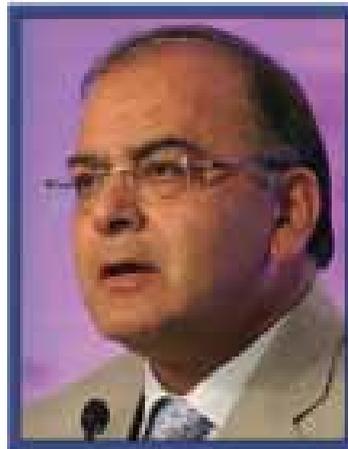
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*Greets and Congratulates*



**Shri Arun Jaitley**

**On assuming the office of  
Minister for Finance, Corporate Affairs,  
and Defence, Government of India.**

*Best wishes for success and excellence in all  
your endeavours.*



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*Greets and Congratulates*



**Smt. Nirmala Sitharaman**

**On assuming the office of  
Minister of State for Commerce & Industry  
(Independent Charge), Finance, and  
Corporate Affairs, Government of India.**

*Best wishes for success and excellence in all  
your endeavours.*



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- 01 >> ICSI Convocation 2014 held at Kolkata – Standing on the dais from Left: CS Sutanu Sinha, CS Anil Murarka, CS R. Sridharan, Dr. P. Ishwara Bhat (VC, The W.B. National University of Juridical Sciences), CS G. S. Gupta (CE, Emami Biotech Ltd.), CS Vikas Y Khare and CS Arun Kumar Khandelia.
- 03 >> ICSI Convocation 2014 held at Chennai – CS C. Sudhir Babu presenting a bouquet to Dr. P. Vanangamudi (VC, The Tamilnadu Dr. Ambedkar Law University, Chennai). Others standing from Left: CS Sutanu Sinha, CS R. Sridharan and CS Dr. Baiju Ramchandran.
- 05 >> EIRC - Bhubaneswar Chapter – Talk on How to set up Service tax Practice - Sitting on the dais from Left: CS A. Acharya, S. K. Panda (Chief Commissioner, CCE&ST) and CS Vikas Y Khare.

- 02 >> ICSI Convocation 2014 held at Mumbai – Sitting on the dais from Left: CS Ragini Chokshi (Ms), CS Sudhir Babu, CS Atul Mehta, CS R. Sridharan, Chief Guest Dr. A.K.Sengupta (Founder Higher Education Forum, Mumbai), CS Vikas Y Khare and CS Sutanu Sinha.
- 04 >> ICSI – NISM Conference on Ethics and Corporate Governance – Sitting on the dais from left: Ms. Chitra Ramakrishna (MD & CEO, NSE Ltd.), Chief Guest Shri G. Gopalakrishna (Director, CAFRAL) and Shri Sandip Ghose (Director, NISM).
- 06 >> NIRC – One Day Mega Workshop on Companies Act, 2013 – Dr. K. R. Chandratre Addressing. RIGHT: A view of the invitees, dignitaries and delegates.





## Articles [A 258-309]

P-682

### Independent Directors

» P-682

#### Pradeep K. Mittal

The new Companies Act of 2013 has mandated the appointment of independent directors to ensure that the affairs of the company are conducted properly and that Satyam like scams do not take place. Who are eligible for appointment as Independent Director, what is their role and responsibility, how they are to be appointed and removed have all been briefly highlighted in this article.

### New Thought in Management and the Spiritual Paradigm of Consciousness

» P-686

#### Om Prakash Dani & M. S. Srinivasan

At present, there is a growing interest in what is now called as spirituality in business. However most of what is called as "spiritual" in management skims the upper layers of the mental and moral domains and falls short of the true spiritual domains of consciousness. Modern business has gone through a process of natural evolution from the physical-economic, social-emotional to the mental-moral paradigm. Stephen Covey's principle-centered leadership, along with the concept of CSR, represents the highest point in the mental-moral evolution of business. But it is still within the domain of mental evolution and doesn't enter decisively into the spiritual paradigm which can lead to a transformation of consciousness. The main objective of this article is to bring out the distinction between the mental-moral paradigm of the new thought in management and the spiritual paradigm of consciousness.

### Financial Statement Fraud

» P-690

#### Manjit Singh

Financial Statement Fraud is the deliberate misrepresentation of the financial condition of an enterprise accomplished through the intentional misstatement or omission of amounts or disclosures in the financial statements to deceive financial statement users. The cause of fraudulent financial reporting is the combination of situational pressures of performance on either the company or the manager and the opportunity to commit the fraud without the perception of being detected. Financial statement fraud can have an impact on any person or organization that has a financial interest in the success or failure of a company. A disbelieving eye on the part of interested parties might be more effective in protecting investors, creditors, and other business partners from the negative effects of financial statement fraud.

### Class Action Suit: Boon for Small Investors

» P-695

#### Prof. J. P. Sharma & Sakshi Verma

The Satyam episode has sharply brought into focus the gaps in Indian corporate laws to deal effectively with such a situation, post event, viz. compensating the cheated investors by those who perpetuated the fraud. The key Indian corporate laws e.g. the SEBI Act 1992, the SCRA, 1956 and the Companies Act, 1956, have no provisions on class action suits. On the contrary, a large number of countries have incorporated provisions on 'Class Action Suit' in their corporate laws. The recently passed Companies Act in India proposes for class action suit by specified number of investors or depositors against the company. The introduction of 'Class Action Suit' in India is being seen as a positive move as it empowers small shareholders to seek answers in case they feel that a company's management or its conduct of affairs

is prejudicial to its interests or its members or depositors. The article discusses the concept of class action suit, how it works, how it evolved and how it empowers stakeholders.

### Of Mortgages & Charges

» P-700

#### B.L. Akshara

Even though pledging or mortgaging the properties as securities with the lender while borrowing involves contractual obligation between the borrower and the lender, the Common Law courts in England during the early part of 17th Century, started applying the doctrine 'Once a mortgage always a mortgage' after witnessing the oppressive law on mortgages wherein the strict implementation of the contractual obligations created unfair bargaining power to the lenders. In the present day context, applying the doctrine 'once a mortgage always a mortgage' by the courts while deciding disputes about redemption of mortgages seems to be anachronism and need to be jettisoned except in some individual cases after taking into consideration the vulnerable position of the borrowers due to poverty, underdevelopment of their area and when only a few lenders dominating such areas. This article makes an overall analysis of the law governing mortgages and charges keeping in view of the various decisions of the Apex Court and the observations of some eminent jurist.

### Real Estate Investment Trusts (REITs) – Understanding The Concept

» P-703

#### Brijesh Thakkar & Esha Desai

REIT is an attempt to understand the new financial vehicle devised to bring liquidity and standardization in the real estate sector. The concept of REIT has been evolved and functioning globally in various countries US, UK, Australia, Japan etc., and plays an important role in designing the cash flow to the real estate sector, especially the commercial properties. The article is divided into various sections starting from the introduction to the concept, structure of REIT, roles & responsibilities of key person, benefits for the industry and unit-holders and comparison of the regulations with global practice of REIT. The concluding part is drafted based on the response for REITs globally in context to the Indian situation. Every section contains the brief of regulations, comments/suggestions and our views on the related regulation. The concept derives high importance based on the current situation of the real estate market demanding high liquidity for functioning and enabling the quality projects to sustain through the competitive market conditions. The systematized form and transparency followed by the REIT shall boost the morale of investors and also structure the unorganized real estate sector to be more systematic in functioning.

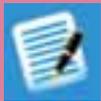
### Corporate Strategy- Dimensions and Issues

» P-711

#### Amita Verma

Company Secretaries are responsible for the smooth administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the Board of Directors are implemented. Corporate strategy continuously appears high on the boardroom agenda. In the field of business administration it is useful to talk about "strategic consistency" between the organization and its environment. Decision-makers in organizations use dimensions implicitly or explicitly to sort strategic issues. A focus on issue sorting can be seen as an attempt at a better-understanding of strategic issue diagnosis. Corporate strategy issues that managers have to deal with can be clustered around three dimensions: composition, management and value. There are six corporate strategy issues. Issue I is corporate scope: the level of diversification. Issue II is corporate coherence: the





# at a Glance

level of relatedness. Issue III is corporate responsibilities: the level of headquarters authority. Issue IV is corporate practice: the level of HQ control. Underlying these four issues are issue V, corporate responsiveness (the level of corporate effectiveness) and issue VI, corporate synergy (the level of corporate linkage). These six issues can be perceived from two divergent perspectives: the portfolio corporation perspective and the integrated corporation perspective. The strategist can choose from both perspectives, using elements from each one to dealing with the corporate strategy issues he is confronted with.

## Stamp Duty on Securities?



P-717

### Ashutosh Kumar

Indian Stamp Laws secure vital position amongst the various laws for revenue generation for the government. This law is a fiscal statute and its sole aim is to generate revenue for the State. This article is to point out the provisions of the applicability of the Act and the focus area is on levy of stamp duty on securities issued by the companies. The article is to show the practical problem being faced by corporates due to vagueness in Stamp Act relating to levy of duty. Duty on issue of securities has always been a debatable topic. Will the corporates be able to save from such ambiguity or end up by paying both stamp duty and litigation charges?

## Multi-level Marketing Schemes- Whether Legal?



P-721

### Nidhi Ladha

Multi-Level Marketing (MLM) structure of retailing is emerging as an alternative form of direct marketing to customers. Ex facie, it leads to disintermediation, generates employment particularly for housewives, and therefore, there cannot be anything wrong in such practices. However, in the past, several MLM schemes have been run as pyramid schemes, or money-for-money scheme which creates legal and regulatory uncertainty so much so that there have been some high profile litigation. Several rulings have gone into the legality of MLM schemes and several scams in the sphere have opened up the eyes of regulators. While there are several international regulations on MLM clearly distinguishing between Ponzi schemes and genuine direct marketing, in India, at this time, the sole basis for examining the legality of an MLM scheme is the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The crux of this article is that all MLM schemes cannot be said to be illegal. However, if the MLM scheme is run as a blatant money-for-money scheme, it surely becomes illegal. Finally, the article also summarizes significant features for a legally tenable MLM scheme.

## Gender Harassment: Statute and Beyond



P-727

### Bishakha Chakraborty

Sexual harassment is a violation of human and workers' rights, a form of violence, an occupational safety and health risk, an unacceptable working condition and a form of gender discrimination. The enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on 22nd April, 2013 is a concrete step towards addressing this menace. But at the same time a general awareness is required in the society. A sensitive approach needs to be developed among those who control and lead organizations and a Company Secretary being key advisor to the management can play a vital role in creating that. As Sexual harassment often involves quid pro quo, it creates a hostile work environment. A Company Secretary is in a position to insist upon legal compliances and ensure an ethical and discrimination free work culture so essential for the growth of an organization.

## Legal World [LW 53-61]

P-734

- ▶ **LW: 48:06:2014** Section 110 of the Companies Act, 2013 relating to postal ballot does not preclude the calling of physical meetings to consider the scheme of amalgamation. [Bom] ▶ **LW: 49:06:2014** Company court, in a winding up petition, has power to grant interest even though the contract between the parties does not provide for the same. [Del] ▶ **LW: 50:06:2014** Franchisee agreements containing differential terms are, per se, not anti-competition agreements. [CCI] ▶ **LW: 51:06:2014** When the accused failed to produce his own books of accounts and witnesses to rebut the evidence of the complainant to establish the non-existence of consideration or debt, he is said to have not rebutted the statutory presumption of the existence of debt. [Del] ▶ **LW: 52:06:2014** Termination of the services of an employee who had put up a continuous service of 6 years, though interrupted by the artificial temporary breaks inflicted by the employer, is retrenchment. [SC] ▶ **LW: 53:06:2014** Date of birth as recorded in the school leaving certificate should be preferred over the date of birth recorded in the statutory records of the company. [SC] ▶ **LW: 54:06:2014** Employees of the schools run by a company cannot be considered as the employees of such company. [SC] ▶ **LW: 55:06:2014** In the case of amalgamation, benefit of section 72 of the Income tax Act, 1961 is not available to cooperative societies. [SC]

## From the Government [GN 85-96]

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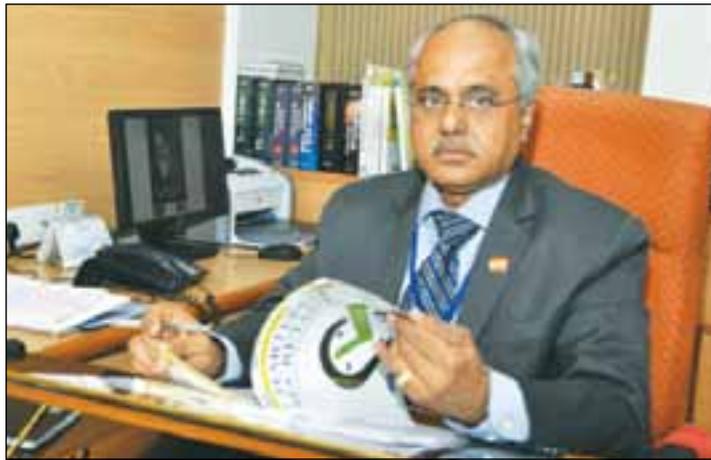
- ▶ Delegation of Powers and Functions to Registrar of Companies ▶ Delegation of Powers and Functions in respect of allotment of DIN ▶ Delegation of Powers and Functions to the Regional Directors ▶ Extension of validity period for names reserved as on 31st March, 2014 ▶ Applicability of PAN requirement for Foreign Nationals ▶ One time opportunity for extension of Period of Reservation of Name ▶ Certification of E-forms/non E-forms under the Companies Act, 2013 by the Practicing Professionals:-regarding.. ▶ Availability of E-forms/non E-forms under the Companies Act, 2013-reg. ▶ Online payment of stamp duty and court fee stamp for issue of certified copies ▶ The Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014 ▶ Establishment of Local Office of the Board at Dehradun ▶ Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2014 ▶ Circular on Mutual Funds ▶ Companies exclusively listed on Derecognized/ Non-operational Stock Exchanges ▶ Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement ▶ Risk management framework for Foreign Portfolio Investors (FPI) under the SEBI (Foreign Portfolio Investors) Regulations, 2014

## Other Highlights

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- ▶ Members Admitted / Restored
- ▶ Certificate of Practice Issued / Cancelled
- ▶ Licentiate ICSI Admitted
- ▶ News From the Regions
- ▶ News From the ICSI - CCGRT
- ▶ Company Secretaries Benevolent Fund
- ▶ Formation, Recognition and Functioning of Study Circle Guidelines, 2014
- ▶ Revised Exposure Drafts of Secretarial Standards with Respect to General and Board Meetings For Public Comments
- ▶ Our Members
- ▶ Prize Query





***“Let him who would move the world first move himself.”***

**-Socrates**

***“At the center of your being you have the answer; you know who you are and you know what you want.”***

**-Lao Tzu**



**Dear Professional Colleagues,**

The recent elections and the formation of a new government at Centre have clearly demonstrated to the world the triumph of democracy. On behalf of the members of the elite profession of company secretaries, I have immense pleasure and privilege to congratulate Shri Narendra Damodardas Modi, who assumed the august office of the Hon'ble Prime Minister of India on 26th May, 2014. The country has very high expectations from him and I am sure, he would guide the economy and the country to reach unprecedented heights. We, the professionals, must continue to act with added sense of responsibility to usher in much higher level of prosperity for the entire nation.

On 29th May, 2014, a delegation comprising of me, CS Sanjay Grover, a Council Member, CS M. S. Sahoo, Secretary and CS Sutanu Sinha, Chief Executive called on Shri Arun Jaitley, Hon'ble Union Minister for Finance, Corporate Affairs, and Defence, who happens to be a honorary member of the Institute, and offered our congratulations and best wishes to him. On the same day, the said delegation and Ms. Alka Kapoor, Joint Secretary called on Ms. Nirmala Sitharaman, Hon'ble

Minister of State for Commerce & Industry (Independent Charge), Finance, and Corporate Affairs and offered our felicitations and good wishes.

“The greatest thing in the world is to know how to belong to oneself.” wrote the 16th century celebrated author Michel de Montaigne. As professionals, while we render value added services based on certain known parameters, we must appreciate that each one of us is special in our own way. We need to figure out ourselves, know ourselves truthfully and find success in ourselves. The simple fact is that if one is successful within, he will be successful on the outside as well. Our mind is our greatest asset. Much depends upon our understanding of the self. We all have a sense of the self. Whether that sense of self is positive or negative is based upon our experiences in life and our perceptions and assessment of ourselves. The self is a factual description of how you perceive yourself. If your perception is distorted, this description may not be an accurate depiction of you, but it is an accurate statement of what you believe about yourself. The concept of self is derived from self-





## From the President

esteem and self-efficacy. If a person has low self-esteem, the self may be skewed in the direction of a negative description.

Become addicted to continuous improvement and increase in your knowledge consistently and constantly. With time, you will inevitably become the person that you desire to be. Then you will no longer have to chase after success. Success will follow you. Your mind will become magnetized to attract success, provided you invest in yourself in terms of not only professional activities, but also the other peripherals of life or profession. Indeed, we are entering a world that increasingly rewards individual aspirations and persistence and can measure precisely who is contributing and who is not. Therefore, investing in oneself would witness the transformation which will happen in each one.

Friends, understanding and implementation of the new company law require a helping hand. The Institute has a dedicated e-mail id for receiving the operational difficulties/views relating to the Companies Act, 2013, and rules notified thereunder. We are interacting with the MCA on regular basis and getting the replies forwarded to the members. I appeal to all members to make use of this facility for their views or implementation difficulties. The Institute is constantly pursuing with MCA with respect to notifications on certain sections keeping in mind the aspirations and expectations of the members and in this regard I recently met Shri A. S. Bhatia, Joint Secretary, MCA twice. Further, representations by us are uploaded on the website of the Institute from time to time for the information of the members.

A student blossoms as a member in a solemn convocation. The Institute recently organised three convocations – one each in Eastern, Southern and Western region. I participated in all of them and witnessed the solemn oath the newly admitted members took. On 3rd May, 2014, Dr. P. Vanangamudi, Vice Chancellor, The Tamilnadu Dr. Ambedkar Law University, Chennai chaired the Convocation Ceremony of the Southern Region at Chennai. The Convocation Ceremony at Kolkata for the Eastern Region on 17th May, 2014 was presided over by Shri G. S. Gupta, Director, Emami Biotech Limited. The Convocation Ceremony for the Western Region was held on 24th May 2014 when Dr. A. K. Sengupta, Founder, Higher Education Forum was the Chief Guest. At these Convocation Ceremonies, I detailed the Institute's activities and initiatives and also the crucial role being played by the company secretaries in governance architecture.

Dissemination of activities and initiatives at all levels is a must for an Institution like us, where the stakeholders are spread across the country. On 9th May, 2014 at Bangalore I addressed a Press Conference and also met the members and students at a meeting. During these meetings, I shared with

them various programmes which are on the anvil, including leveraging technology for upgrading various services being offered to the students and members and I also informed them with regard to integrated CS Course. On 20th May, 2014 at Thrissur, I participated in a Seminar on "The Companies Act: 2013 –Moving Towards Next Decade" and also interacted with the members and students at a meeting, apart from addressing a Press Conference. At the programmes of members, I highlighted the activities of the Institute and in particular emphasized the need for capacity building. At the Press Conference, I apprised the programmes of the Institute and salient features of the emerging legislative scenario with particular focus on the CS profession.

I met the members of the Bhayander Chapter on 23rd May, 2014 and interacted with them the matters of immediate concern to the profession and also the plans ahead. I visited Visakhapatnam where I addressed a Press Conference, inaugurated a Seminar and had interaction with the students and members on 27th May, 2014. At these events I briefed the highlights of the Companies Act, 2013, e-initiative of uploading the "ICSI Primer on the Companies Act, 2013" that incorporates all the major chapters of new Companies Act on YouTube, Computer Based Examination for foundation programme, modified training structure and introduction of open book examination in professional programme elective papers, etc.

I am glad to inform that the Council has implemented Guidelines for Formation, Recognition and Functioning of Study Circles, 2014 w.e.f. April 1, 2014 to provide Continuing Professional Education (CPE) for the members of the Institute. The prime objective of the Study Circles is to support the learning initiatives of the Institute. Now, we are at a crucial juncture and the capacity building is a must and we want to reach out to large section of members. Under the said guidelines, corporates including their subsidiaries, associates and joint Ventures, are also allowed to form Study Circles. Thus, seamless learning process will be available for the members to choose and update their knowledge.

I am glad to state that the institute is launching a new PMQ Course in Competition Law at a National Seminar to be organized on the theme "Laws and Economics of Competition" on June 13, 2014 at New Delhi. Mr. Ashok Chawla, Chairman, Competition Commission of India has kindly consented to be the Chief Guest. Eminent faculty comprising of senior functionaries from Regulators and Government and eminent professionals will address the participants. The broad coverage of the seminar include prohibition of anti-competitive agreements, abuse of dominance, and regulation of combinations and investigation.

As you are aware, the Institute is already offering PMQ courses



in Corporate Governance and Corporate Restructuring & Insolvency. Considering the present and prospective needs of the profession, it has decided to bring out e-bulletin exclusively for PMQ candidates on regular updates and the first e-bulletin had already been sent to PMQ candidates. It has also decided to offer PMQs on five specialised subjects, namely, Banking Law and Practice; Insurance Law and Practice; Capital, Commodity and Money Market; Intellectual Property Rights – Law and Practice; and International Business – Law and Practice.

As you are aware, International Professional Development Fellowship Programme, an initiative of the Institute to provide its members exposure to international services and market and opportunities of networking with their counterparts entered its ninth year. This year the Institute is organising this Fellowship Programme covering – Bali (Indonesia), Singapore and Malaysia between 29th June, 2014 and 07th July, 2014.

The 15th National Conference of Practicing Company Secretaries, a much awaited annual congregation of our members in practice is scheduled at The Orchid, Mumbai on June 27-28, 2014. The theme of the Conference is: “PCS: The Facilitator for Corporate Growth”. The details of the conference are available on the ICSI website and also published elsewhere in this issue. I call upon all the members to register for the conference in large numbers and make it a grand success.

I once again reiterate that the Companies Act, 2013 would

create a need based requirement of company secretaries in the light of its provisions such as registered valuers, interim administrators, enhanced penalties, enhanced disclosure requirements and so on, besides the mandates such as secretarial audit, certification of e-forms and other documents. I appeal to all our members to make use of the facilities and participate in capacity building programmes across the nation to learn the implementation of the Act effectively and to create further opportunities for ourselves.

Before I conclude, I once again underline the importance of healthy self-esteem which is so essential for a professional. I end with a quote from Arthur Conan Doyle: “My dear Watson, said [Sherlock Holmes] .....To the logician all things should be seen exactly as they are, and to underestimate one’s self is as much a departure from truth as to exaggerate one’s own powers.”

With kind regards,

New Delhi  
31st May, 2014

Yours sincerely,

(CS R. SRIDHARAN)  
president@icsi.edu

## 42<sup>nd</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

**Days:** Thursday-Friday-Saturday

**Venue:** Science City, Dhapa, Kolkata

**Dates:** 21-22-23 August, 2014

**Theme:** CS – Change. Challenge. Opportunity.

Kindly block these dates in your diary. Other details about the National Convention being hosted on ICSI website shortly.





**Pradeep K. Mittal\*, FCS**

PKMG Law Chambers  
Delhi

[pkmittal171@gmail.com](mailto:pkmittal171@gmail.com)

## Independent Directors

➤ The new Companies Act of 2013 has mandated the appointment of independent directors to ensure that the affairs of the company are conducted properly and that Satyam like scams do not take place. Who are eligible for appointment as ID, what is their role and responsibility, how they are to be appointed and removed have all been briefly highlighted here.

**T**he Companies Act, 2013, for the first time, defines an 'Independent director' and the definition in Section 2(47) is identical to the one provided in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, a regulation applicable only to listed companies. Section 2(47) says that an 'independent director' means an independent director referred to in sub-section (6) of Section 149.

### WHO CAN BE AN INDEPENDENT DIRECTOR

Section 149(6) of the Companies Act, 2013 specifies as to who can be an independent director. In simple words, any of the following persons can be termed as independent director:

- A person who is not a Managing Director nor Whole-time Director nor a Nominee Director; in other words, a director who is either non-executive or part time professional director.
- A person with relevant experience, expertise and integrity in the opinion of Board of Directors. Therefore, while considering the appointment of Independent Director, the Board has to deliberate as to whether the person is a man of integrity

and possess experience and expertise and thereafter pass a resolution. Though the word 'relevant' is used it does not narrow down the choice about the person. The person may be having experience in the line of business in which the company is engaged and others may have experience in the fields such as law, finance, economic, management, business, trade, commerce etc.etc.

- A person who neither was nor is a promoter of the company nor its holding or subsidiary or associate company. 'Associate company' has been defined in sub-section (6) of Section 2 of the Companies Act, 2013.
- A person who neither has nor has any pecuniary relationship with the company, its holding, subsidiary, or associate company or their promoters, or directors during the preceding two financial years or during the current financial year.
- A relative who has or had pecuniary relationship or transaction with the company, holding company, subsidiary company, associate company or their promoter director or director and the value of such relationship or transaction does not exceed 2% of its gross turn-over or its total income or Rs.55,00,000 or such higher amount as may be prescribed during the immediately two preceding financial years or during the current financial year.
- A person who neither himself nor his relative had held or holding the position of KMP or currently is or has been the employee of the company, its holding, its subsidiary

\*Council Member, The ICSI.



➤ **An important question that arises for consideration is as to whether an Advocate or any person who is either partner or sole proprietor of legal or consulting firm can become independent director in the company to which they are providing legal services.**

or its associate company during any three financial years immediately preceding the financial year in which he is sought to be appointed.

- A person who neither himself nor any of his relatives is or has been (i) an employee or proprietor or a partner, in any of the immediately preceding three financial years, in the firm of auditors, company secretaries in practice or cost auditors of the company or in its holding company or subsidiary company or associate company; or (ii) in any legal or consulting firm that has or had any transaction with the company, its holding company, subsidiary company or associates company, amounting to 10% or more of the gross turnover of such firm or (iii). a person who either holds together with his relatives two per cent or more of the total voting power of the company; or (iv) a person who is neither Chief Executive nor Director, or by whatever name called, in any Non-Profit Organization that receives twenty five percent or more of its receipts from the company or any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting of the company.
- A person who possess such other qualification as may be prescribed.

An important question that arises for consideration is as to whether an Advocate or any person who is either partner or sole proprietor of legal or consulting firm can become independent director in the company to which they are providing legal services. There is no legal bar so long as such Advocate or his legal consulting firm is raising bills which do not exceed 10% or more of its gross annual turnover. However, in case of (a) firm of auditors (b) company secretaries in practice or (c) cost accountant there is a total bar irrespective of their turnover. If the intention of the legislature was to put an embargo upon an Advocate or his Consulting Firm, the word "legal or consulting firm" would have found place in Section 149(6)(e)(ii) (A) itself and would not have related to its gross annual turn over. In other words, if a person is an employee, proprietor or partner in any firm of Auditors, PCS or Cost Accountant, during any preceding three years, is not at all entitled to be appointed as an independent director whereas an Advocate can be appointed as an independent director so long as he himself or his consulting firm raises bills of the value not exceeding 10% or more its annual gross turnover. In fact, the Ministry of Corporate Affairs in its Circular No.13/75 dated 5.6.1975 has clarified that a contract of professional services is not violative of Section 297 of Companies Act, 1956. There is a change

in law but still, professional services rendered by an Advocate does not come in the way of his becoming independent director so long fee bill does not exceed the limit as stated above.

According to Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014, an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operation or other disciplines related to the company's business. The word "other disciplines related to the company's business" would include those areas peculiar to the lines of the business in which the company is engaged in.

## STRENGTH OF INDEPENDENT DIRECTOR

Section 149(4) requires every listed company to appoint minimum one-third of the total number of directors as independent directors. For companies, other than the listed companies, Rule 4 of The Companies (Appointment and Qualification of Directors) Rules, 2014 provides that following class of public companies shall have at least two persons as independent directors:-

- Public Companies having paid up share capital of Rs.10 Crores or more
- Public Companies having turn over of Rs.100 Crore or more
- Public Companies having outstanding loan, debentures and deposits, in aggregate, in excess of Rs.50 Crore.

## PROCEDURE FOR APPOINTMENT

Section 150(1) says that an independent director may be appointed from out of the data bank maintained by any association, body, institute as may be notified by Central Government. It is clarified that it is not mandatory that independent director should be appointed only from the data bank in view of the word 'may'





# Article

INDEPENDENT DIRECTORS

➤ It is clarified that it is not mandatory that independent director should be appointed only from the data bank in view of the word 'may' appearing in the Section. Needless to say, appointment of independent director shall first be considered in the meeting of the Board of Directors and later on approved by the company by way of ordinary resolution in general meeting as per Section 152(2). However, the second tenure of five consecutive years shall be by way of special resolution passed in the general meeting.

appearing in the Section. Needless to say, appointment of independent director shall first be considered in the meeting of the Board of Directors and later on approved by the company by way of ordinary resolution in general meeting as per Section 152(2). However, the second tenure of five consecutive years shall be by way of special resolution passed in the general meeting. The Explanatory Statement shall give proper justification for choosing such person as independent director and also include a statement that in the opinion of the Board of Directors, he fulfils the conditions specified in the Act for such an appointment. A proper letter of appointment, containing such terms as per Schedule-IV (Appendix 1) shall be issued to such an incumbent.

## PAYMENT OF SITTING FEE/COMMISSION

According to Section 149(9), the independent director is entitled to receive

- (a) sitting fee for Board/Committee meetings as may be prescribed under second proviso under Section 197(5)
- (b) reimbursement of expenses for attending the board/committee meetings
- (c) commission related to profits of the company subject to the provisions of Section 197 and 198 ( one percent of the net profits if there is a Managing Director or Whole-Time Director or Manager and three percent of the net profits in any other case). The net profits shall be computed in accordance with Section 198. The independent director , however, shall not be entitled to receive any "stock option".

## TENURE OF OFFICE

The independent director is entitled to hold office for a term of

five consecutive years and shall be entitled to appointment for a further term of five years subject to approval of shareholders by way of special resolution in the general meeting and disclosure to this effect in the Directors Report. The independent director shall not hold office in excess of two consecutive terms of five years but shall be eligible to be appointed after the expiry of three years of ceasing to become independent director. Besides the above, as per mandate of Section 149(11), he shall not be entitled to be appointed or associated with the company either directly or indirectly for a period of three years. The Explanation to sub-sections (10) and (11) of Section 149 further provide that the existing tenure of the independent director shall not be reckoned with for the purpose of calculating the tenure of one or two terms of five years, as the case may be.

## RESIGNATION/REMOVAL

The independent director may resign by sending a letter of resignation in writing to the company and such letter shall be considered in the meeting of Board and when accepted the prescribed return shall be filed with ROC. The Director's Report (immediately following the date of resignation) shall contain a reference of such resignation. It is also incumbent upon such director to send such letter of resignation, containing detailed reasons to the Registrar of Companies within a period of thirty days. In the Companies Act, 1956, there was no legal obligation for an independent director to send a copy of the letter of resignation to the ROC.

An independent director can also be removed by the company by passing an ordinary resolution in general meeting after giving him a reasonable opportunity of hearing pursuant to a Special Notice as permissible under Section 169 of Companies Act, 2013. The procedure for sending notice and hearing is the same as was provided under old Act. Appendix I to Schedule IV prescribes that vacancy so arisen shall be filled within a period of 180 days from the date of either resignation or removal.

## EXCLUSIVE MEETING OF INDEPENDENT DIRECTORS AND BOARD EVALUATION OF INDEPENDENT DIRECTORS

The independent directors shall hold an exclusive meeting of themselves once a year without the presence of non-independent directors and members of management. It is expected that all independent directors must attend such meeting. This meeting is expected to review the performance of (a) non independent directors and board as a whole (b) review the performance of the Chairperson after taking into account the views of executive directors and non-executive directors; and (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.





The Board of Directors (excluding the persons who are to be evaluated) shall have to evaluate the performance of independent directors. On the basis of the Evaluation Report, the Board of Directors will decide about the continuance or otherwise of the independent directors, as per Appendix-I of Schedule IV.

## LIABILITY

An independent director or non-executive director (not being promoter or KMP) shall be liable only for those acts of omission or commission of the company which had occurred with his knowledge derived (a) during board process (b) with his consent or connivance in the commission of offence; or (c) where he has not acted diligently or prudently.

In case, the Registrar of Companies, Serious Fraud Office, or some other agency or person files a prosecution either before a Chief Metropolitan Magistrate or National Company Law Tribunal, as the case may be, in relation to the offences committed by the company, sub-section (12) of Section 149 provides "protection" to the independent director, which, it is felt, is only on paper and is completely illusory. In order to establish that the offence has not been committed with his consent, connivance, knowledge or board process, one has to undergo the process of trial. At the time of issuance of summons by the MM, the accused persons are not entitled to be heard. The ACMM, while issuing summons to the accused person, is guided by the following principle of law enunciated by the Supreme Court in the case of *Alpic Finance Ltd v. P Sadasivan* MANU/SC/0106/2001:

"The Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances:-

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.
- (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.
- (3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible.
- (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of complaint by legally competent authority and the like:

There is no provision in the law which entitles the accused person to be heard before the MM after receipt of summons from the court and prove his innocence. His guilt or innocence could be established only after the trial is over or at best at the stage of framing of charge. The criminal trial, as per current scenario, prolongs to a period ranging from 5 to 10 years. Needless to say, during this period, an independent director has to personally appear on each date of hearing either before Ld CMM or NCLT during the entire period of trial unless he is exempted from appearance for sufficient reasons being adduced in an application for exemption. However, there is no procedure for grant of permanent exemption by the Trial court unless the High Court, on a petition under Section 482 of Cr PC/Criminal Writ under Article 226/227 of Constitution of India, grants exemption from personal appearance and allowed appearance through an Advocate.

In the celebrated case of *State of Haryana v. Ch. Bhajan Lal* MANU/SC/0115/1992, the Supreme Court has laid down principles for quashing of criminal of complaints and has held that the criminal prosecution could be quashed, in the initial stage, only in rarest of rare cases. However, of late, for alleviating the hardship of innocent persons, it has pronounced that interference is possible by the High Court in cases where there is absolutely no set up by the prosecuting agency against the accused person. The Supreme Court in the case of *Manna Lal Chamaria v. State of West Bengal* MANU/SC/0219/2014 has upheld the order for quashing the criminal complaint by holding that the allegations in the complaint are bald and general and no specific role has been assigned against each of the accused persons. The court observed:

"The law on the subject is now very well-settled by a series of decisions rendered by this Court and it is not necessary to repeat the views expressed time and again. Suffice it to say, that the law has once again been stated in *A.K. Singhania v. Gujarat State Fertilizer Co. Ltd.* MANU/SC/1081/2013 to the effect that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the Negotiable Instruments Act, 1881, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time. From the averment made in the complaint, which is reproduced above, it can safely be said that there is no specific or even a general allegation made against the Appellants.

The concept of appointment of independent directors is commendable and laudable provided the independent directors are committed and dedicated to the company with which they are associated and do not conceive the idea of 'desertion' immediately after the emergence of first sign of sickness. CS





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## New Thought in Management and the Spiritual Paradigm of Consciousness

- In terms of organizational development the highest conception arrived in modern management thought is the concept of the “triple bottom line” with an emphasis on corporate social responsibility, sustainability and creating value for stakeholders. In terms of human resource development it is the principle-centred paradigm of Stephen Covey. The next step in evolution has to be in the spiritual dimension.

**T**he corporate world is in a state of ferment and transition. There is at present a growing group of management thinkers and leaders who are seeking for something greater than the bottomline. Among them there are some who are talking about spirituality in business. However most of what is called as “spiritual” in management skims the upper layers of the mental and moral domains and falls short of the true spiritual domains of consciousness. This new thought in management can help the corporate world in taking the next step in evolution beyond the techno-economic bottomline and therefore helpful in the forward march of business. But to move further beyond into the spiritual, the corporate mind has to understand clearly the distinction between the higher mental-moral domains and the true spiritual dimensions. The main purpose of this study is to bring about this distinction between the new thought in management and the spiritual paradigm of consciousness.

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### THE NEW THOUGHT IN MANAGEMENT

Let us take some brief snapshots of the evolving corporate world. When we look back at the early seventies, the dominant corporate values are shareholder value, market-share, profit-maximization, productivity, and competitive advantage. Looking again after another ten or fifteen years, you see some new values like quality, customer service, innovation, knowledge-management, and globalization gaining prominence. Presently we see another set of values like social responsibility, sustainability, ethics, and employee development, slowly gaining increasing acceptance among corporate leaders. A new concept, which is popular at present among business leaders, is “triple-bottom line”: economic, social and environmental. What is the meaning and significance of this change or evolution in values?

We can perhaps get some clues to answer these questions if we examine the corresponding or parallel evolution in terms of conception of human nature and motivation theories in management. According to Stephen Covey, evolution of



➤ in terms of organizational development the highest conception arrived in modern management thought is the concept of the “triple bottom line” with an emphasis on corporate social responsibility, sustainability and creating value for stakeholders. And in terms of human resource development it is the principle-centred paradigm of Stephen Covey.

management thought may be viewed in terms of four paradigms. First is the scientific-authoritarian paradigm of Fredrick Taylor, which viewed the human being as a physical man or a “stomach” seeking mainly for economic survival and security. In this paradigm, the path of motivation is through a system of punishments and rewards administered by an authoritarian management style. The second paradigm is that of the human relations school which conceived human beings as a “heart” with emotional needs for appreciation, recognition and affection. The path of motivation lies in treating people with respect, decency, courtesy and kindness. The third paradigm views the human being as a “mind” with its need for knowledge, self-expression and self-actualization. Here, the motivational strategy is based on providing sufficient autonomy and opportunity for people to develop and express their mental potentials and talents and harness them for realizing organizational goals. This is the paradigm of the human resource development.

The first, Taylorian paradigm is predominantly physical, the next human relations paradigm is social, and the third Human Resource Development paradigm is psychological. And finally, Stephen Covey presents his own principle-centred approach as a “spiritual” paradigm. In this fourth paradigm a human being is viewed mainly as a “soul” seeking for “meaning.” According to Covey, the highest motivation happens when people are given the freedom and opportunity to use their talent to serve a meaningful moral cause. As Covey explains this fourth paradigm:

“Now we work with fairness, kindness, efficiency, and effectiveness. We work with the whole person. We see that people are not just resources or assets, not just economic, social, and psychological beings. They are also spiritual beings; they want meaning, a sense of doing something that matters. People do not want to work for a cause with little meaning, even though it taps their mental capacities to their fullest. There must be purposes that lift them, ennoble them, and bring them to their highest selves. Using this paradigm, we manage people by a set of proven principles. These principles are the natural laws and governing social values that have characterized every great society, every responsible



civilization, over the centuries. They surface in the form of values, ideas, ideals, norms, and teachings that uplift, ennoble, fulfill, empower, and inspire.”<sup>1</sup>

Thus, in terms of organizational development the highest conception arrived in modern management thought is the concept of the “triple bottom line” with an emphasis on Corporate Social Responsibility and Sustainability and creating value for stakeholders. And in terms of human resource development it is the principle-centred paradigm of Stephen Covey.

There is a meaning and pattern behind this change and evolution of values and conceptions in business and management thought. Modern business has gone through a process of natural evolution from the physical-economic, social-emotional to the mental-moral paradigm. In our integral view Covey’s paradigm is not entirely spiritual; it is predominantly mental-moral, but it can be a very effective preparation for the spiritual.

There are more or less similar perspectives as that of Stephen Covey by other thinkers like for example, Abraham Maslow, Charles Hardy and many such authors on self-development. We will not enter into the details of this new thought. We are highlighting Stephen Covey because he is a representative thinker of this type of thinking which tries to bring higher values to management. Their thoughts and ideals are more or less similar to that of Covey. Most of the literature in this category is based on the following values or principles:

1. Personal Development
2. Positive Thinking

<sup>1</sup> Stephen R. Covey, Principle-Centred Leadership, Simon &Schultzer, London, p. 178-79





3. Optimism or positive self-assertion
4. Self-expression of the human potential or self-actualisation
5. Emphasis on some universal moral principles like integrity, fairness, justice, kindness, service or contribution to the society.
6. Harmonious relationship with people with an emphasis on family, friends, work-life balance.
7. Worldly success with an altruistic touch.

The integral view agrees with Stephen Covey that the next step in evolution has to be in the spiritual dimension. But as we have indicated earlier, in the integral view, most of this new thought in management are within the mental-moral domain and do not enter into the spiritual domain. In our further discussions we will call the new thought in management as the NTM paradigm and the spiritual paradigm as SPC which means spiritual paradigm of consciousness.

## THE MEANING OF SPIRITUALITY

Before coming to the differences between NTM and SPC we must have a clear understanding of the meaning of spirituality. Let us now examine this much misunderstood term, "spirituality" in the light of Sri Aurobindo's luminous and insightful perspectives.

Sri Aurobindo begins his elaboration of the meaning of spirituality by listing what spirituality is not, "*It must therefore be emphasised*" says Sri Aurobindo, "*that spirituality is not a high intellectuality, not idealism, not an ethical turn of mind or moral purity or austerity not religiosity or an ardent and exalted emotional fervor, not even a compound of all these excellent things; a mental belief, creed or faith, an emotional aspiration, a regulation of conduct according to a religious or ethical formula are not spiritual achievement or experience.*" We must note here many of these characteristics, aims or objectives of NTM come within this list of what spirituality is not. For example in the emerging literature in the West sometimes a strong vital "passion" for work is regarded as spiritual. But what is called here as passion belongs to what Sri Aurobindo describes as "ardent and exalted emotional fervor" in the list of what is not spiritual.

But as we have mentioned earlier, true spirituality does not reject these mental and moral aspirations and activities but accepts the nobility and value of the effort and their evolutionary utility. As Sri Aurobindo explains further: "*These things are of considerable value to mind and life; they are of value to the spiritual evolution itself as preparatory movements, disciplining, purifying or giving a suitable form to the nature; but they still belong to the mental evolution—the beginning of a spiritual experience or change is not there.*" The last of this passage by Sri Aurobindo indicates the main or essential difference between the NTM and SPC. NTM paradigm is predominantly mental, conceptual and behavioural and there is not the aspiration for a direct inner contact with the spirit. This aspiration for a direct experimental contact with the spiritual

Reality and the resulting inner transformation is the essence of spirituality. As Sri Aurobindo sums up:

*"Spirituality is in its essence an awakening to the inner reality of our being, to a spirit, self, soul which is other than our mind, life and body, an inner aspiration to know, to feel, to be that, to enter into contact with the greater Reality beyond and pervading the universe which inhabits also our own being, to be in communion with It and union with It, and a turning, a conversion, a transformation of our whole being as a result of the aspiration, the contact, the union, a growth or waking into a new becoming or new being, a new self, a new nature."<sup>(2)</sup>*

## THE MAIN DIFFERENCES

We are now in a better position to understand with greater clarity the distinctive features of NTM and SPC. These are the main differences:

1. NTM paradigm is confined to self-development within the mental-moral ego; SPC aims at self-transcendence of the mental-moral ego in an egoless and universal consciousness.
2. NTM paradigm aims at a mental-moral reformation of outer behaviour and action; SPC aims at an inner transformation of consciousness.
3. NTM aim at self-actualisation within the body-mind complex; the goal of SPC is self-realisation, which means discovery of the deepest and innermost truth of our spiritual individuality beyond our body and mind and live and act from this true Self. This true Self is at once individual and universal. It has an individuality with its own unique and intrinsic nature. But at the same time its consciousness extends to embrace others and all life in a feeling of spiritual identity, where we can feel all others as part of our own self, as concretely as we feel our body as our own self. If you ask how can something be at once individual and universal, we can only say that the spiritual domain transcends the categories of logical thinking; it is a consciousness in which contradictions of logic are fused in a suprarational harmony.
4. NTM aims at meaningful work; the quest of SPC is to discover the highest aim, meaning and purpose of human life as a whole.
5. In NTM, worldly success is an important and integral part of the goal; in SPC they are the result or a by-product and not the aim.
6. In NTM, CSR is based on economic and social mutuality between the Corporation and the Community; in SPC it is based on the unity of con<sup>2</sup>sciousness where other are felt as part of our own self.

2 Sri Aurobindo, CWSA, Vol. 21-22, p. 889





➤ The most important difference between the NTM and SPC lies in the inner transformation of consciousness. In the NTM paradigm, the main emphasis is on externalization of ideas or values in action and behaviour. Though this is very important and a vital part of the inner discipline of spirituality, this is not enough for a complete transformation of consciousness. For this inner transformation, externalization of ideas through action has to be accompanied by internalization of them in thought and feelings so that outer action becomes a spontaneous expression of a corresponding inner state of consciousness.

7. Leading faculties of NTM are reason and ethical sense. In SPC they are the ethical aesthetic and intuitive intelligence.

## THE INNER TRANSFORMATION OF CONSCIOUSNESS

The most important difference between the NTM and SPC lies in the inner transformation of consciousness. In the NTM paradigm, the main emphasis is on externalization of Ideas or Values in action and behaviour. Though this is very important and a vital part of the inner discipline of spirituality, this is not enough for a complete transformation of consciousness. For this inner transformation, externalization of ideas through action has to be accompanied by internalization of them in thought and feelings so that outer action becomes a spontaneous expression of a corresponding inner state of consciousness. In SPC this transformation of consciousness can be achieved by the following system of discipline, which is lacking in NTM:

1. Growth of consciousness through increasing self-awareness
2. Preparatory inner purification through a process of cultivation-rejection, which means rejections of all thought, feeling, impulses and motives which are contrary to the ideal and

3. cultivation of all that is in harmony with ideals.
3. Progressive elimination of ego and desire from all the levels of our being—physical, emotional, mental, moral.
4. Transcendence of dualities through the practice of equanimity to the polarities of life like success and failure, praise and blame, joy and sorrow.
5. Witness-consciousness by which we can watch the inner movements of our mind and heart as a detached observer.
6. Inner calm, peace and silence which means freedom from the clamour thought.
7. Development of the intuitive intelligence beyond the mind.
8. Self-surrender to a higher divine power above our mind.
9. All actions for and relationship with others have to be based on an experience, intuition, feeling or perception of the Unity-consciousness or I-am-You consciousness, which means on the perception, my wellbeing is dependent on the wellbeing of others and that of the larger whole of life, and when I do good to others I am doing good to myself and when I hurt others I am hurting myself.
10. This principle of unity-consciousness applies not only to outer activities but also to our inner movements like thoughts and feelings. A good thought and feeling for others induces a similar thought and feeling in them leading to harmonious relationship. And conversely negative thoughts and feelings like irritation, anger, resentment also invokes a similar reaction in others, leading to perpetual inner conflict which may not be visible outside.

**Table-I**  
**NTM & SPC**

	NTM	SPC
1.	Self-development within the mental-moral ego	Self-transcendence of ego in the spiritual consciousness
2.	Mental-moral reformation of outer behaviour and action	Inner transformation of consciousness
3.	Self-actualisation within the body-mind complex	Self-realisation in the spiritual consciousness beyond the body-mind
4.	Aims at meaningful work	Quest for the highest meaning, aim and purpose of life as a whole
5.	Worldly success is part of the aim	Worldly success could be a result
6.	CSR is based on economic and social mutuality among the stakeholders	CSR is based on unity of consciousness
7.	Leading faculties: reason and ethical sense	Ethical, aesthetic and intuitive intelligence

CS





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# Financial Statement Fraud

- A manipulation of the company's reported earnings or assets can affect a bank that extends credit to the company, a shareholder who invests money in the company, and those organizations that enter into contracts or agreements with the company.

## BACKGROUND

**T**he essential characteristic of fraud is the intent to deceive. *If the intent to deceive is lacking in any act or series of acts or representations, it is wrong to call such acts fraudulent, although they have caused a loss.* Financial Statement Fraud is the deliberate misrepresentation of the financial condition of an enterprise accomplished through the intentional misstatement or omission of amounts or disclosures in the financial statements to deceive financial statement users.

Financial fraud may be defined as an intentional act(s) designed to deceive other persons and cause them financial loss. Financial statement fraud is perpetrated by management and it is a fraud that injures investors and creditors through materially misleading financial statements. Financial statement fraud almost always occurs with the knowledge or consent of management. Fraud is any business activity, which resorts to deceitful practices or devices with the intent to deprive another of property or other rights, or to cause economic injury.

A principal may be incompetent or negligent in managing the business or may be even willfully wasteful of the firm's assets, by gambling for instance; but, unless creditors were at some point intentionally deceived on a material fact, the principal cannot properly be charged with fraud.

\*Views expressed herein are personal views of the author.



## REASONS FOR FINANCIAL STATEMENT FRAUD

Financial statement fraud is usually committed with the intention of making financial gains, such as by using the false information to increase the value of the company's stock. Especially with public companies, there are expectations related to the financial results, and executives may alter numbers to conform. Earnings management (financial statement fraud) means that



➤ Indicators of fraudulent manipulation of revenue include: existence of unusual ratios related to inventory or accounts receivable, rebooking receivables so unpaid amounts related to phony sales do not look so old or recording large write-offs shortly after the close of a period. An internal report (a tip from an employee) of revenue manipulation may be necessary in order for auditors or other professionals to become aware of the fraud, as schemes to manipulate revenue are often carefully crafted and covered.

management played games with the numbers, shifting revenue or expenses from one period to the next, or inflating assets or underreporting liabilities. Following are the reasons for financial statement fraud:

- To demonstrate increased earnings per share thus allowing increased dividend /distribution payouts
- To encourage investment through the sale of stock
- To cover inability to generate cash flow
- To dispel negative market perceptions
- To obtain financing, or to obtain more favorable terms on existing financing
- To receive higher purchase prices for acquisitions
- To demonstrate compliance with financing covenants
- To meet company goals and objectives
- To receive performance-related bonuses

## TECHNIQUE USED TO MISSTATE FINANCIAL STATEMENTS

### Revenue Overstatement

The first and most common way that financial statement fraud is carried out is through revenue overstatement. The easiest way to improve the apparent financial condition of a company is by fraudulently inflating revenue. Companies can do this by:

#### Booking fictitious sales

- Holding the books open at the end of a period
- Recognizing legitimate sales early

- Shipping items not ordered by customers and booking the sales
- Booking revenue before it has been earned on projects in progress
- Recording sales for items produced but not yet shipped, or only partially shipped
- Booking sales but delaying shipment to customers (bill-and-hold schemes)
- Not properly recording allowances for returned goods

### Detection of Revenue overstatement

Revenue overstatement is detected by examining revenue patterns and looking for Irregularities. Unusual changes in cost of goods sold might signal a problem, as companies that book fictitious revenue do not always book corresponding expenses. Revenue overstatement may also be suspected when a company has consistent cash flow problems, even in light of apparently increasing sales and profits.

One irregularity that may not often be considered as such is a suspiciously constant increase in sales or profits from period to period. There is a high expectation that revenues will grow by a certain percentage, and that profits will increase accordingly. Finance professional know the "acceptable" parameters for their numbers. Anything outside those ranges will raise questions. So it is not a stretch to believe that revenue and expenses could be manipulated to conform to those expectations.

For example, the financial statements and related notes for a public company that sells a specific type of Machinery. The financial statements showed extremely stable gross profits as a percentage of revenue. Yet the notes to the financial statements indicated that the business was suffering because of significant increases in the cost of materials. Therefore, it would make sense that the gross profit percentage might be negatively affected, unless the company could raise the retail pricing enough to cover the cost increases. Independent evidence suggested that retail prices were not up, bringing into question the accuracy of the profit-and-loss statement





# Article

FINANCIAL STATEMENT FRAUD



and raising the possibility that the numbers were manipulated.

The face of the financial statements appears reasonable. The fraud is discovered only once facts are cross-checked with the numbers and outside evidence is compared with management's assertions. Other indicators of fraudulent manipulation of revenue include: existence of unusual ratios related to inventory or accounts receivable, rebooking receivables so unpaid amounts related to phony sales do not look so old or recording large write-offs shortly after the close of a period. An internal report (a tip from an employee) of revenue manipulation may be necessary in order for auditors or other professionals to become aware of the fraud, as schemes to manipulate revenue are often carefully crafted and covered.

If a revenue overstatement is suspected, the following procedures can be used to investigate:

- Examine the books for adjusting entries, especially toward the end of an accounting period, that increase revenue.
- Look for "on-top" accounting entries that were booked after the close of the accounting period and changed the financial statement numbers.
- Examine documentation to determine whether sales toward the end of an accounting period were legitimate. This is often referred to as cut-off testing by auditors.
- Search for transactions toward the end of an accounting period that cause the company's results to barely meet or exceed budgets, projections, or Wall Street's expectations.
- Compare purchase orders to invoices to see whether a customer issued a purchase order after a sale was booked. The purchase order could be proof that a sale was booked before the items were even ordered by the customer.
- Analyze write-offs and returns in later accounting periods to see whether earlier sales may have been improperly recorded.
- Look for altered documentation that may indicate backdating of sales documents.
- Check post-closing shipping documentation to determine when goods were actually delivered to customers.
- Use date-stamped and time-stamped evidence like e-mails,

faxes, and accounting system entries to try to determine when agreements were made, contracts were signed, and sales were actually made.

- Compare commissions paid to sales booked. Management is not eager to pay commission on fictitious revenue.
- Examine payments of invoices to determine whether payment lags on sales booked toward the end of an accounting period. Delayed payment may suggest the sale was not really made until later.
- Independently confirm sales dates and amounts with customers.
- Independently confirm accounts receivable balances with customers.
- Examine what appear to be partial payments on accounts, which could suggest inflated invoices used to manipulate revenues. The customer clearly would pay only what is legitimately owed, making it appear as if there has been only partial payment.
- Channel Stuffing
- Round-Tripping
- Asset Overstatement
- Liability and Expense Understatement
- Reserve Manipulation
- Misrepresentation or Omission of Information
- Improper Recording of Mergers and Acquisitions
- Off-Balance-Sheet Items
- Accounting Involves Judgment and Estimates
- Earnings Management

## Unreasonable assumptions with regard to estimates

To make unreasonable assumptions with regard to estimates, management may extend the estimated useful life of its Machinery to decrease depreciation expense and increase net income. Overstated depreciation falsely increases money in corporate coffers, as it gives illusion that more depreciation expense came out of operating income and, therefore, less taxes to pay. Another estimate commonly manipulated is allowance for doubtful accounts. An understatement of this estimate both increases net assets and overstates net income.

## False Asset Evaluations

To make assets appear more valuable than they actually are. Although the entries in the financial statements may be true, the appraisals that led to these statements being written are incorrect. For example, if a company deliberately appraises non-producing Assets as worth the same as one that produces revenue, and includes this valuation on its financial statement, this is a form of fraud.

## Concealment or omission of information.

It is a form of fraud in which certain liabilities or other harmful





disclosures that make hurt the company is kept off a financial statement. There are rules regarding explanations and disclosures that must accompany financial statements. Without that additional information, the financial statements themselves might easily be misinterpreted. Deliberately omitting necessary information from the notes to the financial statements is a simple, but effective, way to tender misleading financials. For example, if the company took on a number of liabilities, such as by taking out a loan or issuing debt, this will generally need to be recorded. By keeping such disclosures off the statement, the company looks in better financial shape than is the case.

### Recording Uncertain Sales

To record sales that have not yet gone through as sales that have already been transacted. This can take several forms, including sales that are currently being negotiated or sales that are expected for the next quarter. This form of fraud is closely related to the recording of false revenues. Like false revenues, this form of fraud is designed to make the company appear more profitable than is the case.

### Misapplication of Accounting Rules

Another method for financial statement manipulation. Executives may deliberately incorrectly apply accounting rules in a way that enhances the company's financial results. There are other forms of financial statement fraud that are gaining in popularity. Schemes include the misuse of reserves often referred to as using reserves as "cookie jars" to shift income and expenses between periods depending upon the company's "need" for the financial statements to fall within certain parameters.

### Overstatement of Expenses

An opposite impact on net income occurs when the overstatement of assets leads to an overstatement in expenses. When the accountant records an expense, he records a decrease to Cash, an asset, and an increase to Expense. If the accountant enters too high of a number or enters the transaction twice, both the assets and the expenses are overstated. An overstated expense balance leads to an understated net income for the period.

## MAJOR TYPES OF FINANCIAL STATEMENT FRAUD

### Fictitious revenues

- Fabricating revenue
- Inadequate provisions for sales and returns
- Sales with conditions

### Timing differences

- Early revenue recognition
- Recording expenses in the wrong period

### Concealed liabilities and expenses

- Liability and/or expense omission

- Omission of warranty and product liability

### Improper disclosures

- Liability omissions
- Significant events
- Management fraud
- Related-party transactions
- Changes in accounting policy

### Improper asset valuations

- Inventory
- Accounts receivable
- Fixed assets
- Business combinations

### EARLY WARNING SIGN (RED FLAGS) ASSOCIATED WITH FINANCIAL STATEMENTS FRAUD:

- Domination of management by a single person or small group without compensating controls
- A practice by management of committing to analysts, creditors, and other third parties to achieve aggressive or unrealistic forecasts
- Ineffective communication, implementation, support, or enforcement of the entity's values or ethical standards by management or the communication of inappropriate values or ethical standards
- Recurring negative cash flows from operations or an inability to generate cash flows from operations while reporting earnings and earnings growth
- Rapid growth or unusual profitability, especially compared to that of other companies in the same industry
- Significant, unusual, or highly complex transactions, especially those close to period end that pose difficult "substance over form" questions
- Significant related-party transactions not in the ordinary course of business or with related entities not audited or audited by another firm
- A significant volume of sales to entities whose substance & ownership is not known
- Recurring attempts by management to justify marginal or inappropriate accounting on the basis of materiality
- Formal or informal restrictions on the auditor that inappropriately limit access to people or information or the ability to communicate effectively with the board of directors or audit committee
- Minimal (if not nonexistent) requirements for executive disclosures or examination of executives' activities
- A company without an effective internal auditing staff
- A company that uses several different auditing firms, none of which can see the big picture
- A company that changes auditors frequently or hires inexperienced auditors
- A company that has many surprises for the auditors
- Companies that have already been practicing decanting





# Article

FINANCIAL STATEMENT FRAUD

➤ The cause of fraudulent financial reporting is the combination of situational pressures on either the company or the manager and the opportunity to commit the fraud without the perception of being detected. These pressures defined by the Treadway Commission are known as red flags. If red flags are present, then the risk of financial reporting fraud increases significantly.

accounting may use merger activity to their advantage by attempting to mask ongoing accounting deception

The cause of fraudulent financial reporting is the combination of situational pressures on either the company or the manager and the opportunity to commit the fraud without the perception of being detected. These pressures defined by the Treadway Commission are known as red flags. If red flags are present, then the risk of financial reporting fraud increases significantly.

Pressures can escalate to an even higher point of potential fraud when an executive/manager is in situations that prompt him or her to demonstrate favorable earnings in order to support projections, maintain the credibility of management, avoid a merger situation, or prevent the suspension or delisting of the company's stock. If these pressures have already given rise to litigation between management and shareholders, then there is an especially conducive climate for financial statement fraud. By recognizing the contributing factors, there is a greater potential to curb the incidence of fraud.

Other pressures tying more directly to the business' financial performance include:

- Unfavorable economic conditions
- Heavy investments and/or losses
- High debt
- Insufficient working capital
- Difficulty in collecting receivables
- Reduced ability or inability to obtain credit
- Restrictive loan agreements
- Dependence on one or two customers and/or transactions
- Product obsolescence
- Profit margin deterioration due to rising expenses and declining revenues

## CONCLUSION: THE IMPACT OF FINANCIAL STATEMENT FRAUDS

Financial statement fraud can have an impact on any person or organization that has a financial interest in the success or failure of a company. A manipulation of the company's reported earnings or assets can affect a bank that extends credit to the company, a shareholder who invests money in the company, and those organizations that enter into contracts or agreements with the company. It has the power to put employees out of work once the fraud is exposed or collapses. It also has the power to enrich employees – mostly those involved in the fraud, Financial statement fraud will cause shareholders to overpay for their investment in the company and they will get less value for their money than they are aware. They may lose part or all of their investment if the company ultimately fails or has to go through some sort of reorganization in order to remain viable. Shareholders also lose the opportunity to invest their money in other companies which may have better actual financial results or which may be more honest in their operations.

Banks lose money, which affects other bank customers who ultimately make up for those losses and affects the bank's investors. Creditors can lose large sums of money, which may not have been risked if the creditors knew the true financial condition of the company.

Regulations may be effective in curbing some of this fraud, but a skeptical eye on the part of interested parties might be more effective in protecting investors, creditors, and other business partners from the negative effects of financial statement fraud.[CS](#)

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## Class Action Suit: Boon for Small Investors

- The concept of class action suit is not new to the world. It is very much popular in West and has helped investors to fight against wrong acts committed by the company, directors, management and auditors. The huge amount of compensation under this clause has been paid to investors in US, over the years, for various types of frauds, insufficient and misleading disclosures.

### INTRODUCTION

**W**ith the passing of the new company law, Indian corporate sector will now be governed by a new, modified law and bid goodbye to 57 year old Companies Act. The essence of the recently passed law is to totally overhaul the Companies Act, 1956 with a view to promote self-regulation, eradicate unwarranted regulatory approvals, vest shareholders with greater powers and encourage greater transparency in the disclosures by corporate entities. In the light of Satyam fiasco, many new and unheard concepts have been introduced in the new law that proposes sweeping changes to the existing company laws. The law proposes class action suit that may be filed by specified number of members or depositors against the company, if the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors. This is a welcome move. Under the new law, the requisite number petitioners in the case of a company having a share capital, should not be less than 100 members (including depositors) or not less than such percentage as may be prescribed. In the case of a company not having a share capital,





# Article

CLASS ACTION SUIT: BOON FOR SMALL INVESTORS

➤ The concept of class action suit is not new to the world. It is very much popular in West and has helped investors to fight against wrong acts committed by the company, directors, management and auditors. The huge amount of compensation under this clause has been paid to investors in US, over the years, for various types of frauds, insufficient and misleading disclosures.

the petitioner should not be less than one-fifth of the total number of its members. The petitioners can file an application before the National Company Law Tribunals (NCLT) and the order passed by the Tribunal shall be binding. Banking companies are out of the purview of class action.

The concept of class action suit is not new to the world. It is very much popular in West and has helped investors to fight against wrong acts committed by the company, directors, management and auditors. The huge amount of compensation under this clause has been paid to investors in US, over the years, for various types of frauds, insufficient and misleading disclosures. 'Master Tobacco Settlement' is the case of the largest payment of compensation to the plaintiffs in the history of US Class Actions providing \$206 billion over 25 years. Similarly, \$7.2 billion in settlements was reached by Enron to compensate shareholders whose stock became worthless during the company collapse; a total payment of over \$6.13 billion made to the World.Com Investors; Tyco International settled 32 of the class action suits for \$2.975 billion and an employee's class action suit was filed on behalf of 50,000 Tyco employees and settled for \$72.5 million in December 2009. In the case of Satyam, new management paid \$125 million to the purchasers of Satyam's ADS.

## DECODING CLASS ACTION SUIT

A class action is a type of lawsuit in which the claims and the rights of many people are decided in a single case. 'Class Action Suit' originated in the US, is an action brought by a complainant representing a class (individuals or entities who have suffered in the nearly uniform manner) and involves the payment of damages. In USA, if the number of investors is large, in a single case, 'Class Action Suit' could be filed wherein the decision of the Court benefits all the investors in that class, through a single order. The US style 'Class Action Suit' is not practiced in Europe, where the 'Class

Action Suit' is to be pursued only by consumer associations rather than by individuals.

Barron's Business Dictionary defines 'Class Action' as "a suit brought by one or more members of a large group of persons on behalf of all members of the group. If the court permits the class action, all members must receive notice of the action and must be given an opportunity to exclude themselves. Members who do not exclude themselves are bound by the judgment, whether favorable or not." In United States courts, an 'Action' refers to a lawsuit. In other words, once a complaint is filed with the court, the judicial proceedings are called the action. On the other hand, a 'Class Action' is a type of lawsuit in which the claims and rights of many people are decided in a single case. Specific plaintiffs are named in the lawsuit to assert the claims of the entire class so that everyone with the same claim or injury doesn't have to file their own separate lawsuit. Also, because they allow people whose damages are too small to warrant an individual lawsuit to try their cases together, class actions can often be the only practical way to stop illegal practices and recover ill-gotten gains. Class action suits have allowed individual people stand up against the most powerful industries in the world and to hold them accountable for their action.<sup>1</sup>

Class actions provide an overwhelmingly powerful law enforcement mechanism that is capable of imposing, unlike any other civil law enforcement mechanism, a threat of liability exposure on business entities for the social consequences of systematic wrongdoing. Class actions are not too different from any civil case. The plaintiff files a complaint, which must be answered by the defendants. The parties engage in discovery, a process by which each side gets to uncover all of the documents and information in the possession of the other side related to the case. At times, the lawyers will file motions with the court to seek to dismiss some or all of the claims, narrow the issues or, in general, to resolve procedural disputes. Normally, the defendants will seek to have the complaint dismissed prior to trial, on the grounds that the facts could not possibly support a finding against them. If these motions fail, the case ultimately goes to trial or is settled. However, class actions do tend to be larger and involve more complicated issues than most other civil cases. This means that although many of the procedural steps are the same as in other civil cases, the judge will be more involved in the handling of the case than normal, conducting more frequent status conferences to ensure that the case is proceeding, and to resolve procedural disputes.<sup>2</sup>

In India, only the Civil Procedure Code and Statutes like Consumer Protection Act recognize the concept and provide for class action with prescribed conditions. The Consumer Protection Act, 1986 empowers a consumer or consumer association where there are numerous consumers having the same interest, to seek compensation/damages for fraud, unfair trade practice, deficiency of services, etc. However, the complaints under this Act are to

1 "Class Action Basics" available at: <http://www.millslawfirm.com/classaction.html>

2 "About Class Actions" available at: <http://www.srkw-law.com/about-class-actions.html>





➤ Modern class action lawsuits were born out of the common law tradition of England stretching back to medieval times. Written records dating back as early as 1125 show a well-established English legal custom that allowed a large group of villagers to choose three or four representatives to file a single complaint in court. These so-called representative actions persisted throughout English history and into Colonial America.

be disposed of through a summary procedure that virtually rules out adjudication of complaints relating to large scale frauds. The introduction of 'Class Action Suit' in India is being seen as a positive move as it empowers small shareholders to seek answers in case they feel that a company's management or its conduct of affairs is prejudicial to its interests or its members or depositors.

## FACTORS DETERMINING "CLASS ACTIONS"

As depicted in the following figure, there are four factors<sup>3</sup> determine if a class action is appropriate:

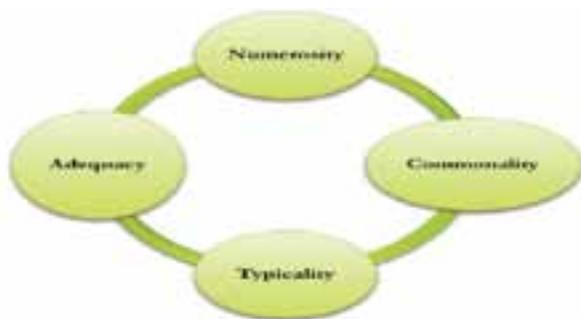


Figure 1- Factors determining Class Action Suit

1. First and most obvious is called numerosity, which means that there must be so many similar claims that it's more practical for them to be resolved in one lawsuit instead of several.
2. Second is the principle of commonality i.e. the claims must be similar. They must share common factual disputes and/or common questions of law so that they can all be resolved in the same lawsuit.
3. Third is typicality i.e. the persons named as class

3 "Class Action FAQ" available at: <http://class-actions.lawyers.com/Class-Action-FAQ.html>

- representatives or named plaintiffs must have claims that are typical of the class. The claims need not be identical, but merely representative of the average class claim.
4. Finally, is the adequacy i.e. the persons named as class representatives or named plaintiffs must be capable of adequately representing the class? Adequacy here means representing fairly the claims of all class members, and not using the lawsuit to reap its benefits at the expense of other class members.

As an example, a typical class action might involve a defective drug with harmful side effects. It could be taken by thousands of people, satisfying the numerosity factor. The side effects may have caused liver damage or heart disease in these people. That's a common factual claim. And the drug maker should have known about the side effects and warned of them. That's a common legal question. If the class representatives have claims like this, and are up to the task of representing the class, the typicality and adequacy factors are satisfied. This is a good class and the case can proceed as a class action.

## EVOLUTION OF CLASS ACTION SUIT

Modern class action lawsuits were born out of the common law<sup>4</sup> tradition of England stretching back to medieval times. Written records dating back as early as 1125 show a well-established English legal custom that allowed a large group of villagers to choose three or four representatives to file a single complaint in court. These so-called representative actions persisted throughout English history and into Colonial America. In Medieval Europe there is record of a few individuals' representing a large group of people in legal suits since 1125 A.D. Documents from England demonstrate that this form of representation was typically used when a village or agrarian community filed a suit as a unified whole.<sup>5</sup>

The evolution of Class Action Suit is summarized below:-



Figure 2: History of Class Action

4 Civil law in the United States is based on common law. Common law - as opposed to criminal law or constitutional law -- is grounded in precedent, the decisions made by judges in similar cases.

5 "The History of Class-Action Lawsuits" available at: [http://www.ehow.com/facts\\_6789433\\_history-class\\_action-lawsuits.html](http://www.ehow.com/facts_6789433_history-class_action-lawsuits.html)





## THE FIRST CLASS ACTION SUIT

The lawsuit that set the precedent for today's class-action suits was the *Discart v. Otes* case. In 1309, Master Otes, a wealthy landowner in the Channel Islands, demanded that all rent and other debts owed to him be paid in French, rather than local, currency. This made the debts owed nearly triple their original value. As a result, a large group of Islanders sued him. Jordan Discart, whose name was attached to the case, was the first to sue, and so became representative of all the tenants on Otes' land.<sup>6</sup>

## CLASS ACTION SUITS MAKES DEBUT IN INDIA

In India class action suits are confused with the group actions under the Consumer Protection Act, 1986 and PILs. However, both the mechanisms are different from class actions to be introduced under the new Law. Beginning in the 1970s the Indian judiciary evolved the concept of Public Interest Litigations (PILs). At that stage, PILs were intended to espouse the grievances of the poor and disadvantaged strata of society who did not have the means or the wherewithal to protect their own interests. Although not strictly "class action litigation" as it is understood in American law, Public Interest Litigation arose out of the wide powers of judicial review granted to the Supreme Court of India and the various High Courts under Articles 32 and 226 of the Constitution of India, respectively. Such litigation was meant to be a collaborative and co-operative effort of the parties thereto, in order to secure justice for the poor and weaker sections of society.<sup>7</sup>

PIL cannot be treated as class actions. Two key differences separating them are:-

1. PILs can be filed only against the state or public authorities in the High Court and Supreme Court under Article 226 and Section 32 of the Constitution, respectively, whereas class action suits can be filed against any entity, including private entities.
2. The plaintiff in a class action suit must necessarily have suffered a legal injury and must have a financial interest in the suit unlike a PIL where the plaintiffs are not required to have sustained damage due to any wrong doing mentioned in the suit.<sup>8</sup>

## A WELCOME MOVE

In terms of shareholder remedies in India, there is a fair amount of vibrancy in direct actions in the form of claims for oppression and mismanagement brought before the Company Law Board (CLB)

["Company Law Board" substituted by 'Tribunal' by the Companies (Second Amendment) Act, 2002]. While the CLB has been active in considering these cases, their scope is fairly limited and may not necessarily be available for all instances of breaches of duties either by the company or the management. Considering some of these difficulties, the Companies Bill, 2009 introduced a specific clause on class actions by shareholders as a method to ensure greater enforcement of corporate law. However, as anticipated, this was met with stiff resistance from the industry, which feared that this will lead to the opening of floodgates resulting in companies having to face numerous lawsuits from shareholders. Nevertheless, the government succeeded in its move. Section 245 and 246 of the Companies Act 2013 gives a right to a group of shareholders or depositors to move National Company Law Tribunal (NCLT) if they believe that the management or conduct of the affairs of the company are prejudicial to them. As per Clause 245 of the Act, requisite number of member(s)/depositor(s) by filing an application before NCLT on behalf members or depositors can:

- Claim damages or compensation or demand any other suitable action against the company or its directors
- Restrain the defendant from committing an act ultra vires articles or memorandum
- Restrain the defendant from committing breach of memorandum or articles
- Declare a resolution altering the memorandum or articles of the company as void
- Restrain the company and its directors from acting on such a resolution
- Restrain the defendants from doing an act which is contrary to the provisions of this Act or any other law in force for the time being
- Restrain the defendant from taking action contrary to any resolution that has been passed by the members
- A public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed



6 Ibid  
7 "International Comparative Legal Guide Series" available at: [http://www.iclg.co.uk/index.php?area=4&country\\_results=1&kh\\_publications\\_id=213&chapters\\_id=4828](http://www.iclg.co.uk/index.php?area=4&country_results=1&kh_publications_id=213&chapters_id=4828)  
8 "Satyam's Class Action Law Suit" available at: <http://www.vccircle.com/columns/satyams-class-action-law-suit>



Action can be taken against:

- The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part
- The auditor, including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct or
- Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part

**Consequences of Non-Compliance:** If a company fails to comply with an order passed by NCLT under class action, then it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

## PREVENTING FRIVOLOUS SUITS

With power comes responsibility and so significant checks and balances have been introduced to ensure that only genuine actions are entertained by the NCLT. They are as follows:

- There is a threshold limit in terms of the support required for bringing an action. Clause 245 of the Companies Act, 2013 states that a certain number — no fewer than 100 — of members of a company and depositors can bring a class action suit before the National Company Law Tribunal (NCLT).
- NCLT is required to consider a number of factors while considering an application- whether the shareholders and depositors are acting in good faith or have any personal interest in the action, or whether the act or omission involved has been authorised or ratified by the shareholders
- Two class action applications for the same cause of action will not be allowed
- Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor, including audit firm or expert or consultant or advisor or any other person associated with the company
- The frivolous and vexatious actions are discouraged by conferring the NCLT with the powers to impose costs on the initiating shareholders while rejecting applications on those grounds. Frivolous applications, if any, made by the group of shareholders or depositors will be rejected and the applicant can be asked to pay up to Rs one lakh to the opposite party.

## BENEFITS OF A CLASS ACTION SUIT

It can be difficult to decide whether or not to take part in a class

action case. The advantages and disadvantages should be carefully considered by each class member prior to joining a class action lawsuit so that a class member has a realistic idea of the possible good and bad outcomes of joining a class action lawsuit. Some of the common advantages<sup>9</sup> of class action lawsuits available to a petitioner in US may include:

- The litigation costs are low, as they are divided among class members. Thus, the very number of class members in the plaintiff group can provide a shared expense benefit to each individual class member
- Class action suits provide opportunity for plaintiffs to seek relief for small amounts of money as the lower litigation costs will allow plaintiffs to seek relief who would not have found it financially prudent to do so in a traditional lawsuit
- There will be greater judicial efficiency as a class action lawsuit will be decided by the NCLT (different from courts), that provides a single window system. Thus, the litigation will take up less cumulative court time and might involve fewer judges.
- Since only one decision by one judge, or one settlement will be made (as is prevalent in USA), plaintiffs' recoveries should be consistent; there is greater uniformity of recoveries among similar plaintiffs. There is greater uniformity for defendants as the one decision or one settlement benefit also creates greater certainty for defendants. A defendant and others in situations similar to the defendant's situation are not left wondering about how to follow the law because only one decision was issued.
- Class actions ensure that payments are spread equally across all injured parties
- Class actions also ensure that plaintiffs are represented by an experienced, highly competent attorney, someone they might not have been able to afford on their own.<sup>10</sup>

## TO CONCLUDE

Once thought of as only a US phenomenon, class action procedural regimes are now spreading rapidly around the world. In India under the old Company law, when there was something wrong in the Company, the Central Government was to be approached that dealt with the illegality or the irregularity. But now, under the new enactment, the creditor or the members can approach NCLT asking for investigation into the affairs of the Company or relief against the Company subject to the express limitations. MCA has already notified many of the sections with rules. However, Section 245 containing rules for class actions have not yet come into force as the Government is preparing a stringent set of rules and norms that would arm even small investors to fight for their rights collectively through class action suits. Let's hope that class-action suits apart from empowering minority shareholders will help improve the quality of financial reporting as well as the quality of corporate governance in India. CS

<sup>9</sup> The Advantages and Disadvantages of Class Action Lawsuits" available at: <http://resources.lawinfo.com/en/articles/class-action/federal/the-advantages-and-disadvantages-of-class-action.html>

<sup>10</sup> "How Class Action Lawsuits Work" available at: <http://money.howstuffworks.com/class-action-lawsuits5.htm>





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## Of Mortgages & Charges

- Is there a need to change the doctrine 'once a mortgage always a mortgage' in the present day competitive world? An overall analysis of the law governing mortgages and charges is made here keeping in view of the various decisions of the Apex Court and the observations of some eminent jurists.

### INTRODUCTION

**P**ledging or mortgaging the properties as securities with the lender while borrowing has been practiced by man from time immemorial. Pledge involves either physical or constructive delivery of goods or things whereas, mortgage relates to transfer of an interest in specific immovable property as security towards the debt. An analysis of the law governing mortgages and charges keeping in view of the present day competitive world is made here.

Section 58 of the Transfer of Property Act defines Mortgage as "the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or performance of an engagement which may give rise to pecuniary liability". The same section speaks about various kinds of mortgages. Section 100 of the Transfer of Property Act defines Charge as "to provide immovable property as security by a person towards the payment of money to another and the transaction does not amount to a mortgage". The Companies Act does not make any distinction between mortgage and charge for the application of its provisions and the charge not necessarily relate to immovable property. As



per Section 2(16) of the Companies Act, 2013, "Charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Except on mortgage by deposit of title deeds, registration is compulsory on all kinds of mortgages, viz., Simple mortgage, Mortgage by conditional sale, Usufructuary mortgage, English mortgage and Anomalous mortgage. Under the Companies Act, an equitable mortgage or charge created by deposit of title deeds, also require registration as per section 77 of the Companies Act, 2013. However, the transaction would not become void just because the mortgage or charge was not registered. The consequence of



➤ A common practice prevailing in the finance sectors in India for creating a second or subsequent mortgage(s) in respect of creation of charge on the assets of companies is to insert a clause in the loan agreement to obtain a 'No Objection Certificate' from the first or prior charge holders before creating subsequent charge in favour of the other lender and to record memorandum of entry in the books of the first charge holder

non-registration is that the security created by the mortgage or charge becomes void as against the liquidator and other creditors and thus reduces the status of a secured creditor to an unsecured creditor during winding up. Further, section 86 of the Companies Act, 2013 imposes punishment for contravention of the provisions relating to registration of charges, by way of fine on the Company and with imprisonment or with fine or with both on every officer of the company who is in default.

## LEGALITY OF OBTAINING 'NO OBJECTION CERTIFICATE' FROM THE PRIOR MORTGAGEES

The primary obligation of the Borrower is to repay the money borrowed along with interest accrued within the due date. When the Borrower fails to honour obligation under the agreement, the Mortgagee can file a suit against the Mortgagor to recover the money advanced by him and can get an attachment from a competent court against the mortgaged property. When the same property is mortgaged to two or more persons, the prior mortgagee will have the absolute right to recover his dues in priority to the subsequent mortgagees and this chain will continue with the subsequent mortgagees.

One of the common practice prevailing in the finance sectors in India for creating a second or subsequent mortgage(s) in respect of creation of Charge on the assets of companies is to insert a clause in the loan agreement to obtain a 'No Objection Certificate' from the first charge or prior charge holders before creating subsequent charge in favour of the other lender and to record Memorandum of Entry in the books of the 1<sup>st</sup> Charge Holder. Based on the copy of the Memorandum of Entry, the Registrar of Companies registers the charge(s). The time limit observed by the Registrar is same

as provided under section 77 of the Companies Act, 2013, that is basing on the date of the Memorandum of Entry. As per section 77 of the Companies Act, 2013, mortgage(s)/ charge(s) created has to be registered within 30 days from the date of creation of mortgage(s)/charge(s) or it can be extended by the Registrar of Companies at his discretion on an application by the Company by a further period of 270 days on payment of additional fees as prescribed under the Companies (Registration Offices and Fees) Rules, 2014. Further Section 78 of the Companies Act, 2013 provides the person in whose favour the charge is created to apply for registration of charge where a company fails to register the charge within the prescribed period and the Registrar may after giving notice to the Company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of fees as may be prescribed.

It's the duty of the lender to ascertain whether a prior mortgage did exist or not. The lender can obtain this information either from the Sub-Registrar's Office in the case of English or other mortgages that have been registered or from the Office of the Registrar of Companies in the case of charges created by the companies that are registered under the Companies Act. There is no need for the subsequent mortgagees to insist on the Borrower to obtain 'No Objection Certificate' from the prior Mortgagees before mortgaging the properties. A first charge holder can't raise an objection for creating second or subsequent mortgages on the same property as being already secured in priority to subsequent mortgagees. It should be the subsequent mortgagees concern to verify whether any prior mortgage did exist or not. In *Central Bank of India vs. Saraf Tex Industries Ltd.*, (1998) 15 SCC 60 (Del), the Delhi High Court held that mere non-availability of no objection letter from the first charge holder to create a second charge cannot be an objection for registration of second charge where the intention to create second charge was clear from the terms of sanction itself.

## REDEMPTION OF MORTGAGE

When the mortgage debt is repaid in full, Mortgagor would be entitled to redeem the mortgaged property. Section 60 of the Transfer of Property Act provides that the Mortgagee shall deliver to the Mortgagor or to his order, the mortgage deed and all the documents relating to the mortgaged properties that are in the possession or power of the mortgagee upon repayment of mortgaged debt at any time after the principal money become due i.e., when the Mortgagor paid the mortgaged money to the mortgagee at the proper time & at the proper place. Section 60 of the Transfer of Property Act does not allow partial redemption of property upon repayment of partial amount. Law provides inherent powers to the mortgagor to redeem his assets upon repayment of the debt when it becomes due.

In *Gangadhar V. Shankar Lal*, AIR 1958 SC 77 (b), the Apex Court said "Ordinarily, and in the absence of a special condition entitling





# Article

OF MORTGAGES & CHARGES



the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period."In this case, in the mortgage deed there was a stipulation, which provided that mortgagor would be entitled to redeem after a period of 85 years, and thereafter he should redeem within six months and not thereafter. Hon'ble Court held that the latter term amounted to clog and was invalid and must be ignored. But the Court also made it clear that this did not have any bearing on the other clause i.e. of prohibition on redemption before the expiry of 85 years. The Court rejected the contention on behalf of the mortgagor that the aforesaid term of 85 years was a clog on the equity.

In *Narandas v. S.A.Kamtam* (AIR 1977 SC 774) it was held that the right of redemption is not extinguished automatically on the expiry of the period specified in the mortgage even though there is such a recital in the mortgage deed. Right of redemption exist even when the mortgagor fails to pay the money at proper time and place & the mortgage deed contains a clause to the effect that the right of redemption ceases if the Mortgagor fails to pay the mortgaged money within the specified date & at the place. However, the Apex Court took a contrary view in *State of Punjab and Others V. Ram Rakha and Others* (AIR 1997 SC 2151). In that case, the Respondents filed a civil suit before the trial court for a declaration that after the expiry of the period of 60 years from the date of mortgage, they have become absolute owners as the mortgage became irredeemable and as a consequence they are the owners of the property. The Trial court dismissed the suit. On appeal the High Court of Punjab & Haryana reversed the decision of the Trial Court & decree was granted in favour of the respondents. The Appellants filed a special leave petition before the Apex Court. The Apex Court dismissed the appeal holding that the judgement of the High Court was in order. This decision was overruled by the Apex Court in the recently concluded case – *'Harbans v. Om Prakash and Others* (10.11.2005 SC Civil Appeal 6580 of 1999)\* and commented that – 'It appears that the decision in *Ganga Dhar's* case (Supra) was not noticed by the two judge Bench in *State of Punjab* case (Supra). The decision according to us lays down correct position in law which is applicable.

The extinguishment of right to redeem can take place only in the

manner provided by law. Such extinguishment of right can take place either by the act of the parties or by a decree of the court or by a statutory provision that debars the mortgagor from redeeming the mortgaged assets. When it's extinguished by the act of the parties, the act must observe the formalities that the law prescribes. Mortgagee cannot unreasonably put any covenants or restrictions to redeem the mortgaged property. Any unreasonable demand would be deemed as clog in redemption of mortgage. It may be apt to quote here the observation made by Lord Lindley M.R. in *Santley v. Wilde* (2 Ch 474 1899, quoted in AIR 1985 P & H 189) - "Any provision inserted to prevent or performance of the debt or obligation, for which the security was given, is what is meant by a clog or fetter on the equity of redemption and is, therefore, void. It follows from this, that once a mortgage always a mortgage".

## A NEED FOR CHANGE OF DOCTRINE?

The Common Law Courts in England started applying the doctrine 'once a mortgage always a mortgage' during the early part of 17th Century after the courts witnessed the oppressive law on mortgages wherein the strict implementation of the contractual obligations created unfair bargaining power to the Lenders. The justification this doctrine gives while disregarding the terms of contract and going ahead to protect the mortgagor is of his vulnerable position and unequal bargaining power. In the present day competitive market, this justification is susceptible as borrowers have many options to choose their lenders and negotiate the terms of lending. Especially some of the Corporate Borrowers are larger than the lending institutions. The argument that the vulnerable position and the unequal bargaining power of the Borrower is an anachronism. The words of Sir Frederic Pollock is worth mentioning in this context - "Today the doctrine of clogging is an anachronism and might with advantage be jettisoned. Instead the courts have taken to emphasizing the doctrine in all its crudity. It was open to them a few years since to have moulded the doctrine to meet the changing conditions of modern life, and to have confined redress to cases where there was anything oppressive or unconscionable in the bargain, to make this the test, as it was the origin of the doctrine."

## CONCLUSION

Situation changed enormously since the beginning of the application of the doctrine 'once a mortgage always a mortgage'. The competition among the lenders has increased manifold. The borrowers have choice to choose their lenders who would be co-operative and reasonable in their terms. Contractual obligation should be the determining factor while deciding the redemption of mortgages except in some individual cases where the borrowers could be in vulnerable position because of their poverty and lack of development of their area and when only a few lenders dominating such areas. When enforcement of contractual obligations becomes the norm, needless litigations will reduce to a large extent, thereby save the time and money of both the borrower and the lender. 



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# Real Estate Investment Trusts (REITs) – Understanding the Concept

- Although the concept of REITs as of now appears to be very positive from its face, it has many obstacles especially in the Indian market. Indian real estate sector is known for its series of default flaws which makes it difficult for the concept to sync with the Indian market. Right now the concept flows on the paper boat waiting for the support from public and the SEBI.

## INTRODUCTION

India's real estate sector has witnessed rapid growth in last decade. The growth is experienced by all the cities especially by Tier I and Tier II cities. However, the current real estate market in India is facing various problems such as extreme competition, expensive land reserves, lack of liquidity and limited demand with high supply of properties.

The Private Equity (PE) industry has been funding various good projects but other factors keep on hurting the pace of development of real estate industry. There are various measures taken by government to revamp the pace of the industry and one of them is to introduce a vehicle in the financial market which will be investing in the real estate industry.

On October 10, 2013 Securities Exchange Board of India (herein after referred to as "SEBI") came out with the consulting paper on regulations for Real Estate Investment Trusts (herein after referred to as "REITs") which can serve as a vehicle to stabilize and systematize the way of investment in the real estate industry.



The draft REITs regulation is the third initiative taken by the SEBI to bring REITs regime in India. The very first draft of REITs regulation was introduced in 2008 by SEBI and subsequently the second attempt was made in the form of Real Estate Mutual Funds ("REMF"). However, above both attempts could not get success as predicted due to lack in clarity over multiple issues of taxation and foreign investment in real estate. Introduction of current draft regulation for REITs is again an attempt to bring into the market a SPV to revamp the real estate industry. SEBI has taken into consideration international REITs regimes and views of experts based on the last two attempts made by them.

\*Views expressed herein are personal views of the authors.





# Article

REAL ESTATE INVESTMENT TRUSTS (REITS) – UNDERSTANDING THE CONCEPT

➤ Real Estate industry is facing a tough time with the dried-up finance and increasing debt burden. There is plenty of untapped investment in the hands of small and medium investors. REITs will help in acquiring such investors as the investment amount in the units of REITs will be attracting investors in large quantities from every household.

## II. UNDERSTANDING THE TERM - REITS

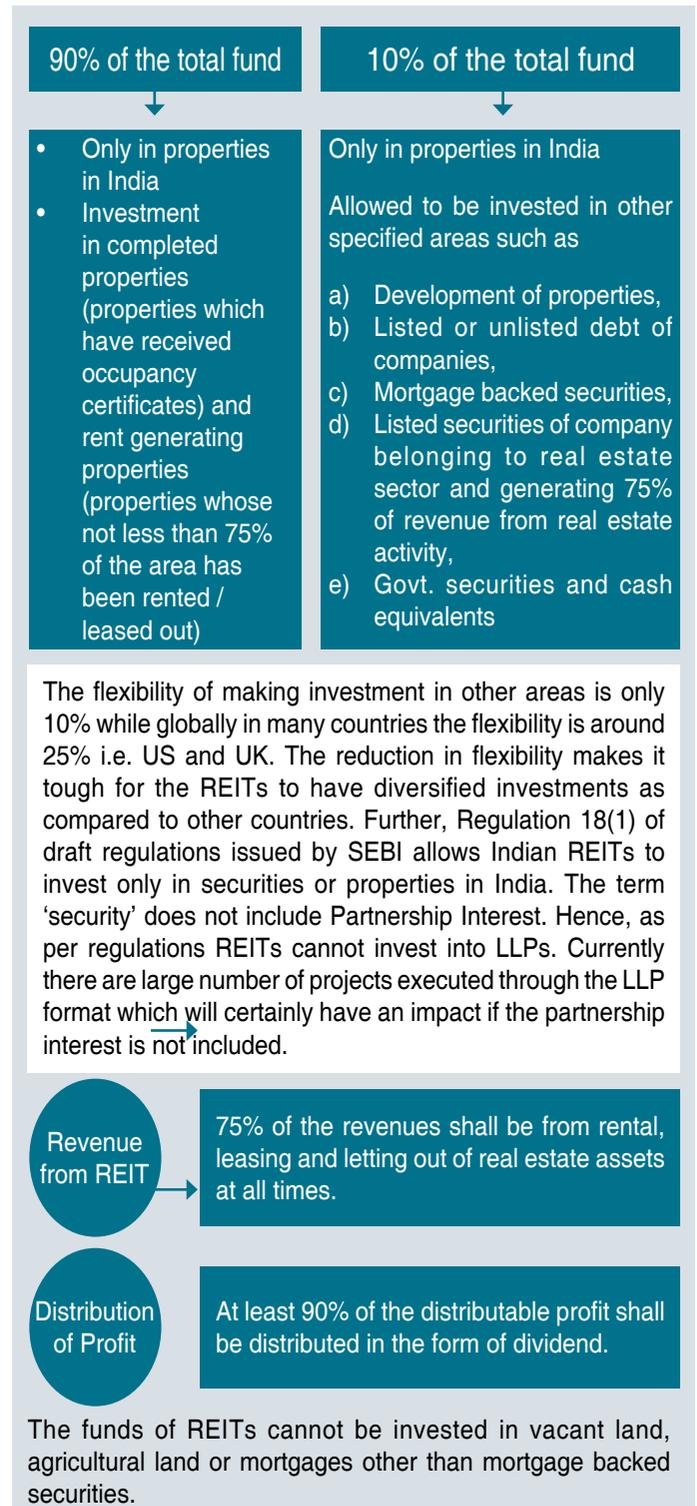
REITs shall be a trust that will be registered under the Indian Trusts Act, 1882 and under respective regulation issued by the SEBI which shall primarily invest in completed projects and generate income through rent, lease and letting of real estate assets.

The concept of REITs has been evolved through the global practices followed by various countries like USA, UK, Australia, France, Japan etc. REITs were created in 1960 in the United States to give investors the opportunity to invest in the real estate sector, which is a high-yield sector, using liquid securities. Formation of REITs allows them to access this sector in the same way as they would invest in other asset classes.

The concept functions in a similar way to those investing in shares. People can invest in REITs by buying the Units and in turn the REITs shall utilize the consolidated amount received from Unit holders to invest in the properties. The benefit derived from such investment by REITs shall be distributed in the form of dividend to the Unit Holders. It expresses the power of unity which helps you to invest /purchase properties with small amounts in an indirect manner. Real Estate industry is facing a tough time with the dried-up finance and increasing debt burden. There is plenty of untapped investment in the hands of small and medium investors. REITs will help in acquiring such investors as the investment amount in the units of REITs will be attracting investors in large quantities from every household. This addition of investors with the untapped money will increase the liquidity to the real estate market pushing towards growth and appreciation for quality projects.

The objective to have such type of investment vehicle is to bring transparency and liquidity in the sector and further make the investment in real estate sector less risk burden.

## III. METHODOLOGY OF INVESTMENT BY REITS





## IV. REQUIREMENT OF LISTING AND DISTRIBUTION OF UNITS

Registration	Formation of the REITs shall be as a Trust under the provisions of Indian Trust Act, 1882. The special purpose vehicle, REITs shall be registered with SEBI.
Raising of Funds	After registration, it shall raise funds through initial offer and further raise funds through follow-on offers. Current draft regulation does not permit to raise the fund through preferential allotment and Right Issue. Provisions relating to initial and follow on offers in draft regulations: Draft Letter of offer shall be filed with SEBI atleast 30 days prior to filing of Final letter. Draft Letter of offer shall be available for 10 days for public comments. After completion of above procedure, 5 days notice period shall be served before filing Final letter of offer. Units of the REITs shall be listed within 15 days of the closure of Initial offer.
Asset size for listing of securities	The size of assets should be of at least Rs.1000 Cr for getting the securities of REITs listed.
Minimum Offer Size	The Minimum Offer size for public shall be of Rs.250 Cr and minimum public float to be of 25% of the total size of Offer. As per current draft regulation, failure to maintain minimum public float mandates a trustee to apply for delisting of the REIT.
Minimum subscription	The units shall be divided to a minimum unit of Rs.1 lac and minimum subscription to be of Rs.2 lacs. Apparently, the value of the unit is kept high in order to exclude small shareholders, keeping in mind the high risk and initial stages of implementing the new concept.
Trading of Units	Units of REITs can be traded only on the stock exchange. Unlike the listed shares, off market trading of Units of REITs through negotiation is not permitted in draft regulations.

## V. STRUCTURE OF REITS



The structure of REIT is similar to that of corporate environment wherein, sponsor has roles similar to promoter, trustee to be more of like an independent director, manager to be like chief executive officer.



# Article

REAL ESTATE INVESTMENT TRUSTS (REITS) – UNDERSTANDING THE CONCEPT

## ROLE OF SPONSOR

### Criteria:-

- Minimum experience of 5 years from real estate sector and
- Minimum networth of Rs.20 Cr.

### Responsibility

- To form the REIT and
- To appoint Trustee to manage the organization independently as per the trust deed and regulations.

### Minimum Holding of Units

- Mandatory holding of atleast 25% of the units for minimum 3 years from the date of listing of units.
- Units above 25% shall be held for a minimum period of 1 year after listing of such units
- After 3 years minimum of 15% shall be held at all times by the sponsor.



### Exit Option

- Only after a period of 3 years from the date of listing wherein shares can be sold to other buyer who will be designated as the new sponsor for the trust.
- For that, approval of 60% of the Unit Holders (in value & numbers) is required.
- Re-designated sponsor is also required to hold 15% of the total holding all the time

The criteria for being sponsor is more of close-ended as it requires sponsor to be from real estate sector having 5 years of experience from real estate industry. This will affect the interested parties from different sectors having the funds but cannot establish REITs due to the restrictive criteria for sponsor. Further there was no need to add the additional requirement of 5 years of experience for sponsor as they would not be handling the day-to-day affairs. Such criteria is acceptable for manager in true sense but not for sponsor.

## ROLE OF TRUSTEE

### Why Trustee?

The concept of trustee is being evolved with the requirement of independent person for protecting the interests and funds of investors. Trustee is required to protect the assets of the REIT for the benefit of the unit holders as per the trust deed and regulations.

### Criteria

The trustee so appointed shall be an independent person to “Sponsor” & “Manager.”

### Functions

The role of trustee is similar to independent compliance/legal personnel.

The Trustee shall look after the following matters:

- (i) Compliance of regulations,
- (ii) Verifying title deeds, verifying material contracts
- (iii) Periodical review of work done by Manager
- (iv) Periodical review of complaints by unit holders and status of same.

Trustee shall be responsible to appoint a manager with the required qualifications and criteria. The Trustee shall review all the reports forwarded by the Manager periodically.

The role and powers of trustees are expected to add strict governance in functioning of the REITs. However it may conflict with the interest of the sponsor, as they infuse in the amount for the REITs and they should have rights to appoint a person managing the day-to-day affairs. Finding out an independent trustee handling an organization with such huge amount appears to be far more difficult than on papers.



## ROLE OF MANAGER

### CRITERIA

Manager shall be the person involved in day to day activities of REITs.

The person to be appointed as Manager shall have experience of 5 years in real estate sector and shall have minimum networth of Rs.5Cr

### FUNCTION

The functions of manager are similar to that of Chief Executive Officer. Manager plays vital role in operation of the REITs whose responsibility starts from application for registration and ends on delisting of units, if any.

Manager is responsible for following:

- a) Filing Offer documents
- b) Getting in-principle approval and listing of units.
- c) To identify and recommend investment opportunities to a committee constituted to take the decisions of investment
- d) To appoint the Valuer, Auditor, Merchant Banker, RTA etc while the process of listing of securities.

The networth criteria of manager appear to be irrelevant criteria as the manager should be tested on its experience and not networth. Networth criteria is more relevant to sponsors than the manager, in order to bring stability to the trust.

## ROLE OF PRINCIPAL VALUER

### CRITERIA

Independent person (not related to sponsor, manager, trustees)

A person registered under Section 247 of the Companies Act, 2013 as Registered Valuer

Experience of atleast 5 years in valuation of real estate.  
To be appointed by Manager

### FUNCTIONS

To conduct valuation process in fair and transparent manner in compliance with the regulation

To provide valuation reports to the Trust

To maintain independence and shall not invest in Unit of the trust





# Article

REAL ESTATE INVESTMENT TRUSTS (REITS) – UNDERSTANDING THE CONCEPT

## Other important points related to valuation:

- NAV to be calculated on a biannual basis
- Once in a year, full valuation shall be required to be made including physical inspection of real estate site. Any development shall be updated every six months.
- In case of purchase or sale of any property, average value of valuation made by two independent valuers shall be taken into consideration. The property is required to be valued by two independent valuers.



## VI. LEVERAGE

- SEBI has allowed leverage (on a consolidated basis) to a maximum of 50% of the value of its assets.
- REITs need not to obtain any additional approval till 25% of the total leverage.
- Beyond 25%, credit rating and approval of 75% of the unit holders of the REITs (by value and number) is required

## VII. RELATED PARTY TRANSACTION

- Draft REITs regulation issued by SEBI has adopted reasonable approach with respect to related party transactions. Certain related party transactions are restricted and for certain transactions approval of Unit Holders is required.

### Restrictions:

- Area leased to related party shall not exceed 20% of the total underlying area of assets
- Value of aforesaid lease asset shall not exceed 20% of the value of the total underlying assets.
- Rental income of such leased assets shall not exceed 20% of the value of total rental income derived from the underlying assets.
- All the related party transactions shall require full valuation by two independent valuers an average of the two valuations obtained as above shall be taken into consideration.
- For all related party transaction, fairness opinion is required to be obtained by Manager and submitted to Trustee.

## Transaction with the approval of Unit holders:

Subsequent to Initial offer, any related party transaction proposed to be entered into by REITs whose value exceeds 5% of the value / rental income / borrowings of the REIT requires the approval of 75% of the unit holders by value and number, excluding the interested parties.

## VIII. CERTAIN MATTERS REQUIRE APPROVAL OF THE UNIT HOLDERS

### Certain important matters wherein 60% of the approval of Unit holders in Value and Numbers are required

- Removal or appointment of a new trustee / manager / sponsor or principal valuer,
- Change in control of sponsor,
- To delist Units of the REITs

### Certain important matters wherein 75% of the approval of Unit holders in Value and Numbers are required

- Borrowings in excess of 25% of the value of the REIT assets
- Change in investment strategy
- Any related party transactions
- Proposal by the sponsor or manager to delist units of the REITs
- change in investment strategy and if any unit holder (or associated persons) seek to acquire more than 50% of the units of the REIT by value

## IX. RIGHTS OF UNIT HOLDERS

Right to remove manager, auditor, principal valuer, apply to SEBI for changes in trustee, seek delisting of units etc.

Right to receive annual report within 2 months from the end of the Financial year

The trustees have the responsibility to conduct Annual General Meeting once in a year. All the investors have the right to attend Annual General Meeting wherein annual accounts, performance of the REITs, valuation reports, approval of the auditors, appointment of principal valuer etc. shall be discussed.

In certain special cases such as specified related party transactions, borrowing in excess of specified limit, any change in manager/sponsor, delisting of units etc. , approval of certain percentage of Unit holders is mandatory.

Detailed disclosure requirement has been specified for the benefit of Investors. Mandatory minimum disclosure in valuation report has been specified



## X. BENEFITS TO THE INDUSTRY

- (i) The new vehicle REITs shall provide liquidity to the struggling real estate sector.
- (ii) Commercial properties are expected to benefit as REITs can invest in properties to earn rentals and reduce the standing stocks in the market.
- (iii) It will be a single point sale to the builders as the investment by REITs is expected to be in bulk.
- (iv) Due to bulk sale, there will be less hurdles to create small divisional commercials and sell it to individual buyers.
- (v) It will bring flexibility to builders to work quality and designs as there will be sale in bulk
- (vi) The investment by REITs will bring transparency in the manner of the investment made in the real estate and benefit the quality projects to grow.
- (vii) The transparent manner of functioning and continuous disclosure pattern to unit holders is an approach to systematize and standardize the most unorganized sector.

## XI. BENEFITS TO THE UNIT-HOLDERS

- (i) The unit-holders are expected to benefit the most by passing on the headache of finding the opportunities for investments to trust.
- (ii) The investments made by the trust will be in a systematic form after expert advisory which shall be similar to mutual funds where-in unit holders invest the money and the professionals decide for making investment which can reap better benefits.
- (iii) There will be transparency of functioning as regular disclosure shall be made by the trust to the unit-holders.
- (iv) The liquidity of the units is expected to be very high as the units shall be listed on stock exchange, while in case of normal investment in real estate it is very expensive with least liquidity.
- (v) The professionals managing the trust shall have expertise in the real estate field to take precise decision. The risk factor also reduces as the professionals having high contacts and better experience shall be making decisions for the trust to make investment.
- (vi) The pattern for profit distribution is 90% of the profit derived which shall be paid to unit-holders, which in long term is expected to reap better benefits.

## XII. DRAWBACKS

- The most likely drawback of having such form of vehicle is that it may shoot up the prices of the commercial properties due to increase in demand.
- The investment made by the REITs will be expensive one as the requirement of the regulation states to make the investment only in projects which have completed 90% of work.

- The concept of REITs is a long term bet as the flow of income in the form of rentals will constitute small percentage of returns as compared to the investment.
- The expenses in the initial stages are very high for functioning and listing of units. It hardly leaves any room for gaining benefits in first 5 years or short term. Viability of the concept apparently is only for big players due to strict compliance/criteria and having a long term view to breakeven in the profit zone.
- Generally saleable areas available in market with 90% of work completed are in bits and pieces. Only builders having high liquidity shall have such unsold stock thus it will be difficult for REITs to form the strategy to acquire large properties with completed work.
- One more drawback appears to be the distribution of its 90% of generated income as the distribution pattern will provide very little room for accumulating reserves. Expansion may be difficult for the Trust and further any adverse change in economic scenario leading to consolidation or recession may affect the trust heavily with low reserves resulting to shutdown.

## XIII. DELISTING OF REITs

- As per regulation 17 of the draft REITs regulation, following circumstances will result into mandatorily application by REITs to SEBI and Stock Exchange for delisting of the Units and termination of REITs:



- The Minimum public float falls below 25% of the total units of the REITs;
- The number of unit holders in the REITs (other than related parties) falls below 20;
- SEBI or a stock exchange requires the delisting of the REITs for violation of the listing agreements / any provision of law or in the interest of unit holders;
- The sponsor or the manager applies for delisting of units and receive the relevant approval from the unit holders; and
- The unit holders apply for delisting of units;

## XIV. TYPES OF REITs

- REITs are divided into various categories based on the kind of income earned or sector specific. Like in US the REITs are categorized as Equity REITs or Mortgage REITs.





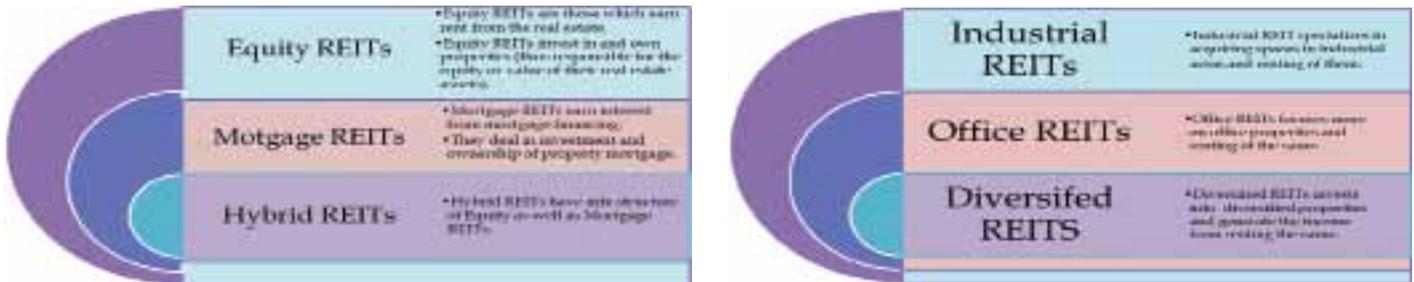
# Article

REAL ESTATE INVESTMENT TRUSTS (REITS) – UNDERSTANDING THE CONCEPT

## a) Income Specific

REITs are also bifurcated to sector specific REITs.

## b) Sector Specific



## XV. COMPARISON OF REITS REGULATIONS IN INDIA\*, US AND UK

\*as per the draft regulations specified by SEBI in India

	REITs in India	REITs in US	REITs in UK
<b>1. Utilization of funds</b>	<ul style="list-style-type: none"> <li>a. 90% of investment to be done in completed revenue generating properties.</li> <li>b. 10% of investment can be done in other assets i.e. developmental properties, mortgage backed securities, government securities.</li> </ul>	<ul style="list-style-type: none"> <li>a. 75% of investment in real estate assets and cash.</li> <li>b. 25% of investment in non-qualifying securities or stock in taxable REITs subsidiaries.</li> </ul>	<ul style="list-style-type: none"> <li>a. 75% of investment comprise of assets or cash involved in property rental business.</li> <li>b. Rest 25% is open for any investment</li> </ul>
<b>2. Public Float</b>	25% to be public float	Not applicable	Cannot be close ended. Minimum 35% to be public float (grace period of 3 years allowed to form open ended)
<b>3. Types</b>	Equity based REITs	<ul style="list-style-type: none"> <li>a. Equity REITs</li> <li>b. Mortgage REITs</li> <li>c. Hybrid REITs</li> </ul>	a. Equity REITs
<b>4. Distribution pattern</b>	Distribute 90% of its net profit after tax in the form of dividend	Distribute 90% of its taxable income to shareholders annually in the form of dividend.	Distribute 90% of its property income to shareholders.
<b>5. Spread Requirement</b>	<ul style="list-style-type: none"> <li>a. Minimum 20 Public shareholders.</li> <li>b. Not more than 50% of its shares to be held by 5 or fewer individuals during the last half of the taxable year.</li> </ul>	<ul style="list-style-type: none"> <li>a. Minimum 100 shareholders after its first year as a REIT.</li> <li>b. Not more than 50% of the shares are held by 5 or fewer individuals.</li> </ul>	<ul style="list-style-type: none"> <li>a. Share capital of at least GBP 50,000.</li> <li>b. A single corporate shareholder not to hold more than 10% or more of the shares/voting rights.</li> </ul>
<b>6. Listing Requirement</b>	Mandatory	Not mandatory	Mandatory with three years of grace period for widely held
<b>7. Investment in other REITs</b>	Investment by Indian REITs in other Indian REITs not allowed	Investment by US REITs in other US REITs allowed	Investment by UK REITs in other UK REITs allowed and income earned by such investment shall be tax exempt.

### CONCLUSION:

Although the concept of REITs as of now appears to be very positive from its face, it has many obstacles especially in the Indian market. Indian real estate sector is known for its series of default flaws which makes it difficult for the concept to sync with the Indian market. Various problems like no clear land titles, transferring issues, series of approvals etc., makes it risky investing in real estate market. One of the important issues to be considered is taxation on the Indian and Foreigner unit holders which may subsequently require amendment on various applicable rules and regulations. Right now

the concept flows on the paper boat waiting the support of masses and serious outlook from the SEBI for shaping into material script. However, if effective, it will surely touch the most unorganized sector trying to shape it systematically.

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3. Website of London Stock Exchange - [www.londonstockexchange.com](http://www.londonstockexchange.com)



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## Corporate Strategy- Dimensions and Issues

- Corporate strategy is the way a company creates value through the configuration and coordination of its multi-market activities and continuously appears high on the boardroom agenda. Successful strategies are three-dimensional, each dimension requiring an equal amount of attention.

**C**ompany Secretaries are responsible for the smooth administration of companies, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the Board of Directors are implemented. Company Secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning. Company Secretaries are in a position to throw considerable light on various aspects of changing corporate dimensions and issues which help in devising better Corporate Strategies.

Corporate strategy continuously appears high on the boardroom agenda. Strategic management analyses the major initiatives taken by a company's top management on behalf of owners, involving resources and performance in internal and external environments. In the field of business administration it is useful to talk about "strategic consistency" between the organization and its environment. Corporate strategy is the way a company creates value through the configuration and coordination of its multi-market activities. Successful strategies are three-dimensional, each dimension requiring an equal amount of attention. Decision-

makers in organizations use dimensions implicitly or explicitly to sort out strategic issues. Organizational decision-makers continuously face issues that potentially could affect current and future performance. At the same time, these decision-makers must select issues that are worthy of attention in the traditional domains of technology, economic conditions, social and political developments, human resource concerns, etc.. A focus on issue sorting can be seen as an attempt at a better-understanding of strategic issue diagnosis.

### THE DYNAMICS OF STRATEGY

Generally strategy comprises three objectives: creating value, handling imitation and shaping a perimeter. Any of the three dimensions of strategy-value, imitation or perimeter- can be the starting point of a strategic initiative. Several sequences of value, imitation and perimeter are possible, and each typifies a strategic development.

When an innovative start-up seeks to implement a new business model, it first focuses on value, then on perimeter and only later on preventing or leveraging imitation. However, a me-too competitor enters the competitive game by imitating incumbent winning

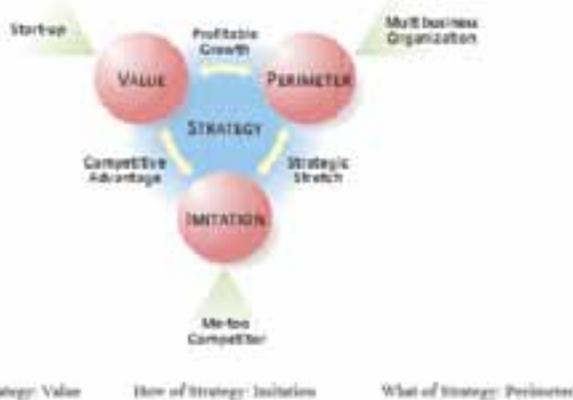




# Article

CORPORATE STRATEGY- DIMENSIONS AND ISSUES

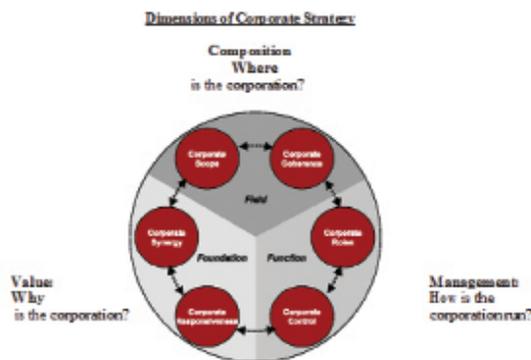
concepts, usually altering the existing value proposal and then extending its perimeter. The corporate parent of a multi-business organization designs its strategic development through enlarging its perimeter and tries to replicate its best practices on new grounds in order to meet its value obligations.



Further, value, imitation and perimeter are linked by feedback loops and not by linear causalities. A new perimeter can result from imitation (even self-imitation and implicit trade-offs between innovation and inertia) or flow from value imperatives (meeting shareholder expectations or customer needs). Conversely, a shift in the perimeter (diversification, refocusing or value migration) can impact the value proposal (or at least should leverage synergies with the existing business model) and, when successful, spawns would-be imitators.

## ISSUES OF CORPORATE STRATEGY

Corporate strategy issues that managers have to deal with can be clustered around three dimensions: composition, management and value. Dealing with a corporate strategy issue means dealing with all of these elements:

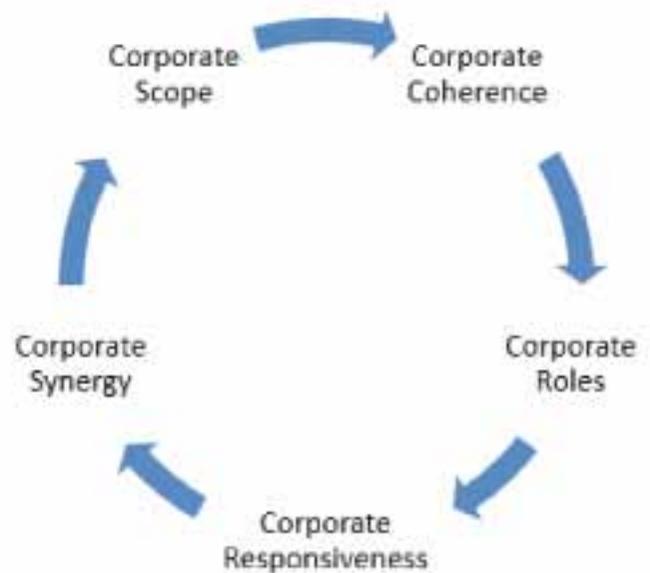


**Corporate Composition.** Corporate composition deals with the range of businesses the corporation is active in. Within this dimension, questions that will be posed in the boardroom could

include “how many functional and product areas is our corporation active in” and “should we diversify into related or unrelated industries. The first question reflects the issue of corporate scope: the level of diversification of businesses. The second question handles the issue of corporate coherence: the level of relatedness between businesses. Composition is also referred to as the ‘Field’ of the corporation. In other words, where is the corporation?

**Corporate Management.** Corporate management deals with the division of labour throughout the corporation and the mechanisms that are employed to carry out corporate strategy. Questions that managers will ask themselves in this respect could be “what are the roles of the headquarters” or, of the corporation, “what tasks do the business units have?” This comes up in the issue of corporate responsibilities, or the level of headquarters authority. Taking these responsibilities into account, the corporate strategist will also want to know the answer for “what are the mechanisms that we can employ to align business goals with the corporate goal?” The latter is central in the issue of corporate practice. This dimension is also referred to as the ‘functions’ in the corporation. In other words, how is the corporation run?

**Corporate Value.** Corporate value deals with the ‘Foundation’ of corporate strategy. Is the corporation’s strategy based on having as much flexibility and market focus for each business unit, or is it based on achieving as many synergies as possible throughout the organization? The first question deals with the issue of corporate responsiveness, or the level of effectiveness, while the second deals with the issue of corporate synergy, or the level of linkage. The overall question to in this dimension is obvious, why is the corporation?



**Composition: The Field of the Corporation**



In this dimension of corporate strategy, management thinking is gathered around two key areas: corporate scope, or the level of diversification, and corporate coherence, or the level of relatedness between business units.

## CORPORATE SCOPE

Even though diversification appears to be one of the key concepts in the strategic management, initially, it was referred to as the development of a firm in markets or industries beyond the boundaries to which it originally belonged. Diversification can include internal development of new products or markets, acquisition of a firm, alliance with a complementary company, licensing of new technologies, and distributing or importing a products line manufactured by another firm.

The corporate strategist may choose to enhance the scope of his company for

- general environment reasons (the milieu in which the firm operates),
- industry environment reasons (market structure),
- firm specific reasons (internal company motives, such as the dissemination of management skills)
- corporate performance reasons

When managers decide to enhance the scope of his company, diversification can have one or more of the following characteristics:

**Product diversification:** This concerns expansion of the range of products that a firm supplies; it can happen without moving to another industry. Product diversification involves addition of new products to existing product line being manufactured or being marketed. For instance, adding tooth brushes to tooth paste or tooth powder or mouthwash under the same brand or under different brands aimed at different segments is one way of diversification. These are either brand extensions or product extensions to increase the volume of sales and the number of customers.

**Functional diversification:** This concerns an expansion of the range of activities that a firm encompasses. When these activities are linked up and down the business system, either backwards towards suppliers or forwards towards the customer, this is usually referred to as vertical integration.

**Industrial diversification:** This concerns expansion of the range of industries that a firm is active in expanding outside its current business system. Industrial diversification has to aim at providing goods and services that appeal to multiple markets rather than focusing on a product line that appeals to mainly one market. The diversification may involve completely unrelated products, such as a company that produces a line of office supplies but also has a division focused on the production of televisions and other electrical entertainment devices. The degree of industrial diversification will

often be influenced by what owners believe will provide the best possible protection from declines in one market by enjoying corresponding increases in demand in another market.

### Geographic

**diversification:** Viewed as part of corporate strategy, international strategy is about diversification into other countries in order to create additional value. Firms start establishing value added activities outside their home countries are often labelled 'multinationals'. For business wealth diversify your product portfolio according to customer segmentation and geographic distribution.



## CORPORATE COHERENCE

The level of relatedness between business units is labelled as corporate coherence. Firms are coherent to the extent that their constituent businesses are related to one another. Setting aside for the moment the conglomerate form of business organization, what is remarkable about firms, is the relative 'coherence' in their business activities.

A salient attribute of diversification is that, firms add activities that relate to some aspect of existing activities. They build laterally on what they have got. New product lines bear certain technological and market similarities with the old. Thus the sequence is generally for firms to begin with a single product and subsequently become multiproduct, rather than the other way around; and new product lines very often, though certainly not always, utilize capabilities common with existing product lines.

Corporate diversification is also a phenomenon that can expand and contract. Firms not only add business, they also commonly divest. Indeed, there often appears to be a degree of circularity to the manner in which new businesses are added and subsequently divested. This is particularly so when corporations diversify through acquisitions. On the other hand, corporations often display remarkable similarities with respect to their diversification strategies.

A firm exhibits coherence when its lines of business are related, in the sense that there are certain technological and market characteristics common to all. A firm's coherence increases as the number of common technological and market characteristics found in each product line increases. Coherence is thus a measure of relatedness. A corporation fails to exhibit coherence when common characteristics are allocated randomly across a firm's lines of business.

The issues of corporate scope and corporate coherence cannot be perceived inseparably.





# Article

CORPORATE STRATEGY- DIMENSIONS AND ISSUES

➤ In the dimension of corporate management, management thinking is also around the issue of corporate practice. It has increased control over the business units, restructuring the corporation through mechanisms such as the standardization of purchasing codes, centralization or decentralization of systems and coordination of resource (internal and external both), for instance in R&D and the like.

## MANAGEMENT: THE FUNCTIONS IN THE CORPORATION

As firms diversify, managements change accordingly. When the composition of companies changed as from the 50s, their structural arrangements into functional departments (e.g. sales, production, finance, purchase etc.) did not match the complexity of increased scope and reduced coherence. Consequently, the 'F-form' was replaced by the 'M-form': instead of organizing the corporation into functions, it was organized according to its businesses in what became known as the 'multi-divisional' form. M-form is not widely followed but it is definitely changing. A major change is the designation of responsibilities across the organization. Whereas the roles that the centre unit and the business units should play used to be clearly defined, boundaries now seem to be setting in. What exactly these roles are or could be comes forward under the issue of corporate responsibilities, or the level of corporate authority.

In the dimension of corporate management, management thinking is also around the issue of corporate practice. It has increased control over the business units, restructuring the corporation through mechanisms such as the standardization of purchasing codes, centralization or decentralization of systems and coordination of resource (internal and external both), for instance in R&D and the like.

## CORPORATE RESPONSIBILITIES

When the strategist wants to judge which roles the business units can play, a contemporary rich stream on the subsidiary perspective is also available. In corporate strategy, emphasis is put on strategic responsibilities throughout the organization: those roles that both the corporate centre and the subsidiaries can take to

achieve the corporation's long-term goals. One corporate strategist may choose to give the corporate office less control over the organization, while another may give more power to the divisions. The following categorization of the roles that the corporate centre can take on can be drawn:

**Architectural role:** Here, the corporate centre is responsible for the strategy, corporate value creation and accumulation of assets for the corporation.

**Allocating role:** In this role, the corporate centre is responsible for assigning and maintaining resources throughout the corporation.

**Administrating role:** In this role, the corporate centre is responsible for regulating, monitoring and controlling the corporation.

**Assisting role:** In this role, the corporate centre is responsible for facilitating, informing and arbitrating for the corporation.

However, the responsibilities of the headquarters unit are just on one side of the corporate medal. A corporate role for the business unit is equally important. The question that the corporate strategist will ask himself is: "How can the businesses units help in achieving the goals of the corporation as a whole?" This necessitates a discussion of the potential relationship of a subsidiary to the parent. When dealing with corporate strategy, the strategist can pick from the following business unit roles:

**Solitary role.** In this role, the business unit is highly autonomous from the headquarters and other subsidiaries.

**Supplier role.** In this role, the business unit acts as a dealer for headquarters or other businesses. It can deliver a large portion of its output in the form of end-products internally, but it can also act as a source of ideas, skills, capabilities and knowledge, or supply technology to the other actors in the corporation.

**Service role.** In this role, the business unit takes over the work of other units. It can take care of support activities for the others

**Star role.** In this role, the business unit is actively engaged with the corporation's strategy. It takes initiative to work together with businesses, and is active in establishing relationships for other businesses to serve the corporation as a whole.





The role of the subsidiary is a negotiated position, that is to some degree understood jointly between HQ and business managers. The role of the headquarters seems more imposing. However, no matter what the division of responsibilities throughout the corporation, it has to be managed in order to achieve the corporate goals. This comes up in the issue of corporate practice.

## CORPORATE PRACTICE

Managing the corporation requires the aligning of the goals of the headquarters and the business units. When searching to align the business and personal goals of subsidiary managers with corporate goals, the corporate strategist can apply the following methods:

**Centralization or Decentralization:** Centralization is the process by which the activities of an organisation, particularly those regarding planning and decision-making, become concentrated within a particular location and/or group. Decentralization is the process of redistributing or dispersing functions, powers, people or things away from a central location or authority.

**Standardization:** The idea of standardization is close to the solution for a coordination problem, a situation in which all parties can realize mutual gains, but only by taking mutually consistent decisions. Standardization is defined as best technical application consensual wisdom inclusive of processes for selection in making appropriate choices for ratification coupled with consistent decisions for maintaining obtained standards.

**Coordination:** Coordination is the act of organizing, making different people or things work together for a goal or effect to fulfil desired goals in an organization. Co-ordination is a managerial function in which different activities of the business are properly adjusted and interlinked.

**Collaboration:** Collaboration is working with each other to do a task. It is a recursive process where two or more people or organizations work together to realize shared goals.

In these four 'alignment means' the balance between control and cooperation varies. Which of the four the strategist wants to use, will depend on concerns such as differentiation characteristics, relatedness between business units and the assumed responsibilities of both the corporate centre and the subsidiaries. These all stem from the corporate strategy issues facing the manager. Yet underlying these is the issue of corporate value.

## VALUE: THE FOUNDATION OF THE CORPORATION

Managers dealing with corporate strategy base their policy decisions on the added value of having more than one business in their firm. The discussion on values is separated in two sub-issues.

On the one hand, there is the value of corporate responsiveness, or the level of corporate effectiveness: to be able to respond to the competitive demands of a specific business area in a timely and adequate manner. On the other hand, there is the value of corporate synergy, or the level of corporate linkage: creating more added value than the extra costs of managing a diversified organization.

## CORPORATE RESPONSIVENESS

The rationale behind the diversification wave in the sixties, resulting in having mutual businesses in one firm, was the application of general management tools, skills and principles and the advantages. These tools were mainly rooted in portfolio planning techniques, by allocating cash effectively to improve the relative competitive position of each business unit. The fundamental determinant of strategy success was perceived as the relative competitive position, which was the most important goal for each business. Effectiveness means increasing revenue in a timely and adequate manner across businesses.

The governance characteristics of the corporations allowed the business units to respond to competitive demands of a specific business area quickly. The diversified firm was able to reap the benefits of 'governance economies', being better able to allocate resources than, for instance, the stock market in case market demands changed. These market changes include customer preferences, competitor moves, supplier actions, new technologies and changes by economic (tax authorities, unions), regulatory (lobbyists, industry bodies) and socio-cultural (media, opinion leaders) actors. This was the rationale in product, functional and industrial diversification, but it becomes even more eminent when firms diversify across national boundaries. The need for local responsiveness, staying attuned to specific demands of each national market, evolves from the 'inherent complexity in international markets, and the formulation of an effective strategy to penetrate these markets'. Even though various features transcend borders, developments and systems in each nation arise, causing international divergence.

The transcendence of organizational characteristics lies at the heart of diversification. Besides being able to allocate resources better than the stock market and even though responsiveness to market demands should be taken into account, corporations will also want to justify their diversification efforts with an efficient, value creating organization. Thus, there is another rationale for having more than one business in the firm, which comes forward in the issue of corporate synergy, or the level of linkage.

## CORPORATE SYNERGY

Whereas governance economies may account for the existence of diversified firms, the other rationale is the ability of such firms to exploit 'economies of scope'. Corporate synergy refers to a





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CORPORATE STRATEGY- DIMENSIONS AND ISSUES

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financial benefit that a corporation expects to realize when it merges with or acquires another corporation. This simply means that for two outputs, the value created by their joint production is greater than the value created if they are produced separately. This is called synergy in fashionable terms, derived from the Greek word 'synergos', meaning 'working together'.

Building on core competences, 'the collective learning in the organization', theoretically stems from the re-emergence of the resource-based view. Here, the firm is regarded as a collection of firm resources where excessive capacity drives diversification. This enables firms to reduce overall operating costs in one or more of its divisions, as well as driving profit by corporate value creation. When pursuing synergy, the corporate strategist can look for the following sources:

**Leveraging resources:** Here, the corporations 'stock of assets' is shared across the business units. Corporation should be built around core competences, which provide potential access to a wide variety of markets, make a significant contribution to the perceived customer benefits of the end product and are difficult for competitors to imitate.

**Integrating activities:** Here, the corporation's value chain is united by sharing similar activities or linking up sequential activities. Businesses with value chains that overlap are obvious candidates for linkage opportunities.

**Aligning positions:** Here, the corporations 'value propositions' are lined up. Aligning product-market combination can improve the company's bargaining position by offering customers a set of

related products or services. It can also improve its competitive position by raising entry barriers and taking away intra-firm competition.

Responsiveness and synergy are conflicting demands, influencing the level of diversification, relatedness, corporate authority and corporate control.

Dimensions	Issues	
Composition Where Is the corporation?	Corporate scope	Level of diversification
	Corporate coherence	Level of relatedness
Management How is the corporation run?	Corporate responsibility	Level of authority
	Corporate practice	Level of control
Value Why Is the corporation?	Corporate responsiveness	Level of effectiveness
	Corporate synergy	Level of linkage

## CONCLUSION

There are six corporate strategy issues. The first Issue is corporate scope: the level of diversification. Characteristics are product-based, functional, industrial and geographic diversification. The second Issue is corporate coherence: the level of relatedness. Firms can be categorized as single business, dominant business, related-constrained, related-linked and unrelated diversified firms. The third Issue is corporate responsibilities: the level of headquarters authority. The strategic roles that the corporate centre can take on are the architectural, allocating, administrating and assisting role. The strategic roles that the business units can adopt are the solitary, supplier, service and star role. The fourth Issue is corporate practice: the level of HQ control. 'Management means' that a strategist can use are centralization, standardization, coordination and collaboration. Underlying these four issues are the fifth issue corporate responsiveness (the level of corporate effectiveness) and issue VI, corporate synergy (the level of corporate linkage). The sources of synergy that the corporation can capture are leveraging resources, integrating activities and aligning positions.

These six issues can be perceived from two divergent perspectives: the portfolio corporation perspective and the integrated corporation perspective. With each perspective adopted, the strategist will deal with corporate strategy issues in entirely different ways. The strategist can choose from both perspectives, using elements from each one to dealing with the corporate strategy issues he is confronted with.

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# Stamp Duty on Securities

- The Indian Stamp Act, 1899 has become 100+ years old and continues to be a good revenue generating statute for the government. However, the point of concern is “even after so long period, the Act has ambiguous provisions” Are the provisions of the Act interpreted by the payer or the payee for their own benefit? The stakeholders and regulators need to introspect, “How judicious they are in determining the stamp duty?”

The Indian Stamp Law, even after crossing 113 years of age, continues to secure a very vital position amongst the various laws for time being in force for revenue generation for the government. The Indian Stamp Act, 1899 (“the Act”) was passed on 27<sup>th</sup> January, 1899 while it came into force from 1<sup>st</sup> of July, 1899. Before 1899, there were many provinces or States or estates which had their own law relating to levy of stamp duty on certain transactions. As the time passed they steadily adopted the same Act as parent Act for deciding the duty on instrument.

This concept has always been debatable since its inception. Initially, the fight had been political. Later, upon its approval, the same changed into legal. In India, after liberalization, this law has become a matter of intense discussion among legal practitioners but sometimes some discussion has resulted into litigation and left to be decided by the Courts in India. Secondly, the presence of ambiguous provisions in law, which makes it disputable, is also a matter of concern for the professionals to advise their clients. Where, the provisions of the Act are silent or not clear, both, the exchequer and payer interpret the provisions for their own benefit.

Nevertheless, this law is a fiscal statute and its sole aim is to generate revenue for the State. Also, its provisions must be read as

to protect the revenue. [*Jagdish Narain v Chief Controlling Revenue Authority*]. In general, the stamp duty, which is levied, is on the instruments and not on the transactions. The instruments which are duly stamped are evidentiary and admitted as evidence before the court while the unstamped or not-properly stamped instruments are not admitted as evidence.

**Historical background:** The origin of the Act can be traced to the act of the Government of Britain. During session of the House, petition from Virginia Colony was rejected and then Mr. George Grenville, the then British Prime Minister, came up with his 55 resolutions to pass the Stamp Bill. The inception has been summarized as follows:





# Article

STAMP DUTY ON SECURITIES

The Stamp Act of 1765 caused enormous outcry in America until it was repealed a year later, setting in action a chain of taxes. The new law required that all legal documents, customs papers, commercial contracts, newspapers, almanacs, wills, pamphlets and playing cards in the American colonies be taxed. A special tax stamp was affixed to show the tax was paid; lawsuits and newspapers were hardest hit--a small matter in Britain where lawsuits and newspapers were far less common than in the colonies.

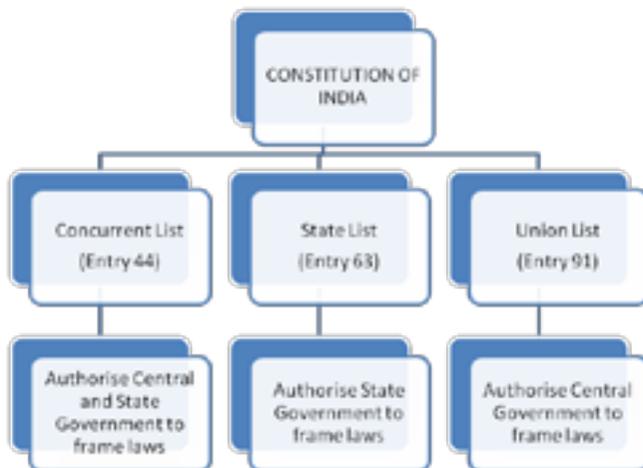
Form the above concept of revenue generation, the ruler of India in 1899 came up with such legislation. And after independence, the same set of rules was followed by adopting the Indian Stamp Act, 1899.

The Stamp Act had never been free from controversies and subject to heated discussion politically as well as legally. In India, also the Indian Stamp Act has always been before different courts for one issue or other. Corporates take this as a burden.

## PRESENT SCENARIO

The presentation alongsideshow the current burdens on Corporates. Too many taxes are levied by the Government which appears to be an extra burden on job generating houses. Stamp duty is also such type of burden on the Corporate Houses. Corporates have to pay the duty almost on various transactions. This article is mainly to point out the provisions for of the applicability of the Act and the focus area is on levying the stamp duty on securities issued by the Companies.

## LEGAL AUTHORITY TO LEVY STAMP DUTY



Separation of authority has been given as per the Constitution of India as pictured above. To levy and collect stamp duty on instruments is one such powers provided by the mother of all laws. In the Constitution of India, all the three lists (Union List, State List and Concurrent List) contain provisions relating to stamp duty. Brief

about the areas of levying duty has been provided on the website of Department of Revenue, Ministry of Finance, Government of India (<http://dor.gov.in/theindianstampact>) is as follows:

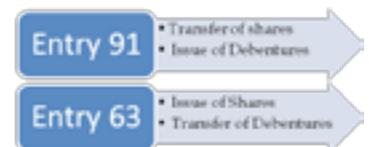
- Stamp duties on documents specified in Entry 91 of the Union List (viz. Bills of Exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts) are levied by the Union. Under Article 268, State, in which the Stamp duty is collected, retains the proceeds except in the case of Union Territories in which case the proceeds form part of the Consolidated Fund of India. At present duty is levied on all these documents except cheques
- Stamp duties on documents other than those mentioned above are levied and collected by the States by virtue of the legislative entry 63 in the State List in the 7th Schedule of the Constitution;
- Provisions other than those relating to rates of duty (which fall within the scope of Entry 91 of the Union List and entry 63 of the State List mentioned above) fall within the legislative power of both the Union and the States under Entry 44 of the Concurrent List in the 7th Schedule which reads as under: "44 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty"

Since our focus area is the duty on securities, the point of concern will be only on the provisions relating to the jurisdiction of the Union Legislature and the State Legislature to charge stamp duty on any instrument relating to the securities

Entry 91 and Entry 63 of the Constitution of India, inter alia, states about the power to levy stamp duty on securities. Because of this authority, the Union Government has adopted the Indian Stamp Act, 1899 with modifications and also the most of the State Governments have followed the same. Central Government has prescribed the rate of duty in Schedule I of the Act while different states prescribed own rate of duty in Schedule I-A.

## DUTY ON SHARES

In recent times, stamp duty on issue of shares has become a very debatable point. Every individual, dealing with the law, is coming out with different views over this. Views of the Corporate Houses and the Exchequer are absolutely north and south. The issue, which has made a wild card entry, is "which place should be the place to levy the stamp duty on allotment of shares, whether place of Board Meeting or place of the Registered Office of the Company" because the revenue department is issuing the show cause notices to the Companies on the basis of their registered address to pay the stamp duty on allotment of shares?



As per the opinion of the corporates or their legal advisors, the stamp duty should be levied where the allotment of shares has been made



i.e. Place of Execution of Instrument. Their contention is that if the business of the company is being carried on from a place other than the registered office of the company, then place of execution would be the place where Board meeting held and resolutions were passed. Their second view is that if all the Board meeting of the Company is conducted at some other place than the registered office why should the stamp duty be paid to the State where the registered office of the company is situated and where no business is being carried on.

On the one side such a contention appears to be right. Why should they pay duty to that State where the transactions related to the allotment of the shares is not been done? Also allotment of shares can be said as fulfilment of promise by the Company towards the investment made by the Company. And allotment of shares fulfils the definitions prescribed from clause (a) to (f) of the Indian Contract Act, 1872. The allotment covers the aspect of 'Proposal', 'Promise', 'Promisee', 'Consideration of Promise', 'Agreement' and 'Reciprocal Promises'.

For example:- If a person, say B, approaches company A Pvt. Ltd. (APL), with a willingness to make an investment of Rs. 8 Crore and in lieu of that APL will allot shares to B. Here B placed before the Company a 'proposal' {Section 2(a) of the Indian Contract Act, 1872}. APL accepts the proposal. Then that proposal becomes a 'promise' {Section 2(b) of the Indian Contract Act, 1872}. B and APL are termed as 'promisor' and 'promisee' {Section 2(c) of the Indian Contract Act, 1872}. The amount of investment i.e. Rs. 8 Crore is the 'consideration of promise' {Section 2(d) of the Indian Contract Act, 1872}. The promise of investment and consideration of payment is together term as 'agreement' {Section 2(e) of the Indian Contract Act, 1872}. And the promise to allot shares in lieu of the investment is termed as 'reciprocal promise' {Section 2(f) of the Indian Contract Act, 1872}.

It is very much clear that if the promise is fulfilled out the State in which the registered office of the Company is situated then the payment of revenue should be to that state where the promise has been fulfilled.

On the other hand the Department is also willing to take full benefit of this vagueness. If we take the view of the Department of Revenue, Delhi Government, then we will find that they calculate the duty on issue of shares on the basis of the rates obtaining in the State where the registered office of the company is located irrespective of whether the allotment has been made in the state of Delhi or somewhere else. They opine that since the registered office of the company is in the state of Delhi the duty must be on the prescribed list of Schedule I-A of the Stamp Act of Delhi. They also say that most of the Companies registered in Delhi are holding their Board Meeting out of the State for escaping the provision of stamp duty, so they have decided to levy the duty on the basis of registered office of the company and not on the basis of place of allotment of shares.

Here one point might arise in future, as from the provisions of the

Constitution of India and the Stamp Act it is not clear as to on which ground the place should be decided for calculating and paying the duty to the state government, that the Government of the State, where the execution of the documents has been completed may ask the companies to pay the stamp duty on the executed instrument. In such circumstances, the loser will be the corporate as they will have to pay to both the states, one where the company has its registered office and other where the instrument has been executed or the issue will reach to the Court and ultimately one more burden of legal expense over the Company. Here one question arises, as per the practices followed in the general society, whether one should pay stamp duty to State Government in which he resides or where he executes instrument liable to stamp duty. The same may be applicable to the Companies also.

Now the grey area about this Act is, the companies, which in general perform their duties in the State where its registered office is situated but at the time of allotment of shares the place of the Board Meeting is of that state where the duty of allotment of shares is very low or minimal to evade the stamp duty. Due to such practice followed by unprofessionally managed companies, the genuine companies also come under surveillance of the revenue department.

The Constitution of India and the Indian Stamp Act make it very clear on the duty applicable on transfer of shares. So, there is no point of concern over transfer. The debatable matter is the duty on the issue of the shares. Unless the amendment or any judgment of the Supreme Court of India in the Indian Stamp Act, 1872 come in this regard, the ambiguity will remain and the department and the company will clash over this again and again.

## DUTY ON DEBENTURES

Another point of discussion is on the duty on issue and transfer of debentures. The governing authority in case of levy of stamp duty on debentures is unlike to that in the case of shares. Entry 91 of the Constitution of India only talks about the 'debentures' and not of transfer of debentures as stated in case of shares (...transfer of shares, debentures...). Here the drafting committee of the Constitution of India has separated the transfer of shares and debenture by a comma which indicates that the authority to levy the duty on issue of debentures is the Central Government and the transfer is under the state government.

Debenture is a type of security as included in the definition of 'Securities' as defined in sub clause (i) of clause (h) of Section 2 of Securities Contract (Regulation) Act, 1956 read with clause 45AA of Section 2 of the Companies Act, 1956. Article 27 of the Schedule I of the Indian Stamp Act prescribed the rate of duty on issue of debentures. Rate of Duty stated in Article 27 are as follows (as per Order published in the Gazette of India on 12<sup>th</sup> September, 2008):





# Article

STAMP DUTY ON SECURITIES

"27. DEBENTURE (whether a mortgage debenture or not), being marketable security transferable-	
(a) by endorsement or by a separate instrument of transfer	
(b) by delivery	
Explanation.-The term "Debenture" includes any interest coupons attached thereto but the amount of such coupons shall not be included in estimating the duty.	0.05% per year of the face value of the debenture, subject to the maximum
Exemption A debenture issued by an incorporated company or other body corporate in terms of registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby or the body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture holders: Provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed."	of 0.25% or rupees twenty five lakhs whichever is lower

Article 27 excludes the debentures which are secured and for which a mortgage-deed has been executed as the same is prescribed in Article 40 of the Schedule I. The article covers only the unsecured and the secured debentures which are not mortgage. The point which should be noted is that Article talks about the duty on "marketable security". Marketable security has been defined under Section 2 (16-A) of the Act. The clause says, "marketable security" means a security of such a description as to be capable of being sold in any stock market in India or in the United Kingdom. A legal dictionary (P Ramanatha Aiyar CONCISE LAW DICTIONARY, by Justice Y V Chandrachud) states the meaning of the word "Capable" as - Susceptible, competent, qualified, fitting, possessing legal power or capacity. The word "capable", stated in Section 2 (16-A) of Indian Stamp Act, means to fulfill the conditions prior to become capable of being sold on the stock exchanges. If we go through the other meaning of the word "capable" - possessing legal power or capacity. It means the securities of the Private Company and the Unlisted Company do not have legal capacity for being traded on the stock exchanges unless it fulfills the condition for being listed.

It is clear that the issue of debentures by private limited companies and unlisted public company is not required to be levied with the Stamp Duty as per the provisions of Article 27 of the Schedule I. But some of the judgments treat the debentures as an "Agreement". The Supreme Court of India has defined the term "debenture" as "an acknowledgement of a debt with a commitment to repay the principal with interest" in *Narendra Kumar Maheshwari v. UOI [1989]*. The *Madras High Court* ruled that for a debenture, to fall within the area of Articles 27 of Schedule I of the Act, has to be "marketable security" transferable either by endorsement or by a separate instrument of transfer or by delivery. Here, the term "acknowledgement of debt" may be referred as a promise to pay. And as per clause (e) of Section 2 of the Indian Contract Act, 1872, every promise and every set of promises, forming the consideration for each other, is an "agreement". And the

relevant stamp duty on "Agreement" has been stated under Article 5 of the Schedule I of the Act. In case of "issue of debentures" Article 5 (c) is applicable where the duty is *Eight Annas*. The duty in such case is very minimal which a company will not resist to pay.

The payment of duty as prescribed in Article 27, in case of issue of debentures by a listed company, is very transparent and hence there is no debatable issue.

Now comes another issue in case of transfer of debentures. The transfer of debentures is basically under the State List of the Constitution of India. It is a fact the state governments never lag behind in levying duty in such matters where one part is under the central government purview. On going through Schedule I of the Indian Stamp Act, Article 62, as prescribed by the central government, prescribes the rate of duty in case of transfer of debentures. The same Article has been adopted by all the States of India with the changes in the rate of duty. Article 62, *inter alia*, says, "TRANSFER" (whether with or without consideration) (a)..... (b) *of debentures, being marketable securities, whether the debentures liable to duty or not, except debentures provided for by Section 8...(rates)...* (For Example- the rate in the state of Delhi is same as stated in Schedule I of the Indian Stamp Act). A view that is expressed is that the transfer of debentures of private and unlisted companies is not covered under Article 62 of the Schedule IA; but it does not mean that the transfer is exempt from the duty. The same can be covered under rate prescribed under Article 23, which states the rate of stamp duty on "conveyance" and the rate is different in different states (For example the rate in Delhi is 5% and 3% in Maharashtra). Clause 10 of Section 2 of Indian Stamp Act states about "Conveyance" as- "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I". As per Section 82 of the Companies Act, 1956, the shares or debentures or other interest of any member in a company shall be, transferable in the manner provided by the Articles of Association.

Here the corporates have the option to save large amounts by taking shelter under the umbrella of Section 8-A of the Indian Stamp Act which *inter alia*, states, "Notwithstanding anything contained in this Act or any other law for the time being in force, ..... (c) the transfer of (ii) beneficial ownership of securities, dealt with by a depository. It means no transfer duty on transfer of securities. Total Expenses for taking the service of the depository will cost approx. Rs. 1 lakh in the initial phase.

## CONCLUSION

The discussion in the preceding paragraphs shows some of the vagueness of the Indian Stamp Act, which is generating more litigation adding to the huge pendency of cases before the Indian judiciary. Both corporates and the Government are trying to take maximum benefit from the ambiguity in the law. The same must be done away with either by amending the Act or issuing clarifications in this regard. This will help avoiding litigation considerably. CS





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## Multi-level Marketing Schemes- Whether Legal?

- All pyramid schemes may not be illegal as there cannot be anything wrong in an FMCG company trying to reach out to consumers directly. Disintermediation is a well accepted economic argument as it does a huge good to a society by providing earning source to housewives, unemployed youth. However, the scheme should not be run as a money-for-money scheme, eventually where the sponsor just sits on a pile of money.

The use of multi-level marketing (“MLM”) schemes to reach out to consumers by FMCG companies is common world-over. In the USA, over the years, the courts/attorneys have drawn broad lines of distinction between so-called “pyramid schemes” and MLM schemes, holding the former illegal, but the latter as genuine devices of marketing products. There are elaborate guidelines on such schemes of the Federal Trade Commission<sup>1</sup> of USA. In India, at this time, the sole basis for examining the legality of an MLM scheme is the Prize Chits and Money Circulation Schemes (Banning) Act 1978 (the “Banning Act”).

Surely enough it cannot be contended that every MLM scheme is illegal. After all, what an MLM scheme does is to use alternative distribution machinery to access consumers directly. However, if the MLM scheme is run as a blatant money-for-money scheme, it attracts the injunction of the Banning Act. Essentially, as we note below, there is no distinction between the intent of the Banning Act in India and the intent of the broad scheme of prohibition of pyramid marketing schemes in the USA or elsewhere, except that there is a rich body of regulatory material on pyramid schemes in the USA,

<sup>1</sup> Brief guidelines are available at <http://business.ftc.gov/documents/inv08-bottom-line-about-multi-level-marketing-plans>.

whereas in India, we have to rely on the provisions of the Banning Act and some of the rulings of the courts. In the absence of regulatory principles, courts in India have taken a *factual approach*, rather than *principled approach* as in the case of other countries. In our view, it is not difficult to draw principles that distinguish between a genuine legitimate MLM scheme and a pyramid marketing scheme.

Hereunder we first examine the provisions of the Banning Act, and then some rulings pertaining to MLM schemes in India and internationally and finally draw features/characters that may distinguish a valid MLM scheme from a pyramid scheme.

### MEANING OF ‘MONEY CIRCULATION SCHEME’

The Banning Act was passed in 1978 along with a series of measures to restrict the access of non-banking companies to public deposits. The Companies (Acceptance of Deposit) Rules 1975 were implemented with effect from 1978. Simultaneously, restrictions were placed in the RBI Act debarring unincorporated entities from raising deposits. The Banning Act was also passed in the same light. Recommendations of the James S Raj Committee seem to have been in the background.





# Article

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➤ The key feature of a pyramid is that as the entrants in the last layer of the pyramid continue to get more and more participants, who pay money, the people in the upper layers continue to make money. However, when this pyramid fails to expand, the last layer loses all its money. There is no economic value in the scheme as such and it is purely a money for money scheme. That is, the last layer gets nothing once the layers fail to broaden further

In essence, the purpose of the Banning Act, as apparent from the background, was to put a bar on the raising of money by entities, where a pyramid of participants continue to get money, in return for them introducing an ever-growing base of participants in the structure. The key feature of a pyramid is that as the entrants in the last layer of the pyramid continue to get more and more participants, who pay money, the people in the upper layers continue to make money. However, when this pyramid fails to expand, the last layer loses all its money. There is no economic value in the scheme as such and it is purely a money for money scheme. That is, the last layer gets nothing once the layers fail to broaden further. Quite obviously, the last layer has the largest number of persons into it – so, in sum, a large number of persons must lose their money for a smaller number of persons to make money. That is the very reason why such a scheme is money circulation scheme, as opposed to one where people get goods or services in return for money.

Section 2(c) of the Banning Act defines a ‘money circulation scheme’ as:

*“any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or **applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions**”*

Due to hapless use of grammar and punctuation in the above definition, the Apex Court in the case of *State of West Bengal & Ors vs Swapan Kumar Guha*<sup>2</sup> has rephrased the definition in order to bring out its meaning clearly as:

<sup>2</sup> 1982 SCR (3) 121

‘money circulation scheme’ means any scheme, by whatever name called,

(i) for the making of quick or easy money, or (ii) for the receipt of any money or valuable thing as the consideration for a promise to pay money, (iii) On any event or contingency relative or applicable to the enrollment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription;”

It cannot be said that the law solely relies on “quick or easy money” as the basis of branding a scheme as illegal. Quick or easy money is a relative term – what may look either quick or easy to one may not be at all easy for another. Unaware of the vagaries of the marketplace, one may regard the stock market as a place for quick or easy money, without realizing how much intellect, opportunism, research and risk-taking goes into the same. In essence, the mandate of the Banning Act cannot be solely left to the interpretation of such volatile words as ‘quick or easy money’ – *the making of money has to be based on entry or enrolment of members into the scheme.*





➤ In an MLM structure, multilevel marketing or network marketing are used to sell the products directly to the consumers in which the salesmen are compensated not only for the work done by them but also for the sales of people who have joined the company through them. The commission which is distributed among the salesmen depends upon the scheme used for division of the commission and is usually based on the new entrants in a chain manner.

Hence, all the three elements above need to be present to make the scheme come under the ban of the Banning Act. A mere “receipt of any money or valuable thing as the consideration for a promise to pay money” cannot be barred, as every loan transaction would otherwise get barred. Likewise, a mere scheme to incentive a person for enrolling others into a scheme cannot be barred, because if that were the case, all the incentives, loyalty programmes or commissions for getting customers will get barred. Agency commissions or referral fees itself will be barred.

The Supreme Court in *Swapan Kumar Guha's case (supra)* has set out the requirements of a ‘money circulation scheme’, which are:

- “(i) there must be a scheme;
- (ii) there must be members of the scheme;
- (iii) the scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrollment of members into the scheme or there must be a scheme for the receipt of any money or valuable thing as the consideration for a promise to pay money on any event or contingency relative or applicable to enrollment of members into the scheme;
- (iv) the event of contingency relative or applicable to the enrollment of members into the scheme will however not be in any way affected by the fact whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription.”

The above interpretation of the Apex Court was also relied upon in its subsequent decision in *Kuriachan Chacko & Ors v. State of Kerala*<sup>3</sup> and the Court upheld the decision of lower courts as the

3 <http://www.indiankanoon.org/doc/450905/>

essentials of Section 2(c) were present in this case. The scheme in this case provided for (i) making of quick or easy money, and (ii) it was dependent upon an event or contingency relative or applicable to the enrolment of members into the scheme.

Thus, the essence of an MLM scheme is (a) it is a money for money scheme rather than money for goods or money for services; (b) those participating in the scheme must continue to bring more members, and will otherwise lose their money – something which virtually forces them to strive to expand the pyramid; (c) those at upper levels of the pyramid continue to make “quick or easy money” as they have virtually forced the pyramid to continue to expand, and as the pyramid expands, they make more money.

## MEANING OF MLM SCHEME



MLM structure of business is emerging as a rampant business practice, despite the legal and regulatory uncertainty surrounding it. As per the city economic offences wing (EOW), multi-level marketing firm QNet had collected over Rs 425 crore from its investors even after cases were registered against it in Chennai, Andhra Pradesh, Maharashtra and Karnataka<sup>4</sup>. Several rulings are in existence which have proved the illegality of MLM schemes and several scams in this respect can be evident which have opened up the eyes of regulators and have forced them to come up with suitable rules and regulations governing or banning MLM businesses. However, in India, there exists single central act namely the Banning Act, which bans the promotion and conduct of ‘money circulation schemes’ or ‘prize chits’ and matters connected therewith or incidental thereto. Section 3 of the Banning Act bans not merely promoting or conducting any prize chit or money circulation but also bans participation in such scheme of any kind and contravention of which carries penal action. The Banning Act has been adopted by several states by making suitable amendments or modifications to the main act.

Before, discussing the legality issue of an MLM scheme or MLM company, we first deal with what an MLM is. MLM or ‘network

4 Source: <http://timesofindia.indiatimes.com/city/mumbai/Multi-level-marketing-firm-collected-Rs-425cr/articleshow/26756053.cms>



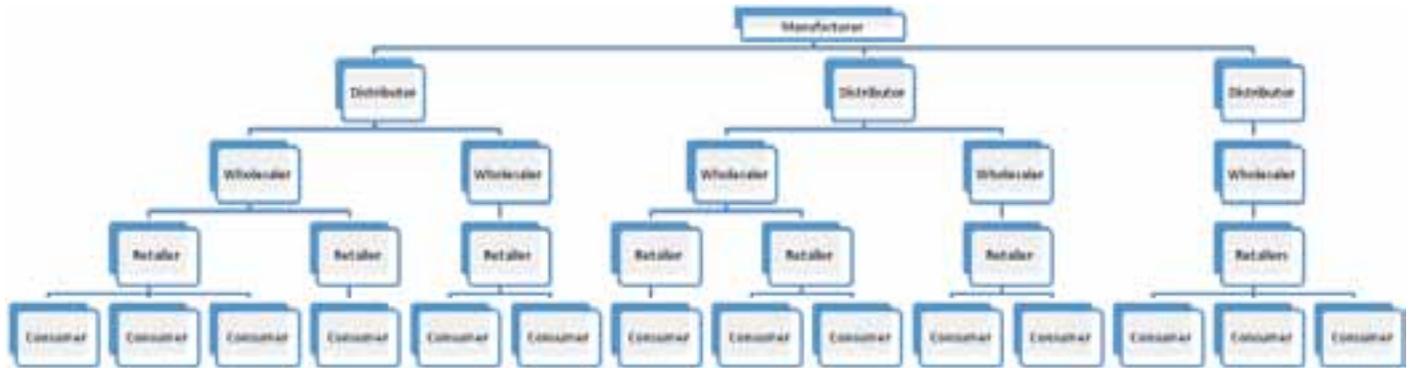


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marketing' as the name suggests, is a business strategy which involves participants at various levels and wherein the level above gets returns through the continuation of the business at the levels below it.

In an MLM structure, multilevel marketing or network marketing are used to sell the products directly to the consumers in which the salesmen are compensated not only for the work done by them but also for the sales of people who have joined the company through them. The commission which is distributed among the salesmen depends upon the scheme used for division of the commission and is usually based on the new entrants in a chain manner. The shorter and missed links in the chain would result in earning lesser commission.



Therefore, a successful MLM structure would necessarily have an unbroken chain of customers/agents.

compelling motivations on the entrant to either continue to expand the pyramid or take a beating.

## MEANING OF PYRAMID SCHEMES

The expression *pyramid marketing* scheme cannot be literally interpreted, because if it were literally taken, every marketing structure involves a pyramid. For instance, the most commonplace structure of marketing a retail product is:

However, in absence of clear regulatory framework differentiating a legitimate and an illegally pyramid, one need to depend on the legal pronouncements in this regard. Below we present a picture of Indian and international judgments deciding MLM/pyramid schemes:

However, a pyramid structure which is barred is essentially nothing but a money circulation scheme in disguise of marketing of goods or services. Some of the key features of such schemes are as follows:

## INDIAN PRECEDENTS

Apart from the Supreme Court cases discussed above, below we discuss some other important precedents on the concept of MLM schemes in India:

- Entrants in the scheme have either to pay an entry fee or buy goods/services of a particular value. The price of goods/ services is inflated so as to virtually amount to an embedded entry fee.
- The entrant has to recover the entry fee or price paid for goods /services by securing more participants in the scheme. Entry of more participants leads to commissions to the levels above.
- Generally the total amount of commissions paid is a very high percentage of the price of the goods. This is obviously much higher than the normal commissions paid in trade/commerce.
- The entrant to the scheme either faces full or a substantial loss of money if he fails to induct further members.
- In many cases where the seller in the chain agrees to buy back the unsold goods from the ultimate buyers has been taken to be a defence against allegations of a pyramid scheme. In other words, if the entrant to the scheme gets a fair value of the money he pays in form of goods/services, and the further commissions/fees he will receive will only be an incremental income, it cannot be said that there were

## AMWAY CASE

The dispute involving Amway was heard by the Andhra Pradesh High Court in 2007<sup>5</sup>. The scheme of the business operation of Amway is a typical example of an MLM structure involving recruitment of new members in the chain where there is sufficient inducement for the previous level to recruit new members for the next level. The returns of the upper level in chain (sponsor) are calculated not only on the basis of his own sales, but also on the performance of the members recruited by him. Furthermore, to be eligible for the commission, minimum business levels have to be maintained, which require aggressively recruiting new members.

The Andhra Court, relying on the twin conditions as stated by Apex Court in *Swapan Kumar Gaha's case (supra)* held that such business model of Amway as illegal based on following reasons:

5 2007 (4) ALT 808



- The purported theme behind the scheme appears to be direct selling which means sale of products to the customers by the distributors of the company without there-being any wholesaler or retailer. The distributors purchase products from Amway at distributors cost and then sell these products at higher price (not more than printed MRP) which is the retail sales profit. The performance incentive increases with the increase in the PV (points value) and BV (business volume).
- It is quite apparent that one of the components of the income earned by a sponsor member is the commission which is calculated not only on the personal PV of the sponsor member, but also from the PV earned by all the remaining 102 members falling within his group. There is, therefore, no gainsaying that a substantial part of the income which the first sponsor member of the group gets depends on the event or contingency relative or applicable to the enrollment of members into the scheme.

## CASE OF APPLE FMCG MARKETING PRIVATE LIMITED<sup>6</sup>

The Madras High Court in the case of M/s Apple FMCG Marketing Private Limited held the business of the company to be illegal and banned under Banning Act. The company was engaged in marketing various products including shampoo, tea, coffee powder, after-shave lotion, etc. under the brand-name 'Joy Eternal' through "network marketing". The marketing process was carried out directly by recruiting the customers themselves as distributors of the products and services. There was no service fee for registration as distributor. Any person who was interested was given a product for the price fixed. The distributors were encouraged to enroll more distributors. The commissions were given only as per the volume of sales made by the individual distributor and his team.

The reasons put forth by the division bench of Madras High Court declaring the business as illegal were<sup>7</sup>:

1. There exists a chain of agents/customers as the 'principle distributor' is getting commission based on chain of new customers and if, for any reason, the chain is broken, at any stage, then the principal distributor's commission would get reduced proportionally to that extent.
2. In the sale price of products, 65% of the price was earmarked for paying as commission to the distributors and that the value of the product is only 35% of the sale price.
3. The progress of the chain of customers, at some point of time, would get saturated and the distributor, who purchases the goods, will not find any purchaser/sub-distributor to sell or enroll afresh.

## INTERNATIONAL SCENARIO

There is no federal anti-pyramid statute in the United

<sup>6</sup> The Chartered Accountant, August 2011 issue  
<sup>7</sup> <http://www.indiankanoon.org/doc/642280/>

States. According to the Federal Trade Commission ("FTC") of USA which deals with issues of consumer protection and competition jurisdiction- "Not all multi-level marketing plans are legitimate. Some are pyramid schemes." The FTC in US therefore recognizes two concepts; legitimate pyramid schemes and illegal pyramids and decides the legality on case to case basis. Pyramid schemes are banned and not legitimate MLM schemes.

The most often cited definition of a "pyramid" scheme is found in the FTC's decision in the matter of Koscot Interplanetary, Inc<sup>8</sup>. Therein, the FTC held that "entrepreneurial chains" are characterized by "the payment by participants of money to the company in return for which they [the participants] receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users."

Despite the literal language of the *Koscot case* (supra), Federal Courts have interpreted and state Attorneys General are increasingly interpreting the term 'ultimate users' to mean persons who are not participants in the program, that is to say persons who are not distributors<sup>9</sup>. To give a definitive shape to the ambiguous business structure, FTC has laid 'retail sale' principles to determine the nature of pyramid and MLM scheme<sup>10</sup>. These rules can be summarized as follows:

- distributors are to sell or consume 70% of the products they purchased each month (later refined to mean sales to non-participants),
- they must be able to prove a sale to each of ten customers each month, and
- reasonable buy-back provisions be permitted.
- These retail rules have been used as a benchmark in other MLM cases by FTC.

The Attorney General of Michigan also recognizes the concepts of 'legitimate MLM schemes' and illegal pyramid. Demarcating the difference between the two, the following principles are seen by the authority<sup>11</sup>:

"Multi-level marketing is a lawful and legitimate business method that uses a network of independent representatives to sell consumer products. Commissions should only be paid on the sale of goods or services to non-participant end-user consumers. Pyramid schemes claim to be in the business of selling products to consumers in order to look like a multi-level marketing company. However, little or no effort is made to actually market the product. Instead, money is made in typical pyramid fashion...from recruiting other people to market the program.....Pyramid schemes are not only illegal; they are a waste of money and time. Because pyramid schemes rely on recruitment of new members to bring in money,

<sup>8</sup> 86 F.T.C. 1106, 1180 (1975)

<sup>9</sup> Webster v. Omnitrition International, Inc. 79 F.3d 776 (1996)

<sup>10</sup> Source: [http://www.ftc.gov/sites/default/files/documents/public\\_comments/trade-regulation-rule-disclosure-requirements-and-prohibitions-concerning-business-opportunities-ftc.r511993-00014%C2%A0/00014-57319.pdf](http://www.ftc.gov/sites/default/files/documents/public_comments/trade-regulation-rule-disclosure-requirements-and-prohibitions-concerning-business-opportunities-ftc.r511993-00014%C2%A0/00014-57319.pdf)

<sup>11</sup> Source: [http://www.michigan.gov/ag/0,4534,7-164-17337\\_20942-208400--,00.html](http://www.michigan.gov/ag/0,4534,7-164-17337_20942-208400--,00.html)





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the schemes often collapse when the pool of potential recruits dries up (market saturation).”

Professor John M. Taylor in his research paper on *The Case (for and) against Multi-level Marketing*<sup>12</sup> has expressed, after analyzing over 350 MLM programs: “Many have asked if it is possible to have a fair and equitable retail-focused MLM program. In other words, what would a good MLM look like? Considering the inherent flaws in MLM as a business model, the established precedents, and the motivations that drive the industry, I seriously doubt that such an MLM is possible. A good MLM may be an oxymoron.”

## WHAT MAKES AN MLM SCHEME LEGAL?

From the above discussion, we can conclude that all pyramid schemes may not be illegal as there cannot be anything wrong in an FMCG company trying to reach out to consumers directly. Disintermediation is a well accepted economic argument as it does a huge good to a society by providing earning source to housewives, unemployed youth. However, the scheme should not be run as a money-for-money scheme, eventually where the sponsor just sits on a pile of money. If the sponsor is a marketing company and is able to create a direct marketing vertical for itself, there is nothing wrong or illegal. In a typical illegal pyramid scheme, generally easy money is earned in guise of sale of products at a much higher price.

An MLM Scheme/pyramid may not be considered as bad in law if it has following features:

- Products are sold through retail as well as through members in a chain;
- Members so introduced in the chain get minimum commission for adding new members however, the price of the product is not overinflated to include the commissions largely. In other words, the selling price of the product in an MLM business should be the same price at which it is being sold in retail market;
- The intent of the seller is not to earn easy and quick money but to make his products available to easy reach of customers. For this purpose, a chain of members can be engaged by paying the members a minimal referral commission;
- People in general get goods or services for their money.

Indian Direct Selling Association (“ISDA”) has also distinguished the direct selling companies from fraudulent financial pyramid schemes<sup>13</sup>. According to ISDA, in a typical illegal pyramid scheme, products are thrust upon the direct sellers, irrespective of their ability to sell the product and the actual market demand and involve products which are cheap to produce and have no established market value. On the other hand, by legitimate direct selling companies, products are supplied to meet genuine demand

<sup>12</sup> Source: <http://www.mlmmwatch.org/01General/taylor.pdf>

<sup>13</sup> Read the full differentiation as laid down by ISDA at <http://www.isda.co.in/images/pdf/Differences-Leafllets.pdf>

and direct sellers are encouraged to hold minimal inventory and replenish as and when need arises.

However, as the Banning Act is not clear and there exists ambiguity in this regard, a clear provision in law is required. Presently, in absence of clear provisions of law, the twin condition test laid by the Apex Court in the *Swapan Kumar Gaha (Supra)* is the sole basis applied by courts generally in adjudicating upon the legality of different MLM schemes.

To curb illegal raising of public funds by MLM companies, the government has framed rules called “Money Circulation Scheme (Banning) Rules” for money circulation schemes which are yet to be notified by states. The norms have been jointly framed by the Finance, Corporate Affairs and Consumer Affairs Ministries along with various other authorities including RBI. Recently, by an ordinance passed on July 18, 2013, SEBI has been empowered to regulate all collective investment schemes of corpus over Rs. 100 crores. Once approved by Parliament, SEBI shall have power to carry out search and seizure operations to crack down the illegal pyramid or ponzi schemes.

The government is constantly making efforts to restrain illegal pyramids and collective schemes ;however it is an equal duty of investors to ensure the legality of a networking scheme before investing money and carefully see the compensation plan, structure and emphasis of such schemes to come to a conclusion on legality. An illegal pyramid will surely collapse after reaching to saturated pyramid chain and investors at bottom line will surely lose their money.

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ISDA has differentiated direct selling companies and fraudulent pyramid schemes available at <http://www.isda.co.in/images/pdf/Differences-Leafllets.pdf>

Read more about difference between network marketing and pyramid scheme at <http://www.network-marketing-business-school.com/pyramid-scheme.html>

Securities and Exchange Commission of US has warned its investors about illegal pyramid schemes [http://www.sec.gov/investor/alerts/ia\\_pyramid.htm#.U32Uz3ZGaKg](http://www.sec.gov/investor/alerts/ia_pyramid.htm#.U32Uz3ZGaKg)

A detailed study by professor John M. Taylor in his research paper on *‘The Case (for and) against Multi-level Marketing* on MLM schemes is available at <http://www.mlmmwatch.org/01General/taylor.pdf>

A write up on network marketing scams is available at <http://indian-mlm-scams.blogspot.in/>

Another interesting article on “Why spotting a pyramid scheme isn’t so easy” by CNBC’s Herb Greenberg and Karina Frayter is available at <http://www.cnbc.com/id/100364484>

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## Gender Harassment: Statute and Beyond

- Despite its gravity, gender harassment at workplace is perhaps the most widespread and most unreported, under-rated form of evil that exists across workplaces around the world. In India, it came to be recognized as a condemnable act in the landmark case of Vishaka v. State of Rajasthan. To put an end to sexual harassment at workplace there is a need to bring about a change in the mind set of the working force.

Unlike what is often presumed, gender harassment is not a myth. And the fact that gender harassment takes place in any organization, sometimes even without our knowledge, is equally true. Gender harassment being a crime involving the modesty and dignity of women, the acts of sexual harassment go unreported in most of the cases partly due to lack of knowledge about the steps to be taken, partly due to fear of losing job, and mostly because there was, till now, no law defining sexual harassment, no law holding the organization responsible for ensuring the safety of women and for protecting their fundamental rights of life, liberty and freedom and finally no law defining a culprit or the punishment to be awarded to him.

### HISTORY

Despite its gravity, gender harassment at workplace is the perhaps the most wide-spread and most unreported, under-rated form of evil that exists across workplaces around the world. In India, it came to be recognized as a condemnable act in the landmark case of Vishaka v. State of Rajasthan<sup>1</sup>. The heinous gang rape of



Bhanwari Devi for her protesting a child marriage as an Anganwadi worker in a village of Rajasthan was an eye-opener to the social malady of sexual harassment at workplace and a wake-up call for the law makers and conscious citizenry of our country about the legal shortfalls in addressing this crime against women. The writ

<sup>1</sup> AIR 1997SC1030





➤ India is a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1981 when the Convention came into effect but India took 30 long years to enact a law on prevention of Sexual harassment at Workplace. The Guidelines laid down by the Supreme Court came about in 1997 only as a result of *Vishaka v. State of Rajasthan* being merely guidelines it was too little and too late.

petition of *Vishaka v. State of Rajasthan*, was in the wake of that incident and intended to draw the attention towards the apathy of the law makers and the judiciary in recognizing and addressing the problems of sexual harassment of women at workplace. The case filed by certain NGOs and social activists before the Supreme Court under Article 32 of Constitution, aimed to seek an alternate recourse, in the face of the legislative lacuna, to protect the rising working women class from the risks to which they were exposed for not being men.

It was in *Vishaka case* that for the first time the offence of sexual harassment at workplace was accepted to be a reality existing in various forms and was considered detrimental to the dignity of women as human beings. Social conditions that impede the growth of woman as a human being, free to follow her own will is firstly and more importantly a violation of natural rights, before being an infringement of any statutory or constitutional rights. In this case the Apex Court not only categorically defined sexual harassment but also issued elaborate guidelines regarding the duties of the employer with the direction to the States and the Government departments to implement these.

The Constitution of India guarantees certain fundamental rights to its citizens. Article 14 speaks of right to equality casting an obligation on the State to treat all citizens equally and provide equal protection of law to all citizens. The right of equality under Article 14 will lose its significance for women unless the workplace is safe and there is a law guaranteeing action against the perpetrator and protection of the harassed women. Sexual harassment at workplace infringes upon the freedom to practice any profession or to carry out any occupation, trade or business [under Article 19(1)(g)] as ensured by the Constitution of India to every citizen, and in turn denies the women the fundamental rights of life and liberty as provided under Article 21. Article 15 empowers the state

to promulgate laws specifically for women and children and Article 42 envisages provisions by the State for ensuring just and humane conditions of work and maternity relief. In spite of ample powers at the disposal of the State and duties and obligations imposed on the State by the Constitution, the issue of gender discrimination and sexual harassment at workplace has not received its due attention and continues unabated.

Apart from Constitutional obligations, India being a signatory of various international covenants, it becomes a duty of India as a member-state to ensure that the messages of these international instruments are upheld. Many of these international covenants deal with issues related to women.

The *International Covenant on Economic, Social and Cultural Rights* in Article 7 recognizes the right of women to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment.<sup>2</sup>

The '*UN Convention on the Elimination of All Forms of Discrimination against Women*' (CEDAW)<sup>3</sup> also binds the signatories to the principles laid by the instrument. The CEDAW casts obligations on the member states to protect women and provide them the opportunity to follow their professions without being discriminated against.

Article 11 of the Convention casts duty on the State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) **The right to protection of health and to safety in working conditions**, including the safeguarding of the function of reproduction.

As a part of general recommendations on Art 11, CEDAW further specifically lays the following in relation to sexual harassment at workplace:

"22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place."

Article 23 the convention further broadly describes Sexual harassment as "such unwelcome sexually determined behavior as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions."

**"Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment,** including

2 Vishaka and others V. State of Rajasthan AIR 1997 SC 1030





recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.”

Article 24 expects the State Parties to undertake to adopt all necessary measures at the national level to achieve the full realization of the rights recognized in the present Convention. It means that the Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

It is pertinent to note here that India is a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1981 when the convention came into effect but India took 30 long years to promulgate a law on prevention of Sexual harassment at Workplace. The Guidelines laid by Supreme Court came about in 1997 only as a result of Vishaka v. State of Rajasthan being merely guidelines it was too little too late. The guidelines largely remained ineffective and voluntary in nature.

The recent spate of incidents of women related crimes have prompted the legislature of our country to finally pass the Bill that has been waiting for Legislative consideration since 2010. 'The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013'<sup>4</sup> comes as a succor to all the working women across various sectors – organized as well as unorganized. The woman workforce of the country is thankful that the law which should have been made soon after the laying of the guidelines of 1997, has finally seen the light of day.

## SIGNIFICANT PROVISIONS OF THE ACT

Nonetheless it is necessary to know the significant provisions of the Act as it has to be accepted and followed by the organizations and bodies with its deficiencies and shortcomings. The Act is structured into 8 chapters dealing with Definitions, Constitution of Internal Complaints Committee, Local Complaint Committee, Procedure to file a complaint and determination if the aggrieved woman is willing to conciliate or is seriously interested in an inquiry, procedure of inquiry in<sup>3</sup>to a complaint in case the conciliation is not opted, Duties of employer, Duties And Powers of District Officer. The last “Miscellaneous” chapter deals with general issues like preparation and submission of annual report, penalty for non compliance and powers of government to monitor, implement data and make rules etc.

## DEFINITIONS

### Employer

The definition of employer in a way points out the applicability of

the Act as all the bodies and persons covered under section 2(g) are supposed to abide by the provisions of the Act. The definition covers a wide ambit and includes the following within it:

- (a) the organizations, undertaking, establishment, enterprise, institution, office,
- (b) branch or unit of the appropriate Government or a local authority,
- (c) the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, may specify;
- (d) any person responsible for the management, supervision and control of the workplace or the person discharging contractual obligations with respect to his or her employees or a person or a household who employs or benefits from the employment of domestic worker will also be regarded as the employer for the purpose of the Act

## Workplace

The Vishaka Guidelines had enjoined upon the Government and Public Sector Organisations to include rules and regulations for prevention of sexual harassment at workplace. Amendments in Industrial Employment (Standing Orders) Act, 1947 were envisaged for private sector organizations. In 2004 the Supreme Court further ordered the State Governments and the Union Territories to amend the Central Civil Services (Conduct) Rules, 1964 and Industrial Employment (Standing Orders) Rules to include 'Complaint Committees on Sexual Harassment' as Inquiry authority under CSS Rules. Till 2012 as pointed out in a PIL filed by Medha Kotwal Lele<sup>5</sup>, these guidelines or the orders of 2004 were not implemented by most of the states or were implemented partially by a few states.

Keeping this laid-back attitude in view, the Act has specifically included Private Undertakings, NGOs, Private Organizations, hospitals or nursing homes, any sports institute, stadium, sports complex or competition or games venue and even official tours and transportations provided to undertake such tours within the ambit of Workplace including unorganized sector. Section 2(p) of the Act defines "unorganized sector" as enterprise owned by individuals



<sup>3</sup> The text of UN Convention on the Elimination of All Forms of Discrimination against Women' (CEDAW) - <http://www.un.org/womenwatch/daw/cedaw/text/econvention.html>





or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs less than ten number of workers.

## Sexual Harassment

The National Commission for Women had formulated a 'Code of Conduct for Workplace' in line with the Vishaka guidelines and had laid an elaborate and more exhaustive definition of Sexual harassment but the present Act had retained the original definition of 1997 guidelines, which in turn more or less reproduces the CEDAW definition. The Act under section 2 (n) has defined any of the following acts or behavior (whether directly or by implication) as sexual harassment

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

## Complaints Committee

The complaint mechanism laid out in the Vishaka guideline has been given a shape and a proper complaint mechanism has been sought to be established by forming the Internal and Local committees.

Section 6 of the Act requires the constitution of Internal Complaint Committee (ICC) by every employer in every workplace. The committee shall have one half of its members as women. The IC is to be headed by senior level woman employee with at least two women employees, preferably having legal knowledge or experience in handling such issues, as members. To impart impartiality in handling the complaints and ensuring fair hearing, a woman member of NGO dedicated for the cause of women is also to be appointed in the Committee.

Local Complaints Committee (LCC) at District Level is formed for such organizations where the IC is not mandatory i.e. the organization where the number of employee is less than 10. Although such exemption is arbitrary, the complaints by employees of such organization/workplaces shall be lodged with the nodal officers operating at block, tehsil, taluk, and ward level who shall forward the complaints to the District Officer within 7days.

The local committee shall have 3 members and one Chairperson, nominated by the District officer. The Chairperson should be an eminent woman in the field of social work and committed to the cause of women, out of the 3 members one should be a woman working in block, taluka or tehsil or ward or municipality in the district, rest two should be women working with NGOs or association committed to the cause of women.

Time limits have been laid for speedy disposal of the complaints at various levels, both in case of ICC and LCC.

## Duties of Employer

Section 19 of the Act has laid down the duties that an employer is expected to fulfill. An employer should do the following:

- Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- Display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (1) of section 4;
- Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- Make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- Cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- Monitor the timely submission of reports by the Internal Committee.

## Shortcomings

The Act has largely replicated and elaborated on the Vishaka guidelines but certain provisions in the Act have compromised the main object of "providing *protection against sexual harassment of women at workplace and the prevention and redressal of complaints of sexual harassment ....*"

The protection of women cannot be ensured unless the employer has a liability and accountability to implement the provisions of the Act. The redressal of complaints will be a distant dream as the aggrieved women may be forced to contemplate conciliation and

4 Bare Act of 'The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act,2013' [http://egazette.nic.in/WriteReadData/2013/E\\_18\\_2013\\_214.pdf](http://egazette.nic.in/WriteReadData/2013/E_18_2013_214.pdf)

5 Medha Kotwal Lele and Others Vs. Union of India and Others OCTOBER 19, 2012.





➤ The protection of women cannot be ensured unless the employer has a liability and accountability to implement the provisions of the Act. The redressal of complaints will be a distant dream as the aggrieved women may be forced to contemplate conciliation and will be punished for false allegations

will be punished for false allegations (any allegation that cannot be substantiated by evidence will be regarded false).

## CONCILIATION – AGAINST THE SPIRIT OF THE LAW

The Act has provided for conciliation between the complainant and the respondent as one of the solutions before initiating inquiry under section 10. Conciliation as a redressal for cases of sexual harassment or for that matter any crime is completely out of place. Sexual harassment being a criminal case, conciliation has severely undermined the object of the entire Act making it look like a civil default where conciliation and arbitration are modes for resolving disputes amongst each other. Sexual harassment being a social wrong, conciliation would only go to lighten the matter. Justice JS Verma Committee had in its report dated January 23, 2013 vehemently opposed conciliation as a means of addressing the issue of sexual harassment. It had submitted that *“This is in violation of the mandate prescribed by the Supreme Court in the Vishaka verdict, which stated that in matters of harassment and humiliation of women, an attempt to compromise is indeed yet another way in which the dignity of women is undermined... the said provision actually shows very little regard for the dignity of women.”*<sup>5m</sup>

Although the provision states that the conciliation may be initiated on request by women, in the socio-cultural scenario of India, there shall be always the apprehension of a request being extracted for conciliation from the aggrieved woman. A woman is often a lone fighter in cases involving sexual harassment and she might not even be supported by her husband, in which case she may be forced to withdraw the complaint and settle for conciliation. The likelihood of the employer exerting pressure for conciliation cannot be ruled out as the organization will not want to spoil its good name. Conciliation would also embolden the respondent and he will be free to repeat the crimes against the same /other women in the same/other organization, for there is no denial of the fact that the sexual offenders are more often than not compulsive, habitual offenders.

6 Source : [www.aware.org](http://www.aware.org)

## PUNISHMENT FOR FALSE COMPLAINT – A CHAUVINISTIC PROVISION

The other major provision of the Act that has drawn flak from all quarters, more particularly from women’s rights groups is the provision of initiating action against complaints that cannot be proved. The acts of passing lewd comments and physical contact is also regarded as sexual harassment at workplace but nine out of ten times there will not be any evidence to prove the act except the frank disclosure of the employee. Should we be led to believe that such attempts though within definition of sexual harassment cannot be complained against because it cannot be substantiated by clear cut evidence, thereby failing the very purpose of the Act? In cases of sexual complaint, the complainant often has to face opposition from employer and colleagues. The colleagues, being employees under the same employer, may not come forward to act as witness putting their own interests at stake. In such situations it is often possible to manipulate evidences so as to falsify the allegations of the aggrieved woman. The provision for retribution shall not only discourage women to file complaint due to the fear that the allegations might not be proved but also can be used as a weapon by the employers to avenge any complaint against sexual harassment.

Further the spirit of this provision reflects masochistic presumption that women can be potential liars in matters pertaining to sexual harassment and again demean women in the guise of ensuring the rights to raise a voice against harassment. Adding insult to the injury the Act further goes on to add in proviso to section (14) “mere inability to substantiate a complaint or provide adequate proof “need not” attract action against the complainant under this section”. The word “need not” seem to imply that inability to substantiate a complaint or to provide adequate proof “should not but may be punished” if the committee feels so. In this context Justice Verma Committee had expressed its disapproval in strongest word while recommending deletion of the provision. The report said *“Section 14 appears to penalise a woman for filing a false complaint. We think that such a provision is a completely abusive provision and is intended to nullify the objective of the law. We think that these ‘red-rag’ provisions ought not to be permitted to be introduced and they show very little thought.”*

As a reiteration under sub section (2) of section 26 the Act further specifically states inter-alia that failure on part of the employer to take action





➤ No authority or tribunal has been formed or prescribed to which the failure of employers in implementing the provisions can be reported. Justice Verma Committee Report has dealt with the need for a Tribunal to conduct periodic inspection of the premises to assess the compliance with the proposed Bill, among other purposes. The purpose of these visits, as per the report, would include gender sensitization and not merely the implementation of the law. There is no explicit provision for training or sensitization of the committee members and employees of the organization.

under section 14 of the Act would entail a penalty of Rs 50,000 which in other words imposes a duty on the employer to take action against the complainant if the charges leveled could not be proved or substantiated.

## NO SYSTEM TO CONFIRM COMPLIANCE

The wordings of Section (9)(1) creates further ambiguity. It states that a complaint of sexual harassment at Workplace can be made to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident. The words "if so constituted" apparently gives an option to the employer to constitute the committee or to keep the formation of the committee in abeyance till the offence takes place and the aggrieved woman actually comes forward to seeks redressal. The Act does not lay down any time limit or provide any mechanism for checking if the employers have formed the Internal Committee or has taken necessary steps to create awareness about the committee or penal consequences as required under section 4 and section 19 of the Act.

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of the law.

There is no explicit provision for training or sensitization of the committee members and employees of the organization.

## Minimal Liability of Employer

Justice Verma Committee has put up suggestions to hold the employer vicariously liable for the acts of its employees. The committee had submitted in its report that "... suitable provisions should be added to the Bill to make payment of compensation for a woman who has suffered sexual harassment which should be paid by the company which compensation will be determined by a Tribunal." In countries like the US, in spite of the absence of any codified law prohibiting workplace discrimination, there is vicarious liability cast upon the employer in certain cases and the employee is liable to pay monetary compensation for failure to provide safe workplace.

But the Act does not stipulate any monetary liability on the employer in case of harassment by its employee against another female employee. Any harm caused to employee during employment is the responsibility of the employer and failure to ensure a safe and secured workplace is a liability that an organization cannot shake off just by complying to the duties laid under Section 9 and section 4. By casting the vicarious liability on the employer, the Act could have gone a long way in ensuring a safe workplace. The organizations would have been keener in compliance to the Act so as to avoid a monetary compensation. Given the gravity and expanse of the offence, stricter compliance mechanism and penal provisions should have been provided and the employer should have been made accountable to the aggrieved employee as well.

The Act only contemplates a penalty of Rs 50,000 in the first offence and twice the penalty if the offence is repeated with the likelihood of cancellation/non renewal of license of carrying on business.

## Responsibility of Employer & Responsibility as Company Secretary

The employers and the managements of the organization need to recognize the importance of the Act and the need to ensure safe and healthy workplace for the women employees. The penal provisions of the Act may compel the employers to display information about committees and fulfill the duties required under section 19 and may comply with the letters of law. But that is not adequate because unless the authority recognizes the problems, acknowledges the need of the committee and sensitization and endeavors to follow the law in its actual spirits, the law cannot achieve its true object. The Company Secretaries play an advisory role to the management. Their work is not limited to secretarial matters and legal compliances; it has widened in recent times to corporate governance. Corporate Governance encompasses overall development of the organization through ethical business practices ensuring the growth of individuals, employees and



stakeholders as an integral part of its own growth process.

With the widening role of a Company Secretary in the areas of good governance, management and legal compliances, she/he is in a position to guide the management in following the Act in its true spirit. She/he can advise the management to comply with the provisions, the violation of which can snowball into issues that may no longer be resolved within the organization. The Company Secretary must enjoin the management to undergo gender sensitization programs and organize the same for the employees as many times the employees/employers are ignorant that their behavior or act is a kind of sexual harassment. On the other hand many times employees are not aware that a particular behavior is a sexual harassment and bear it silently as a part of their work culture. It is definitely in favour of the company to create an atmosphere conducive to the utilization of the fullest potential of human resources of the organization. It is obvious that when some of the employees are bent upon crossing their limits and victims are bearing the burden, the work and development of the company is going to get affected. The HR policy should include relevant information pertaining to sexual harassment, complaint and action mechanism to create awareness and deter such behaviour.

## EMPLOYEE'S RESPONSIBILITY

It is equally important for an employee to be aware of the laws and provisions that are available to a victim of sexual harassment or being the perpetrator inadvertently. The employees should bring the need of gender sensitizing into the notice of their reporting heads or managers or management through staff and management meetings. They should urge the management to display the relevant information regarding the unwelcome behaviours, penal/disciplinary measures and about the formation of the committee in the organization.

## WHAT CAN YOU DO IF YOU ARE SEXUALLY HARASSED?

If you suspect that you are being sexually harassed, immediately let the perpetrator know, firmly and clearly, that his actions are unwelcome and unacceptable.

1. Tell in clear terms that you are uncomfortable with the behaviour. Say NO firmly. In case it is uncomfortable to speak to the perpetrator face to face, then send an SMS or email. Retain any email or SMS correspondence with the harasser as evidence.
2. Start a log and note down dates, times, places and who was present at the time of the incidents and give detailed accounts of the unwelcomed sexual behavior in order to keep a record for the purpose of evidence.
3. Alert or inform someone whom you trust at the workplace of the harassment as they may be able to support you in your case.
4. Document your own work and communications within the company in case the harasser starts to question your work performance to justify his behaviour.
5. Before you file a formal complaint to the committee report

the harassment to your HR/Senior management to resolve the matter and keep a record of the same. They may be in a position to tackle the issue before it becomes a menace by issuing warning or taking other preventive steps.

## CONCLUSION

There can be laws to the nth degree to address issues like gender harassment and sexual equality but to put an end to sexual harassment at workplace there is a need to bring about a change in the mind set of the working force. The organizations primarily being male dominated with senior positions mostly being held by men, the scope of harassment remains high and hope of redressal dim. Due to a parochial upbringing in a patriarchal society, working women are often perceived to be easily available for sexual escapades and therefore the acts of sexual harassment in some form or the other is found in every rung and in every organization. The Beijing Declaration very truly, inter alia, states the poignant truth about the society and status of woman that generally exists world-wide - *"Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms..... In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture"*.

It is therefore the duty of every employer and employee as individuals and Company Secretaries as compliance professionals, to give respect to the dignity of a woman as human being and take steps in their own ways to bring in equality and freedom as enjoined by the Constitution and as guaranteed under our natural rights.

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CS





## Corporate Laws

LW: 48:06:2014

IN RE: AMALGAMATION OF WADALA  
COMMODITIES LTD WITH GODREJ INDUSTRIES  
LTD [BOM]

C.A.No.256/2014

G.S. Patel, J. [Decided on 08/05/2014]

Companies Act, 2013- Section 110 - postal ballot  
- amalgamation of companies- meeting of members-  
voting thereat- whether provision for postal ballot  
precludes the holding of physical meeting of the  
members- Held, No.

### Issue:

Facts are immaterial as the core issue involved in this case was whether in view of the provisions of Section 110 of the Companies Act, 2013 ("the 2013 Act") and SEBI Circular dated 21st May 2013, a resolution for approval of a Scheme of Amalgamation can be passed by a majority of the equity shareholders casting their votes by postal ballot, which includes voting by electronic means, in complete substitution of an actual meeting.

In other words, whether the 2013 Act, read with various circulars and notifications, has the effect of altogether eliminating the need for an actual meeting being convened.

### Decision & Reason:

We must remember that at the heart of corporate governance lies transparency and a well-established principle of indoor democracy that gives shareholders qualified, yet definite and vital rights in matters relating to the functioning of the company in which they hold equity. Principal among these, to my mind, is not merely a right to vote on any particular item of business, so much as the right to use the vote as an expression of an informed decision. That necessarily

means that the shareholder has an inalienable right to ask questions, seek clarifications and receive responses before he decides which way he will vote. It may often happen that a shareholder is undecided on any particular item of business. At a meeting of shareholders, he may, on hearing a fellow shareholder who raises a question, or on hearing an explanation from a director, finally make up his mind. In other cases, he may hold strong views and may desire to convince others of his convictions. This may be in relation to matters that are not immediately obvious to the shareholder merely on receipt of written information or a notice. The right to persuade and the right to be persuaded are, as I see it, of vital importance. In an effort for greater inclusiveness, these rights cannot be altogether defenestrated. To say, therefore, that no meeting is required and that the shareholder must cast his vote only on the basis of the information that has been sent to him by post or email seems to me to be completely contrary to the legislative intent and spirit to the express terms of the SEBI circular and amended Listing Agreement's Clauses 35B and 49.

There are other reasons also why this question of voting exclusively by postal ballot and electronic means is still very much a grey area. Even the new Act contains specific sections regarding quorum for meetings (Section 103). If voting is to be done only by postal ballot, how is that statutory requirement of a quorum to be met? Mr. Mehta's answer is that the non-obstante clause in Section 110 eliminates the need for any such quorum. I find that hard to accept. The edifice of this submission seems to have a uniform glassy façade: it suggests that the information sent to shareholders is fixed, unalterable and immutable. That is seldom so. Agenda items and proposals are frequently amended with suggestions from the floor or even by the Board at the meeting. Often, Schemes of Arrangement or Compromise are amended at a meeting itself; again, these amendments come from the floor or even perhaps from the Board itself. That amendment is then put to vote. In a postal ballot no such amendment is possible. If we were to restrict ourselves to a postal ballot, no shareholder or any director could ever suggest any amendment. The scheme would stand or fall only in its original form. This is contrary to the mandate of Sections 391 and 394 of the 1956 Act. This corresponds to Section 230 and 232 of the 2013 Act, yet to be brought into force. Even so Section 230, as currently framed, still speaks of "the calling of a meeting" and "not merely putting the matter to vote". It has to be remembered that all schemes that are put to the meeting of the shareholders are proposed schemes. This is necessarily means that they are subject not only to approval by voting but also, possibly, to an amendment at the meeting itself.

As matters stand today, Sections 230 and 232 are not yet in force. This means that Sections 391 and 394 of the 1956 Act will need to be read with Section 110 of the 2013 Act. This is yet another grey area: I am unable to see how the non-obstante clause in Section 110 of the 2013 Act can extend to Sections 391 and 394 of the 1956 Act. The words in Section 110 of the 2013 Act are "notwithstanding anything contained in this Act", which can only mean the 2013 Act.

In every Scheme of Amalgamation and, therefore, necessarily,



in all arrangements with shareholders, the consideration clause of the Scheme is of vital importance. The share exchange ratio is finally approved only at the meeting. A report of the auditors is used to recommend a share exchange ratio; but this is only a recommendation. Unless there is a meeting of minds and a consensus this share exchange ratio cannot be decided. Without it, the proposed scheme fails completely.

Further, section 110 speaks of meetings called by the company. Meetings for approval of Schemes under sections 391/394 of the 1956 Act and Sections 230/232 of the 2013 are not "called" by the Company. They are ordered by the Court. These are Court-convened meetings. A court may even dispense with such a meeting, irrespective of any provision for a postal ballot -- where, for instance, it is shown that all shareholders, or the requisite majority, have consented in writing. Prima-facie it appears that the provisions of Section 110 of the 2013 Act cannot and do not extend to any scheme matters. This is true of all companies, whether listed or not. Consequently, any SEBI circulars or guidelines or notifications that make electronic voting or postal ballot the exclusive method of voting on such schemes are clearly unlawful and contrary to the intent of Sections 230/232 of the 2013 Act and of Sections 391/394 of the 1956 Act. There is no question of matters at a Court-convened meeting being decided by postal ballot "instead" of at a general meeting; the postal ballot and electronic voting may be permitted or may even be required in addition to but not in replacement of an actual general meeting.

### The result of this discussion is:

- (a) All provisions for compulsory voting by postal ballot and by electronic voting to the exclusion of an actual meeting cannot and do not apply to court-convened meetings. At such meetings, provision must be made for postal ballots and electronic voting, in addition to an actual meeting. Electronic voting must also be made available at the venue of the meeting. Any shareholder who has cast his vote by postal ballot or by electronic voting from a remote location (other than the venue of the meeting) shall not be entitled to vote at the meeting. He or she may, however, attend the meeting and participate in those proceedings.
- (b) The effect, interpretation and implication of the provisions of the Companies Act, 2013 and the relevant SEBI circulars and notifications, to the extent that they mandate a compulsory or even optional conduct of certain items of business by postal ballot (which includes electronic voting) to the exclusion of an actual meeting are matters that require a fuller consideration. The Central Government, through the Additional Solicitor-General, and SEBI will both need to be heard. The Company Registrar shall send an authenticated copy of this order to both the learned Additional Solicitor General and to SEBI requesting them to appear before the Court when this matter is next taken up for a consideration of this issue. On a prima-facie view that the elimination of all shareholder participation at an actual meeting is anathema to some of the most vital of shareholders' rights, it is strongly recommended that till this issue is fully heard

and decided, no authority or any company should insist upon such a postal-ballot-only meeting to the exclusion of an actual meeting. Since this is evidently a matter of some importance, the Company Registrar is directed to make a submission and obtain necessary directions on the administrative side to have the matter placed before an appropriate Bench. At such a hearing, further safeguards can also be evolved. For instance, it is entirely possible to have a Company Scheme Petition, one that follows an order on and compliance with a Company Summons for Direction, uploaded to the case status system of this Court. All such Company Scheme Petitions must have appended to them the report of the Chairman of the court-convened meeting and the scrutineers' report. Making the petition available in its full form on a free and publicly accessible website such as the High Court, in addition to reports now being uploaded to the websites of the company and the stock exchanges would go a long way to ensuring the necessary information spread. The Ministry of Corporate Affairs must also immediately examine whether the uploads of these documents along with other statutory corporate filings/uploads can be made compulsory.

## LW: 49:06:2014

**SANDEEP SABHARWAL v. M-TECH DEVELOPERS LTD [DEL]**

Company Petition No.517/2012

Vibhu Bhakru, J. [Decided on 07/05/2014]

**Companies Act, 1956- section 433- winding up- delay in project-surrender of flat- builder initially agreed to refund the entire amount to the purchaser-failure to refund full booking amount- whether the company is liable to be wound up- Held, Yes.**

### Brief facts:

On the basis of the advertisements issued by the Respondent, the petitioner had applied for a Duplex Villa measuring 250 sq. yds. at in the housing project and paid Rs.6, 87,500/- from time to time. Undisputedly, the project was delayed and due to delay in the project, the petitioner surrendered the said Duplex Villa and demanded the refund of the sum paid by him. The respondent though initially assured refund of entire sum to the petitioner, refunded only Rs.70,000/- and forfeited the balance amount. Hence the present winding up petition on the ground of neglecting to pay an admitted debt/liability.

**Decision: Petition allowed.**

### Reason:

In the present case, it is an admitted fact that the petitioner had paid





an amount of Rs.6,87,500/- to the respondent towards the booking of the Duplex Villa in the year 2006 & 2007. It is not disputed that there was a delay in construction of the project as the respondent had informed the petitioner regarding completion of the Floor of Villa on 18.02.2009 i.e. after almost 2 years from the date of the last instalment paid. It is also not disputed that the petitioner surrendered the said Villa on 04.05.2009 and the respondent, on 28.01.2010, refunded a sum of Rs.70,000/- i.e. part of the amount due to the petitioner.

Considering the above facts, the issue to be considered in the present case is whether the defence raised by the respondent towards the amount admitted by the respondent is substantial and bona fide. It is the contention of the respondent that no amount is due and payable to the petitioner as the amount paid by the petitioner had been forfeited since the petitioner has failed to pay the further instalment and also the penalty imposed. Apparently, the said contention or defence of the respondent appears to be a sham and is not tenable in view of the letter dated 04.05.2009 issued by the respondent whereby the respondent admitted that the petitioner was entitled to the full refund of the amount paid by the petitioner and assured the petitioner that the amount paid would be refunded to it by two demand drafts.

It is relevant to mention here that there was no further communication on the part of the respondent whereby the respondent disputed its liability towards the petitioner. In fact, on 28.01.2010, the respondent made a part payment for an amount of Rs.70,000/- to the petitioner. Further, the statutory notice issued under section 434(1) (a) of the Act to the respondent also elicited no response from the respondent. Therefore, by virtue of section 434(1) (a) of the Act, the respondent is deemed to be unable to pay its debts. In the given circumstances, the present petition is liable to be admitted.

The next question that is required to be considered is whether the respondent would also be liable to pay interest on the amount claimed by the petitioner. It is an admitted position that the amount claimed by the petitioner was, admittedly, due and payable by the respondent. Besides the said amount, the petitioner would also be entitled to a reasonable interest as the sums paid by the petitioner have been utilised by the respondent.



## Competition Laws

LW: 50:06:2014

## OM DATT SHARMA v. ADIDAS AG & ORS [CCI]

Case No. 10 of 2014

Ashok Chawla, Anurag Goel, M. L. Tayal, S. L. Bunker [Decided on 13/05/2014]

**Competition Act, 2002- sections 4 & 26 – retailing of sports goods- franchisee agreement- differential terms – whether constitutes abuse of dominance- Held, No.**

### Brief facts:

**The informant who is the Managing Partner of M/s Kalpataru Enterprises, has filed the information in instant case alleging abuse of dominance by OPs with respect to the franchisee agreement entered by and between them. The informant alleged that the OPs had granted more favourable terms such as higher discount rate in the franchisee agreement entered with other retailers and also refused to take back the dead stocks.**

**Decision: Case closed.**

### Reason:

After having perused these allegations, the Commission is of the opinion that the allegations seem baseless and not amounting to an abuse of dominant by the Adidas AG Group within the meaning of Section 4 of the Act.

The Commission finds two fundamental flaws in the allegations made by the Informant. Firstly, the Agreement which was termed as unfair and arbitrary was entered into in 2003 when the alleged dominant group had not even come into existence. Secondly, even if the submission of the Informant regarding dominance of the Adidas AG Group is accepted post the formation of group in 2005, the conduct of the Adidas AG Group vis-a-vis the Informant remained same (as the Agreement was said to be continued on same terms and conditions). Further, as per Informant's own submissions, the agreement with M/s Neelkanth Traders was more favourable than the one with it which fact goes against the allegation of abuse by the Adidas AG Group.

Although there were certain differences between the two franchisee agreements as stated above, the differences cannot be termed as abusive unless they are discriminatory within the meaning of section 4(2) (a) (i) and 4(2) (a) (ii) of the Act. These franchisee agreements were entered into on different dates, the first one (between the Opposite Party No. 3 and the Informant) was executed in August 2003 and the second (between the Opposite Party No. 3 and M/s Neelkanth Traders) in March 2006. It may also be pertinent to note that a manufacturer is not obligated to follow a single template agreement throughout its existence. With passage of time and operations, the commercial arrangements may undergo a change.





It is not the case of the Informant that the margin of 28% was imposed on him even after the expiry of the Agreement in 2006. The Agreement was renewable/terminable after 3 years (i.e., after 27.08.2006) by mutual consent of the parties. Moreover, the difference of margins is not substantial which can be termed as abusive within the meaning of Section 4 of the Act.

The Commission further notes that the allegation of the Informant regarding the Opposite Party No. 3 not taking back the dead stock lying in the custody of the Informant which allegedly inflicted financial harm on it, prima facie does not raise any competition concern.



## General Laws

**LW: 51:06:2014**

**VIJAY POWER GENERATORS LTD v. TARUN ENGINEERING SYNDICATE & ANR [DEL]**

**Criminal Appeal Nos.1432-36 of 2013**

V.K. Jain, J. [Decided on 09/05/2014]

**Negotiable Instruments Act,1882- sections 138 & 139- dishonour of cheque- accused failed to produce books of accounts and his witness to rebut the documents and witnesses produced by the complainant- Trial court dismissed the complaint as the presumption of debt was rebutted by the accused- whether tenable- Held, No.**

### Brief facts:

The appellant is a Company engaged in the business of selling power generators and related equipments. The case of the appellant/complainant is that M/s. Tarun Engineering Syndicate, which is a partnership firm, purchased goods from it and issued cheques from time to time towards payment of those goods. The cheques, when presented to the bank were dishonoured with the endorsement "Account Closed/Payment Stopped". After serving demand notice upon the firm, as many as six complaints were filed by the appellant/complainant, five against the firm through its partner Shri Sumit Seth and one against Shri Sumit Seth, describing him as the proprietor of M/s. Tarun Engineering Syndicate.

The accused claimed that the aforesaid cheques were issued to the complainant Company as advance payment for supply of material but no material was supplied against the cheques. No witness was examined by the accused.

The Trial court accepted the defence taken by the accused and accordingly dismissed the complaints. Being aggrieved from dismissal of the complaints and acquittal of the accused, the appellant/complainant Company is before the High Court by way of these appeals.

**Decision: Appeals allowed.**

### Reason:

The primary issue involved in these cases is as to whether the cheques in question were issued as advance for supply of goods which were never supplied or they were issued towards payment of the goods which were purchased by the firm and were duly supplied to it.

Since the accused did not lead any evidence at all, the question which arises for consideration is as to whether it has been able to bring on record such facts & circumstances which would impel the Court to believe that the consideration did not exist or that its non-existence was so probable that a prudent man would in the facts & circumstances of the case accept the plea that the consideration did not exist. In a case where no evidence is led by him the accused is required to show existence of circumstances which are so compelling as to shift the burden again on the complainant. Of course the accused is not required to prove his defence beyond reasonable doubt and he can discharge the onus placed on him by establishing, the proof required from him, on the standard of being preponderance of probabilities.

Ex.CW3/4 (Colly) is the statement of account maintained by the appellant/complainant Company in respect of the accused Tarun Engineering Syndicate. This account has been maintained in electronic form the year 1996-1997 onwards. A certificate under Section 65B of the Evidence Act is also annexed to the said statement. CW3 Shri Kishore Kumar has vouched the correctness of the said statement on oath. On the other hand the respondent has not produced any witness to rebut the sworn statement of Shri Kishore Kumar nor has it produced its own account books or its account in respect of the transaction with the complainant/appellant.

In these circumstances and also considering that neither any oral evidence has been produced by the accused nor has it produced its account books, I see no reason to reject the statement of accounts filed by the appellant/complainant Company or to doubt its authenticity. Considering that at the time cheques in question were issued, the amount due from the accused firm was much more than the amount of the cheques issued by it, it would be difficult to accept the contention that the aforesaid cheques were issued as advance payment for purchase of goods and not towards payments of the





price of the goods which the accused firm had purchased from the appellant/complainant Company.

For the reasons stated hereinabove, I am of the considered view that the accused has not been able to rebut the statutory presumption raised under Sections 138(a) and 139 of the Negotiable Instruments Act and the cheques in question were issued for consideration, i.e. towards price of the goods purchased by the accused firm from the appellant/complainant Company.



## Industrial & Labour Laws

LW: 52:06:2014

**BHUVNESH KUMAR DWIVEDI v. HINDALCO INDUSTRIES LTD [SC]**

Civil Appeal Nos. 4883-4884 of 2014

Gyan Sudha Misra & V. Gopala Gowda, JJ. [Decided on 25/04/2014]

**Industrial Disputes Act, 1947 read with UP Industrial Disputes Act – retrenchment- workman working for nearly six years-artificial temporary breaks introduced by the employer- whether the termination on expiry of the term amounts to retrenchment- Held, yes.**

### Brief facts:

The appellant-workman was appointed as Labour Supervisor in the employer's factory on 30.12.1992 and he worked continuously for about 6 years in the said post till 28.7.1998- the day on which his services were terminated. It is pertinent that his services were temporarily terminated for brief periods and again he was appointed in the same post for doing the same work.

The case of the appellant- workman was that he has worked for six calendar years from the date of his appointment till the termination of his service and he has rendered more than 240 days of continuous service in every calendar year before his termination. The respondent-employer terminated the services of appellant- workman on 27.7.1998 as per practice with the reason sanction expired. The

respondent-employer neither paid retrenchment compensation nor issued any notice or paid wages in lieu of the same to the appellant-workman as mandated under Section 6N of the U.P. Industrial Disputes Act (for short the U.P. I.D. Act).

The workman raised an industrial dispute and the Labour Court held that he was retrenched and awarded a compensation of Rs.1,00,000/- which was set aside by the High Court in the appeal preferred by the employer. The workman had challenged the judgement of the High court before the Supreme Court.

**Decision:** Appeal allowed.

**Reason:** The following points would arise for our consideration:-

- 1) Whether the exercise of power by the High Court under Articles 226 and 227 of the Constitution and setting aside the award of reinstatement, back wages and other consequential reliefs and awarding Rs.1,00,000/- towards damages is legal and valid?
- 2) Whether the concurrent finding recorded by the Labour Court and High Court on the question of termination of services of the workman holding that the case of retrenchment falls under Section 6-N of the U.P. I.D. Act is void ab initio and not accepting the legal plea that the case falls under Section 2 (oo) (bb) of the Act is correct, legal and valid?
- 3) Whether the workman is entitled for reinstatement with full back wages and other consequential reliefs?

### 4) What Award?

Answer to point No. 1

The High Court can interfere with an order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant.

Answer to point No. 2

We are inclined to hold that s. 2 (oo) (bb) of the I.D. Act is not attracted in the present case on two grounds: Firstly, in the light of the legal principle laid down by this Court in the case of *U.P. State Sugar Corporation Ltd v. Om Prakash Upadhyay (2002) 10 SCC 89*, the provisions of the U.P. I.D. Act remain unaffected by the provision of the I.D. Act because of the provision in s. 31 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. Hence, s. 2 (oo) (bb) is not attracted in the present case.



Secondly, the claim of the respondent that the appellant was a temporary worker is not acceptable to us. On perusal of facts, it is revealed that his service has been terminated several times and he was subsequently employed again till his service was finally terminated on 27.7.1998. His brief periods of contracts with the respondent have been from 28.12.1992 to 28.12.1993 for the first time, from 3.4.1994 to 29.12.1994 for the second time, from 10.1.1995 to 5.1.1996 for the third time, from 16.1.1996 to 11.1.1997 for the fourth time, from 20.1.1997 to 21.1.1998 for the fifth time and from 27.1.1998 to 27.7.1998 for a final time at the end of which his service was terminated.

Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates “unfair labour practice” as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

Therefore, we deem it fit to construe that the appellant has rendered continuous service for six continuous years (save the artificially imposed break) as provided under Section 25B of the I.D. Act and can therefore be subjected to retrenchment only through the procedure mentioned in the I.D. Act or the state Act in pari materia.

### Answer to Point No.3

Having answered point No. 2 in favour of the appellant, we also answer the point No. 3 in his favour since we construe that the appellant is a worker of the respondent Company providing continuous service for 6 years except for the artificial breaks imposed upon him with an oblique motive by the respondent Company. We hold that the termination of service of the appellant amounts to retrenchment in the light of the principle laid down by three judge bench decision of this Court in *State Bank of India v. Shri N. Sundara Money AIR 1976 SC 1111* and attracts the provision of S. 6-N of the U.P. I.D. Act. The case mentioned above illustrates the elements which constitute retrenchment.

Therefore, the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits. Therefore, we set aside the Order of the High Court and uphold the order of the Labour Court by holding that the appellant is entitled to reinstatement in the respondent-Company.

### Answer to point No.4

We therefore conclude and hold that the Labour Court was correct on legal and factual principles in reinstating the appellant along with full back wages after setting aside the order of termination. The High Court on the other hand, has erred by exceeding its jurisdiction under Article 227 of the Constitution of India in holding that the appellant has in fact, resigned by not joining his duty as a Badly

worker and also awarding that retrenchment compensation to the tune of Rs.1,00,000/- will do justice to the appellant without assigning reasons which is wholly unsustainable in law.

## LW: 53:06:2014

### BHARAT COKING COAL LTD & ORS v. CHHOTA BIRSA URANW [SC]

Civil Appeal No.4890/2014

Gyan Sudha Misra & Pinaki Chandra Ghose, JJ.  
[Decided on 25/04/2014]

**Dispute as to correct date of birth- two sets of date of birth i.e. one as per school leaving certificate and the other as per the employment statutory record- employer refused to rectify the date of birth in accordance with the school leaving certificate – whether correct- Held, No.**

### Brief facts:

The core issue involved in the present appeal was which record as to date of birth of an employee has to be relied upon. At the time of joining the employment the workman had given his date of birth as 15.2.1947 and the same was entered in Form B register also. In the school leaving certificate of the workman the date of birth was recorded as 06.2.1950. In the certificate of Mining Sardar, which he obtained in 1986 the date of birth was shown as 06/02/1950.

The workman sought to rectify his date of birth in 2006 which was not accepted by the employer and he was superannuated in 2007. The workman challenged the decision of the employer under a writ in which the single Judge had held that his correct date of birth should be as shown in the school leaving certificate. Employer's appeal against this judgement was rejected by the Division Bench and hence the present appeal before the Supreme Court.

**Decision: Appeal dismissed.**

### Reason:

In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water.

Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organization. Even this Court in spite of the extraordinary powers conferred under Article 136





has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum.

As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form B register which is a statutory document in which the date of birth has been verified by the respondent himself twice, other non-statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised in 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy.

Thus, the case of the respondent should not be barred on account of unreasonable delay. Admittedly, the appellant as the employer in view of its own regulations being Implementation Instruction No. 76 contained in the National Coal Wage Agreement III, gave all its employees a chance to identify and rectify the discrepancies in the service records by providing them a nominee form containing details of their service records. This initiative of the appellants clearly indicated the existence of errors in service records of which the appellants were aware and were taking steps to rectify the same. Against this backdrop, the stance of the appellant that the records in the Form B register must be relied upon does not hold good as it is admitted by the appellant that errors existed in the same. Even a perusal of the nominee form exhibits the ambiguity regarding the date of birth and date of joining. It was due to the discrepancies which subsisted that the appellants gave all its employees a chance to rectify the same. In such circumstances, the appellants are bound by their actions and their attempt to deny the claims of the respondent is incorrect. The respondent in this case duly followed the procedure available and the attempt of the appellant to deny the claim of the respondent on the basis of technicality is incorrect.

Therefore, the order of the High Court does not call for any interference. We endorse the reasoning given by the High Court and affirm the same.

## LW: 54:06:2014

**NALCO LTD & ORS v. ANANTA KISHORE ROUT & ORS [SC]**

Civil Appeal Nos. 5989, 5992 and 5993 of 2008

Surinder Singh Nijjar & A.K. Sikri, JJ. [Decided on 08/05/2014]

**Service law jurisprudence- schools established and run by**

**company- whether employees of these schools also to be considered as the employees of the company-Held, No.**

### Brief facts:

The Appellant herein, National Aluminium Company Limited (NALCO) has established two schools for the benefit of the wards of its- employees. Two Writ Petitions were filed by the employees of each of school in the Orissa High Court, Cuttack for a declaration that they are the employees of NALCO and be treated as such, with consequential prayer that these employees be also accorded suitable pay scales as admissible to the employees of NALCO. The High court had allowed the writ and hence the present appeal to the Supreme Court.

**Decision: Appeal allowed.**

### Reason:

No doubt, the school is established by NALCO. NALCO is also providing necessary infrastructure. It has also given adequate financial support inasmuch as deficit, after meeting the expenses from the tuition fee and other incomes received by the schools, is met by NALCO. NALCO has also placed staff quarters at the disposal of the schools which are allotted to the employees of the schools. Employees of the school are also accorded some other benefits like recreation club facilities etc. However, the poser is as to whether these features are sufficient to make the staff of the schools as employees of NALCO.

It has been established from the documents on record that both the schools have their own independent Managing Committees. These Managing Committees are registered under the Societies Registration Act. It is these Managing Committees who not only recruit teaching and other staff and appoint them, but all other decisions in respect of their service conditions are also taken by the Managing Committees. These range from pay fixation, seniority, grant of leave, promotion, disciplinary action, retirement, termination etc. In fact, even Service Rules, 1995 have been framed which contain the provisions; delineating all necessary service conditions. Various documents are produced to show that appointment letters are issued by the Managing Committees, disciplinary action is taken by the Managing Committees, pay fixation and promotion orders are passed by the Managing Committees and even orders of superannuation and termination of the staff are issued by the Managing Committees. It, thus, becomes clear that day to day control over the staff is that of the Managing Committees. These Managing Committees are having statutory status as they are registered under the Societies Registration Act. Therefore, it is not right that Managing Committees do not have their own independent legal entities.

Merely because the schools are set up by NALCO or they have agreed to take care of the financial deficits for the running of the schools, according to us, are not the conclusive factors. No doubt, there may





be some element of control of NALCO because of the reason that its officials are nominated to the Managing Committees of the schools. Such provisions are made to ensure that schools run smoothly and properly by the society. It also becomes necessary to ensure that the money is appropriately spent. However, this kind of 'remote control' would not make NALCO as the employer of these workers. This only shows that since NALCO is shouldering and meeting the financial deficits, it wants to ensure that money is spent for rightful purposes.

In so far as their service conditions are concerned, as already conceded by even the respondents themselves, their salaries and other perks which they are getting are better than their counter parts in Government schools or aided/ un-aided recognised schools in the State of Orissa. In a situation like this even if, for the sake of argument, it is presumed that NALCO is the employer of these employees, they would not be entitled to the pay scales which are given to other employees of NALCO as there cannot be any comparison between the two. The principle of 'equal pay for equal work' is not attracted at all. Those employees directly employed by NALCO are discharging altogether different kinds of duties. Main activity of NALCO is the manufacture and production of alumina and aluminium for which it has its manufacturing units. The process and method of recruitment of those employees, their eligibility conditions for appointment, nature of job done by those employees etc. is entirely different from the employees of these schools.

We say at the cost of repetition that there is no parity in the nature of work, mode of appointment, experience, educational qualifications between the NALCO employees and the employees of the two schools. In fact, such a comparison can be made with their counter parts in the Government schools and/or aided or unaided schools. On that parameter, there cannot be any grievance of the staff which is getting better emoluments and enjoying far superior service conditions.

We thus, are of the opinion that the impugned judgment of the High Court is un-sustainable.



## Tax Laws

LW: 55:06:2014

RAJASTHAN R.S.S. & GINNING MILLS  
FEDERATION LTD v. DEPUTY COMMISSIONER OF

## INCOME TAX, JAIPUR [SC]

Civil Appeal No. 3880 of 2003

Anil R. Dave & Shiva Kirti Singh, JJ. [Decided on 29/04/2014]

**Income tax Act, 1961- Section 72- amalgamation of cooperative societies- whether carry forward of loss of the amalgamating societies is available to the amalgamated society- Held, No.**

### Brief facts:

There were four co-operative societies in the State of Rajasthan wherein the Government of Rajasthan had substantial shareholding, which were amalgamated with the appellant society. Upon amalgamation of the said societies into the appellant society, the registration of the said four co-operative societies had been cancelled and all the assets and liabilities of the said four societies had been taken over by the appellant society by virtue of the above amalgamation.

After the amalgamation of the four co-operative societies into the appellant society, when Income-Tax returns for the assessment years 1994-95 and 1995-96 were filed by the appellant society, the appellant society wanted to get the accumulated losses of these four societies carried forward, so that the same could be set off against the profits of the appellant society under the provisions of Section 72 of the Income Tax Act, 1961.

The assessing officer negated the appellant's claim for the reason that the said societies were not in existence after their amalgamation into the appellant society and therefore their accumulated losses could not have been carried forward or adjusted against the profits of the appellant society. Assessment orders were passed accordingly and have been upheld in all appeals filed by the appellant. Hence the present final appeal by the appellant society.

**Decision:**Appeal dismissed.

### Reason:

The main submission of the learned counsel appearing for the appellant society was that the appellant society, being an amalgamated society, must get benefit of setting off losses of the co-operative societies which had been amalgamated into the appellant society. According to him by virtue of the provisions of Section 16(8) of the Rajasthan Co-operative Societies Act, 1965, read with Sections 72 and 72(A) of the Act, the accumulated losses of the amalgamating societies should have been permitted to be adjusted or set off against the profits of the appellant society. His main submission was that by virtue of Section 16(8) of the Rajasthan Co-operative Societies Act, 1965 all legal proceedings initiated against or by the amalgamating co-operative societies would continue and therefore, right of the





amalgamating societies with regard to getting their losses carried forward and set off against the profits of the amalgamated society would continue.

We are not in agreement with the submissions made by the learned counsel appearing for the appellant for the reason that for the purpose of getting carried forward losses adjusted or set off against the profits of subsequent years, there must be some provision in the Act. If there is no provision, the societies which are not in existence cannot get any benefit. The losses were suffered by the societies which were in existence at the relevant time and their existence or legal personality had come to an end upon being amalgamated into another society.

The normal principle is that a non-existent person cannot file an income tax return and therefore, cannot carry forward its losses after its existence comes to an end. All those four societies, upon their amalgamation into the appellant society, had ceased to exist and registration of those societies had been cancelled. In the

circumstances, those societies had no right under the provisions of the Act to file a return to get their earlier losses adjusted against the income of a different legal personality i.e. the appellant society.

So far as companies are concerned, there is a specific provision in the Act that upon amalgamation of one company with another, losses of the amalgamating companies can be carried forward and the amalgamated company can get those losses set off against its profits subject to the provisions of the Act. This is permissible by virtue of Section 72 A of the Act but there is no such provision in the case of co-operative societies.

It is pertinent to note that such a provision has been made only with regard to amalgamation of companies and later on similar provisions were made with regard to banks, etc., but at the relevant time there was no such provision which would permit the amalgamating co-operative society to carry forward and adjust such losses against the profits of the amalgamated co-operative society.

## Appointments



हिन्दुस्तान एरोनाटिक्स लिमिटेड

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**15/1, Cubbon Road, Bangalore – 560 001**



## Corporate Laws

### 01 Delegation of Powers and Functions to Registrar of Companies

[Issued by the Ministry of Corporate Affairs vide F. No. 1/6/2014 - CL. V dated 21.5.2014. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (ii).]

In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), and in supersession of the notification of the Government of India, Ministry of Corporate Affairs, dated the 10th July, 2012, published in the Gazette of India, Extraordinary, Part-II, section 3, sub-section (ii) vide number S.O. 1538 (E), dated the 10th July, 2012, in so far as it relates to items (a) to (b) and items (d) to (e), except as respects things done or omitted to be done before such supersession, the Central Government hereby delegates to the Registrar of Companies, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers and functions under the said sections, if in its opinion, such a course of action is necessary in the public interest, namely: -

- (a) sub-section (2) of section 4;
- (b) sub-section (1) of section 8;
- (c) clause (i) of sub-section (4) of section 8, except for alteration of memorandum in case of conversion into another kind of company;
- (d) sub-section (5) of section 8; and
- (e) sub-section (2) of section 13.

2. This notification shall come into force from the date of its publication in the Official Gazette.

Amardeep Singh Bhatia  
Joint Secretary to the Government of India

### 02 Delegation of Powers and Functions in respect of allotment of DIN

[Issued by the Ministry of Corporate Affairs vide F No. 1/6/2014 - CL. V dated 21.5.2014. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (ii).]

In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), and in supersession of the notification of the Government of India, Ministry of Corporate Affairs. Published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), vide number GSR 650(E), dated the 19th October, 2006 except as respects things done or omitted to be done before such supersession, the Central Government hereby delegates the powers and functions of the Central Government in respect of allotment of Director Identification Number under sections 153 and 154 of the said Act to the Regional Director, Joint Director, Deputy Director or Assistant Director posted in the office of Regional Director at Noida.

2. This notification shall come into force with effect from the date of its publication in the Official Gazette.

Amardeep Singh Bhatia  
Joint Secretary to the Government of India

### 03 Delegation of Powers and Functions to the Regional Directors

[Issued by the Ministry of Corporate Affairs vide F No. 1/6/2014 - CL. V dated 21.5.2014. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (ii).]

In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), and in supersession of the notification of the Government of India, Ministry of Corporate Affairs, dated the 10th July, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) vide number S.O. 1539 (E), dated the 10th July, 2012, in so far as it relates to items (a) to (f) and item (n), except as respects things done or omitted to be done before such supersession the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest, namely :-

- (a) clause (i) of sub-section (4) of section 8 (for alteration of memorandum in case of conversion into another kind of company);
- (b) Sub-section (6) of section 8;
- (c) sub-sections (4) and (5) of section 13;
- (d) section 16;
- (e) section 87;
- (f) sub-section (3) of section 111;
- (g) sub-section (1) of section 140; and
- (h) proviso (i) to sub-section (1) of section 399.

2. This notification shall come into force with effect from the date of its publication in the Official Gazette.





## 04 Extension of validity period for names reserved as on 31st March, 2014.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 13 /2014, dated: 23.05.2014]

In continuation of the General Circular No.11/2014 dated 12.05.2014, approval of the Competent Authority is hereby conveyed to extend continuity of all reserved names as on 31st March, 2014 for another fifteen days period from the date of issue of this circular.

This issues with approval of Competent Authority.

K.M.S. Narayanan  
Assistant Director

## 05 Applicability of PAN requirement for Foreign Nationals.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 12 /2014, dated: 22.05.2014]

Attention of Ministry has been drawn to difficulties being faced by Foreign Nationals while filing Incorporation form (INC-7) due to mandatory requirement of submission of PAN details of intending Directors at the time of filing the application for incorporation.

2. It is hereby clarified that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation. Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned. The form of Declaration is required to be made in the proforma enclosed.

3. This issues with the approval of Competent Authority.

(K.M.S. Narayanan)  
Assistant Director

### Undertaking

I.....(name)....., son of-(father's name).....  
citizen of.....(nationality).....having passport  
No. ....(passport Number]- declare as under:

- (i) That I am not required under the provisions of Income Tax Act, 1961 to obtain Income Tax Permanent Account Number [PAN];
- (ii) That in view of the above I have not been issued any PAN; and
- (iii) That i undertake to furnish to the Registrar of Companies (mention jurisdiction) details of my PAN as soon as a Permanent Account Number is issued to me.

## 06 One time opportunity for extension of Period of Reservation of Name

[Issued by the Ministry of Corporate Affairs vide General Circular No. 11 /2014, dated: 12.05.2014]

Services for incorporation of companies were not available on the MCA21 portal to stakeholders from 1st April, 2014 to 28th April, 2014 because of the deployment requirements for new E-forms. Many stakeholders had reserved names for the purpose of Company incorporation with 60 days prescribed validity expiring during the above mentioned period. They could not avail of the 60 days prescribed period for using the name to complete the corresponding incorporation requirements due to the non-availability of services.

- 2. In view of this, the validity of reservation of all such names with due date of expiry between 1st April, 2014 to 28th April, 2014 is hereby extended up to 31st May, 2014. All applicants whose cases fall in the above mentioned category may be advised to file relevant E-forms for incorporating companies under the Companies Act, 2013 well before the extended validity period.

K.M.S. Narayanan  
Assistant Director

## 07 Certification of E-forms/non E.forms under the Companies Act, 2013 by the Practicing Professionals:- regarding..

[Issued by the Ministry of Corporate Affairs vide General Circular No. 10 /2014, dated: 7.05.2014]

The Ministry has allowed registered Members of the professional bodies (the ICAI, ICSI and the ICAI) to authenticate correctness and integrity of documents being filed by them with the MCA in electronic mode. Details of documents required to be certified have been given in the notification dated 28/04/2014 available on the MCA portal.

- 2. In this regard attention is invited towards the requirement of authentication of documents prescribed under the Companies (Registration Offices and Fees) Rules, 2014 which elaborate on the responsibility. Further, Rule 10 of ibid the Registrar is to examine e-forms or non e-forms attached and filed with general forms on MCA portal viz. to verify whether all the requirements have been complied with and all the attachment to the forms have been duly scanned and attached in accordance with the requirement of above said rules.
- 3. Where any instance of filing of documents, application or return or petition etc. containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the





professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules; 15 days notice may be given for the purpose.

4. The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action u/s 447 and 448 of the Companies Act, 2013 wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.
5. The E-Gov cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action u/s 448 and 449 of the Act wherever prima facie cases have been made out. The E-Gov cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.
6. The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Gov Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month as per the prescribed proforma (copy enclosed).
7. This issues with the approval of the Secretary.

K.M.S. Narayanan  
Assistant Director

### PROFORMA FOR FORTNIGHTLY REPORT BY ROC

For the Period From..... To .....

Sl No	Name of The Professional	Member of The Institute	Membership No /CP No.	Details of The Case	Remarks

### PROFORMA FOR MONTHLY REPORT BY RD

For the Month of .....

Sl No	Name of the ROC	Details of the professional	Membership No / CP No.	Fact of the case	Remarks

## 08 Availability of E-forms/non E-forms under the Companies Act, 2013-reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 09 /2014, dated: 25.04.2014]

In continuation of General Circular No. 6 of 2014, I am directed to inform that w.e.f. 28th April 2014, 46 e-forms including 3 general e-forms will be available for filing by the stakeholders. The 3 General e-Forms will be used for filing 17 forms which are not available as e-forms as on date. Details of these 17 forms and corresponding 3 e-Forms with which these will be filed as attachments are

given hereunder in Table "A".

2. The stakeholders will fill the 17 Forms physically and get it duly signed/ certified by the professionals, if applicable, as per the requirement of the forms and attach these with the prescribed General e-Form as given in attached Table 'A'. The arrangement will continue till the 17 Forms are made available as e-Forms.
3. In addition to filing of the 17 Forms, stakeholders can also file application for seeking extension of date of AGM/ Accounting period by filing form GNL-1. Documents in respect of Companies under liquidation will also be allowed to file along with form GNL-2. Documents in respect of particulars of person(s) or Directors charged or specified for the purpose of section 2(60) of the Companies Act, 2013 will be allowed to file along with form GLN-3. Documents/ forms for filing petitions to Central Government will be allowed to file with form RD-2.
4. It is hereby clarified to all ROCs that dealing hand / approving officers are required to check the physically attached form thoroughly for all fields including name of company and CIN etc. before registry or according approval, etc.
5. This issue with the approval of the competent authority.

K.M.S. Narayanan  
Assistant Director

### Annexure

#### Table A

#### Filing of Forms as an Attachment to certain e-Forms

Sl. No.	General e-Form	Form to be attached with General e-Form	Subject/Purpose of Form to be attached
1.	GNL-2	PAS-2	INFORMATION MEMORANDUM
2.		PAS-4	PRIVATE PLACEMENT OFFER LETTER
3.		SH-9	DECLARATION OF SOLVENCY
4.		DPT-1	CIRCULAR OF ADVERTISEMENT FOR DEPOSITS
5.		DPT-3	RETURN OF DEPOSITS
6.		DPT-4	RETURN OF DEPOSIT EXISTING AT COMMENCEMENT
7.		ADT-1	NOTICE OF APPOINTMENT OF AUDITOR BY COMPANY
8.		ADT-3	NOTICE OF RESIGNATION BY AUDITOR
9.		DIR-9	REPORT BY COMPANY TO ROC FOR DIN OF EXISTING DIRECTOR
10.		NDH-1	RETURN OF STATUTORY COMPLIANCES BY NIDHI COMPANY
11.		NDH-3	HALF YEARLY RETURN BY NIDHI COMPANY
12.	CG-1	DIR-10	FORM OF APPLICATION FOR REMOVAL OF DISQUALIFICATION
13.	RD-1	CHG-8	APPLICATION TO CG FOR CONDONATION OF DELAY
14.		MGT-3	NOTICE OF SITUATION OR CHANGE OF SITUATION OF REGISTERED OFFICE AND VERIFICATION
15.		ADT-2	APPLICATION FOR REMOVAL OF AUDITORS
16.		DIR-5	APPLICATION FOR SURRENDER OF DIN
17.		NDH-2	APPLICATION FOR EXTENSION OF TIME TO RD





## 09 Online payment of stamp duty and court fee stamp for issue of certified copies.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 05 /2014, dated: 28.03.2014]

The Ministry has reviewed the process of issue of certified copies of the documents filed with the Registrar of companies. As per the existing process, in case a User applies for the certified true copy of any document, he needs to pay MCA fee online at MCA portal. The fee is computed based on the number of documents required.

- Once the selection of documents is done and the requisite MCA fee is paid, the Stakeholder is required to approach the jurisdictional ROC along with the application and the acknowledgement of the fee paid. The application needs to be filed along with Stamp Papers of requisite value and the Court Fee stamp attached to the same. The amount of Stamp Duty as well as Court Fee varies from State to State. On receipt of the application, the respective ROC affix the certified documents on the Stamp paper and returns the same to the Stakeholder (Applicant) duly certified.
- With a view to identify and improve the component causing delay in issue of certified copy the Ministry has enabled payment of Stamp Duty as well as Court Fee online through MCA portal. This would enable the respective ROCs to send the certified documents without awaiting for physical stamp papers and any formal application (with Court Fee Stamp) in this regard.
- Amount of Court Fee shall be added to the MCA fee calculated by the system for getting Certified Copies. This would be based on the State in which the registered office of the company is situated. Court Fee would be added per SRN irrespective of number of documents applied for.
- Stamp duty for obtaining certified true copy would also be paid electronically through the system as per the existing process. The Stamp Duty would be calculated based on document, number of copies requested and the State wherein the registered office of the company is situated. Separate SRN will be generated for payment of Stamp Duty.
- After the application is completely processed; an acknowledgement for stamp duty payment shall be generated separately. The same to be appended to the certified copy of the document. The certified copy of the documents requested shall be sent to the stakeholder by the jurisdictional Registrar of Companies within 15 days by post. The Copies would be sent at the address of applicant mentioned in the challan.
- The Registrar of company shall ensure that the corresponding amount of court fee stamp is pasted against the record of

despatch of certified copy or the print out of the challan for payment of MCA fee. The court fee stamp paid by ROC will be booked as Office expenses.

- The Circular shall be effective from 31.03.2014.

Shyam Sunder  
Deputy Director

## 10 The Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014

[ Issued by the SEBI wide Notification No. LAD-NRO/GN/2014-15/03/1089 & Published in The Gazette of India Extraordinary Part –III – Section 4, dated 23.05.2014]

In exercise of the powers conferred by section 30 read with clause (k) of sub-section (2) of section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 25 of the Depositories Act, 1996 (22 of 1996), the Board hereby makes the following Regulations to further amend certain regulations to the extent stated herein, namely:-

### Short title and commencement.

- (1) These regulations may be called the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.

### Amendment to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

- In the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, in the Second Schedule, Part A shall be substituted with the following, namely,-

#### "PART A

#### AMOUNT TO BE PAID AS FEES

Application fee	1,00,000
Registration fee for Category I Alternative Investment Funds other than Angel Funds	5,00,000
Registration fee for Category II Alternative Investment Funds	10,00,000
Registration fee for Category III Alternative Investment Funds	15,00,000
Scheme Fee for Alternative Investment Funds other than Angel Funds	1,00,000
Re-registration Fee	1,00,000
Registration fees for Angel Funds	2,00,000"



**Amendment to the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994.**

3. In the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994, in Schedule II,-
  - (i) in paragraph 1, for the words "thirteen lakh thirty three thousand and three hundred" the words "twenty lakh" shall be substituted;
  - (ii) in paragraph 2, for the word "five" the word "nine" shall be substituted;
  - (iii) in paragraph 3A, for the words "twenty five" the word "fifty" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999.**

4. In the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, in the Second Schedule, in Part A, in the table, in the fourth row, in the third column, for the figure "10,00,000" the figure "15,00,000" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996.**

5. In the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996, in the Second Schedule, in Part A,
  - (i) in the first head, for the figure "1,00,000" the figure "5,00,000" shall be substituted;
  - (ii) in the second head, for the figure "15,00,000" the figure "50,00,000" shall be substituted;
  - (iii) in the third head, for the figure and symbol "0.00025%" the figure and symbol "0.0005%" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.**

6. In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Schedule II,-
  - (i) in paragraph 1, for the words "thirteen lakh thirty three thousand and three hundred" the words "twenty lakh" shall be substituted;
  - (ii) in paragraph 2, for the word "five" the word "nine" shall be substituted;
  - (iii) in paragraph 3A, for the words "twenty five" the word "fifty" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996.**

7. In the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996,-
  - (i) after regulation 8, the following regulation shall be inserted, namely,-
 

**"Payment of annual charge.**

8A. A depository shall pay to the Board, a percentage of

the annual custody charges collected by it from the issuers as specified in Part A of Second Schedule in the manner specified in Part B thereof.;"

- (ii) in the Second Schedule,-
  - a. the reference to regulations shall be substituted with the brackets, words, figures and signs, "(See regulations 3, 7, 8, 8A, 16, 20, 20A)";
  - b. in Part A,-
    - I. in the heading, after the words "REGISTRATION FEES" and before the words "AND ANNUAL FEES", the words and symbol ", ANNUAL CHARGE" shall be inserted;
    - II. in the first head, for the figure "50,000" the figure "5,00,000" shall be substituted;
    - III. in the second head, for the figure "5,000" the figure "15,000" shall be substituted;
    - IV. in the third head, for the figure "25,00,000" the figure "1,00,00,000" shall be substituted;
    - V. in the fourth head, for the figure "1,00,000" the figure "2,00,000" shall be substituted;
    - VI. in the fifth head, for the figure "10,00,000" the figure "50,00,000" shall be substituted;
    - VII. after the sixth head, the following head shall be inserted, namely,-

"Annual charges payable by depository(Rs.) 2% of annual custody charges collected by depository from issuers"

- c. in Part B, in the heading, after the word "REGISTRATION" and before the words "AND ANNUAL FEES", the words and symbol ", ANNUAL CHARGE" shall be inserted.

**Amendment to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.**

8. In the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008,-
  - (i) in regulation 6, in sub-regulation (6), after the words and symbol "forwarded to the Board for its records," and before the words "simultaneously with", the words and figure "along with regulatory fees as specified in Schedule V" shall be inserted;
  - (ii) in regulation 20,-
    - (a) in sub-regulation (1), after clause (d), the following clause shall be inserted, namely,-
 

"(e) Where the application is made to more than one recognized stock exchange, the issuer shall choose one of them as the designated stock exchange.;"
    - (b) after sub-regulation (2), the following sub-regulation shall be inserted, namely,-
 

"(3) The designated stock exchange shall collect a regulatory fee as specified in Schedule V from the issuer at the time of listing of debt securities issued on private placement basis.;"





(iii) after Schedule IV, the following Schedule shall be inserted, namely:-

### "SCHEDULE V

[See Regulations 6(6) and 20]

#### REGULATORY FEES

- (1) There shall be charged, in respect of every draft offer document filed by a lead merchant banker with the Board in terms of these regulations, a non-refundable fee of 0.00025% of issue size, subject to the minimum of twenty five thousand rupees and maximum of fifty lakh rupees.
- (2) The fees as specified in clause (1) above shall be paid by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at the place where the draft offer document is filed with the Board.
- (3) There shall be charged, in respect of every private placement of debt securities which are listed in terms of these regulations, a non-refundable fee of five thousand rupees which shall be paid to the designated stock exchange at the time of listing of the debt securities.
- (4) Every designated stock exchange shall remit the regulatory fee collected during the month under clause (3) above to the Board before tenth day of the subsequent month by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at Mumbai along with the details of the issuances listed during the month."

#### **Amendment to the Securities and Exchange Board of India (Issue and Listing of Non-convertible Redeemable Preference Shares) Regulations, 2013.**

9. In the Securities and Exchange Board of India (Issue and Listing of Non-convertible Redeemable Preference Shares) Regulations, 2013,-
  - (i) in regulation 6, in sub-regulation (6), after the words and symbol "forwarded to the Board for its records," and before the words "simultaneously with", the words and figures "along with fees as specified in Schedule III" shall be inserted;
  - (ii) in regulation 17,-
    - (a) in sub-regulation (1), after clause (f), the following clause shall be inserted, namely,- "(g) Where the application is made to more than one recognized stock exchange, the issuer shall choose one of them as the designated stock exchange.";
    - (b) after sub-regulation (2), the following sub-regulation shall be inserted, namely,- "(3) The designated stock exchange shall collect a regulatory fee as specified in Schedule III from the issuer at the time of listing of non-convertible redeemable preference shares issued on private placement basis.";
- (iii) after Schedule II, the following Schedule shall be inserted,

namely:-

### " SCHEDULE III

[See Regulations 6(6) and 17]

#### REGULATORY FEES

- (1) There shall be charged, in respect of every draft offer document filed by a lead merchant banker with the Board in terms of these regulations, a non-refundable fee of 0.0025% of issue size.
- (2) The fees as specified in clause (1) above shall be paid by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at the place where the draft offer document is filed with the Board.
- (3) There shall be charged, in respect of every private placement of non-convertible redeemable preference shares which are listed in terms of these regulations, a non refundable fee of 0.00025% of issue size which shall be paid to the designated stock exchange at the time of listing of the non-convertible redeemable preference shares.
- (4) Every designated stock exchange shall remit the regulatory fee collected during the month under clause (3) above to the Board before tenth day of the subsequent month by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at Mumbai along with the details of the issuances listed during the month."

#### **Amendment to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009**

10. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in Schedule IV, in Part A, in paragraph (1),-
  - (i) sub-paragraph (a) shall be substituted with the following, namely,-

#### " In case of a public issue:

Size of the issue, including intended retention of oversubscription	Amount / Rate of fees
Less than or equal to ten crore rupees.	A flat charge of one lakh rupees (1,00,000/-).
More than ten crore rupees, but less than or equal to five thousand crore rupees.	0.1 per cent of the issue size.
More than five thousand crore rupees.	Five crore rupees ( 5,00,00,000/-) plus 0.025 percent of the portion of the issue size in excess of five thousand crore rupees (5000,00,00,000/-).

- "
- (ii) sub-paragraph (b) shall be substituted with the following,





namely,-

**" In case of a rights issue:**

Size of the issue, including intended retention of oversubscription	Amount / Rate of fees
Less than or equal to ten crore	A flat charge of fifty thousand rupees. ( 50,000/-).
More than ten crore rupees	0.05 per cent of the issue size.

**" Amendment to the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.**

11. In the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, the Second Schedule shall be substituted with the following,-

**"SECOND SCHEDULE**

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013  
[See Regulation 9]

**FEES**

1. Every applicant shall pay non-refundable application fees along with the application for grant or renewal of certificate of registration as under:
  - a. For individuals and firms ₹5,000
  - b. For Body Corporate including Limited Liability Partnerships ₹25,000
2. Every applicant shall pay registration/renewal fee at the time of grant or renewal of certificate by the Board as under:
  - a. for individuals and firms ₹10,000
  - b. for Body Corporate including Limited Liability Partnerships ₹5,00,000"

**Amendment to the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.**

12. In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in Schedule II,-
- (i) in paragraph 1, for the words "thirteen lakhs thirty three thousand and three hundred" the words "twenty lakh" shall be substituted;
  - (ii) in paragraph 2, for the word "five" the word "nine" shall be substituted;
  - (iii) in paragraph 3A, for the words "twenty five" the word "fifty" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.**

13. In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, in Second Schedule, in paragraph 1,-
- (i) in sub-paragraph A, for the word "one", the word "five" shall be substituted;

- (ii) sub-paragraph C, shall be substituted with the following, namely,- "Annual fees payable by mutual funds

Average Assets under Management (AAUM) as on 31st March	Annual Fee
AAUM up to ₹10,000 crore	0.0015 per cent. of the AAUM
Part of AAUM above ₹10,000 crore	0.0010 per cent. of the portion of AAUM in excess of ten thousand crore rupees

subject to a minimum of ₹2,50,000 and a Maximum of ₹1,00,00,000";

- (iii) in sub-paragraph D,-
  - a. for the figures "0.0020", the figures "0.005" shall be substituted;
  - b. for the words "one lakh", the words "two lakh" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008.**

14. In the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008, in Schedule II,-
- (i) in the second head, for the words and figures "Rs.50,000/- (fifty thousand rupees)", the words, figures and symbols "Rs.1,00,000/- (one lakh rupees)" shall be substituted;
  - (ii) in the third head, for the words and figures "Rs.10,000/- (ten thousand rupees)", the words figures and symbols "Rs.25,000/- (twenty five thousand rupees)" shall be substituted;
  - (iii) in the fourth head, for the words "ten thousand rupees and a maximum of twenty five thousand rupees", the words "one lakh rupees and a maximum of five lakh rupees" shall be substituted.

**Amendment to the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.**

15. In the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, in Schedule II,-
- (i) in paragraph 1,-
    - (a) in clause (a), for the word "four" the word "six" shall be substituted;
    - (b) in clause (b), for the words "one lakh thirty three thousand and three hundred" the words "two lakh" shall be substituted.
  - (ii) in paragraph 1AA,-
    - (a) in clause (a), for the words "one lakh and fifty" the words "two lakh and seventy" shall be substituted;
    - (b) in clause (b), for the word "fifty" the word "ninety" shall be substituted;
  - (iii) in paragraph 2A, for the word "ten" the word "twenty" shall





be substituted.

## Amendment to the Securities and Exchange Board of India (Regulatory Fees on Stock Exchanges) Regulations, 2006.

16. In the Securities and Exchange Board of India (Regulatory Fees on Stock Exchanges) Regulations, 2006, in regulation 4, in sub-regulation (1), in the table, in Sl. No. 5, for the figures "2,00,00,000", the words and figures "Rs. 1,00,00,000 plus 0.00006% of the annual turnover in excess of Rs. 10,00,000 crores, subject to a maximum of Rs. 20,00,00,000." shall be substituted.

## Amendment to the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

17. In the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992,-

- (i) in regulation 3, after sub-regulation (3), the following sub-regulation shall be inserted, namely:-  
 "(4) An application for registration made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part B of Schedule V."  
 (ii) in regulation 10A, after sub-regulation (3), the following sub-regulation shall be inserted, namely:-  
 "(4) An application for registration made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part B of Schedule V."  
 (iii) in Schedule III, for paragraph II, the following paragraph shall be substituted, namely:-

### "II. Fees to be paid by sub-brokers.

Every sub-broker shall pay fees in the manner set out below:

- (a) Where a sub-broker is granted certificate of registration by the Board before April 1, 2014, he shall pay a sum of ten thousand rupees for every block of five financial years commencing from expiry of the block of five years for which the fee has been paid;
- (b) Where a sub-broker is granted certificate of registration by the Board on or after April 1, 2014:—
- (i) he shall pay a sum of twenty thousand rupees for the block of five financial years commencing from the financial year in which registration has been granted; and
- (ii) after the expiry of the said block of five financial years, he shall pay a sum of ten thousand rupees for every subsequent block of five financial years."
- (iv) in Schedule V,-
- (a) after the heading 'Payment of Fees by Stock Brokers/ Clearing Members/ Self-Clearing members', for the word, figures and symbols "[Regulation 10(1)]" the word, figures, letters and symbols "[See Regulations 3, 8, 10A and 10C]" shall be substituted;
- (b) in Part B,

- (i) in clause 3, for the table, the following table shall be substituted, namely,-

Segment	Rate/ Amount (in ₹ )			Remarks
	Stock Broker	Clearing member	Self-clearing member	
Cash	0.0002 per cent of the price at which the securities are purchased or sold ( ₹20 per crore)	*	*	All sale and purchase transactions in securities other than debt securities.
Equity derivatives	0.0002 per cent of his turnover ( ₹20 per crore)	50,000/-	50,000/-	Explanation.—(A) The expression 'turnover' shall include the value of the
Currency derivatives	0.0002 per cent of his turnover ( ₹20 per crore)	50,000/-	50,000/-	trades executed by the stock broker on the concerned segment of the recognized stock exchange and of the trades settled on the expiration of the contracts.
Interest rate derivatives	0.00005 per cent of his turnover ( 5 per crore)	50,000/-	50,000/-	(B) In case of options contracts, 'turnover' shall be computed on the basis of premium traded for the option contracts and in case where the option is exercised or assigned, it shall be additionally computed on the basis of notional value of option contracts exercised or assigned.
Debt	0.00002 per cent of his turnover ( ₹2 per crore) Explanation.— For the purpose of this clause, the expression 'turnover' shall include the aggregate value of the trades executed, including both sale and purchase transactions, by the stock broker including the proprietary trading member on the debt segment of the recognized stock exchange.	50,000/-	50,000/-	The fee shall not be applicable for clearing member or self-clearing member in case the said clearing member or self-clearing Member is already a clearing member or self-clearing member in any other segment and is paying fee, as specified in this Part, for such segment.

- (ii) after clause 4, the following clauses shall be inserted, namely:-

4A. The non-refundable fee payable along with an application



for registration under sub-regulation (4) of regulation 3 or sub-regulation (4) of regulation 10A shall be a sum of fifty thousand rupees.

4B. The fee specified in clause 4A shall be payable by the applicant by means of a demand draft in favour of "Securities and Exchange Board of India" payable at Mumbai."

### **Amendment to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.**

18. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,-
- in regulation 10, in sub-regulation (7), for the words "twenty five thousand", the words "one lakh fifty thousand" shall be substituted;
  - in regulation 11, in sub-regulation (4), for the words "fifty thousand", the words "three lakh" shall be substituted;
  - in regulation 16, in sub-regulation (1), the table shall be substituted with the following, namely,-

Sl. No.	Consideration payable under the Open Offer	Fee (₹)
a.	Upto ten crore rupees.	Five lakh rupees ( ₹5,00,000)
b.	More than ten crore rupees, but less than or equal to one thousand crore rupees.	0. 5 per cent of the offer size
c.	More than one thousand crore rupees.	Five crore rupees (₹5,00,00,000) plus 0.125 per cent of the portion of the offer size in excess of one thousand crore rupees (1000,00,00,000).

U.K. Sinha  
Chairman

## **11 Establishment of Local Office of the Board at Dehradun**

[Issued by the SEBI wide Notification No. LAD-NRO/GN/2014-15/02/1087 and Published in The Gazette of India Extraordinary Part-III – Section 4, dated 23.05.2014]

In exercise of the powers conferred by sub-section (4) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board has established its Local Office at Dehradun under the administrative control of its Northern Regional Office at New Delhi. The Local Office so established shall look after the regulatory aspects of investor protection, facilitating redressal of investor grievances, financial and investor education and such other functions as may be assigned from time to time, and its role and responsibility shall extend to the areas falling under the territorial jurisdiction of the State of Uttarakhand.

## **12 Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2014**

[Issued by the SEBI wide Notification No. LAD-NRO/GN/2014-15/01 and Published in The Gazette of India Extraordinary Part-III – Section 4, dated 06.05.2014]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, namely:-

- These Regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2014.
- They shall come into force on the date of their publication in the Official Gazette.
- In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, -
  - in regulation 21, in sub-regulation (1),
    - in clause (f), the words "ten crores" shall be substituted with the words "fifty crore";
    - in the first proviso to clause (f),
      - the numbers "1993" shall be substituted with the numbers "1996";
      - the words "twelve months" shall be substituted with the words "three years";
      - the words "ten crores" shall be substituted with the words "fifty crore";
    - the second proviso shall be omitted;
    - in the third proviso to clause (f), the words "ten crores" shall be substituted with the words "fifty crore";
    - in clause (f), after the third proviso, the following proviso shall be inserted, namely,-  
"Provided further that an asset management company of a mutual fund eligible to launch only infrastructure debt fund schemes, shall have a network of not less than rupees ten crore."
  - in regulation 28, after sub-regulation (3), the following sub-regulation shall be inserted, namely-
    - The sponsor or asset management company shall invest not less than one percent of the amount which would be raised in the new fund offer or fifty lakh rupees, whichever is less, in the growth option of the scheme and such investment shall not be redeemed unless the scheme is wound up:  
**Provided** that this sub-regulation shall not apply to close ended schemes.
- The sponsor or asset management company of schemes existing





as on date of notification of the SEBI (Mutual Funds)(Amendment) Regulations, 2014 shall invest not less than one percent of the assets under management of the scheme as on date of notification of these regulations or fifty lakh rupees, whichever is less, in the growth option of the scheme and such investment shall not be redeemed unless the scheme is wound up:-

Provided that the amount calculated as per this sub-regulation shall be invested within one year from the date of notification of these regulations:

**Provided further** this sub-regulation shall not apply to close ended schemes."

U.K. Sinha  
Chairman

## 13 Circular on Mutual Funds

[Issued by the SEBI wide No. CIR/IMD/DF/10/2014 , dated 22.05.2014]

### A. Cash investments in Mutual Funds

1. SEBI, vide circular no. CIR/IMD/DF/21/2012 dated September 13, 2012, had permitted cash transaction in mutual funds to the extent of ₹20,000/- per investor, per mutual fund, per financial year.
2. In partial modification to para I (1) of the aforesaid circular, it has been decided to increase the limit of cash transactions in mutual funds from the existing limit of ₹20,000/- per investor, per mutual fund, per financial year to ₹50,000/- per investor, per mutual fund, per financial year, subject to (i) compliance with Prevention of Money Laundering Act, 2002 and Rules framed there under, the SEBI Circular(s) on Anti Money Laundering (AML) and other applicable AML rules, regulations and guidelines and (ii) sufficient systems and procedures in place.

### B. Investment/Trading in Securities by Employees of Asset Management Companies and Trustees of Mutual Funds

1. Please refer to SEBI circular dated May 08, 2001 and circular dated July 11, 2003, on guidelines for Investment/ Trading in Securities by Employees of Asset Management Companies (AMCs) and Trustees of Mutual Funds.
2. Considering that since the issuance of aforesaid guidelines, liquid schemes have emerged as a distinct category of Mutual Fund scheme having features similar to that offered by Money Market Mutual Fund (MMMF) schemes, thus, in partial modification to aforesaid circulars, it has been decided that -

- a. In point 1.1 (iii) of the guidelines for Investment/ Trading in Securities by Employees of Asset Management Companies (AMCs) and Trustees of Mutual Funds, along-with MMMF schemes, Liquid schemes shall be added in list of securities to which the aforesaid guidelines do not apply.
- b. In point 3 of the aforementioned guidelines, along-with MMMF schemes, transaction in Liquid schemes shall be exempted from being reported by employees to compliance officer within 7 calendar days from the date of transaction.
- c. In Point 3.2 of the aforesaid guidelines, which mentions various situations wherein employees of AMC & Trustees of Mutual Funds shall not purchase or sell units of any schemes, term 'liquid scheme' shall be included along-side MMMF schemes.

This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Rajesh Gujjar  
Deputy General Manager

## 14 Companies exclusively listed on De-recognized/Non-operational Stock Exchanges

[Issued by the SEBI wide No. CIR/MRD/DSA/18/2014 , dated 22.05.2014]

1. SEBI vide circular dated May 30, 2012 (Exit Circular) issued guidelines in respect of exit options to stock exchanges. In terms of these guidelines, if the stock exchange is not able to achieve the prescribed turnover of Rs 1000 Crore on continuous basis or does not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of SEBI circular dated May 30, 2012, SEBI shall proceed with compulsory de-recognition and exit of the stock exchanges, in terms of the conditions as may be specified by SEBI.

### Applicability

2. The provisions of this Circular are applicable for all those stock exchanges which have not achieved the prescribed turnover of Rs. 1000 Crore on continuous basis on or before May 30, 2014.

**Directions to Stock Exchanges to deal with companies exclusively listed on non-operational stock exchanges**



3. In line with the above provisions, the following shall be applicable:-

- i. The exclusively listed companies of such non-compliant stock exchanges may opt for listing in nation-wide exchanges after complying with listing norms of main board or the diluted listing norms, if any, on or before the exit of the exchange, either on voluntary or compulsory basis. Nation-wide stock exchanges shall facilitate the listing of these companies on priority basis in a time bound manner. For this purpose, these nation-wide stock exchanges shall immediately create a separate dedicated cell to expedite processing the listing requests from such companies.
- ii. Such exclusively listed companies may also opt for voluntary delisting before the de-recognition of the stock exchanges by following the existing delisting norms of SEBI in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform.
- iii. With a view to facilitate voluntary delisting, if they so desire, it is clarified that for such companies as referred to at Para 2(ii) above, the requirements of 'Minimum Public Shareholding' prescribed in Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, shall not be applicable.
- iv. In case of companies exclusively listed in the non-operational stock exchanges that are not traceable or where the data available is more than three years old, the process of inclusion in list of companies identified as 'Vanishing' (maintained by Ministry of Corporate Affairs) may be initiated by the respective stock exchanges.
- v. As per the 'Exit Circular' the exclusively listed companies, which fail to obtain listing on any other stock exchange, which do not voluntary delist or which are not considered as 'Vanishing companies', will cease to be listed company and will be moved to the dissemination board by the existing stock exchange. It shall be the responsibility of the exchanges which are being derecognized either on voluntary or compulsory basis, to place their exclusively listed companies on the dissemination board. These exchanges shall ensure that the database of the exclusively listed company is transferred to SEBI and to those stock exchanges on whose dissemination board, the shares of these companies are available.

4. This circular is issued in exercise of powers conferred under Section 11 (1) and 11(2) (j) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development

of, and to regulate the securities market.

5. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

Sunil Kadam  
General Manager

## 15 Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement

[Issued by the SEBI wide No. CIR/MRD/DP/ 16 /2014, dated 16.05.2014]

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
  - a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
  - b) There are no other grounds/reasons for continuation of the trading in TFTS.
3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Maninder Cheema  
Deputy General Manager

### Annexure A

1.	Milk Partners India Limited (Formerly Ravileela Dairy Products Ltd, Ravileela Dairy Products Pvt Ltd)	INE301N01017
2.	York Exports Limited	INE057Q01018





3.	Shree Karthik Papers Limited	INE538D01015
4.	Vitan Agro Industries Limited	INE186Q01015
5.	Meenakshi Enterprises Limited	INE242Q01016
6.	Asia Capital Limited	INE131Q01011
7.	Akashdeep Metal Industries Limited	INE149Q01013
8.	Mega Nirman & Industries Limited (Formerly Daphne Investments And Properties Limited)	INE216Q01010
9.	Mercantile Ventures Limited (Formerly MCC Finance Limited, Excel Finance Limited)	INE689O01013
10.	SAB Industries Limited (Formerly Steel Strips and Alloys Ltd, Asia Steel and Alloys Ltd.)	INE137M01017
11.	Potential Investments and Finance Limited	INE919P01011
12.	Tarini Enterprises Limited	INE999P01013
13.	Capital Trade Links Limited	INE172D01021
14.	Nishtha Finance And Investments (India) Limited	INE217Q01018
15.	Econo Trade (India) Limited	INE937K01014
16.	Associated Cereals Limited	INE840I01014

## 16 Risk management framework for Foreign Portfolio Investors (FPI) under the SEBI (Foreign Portfolio Investors) Regulations, 2014

[Issued by the SEBI wide No. CIR/MRD/DP/15/2014, dated 15.05.2014]

- The SEBI (Foreign Portfolio Investors) Regulations, 2014 were notified on January 07, 2014 and shall commence with effect from June 01, 2014.
- To effect a smooth transition to the FPI regime, stock exchanges and clearing corporations are directed to take following measures with regard to trading and risk management of FPI trades:
  - Margining of trades undertaken by FPIs in the Cash Market:
    - The trades of FPIs in Category I, II & III shall be margined on a T+1 basis in accordance with SEBI circular MRD/DoP/SE/Cir-18/2008 dated May 22, 2008.
    - However, the trades of FPIs who are Corporate bodies, Individuals or Family offices shall be margined on an upfront basis as per the extant margining

- framework for the non-institutional trades.
- Position limit of an FPI in the Equity Derivatives Segment and for Interest Rate Futures: Category I & II FPIs shall have position limits as presently available to FIIs. Category III FPIs shall have position limits as applicable to the clients.
- Facility for allocation of trades: In modification to the SEBI circular MRD/DoP/SE/Cir-35/2004 dated October 26, 2004, the following framework shall be implemented to facilitate allocation of trades of a FPI to other FPIs:
  - Entities who trade on behalf of FPIs shall inform the stock brokers of the details of FPIs on whose behalf the trades would be undertaken.
  - The stock broker, in turn, shall inform the stock exchanges the details of such related FPIs.
  - Stock exchanges shall put-in place suitable mechanism to ensure that allocation of trade by a FPI is permitted only within such related FPIs.
- Custodians / DDPs shall provide necessary details related to FPIs, including categorisation of FPIs, to the stock exchanges for the purpose of implementing the aforementioned provisions.
- Stock Exchanges and Clearing Corporations may specify additional requirements as they may deem fit with regard to transition from FII to FPI regime.
- Stock Exchanges and Clearing Corporations are directed to:
  - take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations.
  - bring the provisions of this circular to the notice of the stock brokers / clearing members and also disseminate the same on its website;
  - communicate to SEBI the status of implementation of the provisions of this circular.
- This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema  
Deputy General Manager



## Members Admitted

S. No.	Name	Membership No.	Region
<b>Fellows*</b>			
1	SH PRAVEEN KUMAR TIWARY	FCS - 7551	NIRC
2	SH. KAPIL DHIRAJLAL JOSHI	FCS - 7552	WIRC
3	MR. MANOJ KUMAR BHANDARI	FCS - 7553	WIRC
4	MS. KANIKA BHUTANI	FCS - 7554	NIRC
5	SH OM PRAKASH PANDEY	FCS - 7555	WIRC
6	MS. NIKITA KUMAR	FCS - 7556	NIRC
7	MRS. JAYA SINGHANIA	FCS - 7557	WIRC
8	MR. NIKHIL DINESHBHAI SONI	FCS - 7558	WIRC
9	SH. DEEPAK NATHANI	FCS - 7559	NIRC
10	MRS. SIMPLE JAIN	FCS - 7560	NIRC
11	MR. SUMIT KUMAR GURURANI	FCS - 7561	NIRC
12	SH. KAILASH KANAYALAL SHARMA	FCS - 7562	WIRC
13	SH. ANIL SINGH	FCS - 7563	NIRC
14	SH. A R RAMASUBRAMANIA RAJA	FCS - 7564	SIRC
15	SH. RAJEEV SAXENA	FCS - 7565	NIRC
16	SH. SATISH AGGARWAL	FCS - 7566	NIRC
17	SH. R ASHOK	FCS - 7567	SIRC
18	SH. VIJAY KUMAR BHASIN	FCS - 7568	NIRC
19	MR. JIGARKUMAR NAVINCHANDRA GANDHI	FCS - 7569	WIRC
20	SH. K RAGHUNANDANAN	FCS - 7570	NIRC
21	DR. BAIJU RAMACHANDRAN	FCS - 7571	SIRC

### ASSOCIATES\*\*

1	MR. AJAY KUMAR SONI	ACS - 35531	NIRC
2	MS. MEGHA TANDON	ACS - 35532	NIRC
3	MS. MANISHA NIGAM	ACS - 35533	NIRC
4	MR. BITTHAL GANDHI	ACS - 35534	NIRC
5	MS. KOMAL	ACS - 35535	NIRC

6	MS. HIMANI KHANNA	ACS - 35536	NIRC
7	MS. REEMA CHOPRA	ACS - 35537	NIRC
8	MS. ANCHAL JAISWAL	ACS - 35538	NIRC
9	MS. RUCHI BANSAL	ACS - 35539	NIRC
10	MS. AKANSHA SONI	ACS - 35540	NIRC
11	MR. S LAKSHMI NARASIMHAN	ACS - 35541	SIRC
12	MS. SHAILA RAMESH GHOLAP	ACS - 35542	WIRC
13	MS. VAIBHAVI GAURANG SHAH	ACS - 35543	WIRC
14	MS. DEEPALI MAHESH BHATT	ACS - 35544	WIRC
15	MR. JALPESH RAMESHBHAI DARJI	ACS - 35545	WIRC
16	MS. SAUMIKA SANJAY JAIN	ACS - 35546	WIRC
17	MS. RITU KAMAL SAJNANI	ACS - 35547	WIRC
18	MS. RUTU HITESH BHAI SHAH	ACS - 35548	WIRC
19	MR. THIAGARAJAN N.	ACS - 35549	SIRC
20	MS. BHUMIKA HEMANT DESAI	ACS - 35550	WIRC
21	MR. ANKIT JAIN	ACS - 35551	EIRC
22	MS. NIDHI RAI	ACS - 35552	EIRC
23	MS. FARHA KHATOON	ACS - 35553	EIRC
24	MR. VINAY LAKHANI	ACS - 35554	EIRC
25	MS. KAVITA JALAN	ACS - 35555	EIRC
26	MS. ARCHANA THAKUR	ACS - 35556	EIRC
27	MS. PUNAM SUGANDH	ACS - 35557	EIRC
28	MR. SACHIN	ACS - 35558	NIRC
29	MS. UPASNA THAKRAL	ACS - 35559	NIRC
30	MR. RAJAN KHURANA	ACS - 35560	NIRC
31	MS. ANJANA GULATI	ACS - 35561	NIRC
32	MS. SHRUTI MURKYA	ACS - 35562	NIRC
33	MR. PRAKUL AGARWAL	ACS - 35563	NIRC
34	MS. PALLAVI JAIN	ACS - 35564	NIRC
35	MR. DEEPAK SHARMA	ACS - 35565	NIRC
36	MS. NEELU DASLANA	ACS - 35566	NIRC
37	MS. AKANSHA GUPTA	ACS - 35567	SIRC
38	MS. MANISHA RAJPAL	ACS - 35568	NIRC
39	MR. GANESH PRATAP PAL	ACS - 35569	NIRC
40	MS. ANKITA BHARGAVA	ACS - 35570	NIRC
41	MS. KARISHMA SURI	ACS - 35571	NIRC
42	MS. SHANTANU KHANDELWAL	ACS - 35572	NIRC
43	MS. SHALZA KHEMKA	ACS - 35573	NIRC
44	MS. NEETI GUPTA	ACS - 35574	NIRC
45	MS. SAKSHI SETHI	ACS - 35575	NIRC
46	MS. NEHA AGARWAL	ACS - 35576	NIRC
47	MS. KOMAL GANDHI	ACS - 35577	NIRC
48	MS. SOMYA SINGHAL	ACS - 35578	NIRC
49	MR. NISHANTH MOHAN	ACS - 35579	SIRC
50	MS. HYMAMALINI SRIDHARAN	ACS - 35580	SIRC

\*Admitted during the period from 21.04.2014 to 12.05.2014

\*\*Admitted during the period from 21.04.2014 to 15.05.2014





# News From the Institute

51	MR. PRASANNA H M	ACS - 35581	SIRC	91	MS. APOORVA SINGH	ACS - 35621	NIRC
52	MR. PRAVEEN HEGDE	ACS - 35582	SIRC	92	MR. PRANAV KHANNA	ACS - 35622	NIRC
53	MR. G PRANEETH ABHISHEK	ACS - 35583	SIRC	93	MS. NAVNEET KAUR MAKKAR	ACS - 35623	NIRC
54	MR. PRASANNA BAIRY G	ACS - 35584	SIRC	94	MR. VARUN KHIRWAR	ACS - 35624	NIRC
55	MS. KHUSHAL JANAK BHATIYA	ACS - 35585	WIRC	95	MS. ANU SRIVASTAV	ACS - 35625	NIRC
56	MR. RANGANATHAN S IYER	ACS - 35586	WIRC	96	MS. DEEPIKA VAID	ACS - 35626	NIRC
57	MS. SARITA KUMAR LEELARAMANI	ACS - 35587	WIRC	97	MS. KIRTIKA MATHUR	ACS - 35627	NIRC
58	MS. PRAJAKTA PRAKASH THAKURDESAI	ACS - 35588	WIRC	98	MR. ANUJ AHLUWALIA	ACS - 35628	NIRC
59	MS. BHAGYASHREE KANEKAR	ACS - 35589	WIRC	99	MS. POOJA MANGHNANI	ACS - 35629	NIRC
60	MS. AMRUTA VITTHAL KULKARNI	ACS - 35590	WIRC	100	MS. ANURADHA SAXENA	ACS - 35630	NIRC
61	MS. KALYANI DILIP SHIRODE	ACS - 35591	WIRC	101	MS. PALAK RAWAT	ACS - 35631	NIRC
62	MS. TANISHKA GOPAL AGRAWAL	ACS - 35592	WIRC	102	MR. LALIT GYANWANI	ACS - 35632	NIRC
63	MS. REHA ARVIND RATHOD	ACS - 35593	WIRC	103	MS. RUCHITA LATH	ACS - 35633	NIRC
64	MS. MONALI RAJESH SHAH	ACS - 35594	WIRC	104	MS. HEMADRI BAI	ACS - 35634	SIRC
65	MS. POOJA DILIPKUMAR THAKAR	ACS - 35595	WIRC	105	MS. SWAROOPA MERUVA	ACS - 35635	SIRC
66	MR. AMIT JAIN	ACS - 35596	WIRC	106	MR. SUSHIL LADDA	ACS - 35636	SIRC
67	MS. NIKITA KOTHARI	ACS - 35597	WIRC	107	MR. SREEJITH S WARRIER	ACS - 35637	SIRC
68	MR. RAHUL AGARWAL	ACS - 35598	WIRC	108	MR. NAVEEN S D	ACS - 35638	SIRC
69	MR. HEMANT AMRUTLAL OSWAL	ACS - 35599	WIRC	109	MR. NAGARAJ K V	ACS - 35639	SIRC
70	MR. AASH PRAVIN DHAROD	ACS - 35600	WIRC	110	MR. MAHENDER SHARMA	ACS - 35640	WIRC
71	MS. PREETI CHANDRASHEKAR SHUKLA	ACS - 35601	WIRC	111	MR. VIKAS KALURAM SUTHAR	ACS - 35641	WIRC
72	MR. SAJITH K B	ACS - 35602	SIRC	112	MS. NAMITA SUNIL VAIDYA	ACS - 35642	WIRC
73	MR. KAUSHAL KUMAR SHARMA	ACS - 35603	WIRC	113	MS. APEKSHA MRUGESH MODI	ACS - 35643	WIRC
74	MR. VIVEK AUDICHYA	ACS - 35604	NIRC	114	MS. TRUPTI HEMANT SHEWALE	ACS - 35644	WIRC
75	PANKAJ AGARWAL	ACS - 35605	EIRC	115	MR. SACHIN HIRALAL GUPTA	ACS - 35645	WIRC
76	MR. PANKAJ SHARMA	ACS - 35606	NIRC	116	MS. MADHURA MADHAV DABKE	ACS - 35646	WIRC
77	MS. PADMAJA DILIP KULKARNI	ACS - 35607	WIRC	117	MR. DHAVAL PRADIPBHAI MEHTA	ACS - 35647	WIRC
78	MS. MINU JAIN	ACS - 35608	WIRC	118	MS. JALPA ISHWARLAL JADAV	ACS - 35648	WIRC
79	MR. KAMAL RAJ	ACS - 35609	EIRC	119	MS. KINJAL JAYESHBHAI RAVAL	ACS - 35649	WIRC
80	MR. VIKASH MEHTA	ACS - 35610	EIRC	120	MS. MANJUSHA MOHANDAS NAIR	ACS - 35650	SIRC
81	MS. SWETA PRASAD	ACS - 35611	EIRC	121	MS. RIDDHI GOVIND KHANEJA	ACS - 35651	WIRC
82	MS. CHANDNI JAIN	ACS - 35612	EIRC	122	MR. MUTHUKRISHNAN M PILLAI	ACS - 35652	SIRC
83	MR. PRINCE KUMAR	ACS - 35613	EIRC	123	MR. ROHIT KUMAR SARDA	ACS - 35653	NIRC
84	MR. RAJ KUMAR AGARWALLA	ACS - 35614	EIRC	124	MS. PRIYANKA AGRAWAL	ACS - 35654	EIRC
85	MS. SONAL CALLA	ACS - 35615	NIRC	125	MS. TANUSREE GHOSH	ACS - 35655	EIRC
86	MS. MONIKA RATHI	ACS - 35616	NIRC	126	MS. MANASMITA BASA	ACS - 35656	EIRC
87	MS. SWETA MATHUR	ACS - 35617	NIRC	127	MR. AMIT KUMAR DUDANI	ACS - 35657	NIRC
88	MR. ADITYA GOYAL	ACS - 35618	NIRC	128	MS. GAYATHRI RAGHAVAN	ACS - 35658	SIRC
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90	MS. SWATI GUPTA	ACS - 35620	NIRC	130	MS. ANCHAL GUPTA	ACS - 35660	NIRC
				131	MS. SWATI THOLIA	ACS - 35661	NIRC



132	MR. LALIT TANEJA	ACS - 35662	NIRC	176	MR. GAURAV JAIN	ACS - 35706	SIRC
133	MS. PINKY SINGH	ACS - 35663	EIRC	177	MS. RUCHIKA RAMESH HEDA	ACS - 35707	SIRC
134	MS. DEEPA MALIK	ACS - 35664	NIRC	178	MR. VINAYAK TIMMANNA MARKANDE	ACS - 35708	SIRC
135	MS. TANWI JAIN	ACS - 35665	NIRC	179	MS. MADHU LAKHLAN	ACS - 35709	SIRC
136	MS. AAYUSHI SINGH	ACS - 35666	NIRC	180	MR. MOHAMMAD HAMID	ACS - 35710	WIRC
137	MS. ANSHITA JAIN	ACS - 35667	NIRC	181	MR. TUSHAR VIJAY BHALSHANKAR	ACS - 35711	WIRC
138	MR. MOHNISH DUTTA	ACS - 35668	NIRC	182	MS. PRIYANKA JAIN	ACS - 35712	WIRC
139	MR. NAKUL KUMAR	ACS - 35669	NIRC	183	MS. SNEHAL CHANDRASHEKHAR NIGUDKAR	ACS - 35713	WIRC
140	MR. ANMOL NAKRA	ACS - 35670	NIRC	184	MS. HEMALI SURESHBHAI PATEL	ACS - 35714	WIRC
141	MR. RAJAT GUPTA	ACS - 35671	NIRC	185	MR. NAWAJ WAHAB SAYYAD	ACS - 35715	WIRC
142	MS. SURBHI KAPOOR	ACS - 35672	NIRC	186	MR. SUNIL SHANKAR JADHAV	ACS - 35716	WIRC
143	MS. CHAVI RAWAT	ACS - 35673	NIRC	187	MR. ROHIT KALAHASTHI	ACS - 35717	WIRC
144	MR. MANOJ KUMAR YADAV	ACS - 35674	NIRC	188	MS. BHAVIKA BHARAT JAIN	ACS - 35718	WIRC
145	MR. HIMANSHU DHAWAN	ACS - 35675	NIRC	189	MS. PRIYANKA JAIN	ACS - 35719	WIRC
146	MS. PRACHI AGRAWAL	ACS - 35676	NIRC	190	MS. KALYANI LAMBE	ACS - 35720	WIRC
147	MR. LOVELISH LODHA N	ACS - 35677	SIRC	191	MR. HUPARE KISHOR BABASO	ACS - 35721	WIRC
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150	MR. PRADEEP GUPTA	ACS - 35680	WIRC	194	MS. SUJATA ARVIND LELE	ACS - 35724	WIRC
151	MR. NITESH PARASMAL SHAH	ACS - 35681	WIRC	195	MS. APEXA AJAYKUMAR PANCHAL	ACS - 35725	WIRC
152	MS. PRADNYA DNYANESHWAR KHADSE	ACS - 35682	EIRC	196	MS. ANKITA ATULKUMAR KAYASTHA	ACS - 35726	WIRC
153	MS. AKANKSHA BISHT	ACS - 35683	EIRC	197	MR. SHIVAM SHARMA	ACS - 35727	WIRC
154	MR. RAHUL JOSHI	ACS - 35684	EIRC	198	MR. DARSHANKUMAR BIPINCHANDRA SHAH	ACS - 35728	WIRC
155	MR. SATYAWAN SHARMA	ACS - 35685	NIRC	199	MR. SANTOSH HARIBHAU SANAS	ACS - 35729	WIRC
156	MS. PRIYANKA BATRA	ACS - 35686	NIRC	200	MR. SANDEEP SHIVKUMAR GUPTA	ACS - 35730	WIRC
157	MR. YOGESH DATTATRAY JOSHI	ACS - 35687	WIRC	201	MS. ANUBHUTI TIWARI	ACS - 35731	WIRC
158	MS. RITIKA VARMA	ACS - 35688	EIRC	202	MS. RATHI JAYSHREE HARIKISHAN	ACS - 35732	WIRC
159	MS. RITIKA AGARWAL	ACS - 35689	EIRC	203	MR. JEETKUMAR BHAVESHBHAI RAYCHURA	ACS - 35733	WIRC
160	MR. SUVENDU KUMAR KAR	ACS - 35690	EIRC	204	MR. RAJESHKUMAR GOBARBHAI JOGANI	ACS - 35734	WIRC
161	MS. TASNEEM TAHERA	ACS - 35691	EIRC	205	MS. RIDDHIBEN BHARATKUMAR BAROT	ACS - 35735	WIRC
162	MR. NILAKANTHA SAMAL	ACS - 35692	EIRC	206	MR. SUNIL KUMAR GAGRANI	ACS - 35736	NIRC
163	MS. MADHUMITA PRAMANIK	ACS - 35693	EIRC	207	MS. SWATI SINGH	ACS - 35737	NIRC
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166	MR. MAYANK PRAJAPAT	ACS - 35696	EIRC	210	MR. GUNASEKHAR MPRALA	ACS - 35740	SIRC
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170	MS. AKSHITA KOTHARI	ACS - 35700	NIRC				
171	MS. ANJALI ASIJA	ACS - 35701	NIRC				
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173	MS. HIMA BINDU DULIPALA	ACS - 35703	EIRC				
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175	MS. SHIRLEY D	ACS - 35705	SIRC				





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212	MR. ISHAN MAJUMDAR	ACS - 35742	NIRC	254	MS. DEEPIKA VARADHARAJAN PARTHASARATHY	ACS - 35784	SIRC
213	MS. PAVEET	ACS - 35743	NIRC	255	MS. DIVYASHREE K N	ACS - 35785	SIRC
214	MS. SWATI AGIWAL	ACS - 35744	NIRC	256	MS. SHIVANGI AMITABH	ACS - 35786	SIRC
215	MR. ANKIT SHARMA	ACS - 35745	NIRC	257	MS. RADHIKA PUROHIT	ACS - 35787	SIRC
216	MS. PRATIBHA VIJAY	ACS - 35746	NIRC	258	MR. RAGHAVENDAR RAO DEPURU	ACS - 35788	SIRC
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218	MRS. SHILPA RAJSHEKHAR PAWASE	ACS - 35748	WIRC	260	MS. POOJA SADANAND MANE	ACS - 35790	WIRC
219	MS. KRITI KATHAL	ACS - 35749	WIRC	261	MS. KIMTI SATYANARAYAN SHARMA	ACS - 35791	WIRC
220	MR. TUSHAR NITIN NAVGIRE	ACS - 35750	WIRC	262	MS. VIYATEE PANKAJ PATEL	ACS - 35792	WIRC
221	MS. SHEETAL AGRAWAL	ACS - 35751	WIRC	263	MS. SHREYA SUNIL BAMB	ACS - 35793	WIRC
222	MR. NITIN MORESHWAR PALKAR	ACS - 35752	WIRC	264	MS. MADHULIKA BASHISTHA TIWARI	ACS - 35794	WIRC
223	MS. POOJA ANIL JOSHI	ACS - 35753	WIRC	265	MR. BHAVESH MADANGOPAL KHANDELWAL	ACS - 35795	WIRC
224	MS. KHUSHBU PREM KUMAR GUPTA	ACS - 35754	WIRC	266	MR. SUPARAS JAIN	ACS - 35796	WIRC
225	MR. MARMIK DILIP PATEL	ACS - 35755	WIRC	267	MR. AKILAN B	ACS - 35797	SIRC
226	MR. ROHIT NARENDRA TAPARIA	ACS - 35756	WIRC	268	MS. SHILPA VERMA	ACS - 35798	NIRC
227	MS. ARPITA CHOUBEY	ACS - 35757	WIRC	269	MS. SIBA SANKAR PANDA	ACS - 35799	NIRC
228	MS. SONI SHAILIKA VIKAS	ACS - 35758	WIRC	270	MR. NISHANT SIDDHESHWAR HAWA	ACS - 35800	WIRC
229	MR. TEJAS BHARAT SHAH	ACS - 35759	WIRC	271	MR. SHREEVATHSA G P	ACS - 35801	SIRC
230	MR. MANAV ADLAKHA	ACS - 35760	NIRC	272	MS. SUVARNA BHATJIWALE	ACS - 35802	NIRC
231	MS. KHUSHBOO BHARAT PATWA	ACS - 35761	WIRC	273	MR. VIKRAM AGARWAL	ACS - 35803	EIRC
232	MR. NITESH RAMANI	ACS - 35762	WIRC	274	MR. ALOK KUMAR RAY	ACS - 35804	EIRC
233	MS. INDERJOT KAUR DANG	ACS - 35763	NIRC	275	MS. POORVA SAXENA	ACS - 35805	NIRC
234	MR. LOKESH AGARWAL	ACS - 35764	SIRC	276	MR. ARUN SINGH	ACS - 35806	NIRC
235	MR. BINAY KUMAR YADAV	ACS - 35765	WIRC	277	MS. PREETI BHATIA	ACS - 35807	NIRC
236	MS. SHOBHA RANI SAHU	ACS - 35766	EIRC	278	MS. ANSHULA CHOUDHARY	ACS - 35808	NIRC
237	MS. UDITA MUNDHRA	ACS - 35767	EIRC	279	MS. POONAM LAHOTI	ACS - 35809	WIRC
238	MS. RITIKA BAJAJ	ACS - 35768	EIRC	280	MS. MEENAKSHI BHATEJA	ACS - 35810	NIRC
239	MR. CHANDRAKANT SHAH	ACS - 35769	WIRC	281	MS. NEHA GARG	ACS - 35811	NIRC
240	MR. RAM KISHOR SINGH	ACS - 35770	NIRC	282	MS. SHUBHANGI HURKET	ACS - 35812	NIRC
241	MS. MOHITA SRIVASTAVA	ACS - 35771	NIRC	283	MS. NEELAM SINGH	ACS - 35813	NIRC
242	MR. DINESH KUMAR	ACS - 35772	NIRC	284	MS. NAINA GUPTA	ACS - 35814	NIRC
243	MR. RATNESH MATHUR	ACS - 35773	NIRC	285	MS. PRIYA PANDEY	ACS - 35815	NIRC
244	MS. NISHA RANI	ACS - 35774	NIRC	286	MS. MEENAKSHI BAHL	ACS - 35816	NIRC
245	MR. PURSHOTAM VYAS	ACS - 35775	NIRC	287	MR. DIVESH GOYAL	ACS - 35817	NIRC
246	MS. GARIMA GUPTA	ACS - 35776	NIRC	288	MS. RADHIKA MALPANI	ACS - 35818	NIRC
247	MR. LALIT KUMAR SEWDA	ACS - 35777	NIRC	289	MR. KRISHNA KUMAR C	ACS - 35819	SIRC
248	MS. RITU ARYA	ACS - 35778	NIRC	290	MS. CYNTHIA S	ACS - 35820	SIRC
249	MS. SANCHI SANADHYA	ACS - 35779	NIRC	291	MR. JITENDRA SHARMA	ACS - 35821	EIRC
250	MR. VARUN MOTWANI	ACS - 35780	NIRC	292	MR. RAHUL BIYANI	ACS - 35822	SIRC
251	MS. A SRI VIDHYA	ACS - 35781	SIRC	293	MR. OLWINE JOY FERNANDES	ACS - 35823	SIRC
252	MS. VIDHYA K V	ACS - 35782	SIRC				





294	MR. THIRUMALESH TUMMA	ACS - 35824	SIRC	332	MS. PRACHI SHARMA	ACS - 35862	NIRC	
295	MR. NAVEEN KUMAR R	ACS - 35825	SIRC	333	MS. YUKTI MATHUR	ACS - 35863	NIRC	
296	MS. NITHYA S	ACS - 35826	SIRC	334	MS. ASMITA GHANSHYAM BHATT	ACS - 35864	SIRC	
297	MS. SARANYA R	ACS - 35827	SIRC	335	MR. ARUNSREENIVAS	ACS - 35865	SIRC	
298	MR. NITHIN MOHAN	ACS - 35828	SIRC	336	MR. BOYA RAJASEKHAR	ACS - 35866	SIRC	
299	MS. M RAKHEE JAIN	ACS - 35829	SIRC	337	MR. SHYAM SUNDER R	ACS - 35867	SIRC	
300	MS. NEHA SHUKLA	ACS - 35830	WIRC	338	MS. SHYAMA VIJAYARAGHAVAN	ACS - 35868	SIRC	
301	MS. NEELAM SITAL JETHANI	ACS - 35831	WIRC	339	MR. PRASHANT GANGADHAR TAYSHETE	ACS - 35869	WIRC	
302	MS. ADITI ASHOK JAIN	ACS - 35832	WIRC	340	MS. PAYAL JAYANTILAL MODI	ACS - 35870	WIRC	
303	MR. CHINTANKUMAR SURESHCHANDRA DOSHI	ACS - 35833	WIRC	341	MS. JINAL NALINBHAI PATEL	ACS - 35871	WIRC	
304	MR. RAJ RAMESH GUPTA	ACS - 35834	WIRC	342	MR. RAJKUMAR RAMLANI	ACS - 35872	WIRC	
305	MR. A VISWANADHA SARMA	ACS - 35835	WIRC	343	MRS. RIDDHISHREE BHAVIN TANNA	ACS - 35873	WIRC	
306	MR. KAMLESH MANSINGRAO SHINDE	ACS - 35836	WIRC	344	MR. PAWAN PURUSHOTTAM CHANDAK	ACS - 35874	WIRC	
307	MR. AKSHAYA RANJAN PRADHAN	ACS - 35837	EIRC	345	MS. VINALA OMPRAKASH KESWANI	ACS - 35875	WIRC	
308	MRS. SHARVARI HARSHAD SALVI	ACS - 35838	WIRC	346	MS. NUPUR RATHI	ACS - 35876	WIRC	
309	MR. MITESH ANANT MEHTA	ACS - 35839	WIRC	347	MS. NIKITA PRATIK SHAH	ACS - 35877	WIRC	
310	MS. RIMA PRAKASH MAHAJAN	ACS - 35840	WIRC	348	MS. TRUSHA MUKESH PARIKH	ACS - 35878	WIRC	
311	MS. AMITA VASANT PANCHAL	ACS - 35841	WIRC	349	MS. NIKI HEMANT SHAH	ACS - 35879	WIRC	
312	MS. PRIYANKA KRISHNA BHOSALE	ACS - 35842	SIRC	350	MR. DINESH KUMAR MAURYA	ACS - 35880	NIRC	
313	MR. SHASHIKANT SHARMA	ACS - 35843	WIRC	351	MR. SRIVATHSA DESIKAN N	ACS - 35881	SIRC	
314	MR. DHAVAL ASHVINKUMAR VACHHANI	ACS - 35844	WIRC	352	MS. MEENU KHAJANCHI	ACS - 35882	NIRC	
315	MR. JIGAR JEETANDRA GORSIA	ACS - 35845	WIRC	<b>LICENTIATE ICSI*</b>				
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317	MR. NIMISH CHUNIBHAI SAKHIYA	ACS - 35847	WIRC	6638	MS. ADIBA HABIB CHIMTHANAWALA	WIRC		
318	MS. RUCHIKA MANOJ MITTAL	ACS - 35848	WIRC	6639	MS. SOURABH AGARWAL	EIRC		
319	MR. ANIL DEVILAL HINGAD	ACS - 35849	WIRC	6640	MRS. S. AMUDHA	SIRC		
320	MS. RAMANDEEP KAUR BHATIA	ACS - 35850	WIRC	6641	MS. PARIDHI MUNDHRA	EIRC		
321	MR. KUSHAL KUMAR	ACS - 35851	WIRC	6642	MR. K. SARAVANAN	SIRC		
322	MS. REENA CHANDRAKANT SAWANT	ACS - 35852	WIRC	6643	MS. MEHA BHAGIRAH MURARKA	WIRC		
323	MS. MADHURA KISHOR DHAMNE	ACS - 35853	WIRC	<b>Certificate of Practice</b>				
324	MR. SOHAN SHIVAJI GAONKAR	ACS - 35854	WIRC	<b>S. NAME MEMBERSHIP CP REGION</b>				
325	MR. SURAJ KUMAR SAHU	ACS - 35855	EIRC	<b>NO. NO. NO. NO.</b>				
326	MS. KHUSHBOO BACHHAWAT	ACS - 35856	EIRC	<b>ISSUED**</b>				
327	MR. TAPAN KUMAR PADHY	ACS - 35857	EIRC	1	MR. TAPASVILAL DEORA	ACS - 32529	13087	SIRC
328	MR. BHANU MISHRA	ACS - 35858	NIRC	2	MR. KURTHALANATHAN M	ACS - 31039	13088	SIRC
329	MS. ALKA JUNEJA	ACS - 35859	NIRC	3	MR. VISHAL KUMAR GARG	ACS - 34062	13089	SIRC
330	MS. HIMANSHI BATRA	ACS - 35860	NIRC	4	SH. P S R MURTHY	ACS - 5880	13090	NIRC
331	MS. AKANKSHA KHANNA	ACS - 35861	NIRC	5	MS. SHASHIKALA K	ACS - 29319	13091	SIRC

\*Admitted in the month of April, 2014  
\*\*Issued during the month of April, 2014







6	MS. YOGITA MAGADA	ACS 25294	9468	SIRC	26	MR. S K SHAH	FCS 3123	11243	WIRC
7	MR. AKASH GHUWALEWALA	ACS 32445	12269	EIRC	27	MS. HIMANI GUPTA	ACS 30175	11133	NIRC
8	MR. DHAWAL DOSHI	ACS 30629	12369	EIRC	28	MS. MS. JAYASHREE SONI	FCS 6528	13085	WIRC
9	MS. SEETHA S CHANDRAN	ACS 13806	8883	SIRC	29	MR. VISHAL GOEL	ACS 17857	9846	NIRC
10	MR. U R DESHMUKH	FCS 987	2396	WIRC	30	MS. LEENA	ACS 32098	12593	NIRC
11	MS. RICHA AGGARWAL	FCS 6504	6320	NIRC	31	MR. T R CHANDRAMOHANAN NAIR	FCS 2121	8837	WIRC
12	MS. PRIYANKA AGARWAL	ACS 26316	10453	NIRC	32	MS. MAMTA DHIMAN	ACS 31847	12332	NIRC
13	MR. ADNAN SHABBIR SHAIKH	ACS 33078	12516	WIRC	33	MS. SUNITA GUPTA	ACS 26232	9730	EIRC
14	MR. DHANESH SHRIKRISHNA RALE	ACS 19359	10762	WIRC	34	MR. AMIT KHOWALA	ACS 33525	12494	EIRC
15	MS. ARCHANA ALOK GOYAL	ACS 16004	10965	WIRC	35	MR. DHARMESH KUMAR KIRANBHAI PATEL	ACS 33891	12634	WIRC
16	MS. RUCHI CHAWDA	ACS 29299	12145	SIRC	36	MR. SUJITH S	ACS 31205	12909	SIRC
17	MR. VIJAY RAGHUVIR SINH JADEJA	ACS 31010	11479	WIRC	37	MR. ANKIT PODDAR	ACS 25443	10625	NIRC
18	MS. K VIJAYALAXMI	ACS 9533	11942	WIRC	38	MR. AMIT KUMAR	ACS 31692	11740	WIRC
19	MS. SHACHI HEM	ACS 17362	8851	NIRC	39	MS. MEENAL TALESARA	ACS 22658	12393	NIRC
20	MS. RUCHIKA PARASH AGARWAL	ACS 30792	11284	SIRC	40	MS. BINDHIA K	ACS 30916	11881	NIRC
21	MR. KAMALA KANTA GIRI	ACS 34449	12817	EIRC	41	MS. REETU GUPTA	FCS 5942	6214	NIRC
22	MS. SANAIYA ANIL SHAH	ACS 26546	11810	WIRC	42	MR. JAYRAM VACHHANI	ACS 30232	10972	WIRC
23	MR. SADANAND MISHRA	ACS 34469	12805	EIRC	43	MS. SHEETAL JAIN	ACS 28168	10890	NIRC
24	MR. KANIKA RANI	ACS 33219	12290	NIRC	44	MR. KEVIN SUDESH OLIVEIRA FERNANDES	ACS 2903	2408	WIRC
25	MS. SIMAR PREET KAUR	ACS 15105	6480	NIRC	45	MS. ISHLEEN KAUR JUNEJA	ACS 29185	10519	NIRC

## PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2014-15

The annual membership fee and certificate of practice fee for the year 2014-15 became due for payment w.e.f. 1st April, 2014. The last date for payment of fee is 30th June, 2014.

The membership and certificate of practice fee payable is as follows:

- Annual Associate Membership fee Rs.1125/- (\*)
- Annual Fellow Membership fee Rs.1500/- (\*)
- Annual Certificate of Practice fee Rs.1000/- (\*\*)

\* A member who is of the age of sixty years or above can claim 50% concession and a member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration in writing duly signed that the member

is not in any gainful employment or in practice.

\*\* The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu).

### MODE OF REMITTANCE OF FEE

The fee can be remitted by way of: Online mode through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu))

Cash/Cheque at par/Demand draft or Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr.Saurabh Bansal, Asst. Education Officer at email id [Saurabh.bansal@icsi.edu](mailto:Saurabh.bansal@icsi.edu)





# Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE  
COMPANY SECRETARIES BENEVOLENT FUND\*



Region	LM No.	Name	Member Number	City
<b>EIRC</b>				
1	10357	MR. CHITTA RANJAN BEHERA	ACS - 35738	BHUBANESWAR
<b>NIRC</b>				
2	10333	MR. SURESH KUMAR GUPTA	ACS - 34359	GURGAON
3	10337	MR. RAM MOHAN JHA	ACS - 34111	NEW DELHI
4	10349	MS. NEHA CHAUDHARY	FCS - 7433	JAIPUR
5	10351	MS. ANKITA SATI	ACS - 33176	NEW DELHI
6	10353	MS. MAHIMA PANCHOLI	ACS - 34312	CHITTORGARH
7	10363	MS. PARUL ARORA	ACS - 19228	CHANDIGARH
8	10366	MR. RAJIV KUMAR AGRAWAL	ACS - 28791	LUDHIANA
9	10368	SH. SIDDHARTHA BANIK	FCS - 6081	DELHI
10	10378	MR. DEEPAK KUMAR KAUSHAL	ACS - 27607	NEW DELHI
<b>SIRC</b>				
11	10332	SH. K R RAMAKRISHNAN	FCS - 1381	CHENNAI
12	10334	SH. K. VENKATA CHALAMA REDDY	ACS - 13951	HYDERABAD

Region	LM No.	Name	Member Number	City
13	10335	MR. RAM BABURAO WAGHAMODE	ACS - 34251	BELGAUM
14	10339	SH. K R RAMAMOORTHY	FCS - 661	BANGALORE
15	10340	SH. S SIVARAMAPRASAD	ACS - 8394	BHANUR
16	10341	MS. RAMANI S	ACS - 35243	CHENNAI
17	10342	MR. G PRANEETH ABHISHEK	ACS - 35583	SECUNDERABAD
18	10344	SH. KAMALAKAR SHANKAR HEGDE	ACS - 19393	BELGAUM
19	10346	MS. DEEPIKA KULKARNI	ACS - 35472	HYDERABAD
20	10348	SH. AMARENDRA BABU NAGASURI	ACS - 18924	PRAKASAM DISTT
21	10354	MS. AKSHITA SURANA	ACS - 32571	HYDERABAD
22	10355	MS. SHIRLEY D	ACS - 35705	TRICHY
23	10356	SH. M R GOPALCHARY	ACS - 1787	HYDERABAD
24	10358	MS. NEETI BHACHAWAT	ACS - 13707	HYDERABAD
25	10360	MR. RAGHAVENDAR RAO DEPURU	ACS - 35788	HYDERABAD
26	10361	MR. THIRUMALAI RAJU G.	ACS - 33024	CHENNAI

\*Enrolled during the period from 21.04.2014 to 20.05.2014



Region	LM No.	Name	Member Number	City
	27	10364 MR. S NARENDER NATH	ACS - 32940	SECUNDERABAD
	28	10369 MS. PRATHIBHA L	ACS - 34411	BANGALORE
	29	10371 MR. LOKESH AGARWAL	ACS - 35764	HYDERABAD
	30	10374 SH. KOMARAVOLU KRISHNA	ACS - 19289	HYDERABAD
	31	10376 MR. LAISHRAM BIRDAS SINGH	ACS - 34042	HYDERABAD
	32	10377 MR. THIRUMALESH TUMMA	ACS - 35824	KARIMNAGAR
	33	10379 MS. SHYAMA VIJAYARAGHAVAN	ACS - 35868	THRISSUR DISTT
WIRC				
	34	10329 SH. G CHAKRAVARTHI	FCS - 1809	THANE (W)
	35	10330 MR. MUKESH KUMAR SARSWAT	ACS - 28618	MUMBAI
	36	10331 SH. MAHENDRA KUMAR GUPTA	ACS - 13010	NAVI MUMBAI
	37	10336 MRS. RICHA NITIN GOLE	ACS - 13120	MUMBAI
	38	10338 MR. RANGANATHAN S IYER	ACS - 35586	MUMBAI

Region	LM No.	Name	Member Number	City
	39	10343 SH. DEVENDRA CHAMPAKLAL JARIWALA	FCS - 2704	SURAT
	40	10345 SH. UMESH BHASKAR SANDU	FCS - 3840	BARDEZ
	41	10347 MR. VAIBHAV ASHOKKUMAR GANDHI	ACS - 35062	NADIAD
	42	10350 MR. VIKAS ACHYUT PETHE	ACS - 34879	MUMBAI
	43	10352 SH. J MALLIK	ACS - 11386	PUNE
	44	10359 MS. SHILPA BHAGWAN DARDI	ACS - 16633	MUMBAI
	45	10362 SH. VIVEK KASHINATH SANT	ACS - 13225	MUMBAI
	46	10365 MS. SUJATA ARVIND LELE	ACS - 35724	PUNE
	47	10367 MR. SANTOSH HARIBHAU SANAS	ACS - 35729	PUNE
	48	10370 MS. KALYANI DILIP SHIRODE	ACS - 35591	PUNE
	49	10372 MR. A VISWANADHA SARMA	ACS - 35835	MUMBAI
	50	10373 MR. BHUSHAN TAMBE	ACS - 35353	INDORE
	51	10375 MS. PREETI VIJAY PACHERIWALA	FCS - 7502	NAGPUR



## THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

ICSI House , 22 , Institutional Area, Lodi Road, New Delhi –110 003

Phones : 41504444, 45341000 Fax : 91-11-24626727

E-Mail : [info@icsi.edu](mailto:info@icsi.edu) Website : [www.icsi.edu](http://www.icsi.edu)

# CAREER OPPORTUNITIES

The ICSI, a premier professional body constituted under an Act of Parliament, invites applications for the following posts at its Headquarters, Regional Offices & ICSI-CCGRT, Navi Mumbai :-

Name of the Post	Pay Band & Grade Pay (Rs.)	Max. Age (as on 01.05.2014)	Total No. of Posts
Director(Law)/ Joint Secretary (Law)	37400-67000 with Grade Pay-8700/- 37400-67000 with Grade Pay-10000/-	45 years	1
Joint Director (Internal Audit)/ Director(Internal Audit)	15600-39100 with Grade Pay-7600/- 37400-67000 with Grade Pay-8700/-	45 years	1
Assistant Professor/ Associate Professor	15600-39100 with Grade Pay-6000/- 37400-67000 with Grade Pay-9000/-	40 years 45 years	3 3

For further details viz. qualification, experience, procedure for submission of application, etc., please visit our website [www.icsi.edu](http://www.icsi.edu)/ **career** with effect from **30<sup>th</sup> May, 2014**. Interested candidates must **apply only through electronic application form (On-line)**. Last date for submission of application (On-line) is **20<sup>th</sup> June, 2014**. The "ICSI" reserves the right to increase/decrease or even not to fill up any posts as per its requirement.

(P K Grover)  
Joint Secretary (HR)





# News From the Institute



## List of Companies/ organizations Registered During April, 2014 for providing training to the students of ICSI

Name Of The Company	Training Period	Stipend		
Geetastar Hotels & Resorts (P) Ltd. 601, Geeta Enclave, Vinoba Marg C-Scheme, Jaipur -302001	15/03 Months	Suitable	Kamar Infrastructure Private Limited Kamar Estate ,Devicha Pada, Behind Deepak Nitrite Ltd , Taloja Midc,Taluka Panvel, Mumbai -410208	15/03 Months Suitable
Metro Shoes Limited Metro House, 3Rd Floor, S B S Road, Colaba Causeway Mumbai -400001	15 Months	Suitable	Synergy Steels Limited 55-B ,Rama Road Ind.Area New Delhi-110015	15/03 Months Suitable
Rapid Metro Rail Gurgaon Limited 2Nd Floor, Ambience Corporate Towers Ambience Island, Nh-8 Gurgaon-122001	15 Months	Suitable	Miracle Coro Plast Private Limited 398,Rani Sati Nagar, Ajmer Road ,Jaipur-302006	15 Months Suitable
Ntpc Vidyut Vyapar Nigam Limited Ntpc Bhavan, Core 7 Scope Complex, 7 Institutional Area, Lodhi Road Bew Delhi-110003	15 Months	Suitable	Jaydeep Cotton Fibres Private Limited C-805, The Imperial Heights , Opp[Osite Big Bazar, 150 Feet Ring Road Rajkot-360005	15 Months Suitable
Gestalt Engineering & Technologies (P) Ltd 211-212,2Nd Floor, Chetak Center 12/2 Rnt Marg, Indore (M.P)-452001	15 Months	Suitable	Til Healthcare Private Limited Jhaver Centre Rajah Annamalai Building, 72,Marshalls Road ,Egmore, Chennai-600008	15 Months Suitable
Edc Limited Edc House, 1St Floor Dr.Atmaram Borkar Road P.B.No.275 Panaji, Goa- 403001	15 Months	Suitable	Hira Concast Limited 33, Chittaranjan Avenue, 2Nd Floor, Kolkata-700012	15/03 Months Suitable
Mahant & Mahant Advocates Chamber No 350, Delhi High Court New Delhi - 110003	15 Months	Suitable	Arya Iron & Steel Co Pvt Ltd 51-53A, Mittal Court Nariman Point Mumbai-400021	15 Months Suitable
Poddar Diamond Ltd Dc-111 Bharat Diamond Bourse Bandra Kurla Complex Bandra (East) Mumbai-400051	15 Months	Suitable	The Shamrao Vithal Co-Operative Bank Limited Svc Tower, Nehru Road, Vakola Santacruz(East), Mumbai-400055	15 Months Suitable
Kosamattam Finance Limited Kosamattam Building Market Junction ,M.L.Road Kottayam -686001	15/03 Months	Suitable	Citicorp Services India Limited 8Th Floor,First International Financial Centre (Fifc).Plot Nos. C-54 & C-55 G-Block, Bandra-Kurla Complex Bandra (East), Mumbai-400051	15/03 Months Suitable
Bny Mellon International Operations (India) Private Limited Tower Iii, Level Iii, Cybercity,Magarpatta City, Hadapsar, Pune-411013	15 Months	Suitable	Karad Projects And Motors Limited Plot B-67 & 68, Midc Karad Industrial Area, Tesawade, Karad-415109	15 Months Suitable
			Aster Dm Healthcare Private Limited Ix/475L, Aster Medcity Kuttisahib Road, Near Kothad Bridge South Chittoor P O, Cheranalloor Kochi-682027, Kerala	15 Months Suitable
			Loyal Textile Mills Ltd. No.21/4, Mill Street, Kovilpatti-628501, Tamil Nadu	15/03 Months Suitable



## List of Practising Members Registered For The Purpose of Imparting Training During The Month of April, 2014

Cs Malavikabansal Company Secretary In Practice B-15, Lgf, G.K. Enclave-Ii New Delhi 110 048	Pcsa- 3939	Ganesh Colony Opp Unity Chambers Jalgaon	
Cs Jitendramathur Company Secretary In Practice 2-Gha-2,Kamla Nehru Nagar Ajmer Road Jaipur – 302024	Pcsa- 3940	Cs Gandhiharshal Virendrakumar Pcsa- 3948 Company Secretary In Practice B/08, Punit Apartment, Nr.Indian Bank Daxini Society, Maninagar Ahmedabad – 380008	
Cs Newton Kumardhar Company Secretary In Practice C/O N. C. Dhar Khiroda Building Mahanam Brata Sarani Ramnagar Silchar – 780003	Pcsa- 3941	Cs Purushottam A. Rasalkar Company Secretary In Practice S-2, Apex Jyothi Apartment, 19 <sup>th</sup> Cross Gopal Reddy Layout, 22Nd Main Shamanna Garden, J P Nagar, 5Th Phase Bangalore – 560078 Cs Preeti Sharma Pcsa- 3950 Company Secretary In Practice H.No. 211, Rajeev Nagar Near Sector -18 Faridabad – 121002	Pcsa- 3949
Cs K. Rajiv Company Secretary In Practice Ambady,Kakkattil Warriem, Mamala (P.O) Kochi – 682305	Pcsa- 3942	Cs Omkar Vilasdeosthale Company Secretary In Practice 6, Radhagopal, 364/2 Shaniwar Peth Pune-411030	Pcsa- 3951
Cs Ajitkumar Sharma Company Secretary In Practice 108/1000, 3Rd Floor Kane Nagar, Antop Hill Mumbai – 400037	Pcsa- 3943	Cs R. Padmanabhan Company Secretary In Practice Flat No.3, Anu Shanthi Apts 10/12, Fourth Cross Street C.I.T. Colony, Mylapore Chennai – 600004 Cs Kalpesh Natwarlal Shah Company Secretary In Practice C-703, Satva Nr. Shantivan Bus Stop Narayannagar Road, Paldi Ahmedabad – 380007	Pcsa- 3952
Cs Gauri S.Balankhe Company Secretary In Practice 745, 2 <sup>nd</sup> stage , 2 <sup>nd</sup> Main E- Block Rajaji Nagar Bangalore -560 010	Pcsa- 3944	Cs Ankitabhatnagar Company Secretary In Practice K-82, Kishan Nagar Shyam Nagar Extension Jaipur – 302019	Pcsa- 3953
Cs Ronak Jhuthawat Company Secretary In Practice 1097, Gyan Nagar Hiran Magari Sec – 4 Udaipur -313001	Pcsa- 3945	Cs Bhojraj Ramkrishnawakodikar Company Secretary In Practice Lalgaon Mehendi Bagh Road, Nagpur – 440002	Pcsa- 3954
Cs Suresh Kumarkabra Company Secretary In Practice Gf-4,Tanishq Complex Opp Sbi Urmi Branch Productivity Road Vadodara – 390020	Pcsa- 3946	Cs Nishita Sanghvi Company Secretary In Practice C-101, Shanti Arcade 132 Ft, Ring Road Naranpura Ahmedabad -380 013	Pcsa- 3955
Cs Mahesh Vinodbaheti Company Secretary In Practice B-101, Shubhakamna Sankul	Pcsa- 3947		Pcsa- 3956





# News From the Institute

Cs Meghna Shah Company Secretary In Practice 502, Damji Shamji Trade Centre Vidhyavihar (W) Mumbai – 400086	Pcsa- 3957	Delhi – 110051	
Cs Rahulgupta Company Secretary In Practice 52/74, L-3 , 1 <sup>st</sup> Floor Street No. - 25 Anand Parvat New Delhi – 110005	Pcsa- 3958	Cs Vinay T.M. Company Secretary In Practice 12/A, Paliyamma Niliya, 2Nd Floor 7Th Main, 7Th Block, 4Th Phase Bsk 3Rd Stage, Syndicate Bank Col Bangalore – 560085	Pcsa- 3967
Cs Aanal M. Satyawadi Company Secretary In Practice C/904, Shreeji Towers Opp. Himalaya Mall Drive-In Road Ahmedabad – 380052	Pcsa- 3959	Cs Saveesh K.V Pcsa- 3968 Company Secretary In Practice 2 <sup>nd</sup> Floor, Nta Complex Mini Bye Pass Road Mankavu Calicut -673 007	
Cs Sanjay Sukhramlakkhan Company Secretary In Practice 35K, New Joshi Colony, Hemu Kalani Garden Road Near Sai Baba Temple Jalgaon – 425001	Pcsa- 3960	Cs Aninditabhattacharya Company Secretary In Practice 7 <sup>th</sup> Floor, Room No -10, 2A –Gc Avenue Commerce House Kolkata -700 013	Pcsa- 3969
Cs Nimishamadan Company Secretary In Practice Flat No Fo2, Plot No 209 Sector -11, 1 St Floor Vasundhra Ghaziabad – 201 012	Pcsa- 3961	Cs Shaloonahata Company Secretary In Practice 222, Lake Town Block B, 3Rd Floor Kolkata – 700089	Pcsa- 3970
Cs Kavindra Kumar Gupta Company Secretary In Practice 3072/3, Street No. 5 Ranjeet Nagar South Patel Nagar New Delhi – 110008	Pcsa- 3962	Cs Ram Chanderaggarwal Company Secretary In Practice 93, Qutab View Apartments Dda Ms Flats, Sjs Marg New Delhi – 110016	Pcsa- 3971
Cs Anu Gupta Company Secretary In Practice A-4/42, Sector-16, Rohini New Delhi – 110089	Pcsa- 3963	Cs Bhupendrakauashik Company Secretary In Practice 101, Abhishek Business Centre D-248/10, Laxmi Nagar New Delhi – 110092	Pcsa- 3972
Cs Ravidinesh Kothari Company Secretary In Practice A/103, Sambhusadan Building Deuchano Nagar Bhyander(W) Thane- 401101	Pcsa- 3964	Cs Abhishekgupta Pcsa- 3973 Company Secretary In Practice 339, Lane Prakash Azad Market Delhi -110 006	
Cs Megharaj Sadanandyangali Company Secretary In Practice 64/218, Adarsh Nagar Solapur – 413006	Pcsa- 3965	Cs Asnikar Pranav Sharad Company Secretary In Practice Flat No. 6, S. No. 45/11A Nav-Prachi Housing Society Karvenagar Pune – 411052	Pcsa- 3974
Cs Nehagupta Company Secretary In Practice F 12/15-B Krishan Nagar	Pcsa- 3966	Cs Usha Balasubramanian Company Secretary In Practice 6/4, Rams Swathi Towers 5 & 7 Dr, Durgabai Deshmukh Road R.A. Puram Chennai – 600028	Pcsa- 3975



## News From the Regions

### **EASTERN INDIA REGIONAL COUNCIL**

#### Half Day Workshop on Recent SEBI Circular on Clause 35-B and 49 of the Listing Agreement

On 9.5.2014 the EIRC of the ICSI organized a Half Day Work Shop on Recent SEBI Circular on Clause 35-B and 49 of the Listing Agreement at Kolkata. The programme was inaugurated by Chief Guest B Madhav Reddy, Managing Director & CEO, The Calcutta Stock Exchange Limited, Kolkata in the presence of CS Vinod Kothari, Past Chairman, EIRC and Practising Company Secretary, CS Rajesh Poddar, Past Chairman, EIRC, Deputy Company Secretary, ITC Limited, CS Arun Khandelia, Chairman, EIRC and CS Mukesh Chaturvedi, Secretary & Treasurer of the Regional Council. CS Arun Khandelia, in his welcome address said that the circulars are applicable for both listed and unlisted companies.

Chief Guest B Madhav Reddy started with values of compliances and corporate governance. He discussed corporate governance.

Guest speaker CS Vinod Kothari discussed "Revised Clause 49, Related Party Transaction and Independent Director". CS Kothari described different clauses covering the topics with proper description. He also said that the information should provide for equal, timely and cost efficiently, Information should be prepared and disclosed in prescribed standards, company should maintain minutes of the meeting, consolidation of law, disclosure about RPC, conflicts in RPC, political lacking, related parties under clause 49, social partners description, related party transaction under Section 188 – its exceptions, Financial transaction, audit committees, independent directors with their authorities and powers, threshold rights a) size of company b) size of contract.

Guest speaker CS Rajesh Poddar talked on "e-Voting" and participated in the discussion with all present including CS Vinod Kothari, e-voting facility to its shareholders, utilize the service of e-voting with the conditions specified by the Ministry of Corporate Affairs, Internet link of such e-voting platform, voting power of the company, related parties voting, details of voting pattern, about postal ballot, voting procedures that govern general shareholder

meetings, voting rights of foreign shareholders. The programme was well appreciated by all present.

#### Convocation 2014

On 17.5.2014 the EIRC of the ICSI organized Convocation at Kalamandir, Kolkata.

CS Arun Kumar Khandelia, Convocation Coordinator & Chairman, EIRC of the ICSI, CS Sutanu Sinha, Chief Executive, the ICSI, CS Anil Murarka, Convocation Programme Director & Council Member, the ICSI, CS R Sridharan, President, the ICSI and CS Vikas Y. Khare, Vice-President, the ICSI were present on the occasion. Prof. Dr. P. Ishwara Bhat, Vice-Chancellor, The W.B. National University of Juridical Sciences, was present as Chief Guest and CS G. S. Gupta, Chief Executive, Emami Biotech Limited as Guest of Honour.

CS Khandelia said that convocation means coming together and share success with each other. He explained great Nelson Mandela's biography and asked the members to take lesson from his struggle for success.

CS Anil Murarka, Council Member, the ICSI said that the day was a red letter day because there is a discovery of new enthusiasm, new energy, new hope for members who were going to receive their certificates. CS Murarka also said that the day's convocation would take the participants in the world of CS, which was a moment of pride.

CS Vikas Y. Khare, Vice-President, The ICSI, congratulated the new members and said that they should celebrate their year of membership in social networking sites as they use to celebrate their birthdays. He also gave mantra of success to the members.

CS R Sridharan, President, The ICSI, discussed current issues and hurdles which were faced by the Institute during the last 35 days. He also compared the provisions of the Companies Act 1956 with that of the Companies Act 2013 and explained the new opportunities available in the new Act. He shared with members that they have to be technically updated to be in the field of CS. He also expressed thanks to the parents for attending the programme. He concluded by saying that the appointment of KMP becomes essential for every company.

CS G. S. Gupta, Guest of Honour, conveyed his regards to all members and said "It is a very good opportunity for us to share the success of budding members". He continued his address with his life journey, struggle and his experiences. He said that CS profession is more privileged as it also gives high level of integrity, confidence, power and prestige.

Prof. Dr. P. Ishwara Bhat was the Chief Guest and awarded the Associate Membership of the Institute to newly qualified Members at the ICSI convocation - Eastern Region 2014. Prof. Bhat stated that education is the only way of getting success in professional as well as personal life. The programme was anchored by Mohit Shaw and Shalini Dasgupta.





# News From the Institute & Regions

CS Sutanu Sinha, Chief Executive asked members to stand up and recited the Oath. After Oath ceremony CS Sinha shared his views to members as they should know two important things a) Duty of Shareholders b) Duties of Company. He requested members to have hard work as one has selected the life of a Company Secretary; he has to develop "I can" and "I Will" and these should come from within to be in this profession and do the best.

Certificates were distributed to all the members by the Chief Guest. Merit certificates were also distributed to those who secured high rank in the examination.

CS Sutanu Sinha summed up the deliberations and the programme concluded after rendition of the National Anthem.

## HOOGLHY CHAPTER Study Circle Meetings

On 4.5.2014 a Study Circle Meeting on the Discussion on matters to be considered in the forthcoming Board and General Meeting(s) in Compliance with the provisions of the Companies Act, 2013 was held at the Chapter premises.

CS Hansraj Jaria, Company Secretary, Ratnabali Capital Markets Ltd. was the speaker. On 10.5.2014 a Study Circle Meeting on Discussion on Provisions related to Directors was held at Howrah Maidan. CS Suresh Kejriwal, AVP-Corporate Affairs and Company Secretary, Shalimar Wires Industries Ltd. was the speaker. On 11.5.2014 a Study Circle Meeting on Discussion on Revised Equity Listing Agreement was held at the Chapter premises. CS Ashok Purohit, Asst. Company Secretary, Emami Ltd. was the speaker. On 18.5.2014 at the Study Circle Meeting on Discussion on matters related to Section 185 and 186 of the Companies Act, 2013 held at the Chapter premises CS Narendra Singh, Co. Secretary, Essel Mining & Industries Ltd., (An Aditya Birla Group Company) was the speaker.

## NORTHERN INDIA REGIONAL COUNCIL

### Management Skills Orientation Programmes

From 19.4.2014 to 4.5.2014 the Regional Council organised its 190<sup>th</sup> Management Skills Orientation Programme (MSOP) at Lucknow. R.K. Sharan, Regional Director, PHD Chamber of Commerce was the Chief Guest. Aditya Vidyasagar was the eminent guest.

Again from 21.4.2014 to 7.5.2014 the Regional Council organised its 191<sup>st</sup> MSOP at NOIDA.

Yet again on 22.4.2014 the 192<sup>nd</sup> MSOP conducted by the Regional Council was inaugurated by the chief Guest CS(Dr.) G.B. Rao, Past President, the ICSI. On 9.5.2014 at the Valedictory Session of 192<sup>nd</sup> MSOPCS Subhash Setia, Chief Corporate Affairs & Co. Secretary, DLF Ltd., was the speaker.

### Professional Development Programme

On 26.4.2014 at the Professional Development Programme, Monika Sudhir, Corporate Trainer & CS Pritika Nagi were the speakers.

### One Day Mega Workshop on Companies Act 2013

On 17.5.2014 at the One Day Mega Workshop on Companies Act 2013 Extensive discussion on Chapters XI to XIII of Companies Act, 2013 (Directors, Meetings of the Board and Appointment & Remuneration of Managerial Personnel) & Extensive discussion on e-voting was held. Dr. K.R. Chandratre, Past President, the ICSI and CS Ankur Mittal, Senior Expert, National Securities Depository Ltd. (NSDL) was the speaker.

## Southern India Regional Council

### Interaction Meeting with the President ICSI on Rules notified under The Companies Act 2013

On 07.04.2014, CS Sridharan R, President, The ICSI addressed the members and students at ICSI - SIRC House, Chennai on the recent rules notified under The Companies Act 2013. The President in his address elaborated on the various actions taken by the Council. The President indicated that the Council is continuously following up with the MCA and the developments would be updated in the website regularly. The President also requested the members and students to represent their grievances in a gentle way as the other means would create a negative impact about the Institute in the view of the MCA.

In his address, CS Dr. B Ravi appreciated the actions taken by the Central Council to sort out the issues relating to the newly introduced Rules. CS Dr. B Ravi also requested to speed up the proceedings as the new rules would demotivate the young members and students.

The members interacted with the President actively and emotionally, raising many questions, which were diligently and aptly replied by the President. The President assured that there will be good news in due course, and also asked the members to be patient.

### One Day Seminar cum Panel



## Discussion on The Companies Act 2013

On 05.04.2014, the ICSI-SIRC in association with the SIRC of the Institute of Cost Accountants of India organised a One Day Seminar cum Panel Discussion on The Companies Act 2013 at ICSI-SIRC House, Chennai. CS Dr. Jagan Mohan Rao, CFO and Company Secretary, Ind – Bharath Power Infra Limited, Hyderabad & Central Council Member, The ICAI and Past President, The ICSI in his address briefed the members about the opportunities available to professionals under the Companies Act 2013. He felt that the role of directors has been increased under the Companies Act 2013. He also spoke on NFRA, KMP, Internal Audit and CSR. CS Eshwar S, Company Secretary in Practice, Chennaispoke on 'One Person Company'. He explained that the Companies Act 2013 introduces a new type of entity called the 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act]. The draft rules state that only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC. He elaborated that the OPC may be registered as a private company with one member and at least one director and adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as nominee director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member and the letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies. CS Eshwar spoke on the incorporation of OPC and conversion of OPC into private or public company.

In the second session, CS A M Sridharan, Company Secretary in Practice, Chennai spoke on 'Offences and Compounding of Offences under The Companies Act 2013'. Sridharan opined that the Companies Act, does not define the word offence. 'Offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871) [Section 2(n) of CrPC]. 'Offence' means any act or omission made punishable by any law for the time being in force [Section 3(38) of the General Clauses Act]. The speaker further explained that no compounding for a similar offence committed by a Company or its officer within a period of 3 years under section 441(2). A proper intimation has to be given to the Registrar of Companies within 7 days from the date on which the offence is so compounded. If compounding is made after a prosecution launched by the Registrar of Companies, ROC will drop the prosecution once the offence is compounded. He explained in detail about the compounding of offences and its impacts.

The speaker for the third session was CS Dr. P V S Jagan Mohan Rao, Past President of The ICSI & Council Member of The ICAI, on 'Directors – Challenges & Opportunities including CSR under the Companies Act 2013 and Company Secretaries, Corporate Governance and Bhagavad Gita'. CS Jagan Mohan Rao made an

elaborate presentation on the appointment, duties and qualification of directors, code for independent directors and resignation of director. While speaking on the Independent Directors, he explained that Independent directors shall hold at least one separate meeting every year and other directors and members of management are not to attend these meetings. He further explained that the independent directors must attend these meetings and review of the performance of non-independent directors and the board as a whole is discussed in these meetings. Rao made a presentation on how the professionals can take lessons from the Bhagwad Gita, which was well received by the delegates.

The fourth session was a panel discussion on Companies Act 2013. CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC, CS Raju Iyer P, Chairman, SIRC of ICAI, CS S Eshwar, CS A M Sridharan and CS Dr. P V S Jagan Mohan Rao were the panelists. The delegates actively interacted with the panelists.

## World Health Day Special Seminar on Stress Management - A hurdle for professionals

On 07.04.2014, to commemorate the World Health Day, the ICSI – SIRC organized a special programme on 'Stress Management – A hurdle for professionals'. Dr. Manu Pradeesh, Consultant, The Medical Park, Chennai addressed the members on stress management. Earlier CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address highlighted the importance of work life balance and leading a stress-free life. Dr. Manu Pradeesh, in his presentation explained that stress is a state of mental or emotional strain or tension resulting from adverse or demanding circumstances. He observed that the stress can be classified into acute & short lived and chronic, persisting & unrelenting. He explained that stress will lead to direct biological effects like hormonal changes and autonomic imbalance or maladaptive coping behaviour like smoking and drinking alcohol or emotional mediated effects on diet, activity and behavior level. Dr. Manu Pradeesh further explained that the adrenal glands in the human body are the glands of stress but they are the first glands to fail under stressful conditions. He elaborated on the various ways of controlling stress. He concluded by saying that professionals are more likely to work under more stress and they should understand that work life balance is important. He also narrated some simple exercises to the members.

## Study Circle Meeting on Corporate Finance and Investment Banking

On 11.04.2014, the ICSI-SIRC organised a Study Circle Meeting (SCM) on Corporate Finance and Investment Banking. CS K V Srinivasan, Director, Subadri Financial Services Private Limited, Chennai was the Speaker. Srinivasan in his presentation, explained the term corporate finance as the area of finance dealing with the sources of funding and the capital structure of corporates and the steps taken by the management to increase the value of the firm to





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the shareholders, as well as the tools and analysis used to allocate the various financial resources. He observed that the primary goal of corporate finance is to maximize the shareholder value. He classified the mode of raising corporate finance into debt and equity and explained them in detail. Srinivasan explained the commercial paper, factoring services, buyers' credit, external commercial borrowing and standby letter of credit in detail. He explained the term investment banking as a specific division of banking related to the creation of capital for other companies. Investment banks underwrite new debt and equity securities for all types of corporations. Investment banks also provide guidance to issuers regarding the issue and placement of stock. He elaborated the steps involved in investment banking and also explained about the debt syndication, venture capital, private equity, mergers and acquisitions, valuations, cross border advisory services and financial structuring. He concluded his speech by narrating various avenues in which the CS can play a role in corporate finance and investment banking.

## Group Reading Programme: Appointment and Remuneration of Managerial Personnel & Appointment and Qualification of Directors

From 9-11.4.2014 In the first quarter, the ICSI-SIRC conducted Seven Group Reading Programmes (GRP) on various Chapters under the Companies Act 2013 and those were very successful. Since the Rules on the Companies Act have been notified, the ICSI – SIRC has planned a series of Group Reading on the Rules made under The Companies Act 2013. The first programme of the series (7th GRP) was organized. CS Eshwar S, Company Secretary in Practice led the programme. The chapter I Specification & Definition of Directors, Chapter XIII – Appointment and Remuneration of Managerial Personnel and Chapter IX Appointment and Qualification of Directors were discussed in detail in the 7th GRP.

## Group Reading Programme: Incorporation Rules and Registration of Foreign Companies

From 15-17.4.2014 the ICSI – SIRC organized 8th Group Reading Programme (GRP) on the Rules under The Companies Act 2013. The programme was extended for another two days (19th & 21st April) due to the enthusiasm shown by the members by requesting for an extension. The programme was led by CS Eshwar S, Company Secretary in Practice, Chennai. The Chapter II - Incorporation Rules, Chapter XXII – Registration of Foreign Companies were discussed in the GRP. On 19th April, members also discussed about Secretarial Standards and the comments were forwarded to Head Quarters of the ICSI.

## Meet the Regulator Programme: Interaction with RBI Officials

On 22.04.2014, Biswajit Sarangi, Deputy General Manager and Y Rambabu, Manager from the Foreign Exchange Department of

Reserve Bank of India, Chennai were present at the Meet Regulator Programme (MRP) organized by the ICSI – SIRC at its premises. CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address highlighted the role played by the RBI in regulating the foreign exchange related matters and the role of professionals in assisting corporate in FEMA related matters.

Biswajit Sarangi observed that the delayed reporting and allotment are the main reasons for compounding. He complimented that the CS are doing a good job pertaining to dealing with the RBI in the matters of compounding and others. Rambabu explained that the foreign investment in India is governed by FEMA. He made an elaborate presentation on the FDI and compounding of offences. He explained the classification of transactions - capital account transactions and current account transactions and made a schematic representation on FDI in India. Rambabu also quoted the 'Consolidated FDI Policy circular' announced by Department of Industrial Promotion and Policy on a yearly basis- since 2010, the latest issued on 17th April 2014. He also threw light on the areas in which the FDI is not allowed in India, entry routes and eligibility for FDI and the various reports to be made to RBI. On compounding, Rambabu explained that it is a voluntary process by which a person committing a contravention can seek compounding of an admitted contravention. He explained the ways and means of compounding.

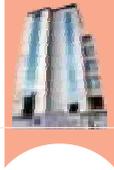
The programme was well attended and the members actively interacted with the RBI Officials.

## One Day Seminar on the Companies Act 2013 – Managing Change in Possibilities

On 25.4.2014 a one day Seminar on The Companies Act 2013- Managing Change into Possibilities was organized jointly by SIRC & Palakkad Chapter of ICSI. K. Padmakumar, Managing Director, Malabar Cements Ltd., Palakkad & Secretary Public Sector Restructuring & Internal Audit Board, Department of Industries & Commerce, Government of Kerala inaugurated the programme and gave key note address on CSR Systems Approach for integrated care of the Aged. Eminent speakers like Dr. (CS) KSRavichandran, CS. ANS Vijay, CS. N. Balasubramanian & CS. Gokul R I handled the sessions on Professional opportunities under the Companies Act 2013, Compliances for private Companies & Provisions relating to Board of Directors respectively. Around 65 persons including members, students and industry representatives attended the programme.

## One Day Seminar on NCLT & Corporate Debt Restructuring

On 26.4.2014, the ICSI-SIRC organised a One Day Seminar on National Company Law Tribunal and Corporate Debt Restructuring at Chennai. Alok Dhir, Managing Partner, Dhir and Dhir Associates & Solicitors, New Delhi (Founder President of AAIFR/BIFR Bar Association of India) inaugurated the seminar and gave the inaugural



address. CS.Mahesh Anant Athavale, Past President, The ICSI and S.M.Sundaram, Advocate, New Delhi delivered the Key Note Addresses.

The first technical session was addressed by Alok Dhir, wherein he explained Revival and Rehabilitation of Sick Companies under Chapter XIX of the Companies Act, 2013. He explained various matters relating to revival and rehabilitation of sick companies under the new Act in comparison with the old Act. Thereafter S M Sundaram enlightened the participants about the NCLT (National Company Law Tribunal) that is to be formed under the Companies Act, 2013. He explained the members as how to appear before the NCLT. CS.MaheshAnantAthavale explained the members about the new provisions on Oppression and Mismanagement in the last part of the first technical session. The participants learned the new provisions on oppression and mismanagement.

The Second technical session started with CS Dr.B.Ravi explaining about Mergers and Amalgamations with respect to the Companies Act, 2013. His presentation was based on a comparative approach of The Companies Act, 1956 and The Companies Act, 2013. Nilesh Sharma (Partner, Dhir & Dhir Associates, NewDelhi) then explained the Corporate Debt Restructuring Mechanism in India. He briefed the participants about the Debt Recovery Tribunal in India and various other matters relating to it. ArvindhPandian, Senior Advocate & Additional Advocate General of Tamilnadu, Chennai was the next speaker of the seminar. He explained the participants about the Compromise and Arrangement under NCLT and briefed about all the procedural and other aspects of Compromise and Arrangement under the NCLT.

The Last technical session was on Winding Up under NCLT which was explained by M L Sharma, Advocate and Former Official Liquidator, New Delhi. He clarified the participants about the various differences in winding up procedures under the Companies Act, 1956 & The Companies Act, 2013.

## Group Reading Programme: Share Capital and Debenture Rules & Registration of Charges

From 28.04.2014 to 30.04.2014 the 9th Group Reading Programme (GRP) on Rules made under the Companies Act 2013 was held at the ICSI-SIRC House, where Chapter IV – Share Capital and Debenture Rules and Chapter VI – Registration of Charges were analysed in detail. The GRP was led by CSA.M.Sridharan, Practising Company Secretary, Chennai.

## COIMBATORE CHAPTER One Day Professional Development Programme

On 17.04.2014 the Coimbatore Chapter of SIRC of ICSI organized

a one day Professional Development Programme on Companies Act, 2013: Sections and Rules having immediate implications at Coimbatore. CS Dr. P V S Jagan Mohan Rao, Past President, the ICSI inaugurated the Programme and addressed the participants on “Directors and Auditors – Role, Responsibilities and Challenges under the Companies Act - 2013”. He very extensively explained the roles and challenges of Directors, Independent Directors and women Directors under the new Companies Act 2013. He further explained the Directors appointments, qualifications, disqualifications and provision of number of directorships, etc.

CS Dr. K S Ravichandran, Practising Company Secretary, Coimbatore addressed on “Setting up a compliance management system under the Companies Act, 2013 and the Rules thereon”.

CS M R Thiagarajan, Practising Company Secretary, Coimbatore addressed on “Different types of Companies under the Companies Act.2013”.

During the programme, a book titled “Reflections on Companies Act 2013 Important aspects and immediate requirements” written by CS Dr K S Ravichandran, was released by M.R Thiagarajan.

During the programme CSBF film was screened twice. The banner & standee of CSBF were also displayed in the programme venue. The programme was very interactive and the queries raised by the participants were ably addressed by all the speakers in their respect sessions, and the programme was actively attended by around 115 participants.

## Series of Discussion Meetings - First Discussion Meeting on Companies Act, 2013

On 7.5.2014 the Chapter organized its First Discussion Meeting for the year 2014, on “Companies Act, 2013, its rules and related forms” at its premises. By conducting this meeting, Chapter created a platform for the members to discuss and update the knowledge/ Sharing of knowledge on Companies Act, 2013. CS G Vasudevan, Past Chairman of the Chapter was the moderator and coordinated the meeting well. The moderator explained the important e-forms to be filed with the Registrar of Companies and other authorities under the Companies Act, 2013, and also requirements preparing and enclosed various documents with such e-forms. He extensively used power point presentation and subsequently, the doubts, implications, consequences, were discussed by the core group of Company Secretaries. It was also guided and supplemented by the moderator. The lively interaction meeting was attended by about 16 Company Secretaries.

## Professional Development Programme on Emerging Paradigm of Corporate Governance under the Companies Act, 2013

On 14.5.2014 the Chapter organized a Professional Development





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Programme on “Emerging Paradigm of Corporate Governance under the Companies Act, 2013” at Coimbatore. CS NK Jain, Corporate Advisor & Former Secretary and CEO, The ICSI, New Delhi was the speaker. In his address, he elaborated the various requirements under the Companies Act, 2013 in general and in particular with respect to Corporate Governance, composition of Board, Independent Directors, Resident Director, Women Director, Rotation of Auditors, Secretarial Audit, Internal Audit, Secretarial Standards, Vigil Mechanism, E-Governance etc., with the support of power point presentation. The session was very informative and appreciated by the gathering at large. The queries raised by the participants were well addressed by the Speaker. The programme was attended by 40 participants.

## Study Circle Meeting on An introduction to Internal and External Frauds and its Deterrence

On 8.3.2014 a Study Circle Meeting was organized by the Coimbatore Chapter of SIRC of the ICSI at its premises on “An introduction to Internal and External Frauds and its Deterrence”.

V Guruprasad, ACS from Bangalore, was the speaker. In his address he explained, how and why internal and external frauds occurred in day to day life and in Corporate Sectors in particulars and the ways for its deterrence, with the support of power point presentation. The session was attended by a total of 40 participants, including 25 members and 15 students and the session carried one programme credit hour for members. The speaker also replied the queries raised by the participants.

## HYDERABAD CHAPTER Workshop on Secretarial Standards

On 19.4.2014 the Chapter organized a Workshop on Secretarial Standards at its premises. CS R. Ramakrishna Gupta, Chairman, PCS Committee welcomed the gathering and addressed the purpose of choosing this topic for discussion and also requested the members to give inputs and changes for forwarding to the ICSI. CS V. Ahalada Rao, Company Secretary in Practice and Member-Secretarial Standards Board was the Speaker. He spoke on certain Secretarial Standards such as SS1, SS2, SS5 and SS7 and requested the members to inform observations/suggestions & comments, if any. Members actively participated at length and gave many suggestions on SS1, SS2, SS3 and SS7 to incorporate the same in the standards.

## Press Meet

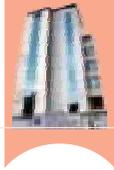
On 25.4.2014 the Chapter organised a Press Meet with CS R. Sridharan, President, The ICSI at Hyderabad. The President outlined the major initiatives of ICSI made during the year such as complete switchover to online registration from 01.01.2014, Computer based examination for CS Foundation Programme w.e.f. June, 2014 onwards and examinees would

continue to be assessed through Multiple Choice Questions (MCQs) and introduction of open book examination in elective subjects (Paper – 9) in Module-III of professional programme (New Syllabus) examination from June, 2014 onwards. He further informed about the Development of Videos on soft skills, MCQs for Computer Based Foundation Examination and MCQ based examination for three papers of Executive Programme, Student Company Secretary/ Foundation Bulletin in Electronic Mode, Revision of Study material in the light of Companies Act, 2013, Massive Open Online Courses (MOOCs) - Video Library for Courseware. He further informed that the Institute introduced New Syllabus for Company Secretaryship Course for Foundation, Executive and Professional Programme level. The Institute also introduced Foundation Programme on OMR examination Format. The New Syllabus for Professional Programme contains FIVE Electives: Banking- Law and Practice, Insurance-Law and Practice, Capital, Commodities and Money Markets, IPR- Law and Practice, International Business-Law and Practice. He mentioned that ICSI simplified the process for seeking registration *denovo* and extension and discontinuation of the requirement of coaching completion certificate. He also emphasised that the ICSI has introduced a New Modified Training Structure for the Students of Company Secretaryship Course w.e.f. 1.4.2014. He also informed that the ICSI will be organizing Investor Awareness Programmes through Regional Councils, Chapters and Resource Persons in coordination with Regional Directors, MCA and will Coordinate with MCA related to IEPF activities i.e. distribution of Pamphlets, Posters and Investor booklets etc. The President, ICSI further informed that, a major e- initiative of the Institute is the ICSI Primer on Companies Act 2013 on “YOUTUBE”. He also informed about the Placement Portal of the Institute, MOU with ASSOCHAM and Department of MSSE&T, ICSI National Awards for Excellence in Corporate Governance etc.

CS Vikas Y Khare, Vice President, ICSI, CS C. Sudhir Babu, Council Member, ICSI and CS Vasudeva Rao Devaki, Chapter Chairman also participated in the Press Meet.

## ICSI President’s Meet with Members

On 25.4.2014 the Chapter organised a Members’ Meet with CS R. Sridharan, President, The ICSI at Hyderabad. Chapter Chairman CS Vasudeva Rao Devaki, informed the members about the importance of the visit of the President, The ICSI and advised the Members to interact with the President actively. CS C. Sudhir Babu, Council Member addressed the Members. He spoke on recent issues related to MCA notification of Companies Act, 2013 Rules and its impact on the profession of Company Secretaries such as Removal of Pre Certification, Appointment of KMP not applicable for Private Companies, Secretarial Audit & Annual Return to be signed by PCS. He also mentioned that ICSI is frequently interacting with MCA to amend and modify the rules so that rules notified are in conformity with Companies Act 2013 and the Draft Rules. He appealed to the members “Let us more collectively add value to the profession by compliance not by just presence”.



CS Vikas Y Khare, Vice President of ICSI said that the new rules which were notified by MCA have shattered the sentiments of all the members equally. He also mentioned that ICSI has clearly given explanation regarding the removal of pre certification to the MCA that practice can only be built up from taking the small works such as Incorporation, filing of e forms for corporate and gradually leading to major compliance works such as IPO, Amalgamation, Takeover, Listing Agreement compliances etc. Hence MCA should show concern, pay the kind concern regarding the precertification of e forms by professionals and see that they are made mandatory. He appealed all the members to be united and face the challenges posed on the profession.

CS R. Sridharan, President, the ICSI addressed that every member should cooperate and maintain utmost peace. He informed that on behalf of Council he assured that Council is taking care of every challenge posed on the profession and also mentioned that Council is regularly working to build up the value of the profession according to the changing global scenario in corporate world. He also mentioned that Council is making efforts to interact with MCA regarding the rules notified with continuous representations in detailed manner. He further stated that Council made representation with Law Ministry to maintain the situations in a steady manner. Council also interacted with other Regulators such as IRDA, SEBI to enhance the profession of CS and explore compliance areas which are complied by CS professionals. He assured the members that Council is preparing guidance note on Secretarial Audit. Council is also focusing on new areas which can enhance the profession of CS such as Insurance Audit. He further gave assurance that every aspect will be taken care of. He also informed that New Building for Centre of Excellence will be constructed in Hyderabad. He appealed to every member that they should work for professional excellence and bring the laurels to ICSI. The queries pertaining to the profession raised by the members were clarified by him.

## IRDA-ICSI Seminar on Convergence of Company Law and Insurance

On 26.4.2014 the ICSI in association with Insurance Regulatory & Development Authority of India (IRDA) organised a Seminar on "Convergence of Company Law with Insurance Law" at Hyderabad. T S Vijayan, Chairman, IRDA was the Chief Guest. CS R Sridharan, President, The ICSI, CS Vikas Y Khare, Vice President, ICSI and CS Sudhir Babu C., Council Member, ICSI & Programme Director also addressed the august gathering.

Speaking at the Seminar T.S Vijayan, Chairman, IRDA, emphasized on strengthening of the Corporate Governance norms for insurance companies issued by the regulator in 2009. He highlighted the role of CS in ensuring good governance in Insurance companies and safeguarding the interest of various stakeholders in such companies. The seminar was a confluence of thoughts between practitioners, academicians and regulators to identify critical governance issues in the Indian Insurance sector. In tune with the seminar theme, the Sessions of the seminar were as under: Governance in Insurance

Sector; Compliance and Risk Management; Stakeholder Protection (Under Company Law & Insurance Law).

The seminar was addressed by a Galaxy of speakers where R K Nair, Whole Time Member, IRDA, P S Prabhakar, Chartered Accountant, S V Sunderkrishnan, EVP & Chief Risk Officer, Reliance Life Insurance; Dr. V R Narasimhan, Chief Regulations, National Stock Exchange; P R Ramesh, Chairman, Deloitte India; C L Baradhvaj, Company Secretary, Bharti AXA Life insurance; Shriram Subramanian, Founder & MD, InGOVERN Research Service Pvt. Ltd.; Ashvin Parekh, Sr. Expert & Advisor, Financial Services, E & Y and Dr. P Nandagopal, MD & CEO, IndiaFirst Life Insurance Company Ltd.

The contents of the seminar were insightful for individuals and institutions that were part of the Corporate Sector, Corporate Governance Professionals, Independent Directors, Compliance Professionals, Risk Managers, Academicians, etc.

## PALAKKAD CHAPTER One Day Seminar on the Companies Act 2013- Managing Change into Possibilities

On 25.4.2014 a one day Seminar on The Companies Act 2013- Managing Change into Possibilities was organized jointly by SIRC & Palakkad Chapter of SIRC of the ICSI. The programme was co-sponsored by Malabar Cements Ltd., Lead College of Management & Prayaga School of Management, Palakkad.

K. Padmakumar, Managing Director, Malabar Cements Ltd., Palakkad & Secretary Public Sector Restructuring & Internal Audit Board, Department of Industries & Commerce, Government of Kerala inaugurated the programme followed by an eminent address on CSR- Systems Approach for integrated care of the Aged by Dr. (CS) KS Ravichandran, CS ANS Vijay, CS. N. Balasubramanian and CS Gokul RI handled classes on Professional opportunities under the Companies Act, 2013, Compliances for private Companies & Provisions relating to Board of Directors. Almost 65 persons including members, students and individuals from public sector companies attended the programme.

## SALEM CHAPTER Members' Meet

On 5.4.2014 a Members' Meet was organized at the Chapter premises. The amendment under the Companies Act, 2013 was the only discussion held during the meeting. All present raised queries regarding the career of the profession. CS Solaiyappan S, Chairman and CS Santhanam N, Secretary of the Chapter read out all the representations made by the President in this regard and explained that the Council is conscious of its responsibilities towards the profession and committed to ensure effective outcome





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of these representations. The communication and appeal from the President was also briefly explained to all present. They requested the participants to have patience and maintain absolute peace and calm. The meeting concluded after rendition of National Anthem.

## Interactive Study Circle Meeting of Members & Students

On 20.4.2014 an Interactive Study Circle Meeting for Members and Students was organized at the Chapter Office. Around 12 members and students participated.

The session was led by CS Solaiyappan S, Chairman and CS Santhanam N, Secretary of the Chapter. The Interaction was headed by the topics of KMP, Directors, Annual Returns and Charges. Various suggestions were placed and queries raised by the members present on the topics and replies/clarifications were given. The session concluded after rendition of National Anthem.

## WESTERN INDIA REGIONAL COUNCIL

### Orientation Lecture Series on Companies Act 2013

From 1 to 4.5.2014 the Regional Council organised maiden Orientation lecture series on Companies Act 2013 at its premises. Eminent speakers from industry and practise addressed the delegates.

Atul Mehta, Council Member, The ICSI in his introductory remarks opined that Company Secretaries should devote time to learn the new Act. He said that the Act has given ample scope for practising professionals and has widened their scope significantly. The CS practitioners will now be called upon to validate various corporate actions of a company, related party transactions, disclosures, notices and documentations. Apart from the value added services as a governance professional, for which a PCS will be called upon by corporate clients, the Companies Act, 2013 provides for a number of mandatory pre-certifications of e-forms by professionals.

On 1.5.2014 there were three sessions. During the first technical session, Kalidas Ramaswami, Sr. Vice President & Company Secretary, Reliance Power Ltd spoke on anomalies and aberrations in the Companies Act, 2013 and the rules. In the Second Session, Mahavir Lunawat, Group Managing Director, Pantomath Advisory Services Group & Former Chairman, ICSI-WIRC spoke on "What influenced the Companies Act, & how Companies Act influenced us". During the third and last technical session of the day Yogesh Chande, Associate Partner ELP, Advocates & Solicitors spoke on the Impact of Companies Act, 2013 on listed Companies.

On 2.5.2014 there were two sessions which were taken by Savithri Parekh, Sr. Vice President & Company Secretary, Pidilite Industries Limited and Vanita Sawant, Practising Company Secretary, Mumbai. They spoke on Board Management & Administration – Composition, Appointment, Resignation, Removal, Qualifications & restriction on number of Directorship, Powers of Directors and Meetings under the Companies Act, 2013 & Enforceability of Share Holders Agreement.

On 3.5.2014 CS Ashok Chhabra Former Executive Director P&G spoke on the role and scope of Independent Directors. Kalidas Vanjpe, Practising Company Secretary threw light on Share Capital, Debentures & Public Deposits. Raju Ananthanarayanan, Director, Lex Praxis shared his experience on the topic Composition of various Committees, Corporate Governance & Business Ethics, Remuneration of Managerial Personnel, etc.

There were four technical sessions on the concluding day. Prachi Manekar, Advocate, Bombay High Court dealt with Loans & Related Party Transactions. Provisions relating to incorporation of Companies were deliberated by B V Dholakia, Practising Company Secretary, Mumbai. Post lunch Sanjoy Gupta, Chartered Accountant spoke on Accounts, Audit & Auditors – Revised Schedule VI, Dividend, Directors Report and V C Kothari, Former Member of Secretarial Standards Board spoke on Corporate Social Responsibility (CSR).

Around 70 members were benefitted by the four day Orientation lecture series. All the sessions were in the mode of speaker-participant interaction and the queries raised during the deliberations were appropriately responded.

### Second Orientation Lecture Series on Companies Act 2013

The inaugural session of the second edition of Orientation lecture series was held on 17.5.2014 at the premises of the regional Office. Keyoor Bakshi, Past President, The ICSI was the Chief Guest and delivered the inaugural address. During his address he made a comparative analysis of old and new Acts and opined that the scope for professionals will be on a higher side. He explained that despite the knee jerk reaction from all quarters to the finally notified rules, the role of CS whether in employment or in practice will always grow – thanks to the various new and stringent compliance requirements which can be handled only with the help of a CS.

Hitesh Kothari, Regional Council Member and Chairman of Professional Development Committee introduced the theme of the series. He thanked Keyoor Bakshi for taking time off his schedule and being a part of the inaugural session of the Orientation lecture series.

Surendra Kanstiya, Practising Company Secretary spoke on Deposits. He highlighted the significant amendments impacting private companies in particular which have accepted deposits from their members and relatives of directors, as they are longer exempt deposits. He also explained the various new compliance requirements applicable in case of deposits.





B Narasimhan, Council member spoke on Postal Ballot and e-voting. In his elaborate session, he highlighted the tremendous opportunity now available for PCS for being appointed as a Scrutinizer in case of listed companies. He also touched upon the recent High Court Judgement in the Godrej case.

The last technical session of the day was handled collectively by A Sekar and Meghna Shah, Practising Company Secretaries who spoke on Secretarial Audit. Meghna Shah introduced the subject of Secretarial Audit to the members and also dwelt upon the provisions in the Companies Act relating to the manner of appointment of Secretarial Auditor. A Sekar explained in detail the format of the report of Secretarial Auditor, scope of Secretarial Audit and the necessity/benefits of retaining the independent status as an Auditor. The session evoked positive interaction, participation and diverse viewpoints.

## AHMEDABAD CHAPTER 11<sup>th</sup> Management Skills Orientation Programme

From 20.3.2014 to 3.4.2014 the Chapter organised its 11<sup>th</sup> Management Skills Orientation Programme at its premises. During the inauguration session CS Umesh Ved, Council Member, ICSI; CS Rutul Shukla, Chapter Secretary; S. N. Mishra, ROC, Gujarat & Co-opted Member Ahmedabad Chapter and CS Chetan Patel, Chairman TEFC Committee of the Chapter were present. Viyatee Patel was appointed as Co-ordinator for the 11<sup>th</sup> MSOP Batch. The dignitaries welcomed the participants and addressed them with occasional speech. The total strength of the MSOP batch was 50 participants. During the MSOP, a galaxy of faculties including senior Company Secretaries deliberated on various topics as per training guidelines of the ICSI. The participants cherished and benefited with the knowledge of practical experiences of the seniors.

The Mock Board Meetings were held on 01.04.2014 in the Board Room of the Companies like CPL India Power Pvt. Ltd., Zydus, Cadila, Ambuja Exports, Adani Group of Companies, Ahmedabad. The participants also gave project presentations on various topics which enabled them to come out with their own ideas, views, presentation skills and knowledge.

At the Valedictory Session Chaitali U. Jani was honoured with the title of "Best Participant", of the MSOP. The certificates were distributed to all MSOP participants and the fifteen days training was successful with great learning and fun.

## Half Day Workshop on Critical Aspects of Companies Act, 2013

On 5.4.2014 the Chapter organised a Half Day Workshop on Critical Aspects of Companies Act, 2013 at Ahmedabad. The workshop was inaugurated by CS Umesh Ved, Council Member, ICSI, CS Ashish Doshi, Vice Chairman WIRC, CS Hitesh Buch, Immediate Past Chairman WIRC, CS Rajesh Tarpara, Chairman Ahmedabad,

CS Rutul Shukla, Secretary & Chairman PDP Committee and CS Rohit Dudhela, Chairman Placement Committee, Ahmedabad. The speakers of the workshop were CS MC Gupta, Practising Company Secretary (PCS), CS Manoj Hurkat, PCS and CS Jatun Jalundhwala, Chief Legal Officer, Adani Enterprises Limited. 179 members attended the seminar. The workshop was organized to deal with practical issues arising out of Companies Act, 2013 and particularly only those Sections, Rules and Forms pertaining to Companies Act, 2013 which are made effective by MCA till the date of the Workshop. The Workshop was immensely beneficial to CS professionals, both in employment and practice.

## First Learning Workshop on Companies Act, 2013

On 11.4.2014 the Chapter organised first learning workshop on Companies Act, 2013 at its premises. The workshop was addressed by CS Chirag Shah, Practising Company Secretary at Ahmedabad. The topic discussed was Company Incorporation. The workshop was attended by CS Members comprising Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman PCS Committee, Ahmedabad Chapter of WIRC of the ICSI. The total strength of the workshop was 106 CS Members.

## Second Learning Workshop on Companies Act, 2013

On 19.4.2014 the second learning workshop on Companies Act, 2013 was held which discussed the topic Acceptance of Deposits & Registration of Charges under New Act. The workshop was addressed by CS Rohit Dudhela, Chairman Placement Committee and a Practising Company Secretary at Ahmedabad. The workshop was attended by CS Members comprising Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, PCS Committee Chairman of the Chapter.

## Third Learning Workshop on Companies Act, 2013

On 26.4.2014 the Chapter organised Third Learning Workshop on Companies Act, 2013 on the topic Preparation of Financial Statement and Director's Report with Posers at its premises. The workshop was addressed by CS D. P. Shah, a Practising Chartered Accountant at Ahmedabad. The total strength of the participants was 128 CS Members. The workshop was attended by CS Members comprising of Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman PCS Committee of the Chapter.

## Study Circle Meeting on Recent Developments In Companies Act, 2013

On 28.4.2014 the Chapter organised a Study Circle Meeting on





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Recent Developments In Companies Act, 2013 at its premises. Prior to this there was an interaction with the President of the Institute. Chapter Chairman CS Rajesh Tarpara briefed the participants about the theme and deliberations during the Study Circle Meeting. CS R. Sridharan, President, The ICSI addressed the participants with the occasional speech and briefed about various representations made by the ICSI to MCA after notification of Rules under the Companies Act, 2013. He also informed the status of the representations made and the recent developments taking place. He also emphasized to concentrate on capacity building of members in various disciplines and advised to organize the programme accordingly. Around 92 CS Members attended the study circle. The floor was open for Interaction and Q/A. Many of participants raised the queries and the same were addressed by the dignitaries present at the Seminar. The participants were given 1 (one) PCH for attending the Seminar.

## INDORE CHAPTER Study Circle Meeting

On 10.5.2014 the Chapter organised a Study Circle Meeting on General Circular No.10/2014; risk involved in e-Form certifications by PCS under the provisions of the Companies Act, 2013; Letter of Engagement to file e-Form, relevant provisions and other care to be taken for self-safeguard at Indore. The Study Circle Meeting was inaugurated by CS Ashish Karodia, PDC Chairman of the Chapter, CS Ritesh Gupta and CS Rajesh Lohia, Discussion Leader. Lohia in his address explained the topic in very simple language.

## Study Circle Meeting on Section 185 of the Companies Act, 2013

On 26.4.2014 the Chapter organised a Study Circle Meeting on Section 185 of the Companies Act 2013 at its premises. Guest Faculty CS M.K. Apte explained the topic in a very simple language.

## Management Skills Orientation Programme

From 5.3.2014 to 20.3.2014 the Indore Chapter of WIRC of ICSI organized its 1<sup>st</sup> Management Skills Orientation Programme (MSOP) at Indore. The MSOP had faculties from different fields of Corporate as well as Non-Corporate Sectors.

## PUNE CHAPTER Study Circle Meetings

Pune chapter of ICSI organized a Study circle meeting on "Insurance with reference to Companies Act, 2013" on 26.4.2014 at Pune. Mandar Kotnis was the faculty for the meeting. In total 16 members attended the programme. One PCH was allotted to members who attended the programme and students were allotted two PDP for the programme.

Again on 3.5.2014 a study Circle meeting was organised on "Applicability and Coverage of Labour laws" at Pune. CS Sandeep Nagarkar was the faculty for the Study Circle Meeting. In total 8 members attended this programme. One PCH was allotted to members who attended this programme & students were allotted Two (2) PDP for this programme

Again on 10.5.2014 a Study Circle meeting was organised on an "Overview of Corporate Taxation Aspects" at Pune. CA Suresh Mehta, was the faculty for the study circle. In total 28 members attended the programme. One (1) PCH was allotted to members who attended this programme & students were allotted Two (2) PDP for this programme.

Yet again on 17.5.2014 a Study circle meeting on "NBFC Registration & Compliances" was organised by the Chapter at Pune. CS Sudhir Thite was the faculty for the study circle. In total 39 members attended the programme.

The technical sessions of the study circle meetings were very informative and appreciated by the gathering at large. For attending each study circle, one (1) PCH was allotted to members & students were allotted two (2) PDP for attending each study circle.

## Full day Non-Residential Seminar on Important Aspects of Service Tax & Employee Wealth Creations Plan

On 29.4.2014 the Chapter organized a Full day non-residential seminar on "Important Aspects of Service Tax & Employee Wealth Creations Plan" at Pune. CS V.S. Datey, Practicing Company Secretary, Pune & CS Vikas Agarwal, Founder Partner, LegaLogic Consulting were the eminent faculties for the Seminar. In total 102 members attended the programme. The technical sessions were very informative & appreciated by the gathering at large. Four (4) PCH was allotted to members who attended the programme & students were allotted Eight (8) PDP for the programme.

## Study Circle Meeting –Sinhagad Road Zone

From 24.3.2014 to 28.3.2014 as a part of Celebration of CSBF week by Pune Chapter of ICSI, it organized a Study Circle Meeting on "Stress Management" at Pune. Swami Buddhanandaji was the faculty for the meeting. In total 119 members attended the programme. The technical session was very informative & appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme & students were allotted Two (2) PDP for the programme.

## Study Circle Meeting - Bibvewadi Zone

On 12.4.2014 the Chapter organised at its premises a Study



Circle Meeting on Labour Laws: What Company Secretary Must Know. Adv. Shrikant Malegaonkar was the faculty for the Study Circle Meeting. In total 50 members attended the programme. The technical session was very informative & appreciated by the gathering at large. One (1) PCH was allotted to members who attended this programme & students were allotted Two (2) PDP for this programme.

## An Open House Session for Members of ICSI

On 9.4.2014 In the Light of the rules notified under the Companies Act, 2013 by Ministry of Corporate Affairs and dilution of Opportunities available for the members of ICSI, Pune Chapter organized an Open House Session at Pune. CS Vikas Khare, Vice President, the ICSI addressed the gathering to express the steps taken by the Central Council in an attempt to restore the opportunities lost by the members of the ICSI consequent to notification of Rules under Companies Act, 2013. He also addressed to the views and queries expressed by the members.

Senior members, Past Presidents of the Institute, CMA D. V. Joshi, Past President, ICA along with other 300 members of the Institute attended the programme. Many members expressed their queries, concerns and suggestions with respect to the issues pertaining to the profession arising after the notification of rules notified under Companies Act, 2013. The open house session was very much appreciated by the gathering at large.

## Study Circle Meeting – Aundh Zone

On 19.4.2014 the Chapter organized a Study Circle Meeting on Company Secretary & Internal Auditor at Pune. CA Rajesh Jeurkar, was the eminent faculty for the meeting. In total 34 members attended the programme. The technical session was very informative & appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme & students were allotted Two (2) PDP for the programme.

## THANE CHAPTER Two days' Workshop on Comprehensive Analysis of Companies Act, 2013 and Rules thereunder

On 3 & 4.5.2014 the Chapter conducted a two days' workshop on Comprehensive Analysis of Companies Act, 2013 and rules thereunder. S N Ananthasubramanian, Immediate Past President of the ICSI in his opening remarks stressed upon the important role played by the Company Secretary in the corporate world. The workshop was addressed by K Sethuraman, Group Company Secretary, Reliance Group, Shashikala Rao, Company Secretary in Practice and B Narasimhan, Central Council Member, the ICSI. The workshop was attended by over 190 Members of the Institute.

## ICSI – CCGRT Conference on Ethics and Corporate Governance

On 2.5.2014, ICSI-CCGRT organised 6<sup>th</sup> ICSI-NISM Conference on Ethics and Corporate Governance at Shillong. The Conference was inaugurated by G Gopalakrishna, Director, CAFRAL while Chitra Ramakrishna, Managing Director & CEO, NSE Ltd delivered the keynote address.

The conference was a convergence of thoughts between practitioners, academicians and regulators to identify critical issues in ethics and governance particularly in the corporate sector. The technical session commenced with B V Chaubal, Deputy Managing Director, SBI giving his perspective of the subject. The conference ended with the panel members – V. S. Sundaresan, Chief General Manager, SEBI, Sandip Ghose, Director, NISM and Amarnath, Chief General Manager, RBI discussing the Regulatory Perspective of the subject. K Sukumaran, Dean, NISM moderated the discussions. There was wide participation in the conference particularly from the banking sector as well as Company Secretaries and other professionals from Guwahati.

## Joint Programme on Companies Act, 2013

On 12.5.2014 ICSI-CCGRT jointly with SIRC of ICSI organised a programme on "Select Provisions of Companies Act, 2013 and Rules". The programme was held at SIRO at Chennai. In the forenoon K Sethuraman, Group Company Secretary & Chief Compliance Officer, Reliance Industries Limited, Mumbai and Shashikala Rao, Practising Company Secretary, Mumbai between them covered Select Provisions of the Companies Act, 2013 and Rules including Appointment and Qualification of Directors, Independent Directors, Appointment and Remuneration of Managerial Personnel, Loans to Directors, Inter-corporate Loans & Investments and Meetings, Boards Report, Related Party Transactions. The program concluded in the afternoon with a session on "e-voting" by Dr. V R Narasimhan, Chief of Regulatory Affairs, NSE, Mumbai.

## Programme on Select Provisions of Companies Act, 2013 and Rules

As a part of the series of programmes on the new Act, ICSI-CCGRT organised yet another programme on 17.5.2014. The venue of the program was ICSI-CCGRT, CBD Belapur, Navi Mumbai. In the forenoon, in the first technical session, Prakash Pandya, Practising Company Secretary, Mumbai spoke on Incorporation of Companies & related matters, Charges and Secretarial Audit. In the second technical session Prachi Manekar, Advocate, Bombay High Court spoke on Compromise & Arrangement, Corporate Social Responsibility (CSR), Regulatory Authorities and Corporate Criminal Liability.

In the afternoon, in the third technical session, Khilona Behera, Assistant Vice President, NSDL spoke on different facets of "e-voting" briefly explaining how the process takes place in the NSDL scenario. In the fourth technical session, Kiran Thacker, Company Secretary, Tata Teleservices Limited, Mumbai spoke on Managerial Remuneration and Related Party Transactions.

There was extensive interaction during the sessions.





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

**CENTRE FOR  
CORPORATE  
GOVERNANCE,  
RESEARCH &  
TRAINING (CCGRT)**

## **INVITATION FOR RESOURCE PERSONS / VOLUNTEERS TO ASSIST SECRETARIAL STANDARDS BOARD (SSB) OF ICSI**

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices prevalent in the corporate sector, constituted the Secretarial Standards Board (SSB) in the year 2000 with the objective of formulating Secretarial Standards, a unique and pioneering step towards standardization of diverse secretarial practices. It comprises of eminent members of the profession holding responsible position in well-known companies, senior members in practice, as well as representatives of regulatory authorities, such as the Ministry of Corporate Affairs, Securities & Exchange Board of India and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India. ICSI-CCGRT (Centre for Corporate Governance, Research & Training) located at Navi Mumbai provides technical support to SSB.

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued and to formulate such Standards. SSB also clarifies issues arising out of such Standards and issues Guidance Notes for the benefit of members of ICSI, corporates and other users. SSB has so far brought out 10 Secretarial Standards and more than 12 Guidance Notes.

As you are aware, Section 118(10) of the Companies Act, 2013 mandates observance of Secretarial Standards with respect to General and Board Meetings specified ICSI and approved, as such by the Central Government. In the light of this, the exercise of re-formulating Secretarial Standards with respect to General and Board Meetings as per the applicable laws has already begun. There is a pressing need to re-formulate other Secretarial Standards and Guidance Notes also.

If you are passionate about our vision of adding value to the general endeavour to strive for good governance, have a certain number of days (preferable) or hours in a week to put in, wish to serve our profession and fit in the criteria below, you can volunteer to assist the SSB in re-formulation of other Secretarial Standards and Guidance Notes of SSB through research and study:

### **ELIGIBILITY:**

Knowledge of Corporate Laws especially Companies Act, 2013  
Practical Exposure to secretarial work  
Possess good drafting and/or interpretational skills  
Have Academic flair and willingness to undertake academic assignments

**DESIRABLE EXPERIENCE:** Knowledge of and Suitable Experience in an academic position or in practice or in employment would be beneficial

***Contribution would be appropriately recognised.***

If interested, you can write with detail to:

The Dean, ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614 or e-mail: [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu) or log on to [www.icsi.edu](http://www.icsi.edu).

**ICSI – CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)**

Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai 400 614

☎: 022 – 2757 7814 /15, 41021515 Fax: 022 – 27574384 ✉: [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu) website <http://www.icsi.edu/ccgrt>



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## INVITATION OF APPLICATIONS FOR PANEL OF VISITING / ADJUNCT FACULTY FOR THE INTEGRATED COMPANY SECRETARYSHIP COURSE EXAMINATIONS

The Companies Act 2013 and various other legislations have cast an arduous responsibility on the Company Secretaries in terms of 'Compliance' and more importantly 'Governance'. With a view to groom students of CS course better to meet the challenges of today, keeping in view, the increasing role the company secretaries are being called upon to play and to develop well rounded niche governance professionals under one roof, an Integrated Company Secretaryship Course (full-time) is being launched by ICSI-CCGRT on pilot basis. The Course would be an interactive programme focusing on experiential learning and combining class room lectures, discussions, class exercises, case studies, visits, practice sessions etc to enable the Students to develop holistic perspective towards decision making and governance.

The first batch of the Executive Programme is commencing from 1<sup>st</sup> July, 2014 for Students appearing in June 2015 session.

In this regard, ICSI-CCGRT is inviting applications for preparing a panel of Visiting / Adjunct Faculty from suitably qualified, competent and experienced persons having academic flair and willingness to undertake such academic and confidential assignments in the following subjects of Company Secretaries examinations:

I	LEGAL DISCIPLINE SUBJECTS	
	(a) Law:	
	(i) Economic and Commercial Laws	Executive Programme
	(ii) Company Law	Executive Programme
	(iii) Industrial, Labour and General Laws	Executive Programme
	(iv) Capital Markets and Securities Laws	Executive Programme
	(b) Law and Practice:	
	(i) Tax Laws and Practice	Executive Programme
II	ACCOUNTING AND FINANCE DISCIPLINE SUBJECTS	
	(i) Company Accounts and Auditing Practices	Executive Programme
	(iii) Cost and Management Accounting	Executive Programme

### ACADEMIC CALENDAR:

The sessions would be held throughout the year between 1<sup>st</sup> July, 2014 and 30<sup>th</sup> April, 2015.

### QUALIFICATIONS:

A person applying for empanelment of his/her name as Visiting / Adjunct Faculty should be holding professional qualification as member of the Institute of Company Secretaries of India/Institute of Cost Accountants of India/Institute of Chartered Accountants of India preferably with at least for three years experience and / or a Doctorate Degree / Postgraduate Qualification with at least second class in the discipline of Law, Management, Finance, Accounting, Commerce, etc., preferably with at least three years post qualification experience either in an academic position or in practice or in employment in the concerned field/discipline having relevance to the subjects of examinations.

### DESIRABLE EXPERIENCE:

Persons having adequate experience of teaching and as Head Examiner/ Moderator/Paper Setter/Examiner in subjects of Law, Management, Finance, Accounting, etc. at graduate/post-graduate level or professional examinations or in writing book(s) or study material in the relevant subject(s) or any other specialised graduate/post-graduate level course (s) with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

### SCALE OF HONORARIUM

Best as per rules

### HOW TO APPLY:

Candidates fulfilling the above conditions and not registered as a student of the Institute may send their application along with the bio-data to The Dean, ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614. email:ccgrt@icsi.edu by April 30, 2015.

For any clarifications you may call 022-41021503 / 33  
**ICSI – CENTRE FOR CORPORATE GOVERNANCE,  
RESEARCH & TRAINING (CCGRT)**

Plot No. 101, Sector 15, Institutional Area, CBD  
Belapur, Navi Mumbai 400 614.

☎: 022 – 2757 7814 /15, 41021515 Fax: 022 – 27574384  
✉:ccgrt@icsi.edu website <http://www.icsi.edu/ccgrt>



# ICSI Guidelines No. AC 1/2014

## FORMATION, RECOGNITION AND FUNCTIONING OF STUDY CIRCLE GUIDELINES, 2014\*

### 1 Context

- 1.1 These Guidelines are issued for the Formation, Recognition and Functioning of Study Circles, which will carry out functions as specified hereunder in order to further the objectives of the Continuing Professional Education for the members of the Institute.
- 1.2 In view of the mandatory programme credit hours requirements for members of the Institute in practice or in employment as company secretaries, as laid down by the Council of the Institute of Company Secretaries of India, the Structured Learning Units have been created to facilitate the members to comply with the said requirements.
- 1.3 These Guidelines will come to effect from April 1, 2014.
- 1.4 Amendments, if any, in respect of these guidelines shall be informed to the respective Regional Councils/Chapters for disseminating the same to the concerned Study Circles.
- 1.5 These guidelines shall supersede earlier guidelines issued by the Institute on the subject.
- 1.6 The existing Study Circles shall also be governed by these guidelines.

### 2. Definition of a Study Circle

A Study Circle is a forum of members of the Institute of Company Secretaries of India who reside/having professional practice or in employment in a particular geographical locality of a city/town or a study circle formed under a corporate who constitute themselves as such for the purpose of carrying out the objectives which are set out in these guidelines.

### 3. Objectives of a Study Circle

- 3.1 To felicitate members to achieve the objectives of Continuing Professional Education.
- 3.2 To provide CPE learning activities to the members of the Institute.

- 3.3 To foster and develop professional fellowship, and exchange professional knowledge amongst the members of the Institute in a particular geographical locality as specified in Guideline 2.

### 4. Constitution and Formation

- 4.1 The Professional Development Committee (PDC) of the ICSI is empowered to approve, supervise, support and regulate the functioning of these Study Circles.
- 4.2 Subject to the provisions under Guideline 2, Study Circles may be formed by a minimum 20 and maximum 150 members.
- 4.3 In case of Study Circles being formed under the aegis of a Corporate (including its subsidiaries, Associates and joint Ventures) the minimum number of members required to form the Study Circle shall not be less than 10. PDC is empowered to reduce the minimum number of members required to form these study circles.
- 4.4 No fee/charges to be received from the members of the above category of study circle, [as specified in Guideline 4.3] and the same to be sponsored by the respective corporates.
- 4.5 Application for the formation of Study Circles is to be made to the PDC complying with the guidelines as under:
  - (i) The application for the formation of a Study Circle to be submitted in the prescribed format as per **Annexure 'A'** to these Guidelines through the concerned Regional Council of the ICSI within whose geographical jurisdiction the proposed Study Circle is to be formed.
  - (ii) In the case of a Study Circle proposed to be constituted from a particular chapter constituency, the proposal in the prescribed form as above to be forwarded to the concerned Regional Council along with the recommendations of the Chapter Managing Committee through the concerned Regional Council for further consideration and approval of PDC.

\*Approved by the Council in its 223rd meeting held on March 14, 2014.

- (iii) In case a study circle proposed to be formed, where there is no Chapter/Regional Council contiguous to it, such proposal to be sent directly to the concerned Regional Council for further action as specified hereinabove [4.5(i)] and these guidelines are applicable *mutatis mutandis*.
  - (iv) The period of a study circle would be in consonance with the period of the concerned Regional Council/Chapter and thereafter, they would be seeking renewal of the same by submitting an application as per **Annexure 'B'** in accordance with the procedure laid down in Guideline 4.5 as above.
  - (v) If PDC decides not to approve for formation/renewal of a Study Circle, the same to be communicated to the concerned Regional Council within 30 days of the receipt of the application and be recorded appropriately.
- 7.4 Study Circles shall work under the guidance, supervision and control of the PDC or any other organ of the Institute which it may decide for this purpose.
  - 7.5 Study Circles should invite only academicians/ professionals/ subject experts as dignitaries for the inauguration / valedictory functions, of the programmes, if any, for their learning programmes.
  - 7.6 The date, topic, venue and faculty for Study Circle programmes have to be routinely informed to the PDC.
  - 7.7 Study Circles shall not use the logo of the Institute on their letterhead or on any of their official stationery. Furthermore, the official stationery of the Study Circles should only contain the name of the Convenor/Dy. Convenor along with their postal address & other contact details like e-mail id, phone nos. etc. for correspondence without mentioning the names of organisations in which they serve or firms they are associated with. The names of the Past Convenors and other office bearers should not be mentioned on the official stationery of the Study Circles. The design/style of the letterhead/envelopes should be as per **Annexure 'B'** to these Guidelines.
  - 7.8 Study Circles are not permitted to publish any newsletter of their own.
  - 7.9 Study Circles to observe protocol guidelines of the Institute.
  - 7.10 Code of Conduct as applicable in the Institute's Elections and such other notifications/directives issued by the Institute in this regard from time to time, shall be applicable to the Study Circles and it is the responsibility of the concerned Regional Council/Chapter to disseminate this information for necessary compliance by the Study Circles.
  - 7.11 Participation at the learning activities of the Study Circle shall be open to all members of the Institute.
  - 7.12 The Convenor of the Study Circle shall invite all the members residing within two kms from the location of the study circle to all the study circle meetings.
  - 7.13 The proceedings of study circle meetings shall be shared by the Study Circle with the Institute.
  - 7.14 Study Circles are allowed to hold a maximum of 16 programme credit hours of programmes during a year. Within this limitation, they may conduct their learning activities subject to a maximum of 4 programme credit hours per day once in four months period. Study Circles should not conduct beyond the maximum of 4 programmes credit hours per day, either split the programme as two programmes in a given day under different programme nomenclature or format as the case may be.

## 5. Name of Study Circles

- 5.1 The Study Circle so formed shall be called " \_\_\_\_\_ (name of the corporate / locality etc.) Study Circle for Members of The Institute of Company Secretaries of India (as the case may be)".
- 5.2 The name of a Study Circle should not be the same or similar to that of an existing Study Circle. Name of a Study Circle proposed should reflect its location / corporate entity. The PDC has the right to accept or to reject any name that has been proposed by the applicants for the formation of a Study Circle.
- 5.3 In case the name of the Study Circle proposed includes the name of the Corporate entity, the same would be allowed by the PDC subject to production of evidence to the effect that the Corporate has concurred to the same unconditionally.

## 6 Registration of Study Circles in the Study Circle Database

The PDC on approving the formation of the proposed Study Circle, would send the intimation to the Regional Council/Chapter to update its records and register the newly formed Study Circle.

## 7 Functioning of Study Circles

- 7.1 Each Study Circle shall have a physical address and also an e-mail id, whereat notices and other communications can be sent by the Institute.
- 7.2 The Study Circles shall not have their own rules and bye-laws and should not be registered under any other Act.
- 7.3 The Study Circles shall not acquire any capital assets except one computer, one printer and related accessories.
- 7.15 **Administration**
  - i. Study Circles are recommended to elect at the beginning of every calendar year a Convenor and a Deputy Convenor to look after the day-to-day affairs/ activities of the Study Circles as well as, maintaining

proper accounts of the Study Circle. The Convenor and Deputy Convenor of the Study Circle created under a corporate to be employed/associated with that particular corporate. A person can serve as Convenor/ Dy. Convenor of a Study Circle for a maximum of three terms of one year each. .

- ii. Respective Study Circles to inform the concerned Regional Council/Chapter changes, if any, in regard to Convenor/Deputy Convenor immediately with full particulars
  - iii. Convenor and Deputy Convenor are not permitted to get their visiting cards printed, which contain the details of their association with their Study Circle.
  - iv. One member can become the Convenor or Deputy Convenor of only one Study Circle at a time.
  - v. The Convenor is responsible for conducting at least one programme per month for the members of the Study Circle to discuss various matters of topical interest, at such predetermined place as may be convenient to members. In case, a particular Study Circle is not functioning for a period of six months without conducting any programme, it is the responsibility of the concerned /Regional Council/ Chapter to bring the same to the notice of PDC for its review and necessary action.
- 7.16 The Convenor of the Study Circle to send copies of the communication in respect of the programmes and also the attendance consisting of the membership number and names of the members to the PDC within ten days of organizing programmes and also to concerned Regional Council/Office for the purpose of recording necessary PCH to the concerned member. The Convenor is also required to forward the details of the programme before organizing a programme the Convenor of the Study Circle to send the details of the same to the Regional Council/Chapter for uploading the details in the portal.

#### 7.17 **Accounts**

- i. Study Circles are authorized to open Bank Accounts in the names of the respective Study Circles and Convenors and Deputy Convenors are authorized to operate the accounts jointly.
- ii. The accounts of the Study Circle to be maintained as per the mercantile system of accounting and with reference to financial year- April to March.
- iii. Convenor of every Study Circle shall submit half - yearly and annual accounts to the respective Regional Council/Chapter. The half yearly accounts for the period from 1st April - 30th September, of the relevant year, shall consist of standard format of Receipts and Payments Account and Income and Expenditure Account and the same shall be submitted before 15th of October. Annual audited accounts comprising of Receipts and Payments Accounts, Income and Expenditure Account and the Balance Sheet of the relevant financial year from 1st April to 31st March shall be submitted before the 15th April to the Regional Council/Chapter. The Regional Council/Chapter after its consideration of the accounts of the Study Circle as mentioned above shall send the same to PDC within 30th November in the case of half yearly accounts and by 31st May in the case of audited Annual Accounts.
- iv. It should be the endeavour of the Convenors to conduct the Learning Programmes on cost competitive and self-financing basis.
- v. The Study Circle to furnish periodically such information as and when called for like, Date of the Programme/Meeting, Topic of the Programme, Name of the Speaker and surplus or deficit of programmes for placing before the respective Regional Council /Chapter Management Committee/ PDC
- vi. Convenors of Study Circles are authorized to collect a reasonable amount from every member as participation fee for each programme to defray the cost of holding learning activities and other incidental expenses connected with the programme.
- vii. The Study Circles shall not be allowed to offer Corporate Membership Scheme or such other schemes to the members.
- viii. The prime objective of the Study Circles is to support the learning initiatives of the Institute. The accounts of the study circle shall not form part of the Consolidated Accounts of the Institute and they would be functioning on "No profit" principle. The cost of learning activities would include legitimate expenses such as rent for the venue for organizing learning programmes, refreshments/ lunch/dinner for the participants, travelling cost of faculties, memento to the faculties, printing, postage for circulating the invitation for the programme to the members and printing of the background material only.
- ix. It is the responsibility of Convenor/Deputy Convenor for ensuring financial propriety of the Study Circle and for submission of proper accounts, as and when required by the PDC or any other authorized organ of the Institute.
- x. The Study Circles are not entitled for any grant or financial assistance/sponsorship from the Institute and/or by the Regional Council or by the Chapter or by a Charity/Trust or any other Institutions. However, Study Circles which are being formed under the category of corporate are to be sponsored only by the concerned Corporate and its

associated companies/institutions and not by any other companies/institutions not connected with the concerned corporate.

- xi. Surplus funds of Study Circles at the end of every financial year should be immediately committed for subsidizing future programmes to be conducted by the respective Study Circle. The surplus funds at the end of each financial year must be utilized within six months from the end of that particular financial year but not later than 30th November for the benefit of the members. In case the surplus amount remain unspent, a report to this effect shall be submitted to PDC by the concerned Study Circle through Regional Council/Chapter, in order to enable the PDC to consider the same and if necessary, to call for such surplus amount from the Study Circle concerned for transfer to the Company Secretaries Benevolent Fund of the ICSI.

#### 7.18 **Joint Programmes**

Programme Credit Hours shall not be granted for programmes organized jointly by Study Circles with any non-Programme Organising Unit. However, two or more Study Circles may jointly organize a programme or a Study Circle may organize a joint programme with other Programme Organising Units.

#### 7.19 **Monitoring of Programmes conducted by Study Circles**

Regional Council/Office and Chapter/ PDC or any other organ shall be designated/developed by the PDC to monitor the activities of the Study Circle . However, the purpose of such monitoring is to ensure that the study circles are functioning as per the guidelines as well as Advisory issued by the PDC from time to time in this regard. The monitoring includes suggestions and advice to the study circle as and when required.

#### 7.20 **Incidental and Related Matters**

- (i) There should be no restriction whatsoever placed by the Study Circles on any member of the Institute intending to become a member of a particular Study Circle.
- (ii) PDC has the responsibility of publicizing the programmes intended to be conducted by the Study Circles.
- (iii) Participation for the programmes , organized by a particular Study Circle is open to all the members including those who are not the members of that study circle, subject to payment of such programme fee.

## **8**

### **Dissolution of Study Circles**

8.1 The PDC has the powers to derecognize a Study Circle in the following cases:

- (i) If the Study Circle is not functioning in accordance with the Guidelines and other decision(s) of the PDC or the Central Council of the Institute.
- (ii) If the Study Circle is found to be working against the interest/policies of the Institute

## **9**

### **Residual Matters**

9.1 In the event of lack of clarity in any matter in the formation of Study Circles or their administration, application should be made to the PDC, which is entrusted with the responsibility for providing such clarification.

9.2 The PDC shall have absolute discretion to decide and intervene in matters concerning Programmes organized by a particular Study Circle, whether conducted by itself or jointly with any other body as permitted under these Guidelines, and also to -

- (i) Prescribe such additional conditions in regard to the conduct, monitoring, content, faculty etc. for any programme and to grant programme credit hours to such program conditional upon compliance with any such conditions as may be prescribed, and
- (ii) Refuse Programme Credit Hours to any such programme if in their view the grant of such Programme Credit Hours is not in the overall interest of the Institute, its Programme Organizing Units, the members or for some other reason not in consonance with the policy or objectives of the PDC as laid down from time to time.

9.3 The PDC, through its administrative arm, is authorized by the Council of the Institute to intervene in any matter so as to either remove hardship or to ensure compliance with the above norms.

9.4 Every Study Circle willing to organise a joint programme shall obtain a prior approval of the Directorate of Professional Development. Requests for such joint Programmes shall be recommended by and routed through the concerned Regional Council/Chapter under whose geographical jurisdiction such Study Circle is situated.



## ANNEXURE A

# Format of application for seeking approval of the PDC for forming a Study Circle by Members of ICSI

Date \_\_\_\_\_

### Chairman

### Professional Development Committee

The Institute of Company Secretaries of India  
ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110 003

### Through the ..... Regional Council

Dear Sir/Madam,

### Sub: Formation of Study Circle for Members

- 1] We, on behalf of the members of the Institute of Company Secretaries of India from..... (name of the locality, place and in the case of Corporate category of study circle mention the name of the Corporate), whose details are given in the enclosed list, desire to form a Study Circle for Members under the name .....
- 2] We have read the Guidelines framed in this respect by the Institute and we shall abide by the same.
- 3] Mr. ....and Mr. .... have expressed their consent to be the first Convenor and first deputy Convenor of the above Study Circle.

We shall be pleased, if the approval is granted for forming the Study Circle at the earliest.

Thanking you,

Yours Faithfully,

**(Convenor)**

**(Deputy Convenor)**

### Note :

- I. The list of signatories to contain the columns : a] Name of the Member with Membership No. b] Name of the Organization with Designation and address c] Address for correspondence, d] E-mail ID, Mobile No. and Landline No.
- II. Signatures of the members to be verified by the concerned Regional office of the ICSI.
- III. In the case of study circle nearer to a particular chapter, the same to be sent through the Chapter to the Regional Council

**ANNEXURE B**

**Format of Application for seeking approval of the PDC for renewing a Study Circle by Members of ICSI**

Date \_\_\_\_\_

**Chairman  
Professional Development Committee**  
The Institute of Company Secretaries of India  
ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110 003

**Through the ..... Regional Council**

Dear Sir/Madam,

**Sub: Renewal of Study Circle for Members**

We, on behalf of the members of the Institute of Company Secretaries of India from..... (name of the locality), whose details are given below, desire to renew the Study Circle for Members under the name ..... We have read the Guidelines framed in this respect by the Institute and we shall abide by the same.

Mr. ....and Mr. .... have expressed their consent to be the Convenor and deputy Convenor of the Study Circle .

We shall be pleased if the approval is granted at the earliest.

Thanking you,  
Yours Faithfully,

**(Convenor) (Deputy Convenor)**

**Note :**

- I. The list of signatories to contain the columns : a] Name of the Member with Membership No. b] Name of the Organization with Designation and address c] Address for correspondence, d] E-mail ID, Mobile No. and Landline No.
- II. Signatures of the members to be verified by the concerned Regional office of the ICSI.
- III. In the case of study circle nearer to a particular chapter, the same to be sent through the Chapter to the Regional Council

**ANNEXURE C**

**Suggested format of Letterhead of the Study Circle for Members in Employment**

.....Study Circle for Members of the ICSI  
Approval reference no. of PDC of ICSI.....

The name of the Convenor  
Dy. Convenor  
Postal address  
e-mail id  
Phone nos.  
Fax nos





Eight  
PCH

**PUNE CHAPTER OF WIRC OF ICSI ANNOUNCES  
TWO DAYS RESIDENTIAL WORKSHOP ON  
"Critical Issues in Corporate Laws"**

Dear Professional Colleagues,

In the advent of Companies Act, 2013 and the Rules issued thereunder and recognizing the demand from the members of ICSI, Pune Chapter of WIRC of ICSI is pleased to announce, for the second time during the year 2014, the Residential Workshop on "Critical Issues in Corporate Laws".

Every new law brings with it complexities and so is the case with the Companies Act, 2013. The workshop aims to discuss on emergent issues and challenges under the new Act and provide detailed and in-depth understanding on the Critical Issues.

For leading the discussions at the workshop, we will be having the gracious presence of Dr. K. R. Chandre, Past President of ICSI and Practising Company Secretary, Pune as faculty cum coordinator.

We request you to rush your registration as well as papers for discussion at the Workshop by email. Kindly mail the papers to:

- CS Dr. K. R. Chandre at [kchandre@icmai.com](mailto:kchandre@icmai.com)
- CS Shilpa Dixit at [shilpa.dixit@mrmca.com](mailto:shilpa.dixit@mrmca.com)
- Pune Chapter at [pune@icmai.edu](mailto:pune@icmai.edu)

With reference to the papers kindly

- Draft the papers in maximum ten lines.
- Do not reproduce the Contents of the Sections/ Rules/ Regulations; it would be sufficient to provide their reference(s) respectively.

**DAY & DATE**

Friday, 20<sup>th</sup> June 2014  
&  
Saturday, 21<sup>st</sup> June 2014

**VENUE**

**BLUE COUNTRY  
RESORT**  
Khingar Road,  
Panchgani, Satara,  
Maharashtra  
Mahabaleshwar 412806  
☎: 02168-241521/502  
✉: 02168-240041

Delegate Fee (Inclusive of Service Tax)	Option 1 (One Day Stay)		Option 2 (Two Days Stay)	
	Early Bird Discount upto 31 <sup>st</sup> May 2014	Regular Fee applicable on after 1 <sup>st</sup> June 2014	Early Bird Discount upto 31 <sup>st</sup> May 2014	Regular Fee applicable on after 1 <sup>st</sup> June 2014
Members of ICSI (Residential)	Rs. 5400	Rs. 6000	Rs. 7900	Rs. 8500
Accompanying Spouse	Rs. 6500	Rs. 6750	Rs. 8500	Rs. 9000
Non-Members (Residential)	Rs. 6000	Rs. 6500	Rs. 8500	Rs. 9000

Cheque / DD should be drawn in favour of "Pune Chapter of ICSI" payable at Pune

**PLEASE NOTE TERMS AND CONDITIONS OVERLEAF FOR YOUR CONVENIENCE**

Rush your entries, as the seats are limited to 50  
(Kindly note that the entries will be registered on first come first PAYMENT basis only)

To Register Please Contact

Assistant Director,

Pune Chapter of WIRC of ICSI

23, Mulundnagar, Corner of Lane No. 3, Above Joshi Hospital, Pune: 411 007

E-mail: [pune@icmai.edu](mailto:pune@icmai.edu)

**CS Shilpa Dixit**  
Chairman

**CS Kuldeep Ruchandani**  
Secretary

**Anil Tale**  
Assistant Director

**Kindly note:**

- All participants are required to carry the Companies Act, 1956 & the Companies Act, 2013, and rules thereunder while attending the workshop.
- With respect to the stay arrangements at the BLUE COUNTRY RESORT, Kindly note that the following will be the Check in and Check out Time:

	Stay arrangements
	<b>Option 1</b>
Check in time:	On or after 10.00 A. M. on 20 <sup>th</sup> June 2014 (Friday)
Check out time:	On or before 9.00 A.M. on 21 <sup>st</sup> June 2014 (Saturday)
	<b>Option 2</b>
Check in time:	On or after 10.00 A. M. on 20 <sup>th</sup> June 2014 (Friday)
Check out time:	On or before 9.00 A.M. on 22 <sup>nd</sup> June 2014 (Sunday)

- No transport facility for the program is being provided by the Chapter.
- Above charges are exclusive of any stay prior to Check-in time and / or after Check-out time mentioned above (for both the options respectively) and are chargeable separately which will have to be paid directly to the Hotel Management by the respective member/(s) or Participant/(s).
- Residential accommodation is on triple sharing basis.
- Fees include participation in the workshop, study material, accommodation as above and other costs as follows:
  - Option 1: all Meals Lunch/Evening tea/dinner on 20<sup>th</sup> June 2014 (Friday) and Buffet Breakfast/Lunch/Evening Tea on 21<sup>st</sup> June 2014 (Saturday)
  - Option 2: all Meals (Lunch/Evening tea/dinner/Buffet Breakfast), which starts from lunch on the 20<sup>th</sup> June 2014 (Friday) & ends with Breakfast on the 22<sup>nd</sup> June 2014 (Sunday).
- Participants are requested to note that all Meals will have a fixed menu as provided by the Hotel Management.
- Participants will be required to bear costs towards any other facility availed by them and the same will have to be paid directly to the Hotel Management by the respective member/(s) or Participant/(s).
- Participants are requested to check at the reception for the free facilities at the resort, for their own convenience.
- Room allotment will be done at the Resort as per availability
- In case, any member/ participant wishes to opt for accommodation on a double sharing or single sharing, the following will be additional cost:
  - On Double Sharing Basis - additional Rs. 1250/- (per person per day)
  - On Single occupancy Basis - additional Rs. 2500/- (per day per room)

\* Above costs are exclusive of applicable taxes
- Registration is Non-transferable.
- Accompanying spouse will not be entitled to attend the workshop unless registered as a participant.
- Fees will be refunded after deduction on account of cancellation as per following:
  - 10% deduction – If cancelled 15 days prior to the date of workshop
  - 25% deduction – If cancelled less than 15 days but more than 7 days prior to the date of workshop.
  - No refund – If cancelled 7 days (or lesser) prior to the date of workshop.

Four PCH for ICSI Members  
Eight PDP for ICSI Students



# THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

ICSI to launch its Post Membership Qualification Course in Competition Law at

## National Seminar on 'Laws and Economics of Competition'

Friday, the June 13, 2014 9.30 am to 5.00 pm Venue: The Ashok, New Delhi

**Registration : 09.00 a.m., Delegate Fee:Rs. 1,000/- + 12.36% service tax**

The Competition is driving today's Global business environment, and is as old as evolution of human beings. Competition being fundamental characteristic of a flexible and dynamic market economy, its benefit accrue to consumers, businesses and the economy as a whole. It benefits consumers by enabling them to choose from a wide array of quality products at affordable prices; businesses benefit from lower prices as consumers of raw materials or intermediate products, which augments their competitiveness; and the economy benefits as competition fosters innovation, increases productivity and leads to accelerated economic growth.

The fundamental objective of Competition Law is to promote and sustain market competition as its rationale lies in the proposition that competition yields social benefits and therefore needs to be nurtured. The process of competition is, however, not automatic, as vested interest groups, incumbent monopolistic firms, collusive businesses and other stakeholders may distort the process of competition or capture the benefits of market-oriented economic reforms. The evidences, in this context, suggest that effective competition regulation in an environment of competition culture acts as a catalyst for trade liberalisation, foreign direct investment and other economic policies, promoting economic growth, equity and welfare of the common man.

In this backdrop, the ICSI is organizing a National Seminar on 'Laws and Economics of Competition' on June 13 2014 at New Delhi. **Mr. Ashok Chawla, Chairman, Competition Law Commission of India has very kindly consented to be the Chief Guest.** Other Eminent Faculty comprising Regulators, Executives and professionals having extensive exposure in chosen areas

will also address the participants on the occasion.

### COVERAGE

The theme of the Seminar will be deliberated in the following three technical sessions:

1. Prohibitions: (i) Agreements, and (ii) Investigations
2. Combinations
3. Abuse of dominance

### PARTICIPATION

The Seminar will be of immense benefit to corporate executives, company secretaries, chartered accountants, cost accountants and other professionals.

### FEE

Rs. 1,000/- + 12.36% service tax per participant to cover the cost of organisational expenses of the Seminar.

### PROGRAMME DIRECTOR

CS Sanjay Grover  
Council Member, ICSI and Chairman, Corporate Laws and Governance Committee

### REGISTRATION

Request for Registration may be sent alongwith demand draft/cheque for Rs. 1124/- per delegate drawn in favour of The Institute of Company Secretaries of India payable at New Delhi to Assistant Director, (Academics), The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110 003. Tel: 011-45341027; Mobile: 9899059620; E-mail: Jagvinder.kaur@icsi.edu.

**For more details please visit Institute's Website:www.icsi.edu**

# REVISED EXPOSURE DRAFTS OF SECRETARIAL STANDARDS WITH RESPECT TO GENERAL AND BOARD MEETINGS FOR PUBLIC COMMENTS

(Last Date for comments: June 30, 2014)

The Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) had revised its Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) as per the new Act and Rules thereunder and hosted the Exposure Drafts thereon for public comments on its website.

Many stakeholders expressed their inability to comment on the Standards owing to the busy season in the financial year & implementation of new law and requested SSB / ICSI to extend the time-frame for comments.

In the light of this and based on the public comments and suggestions already received from various quarters on the earlier Exposure Drafts, SSB has now once again brought out Revised Exposure Drafts of the Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2).

Based on further public comments received, these two Standards would be finalised and sent to the Central Government for their consideration and subsequent notification u/s 118(10) of the Companies Act, 2013.

**Once it is approved by the Central Government, these Standards would become the law of the country and corporates & professionals would be responsible for compliance and implementation of these Standards.**

**While every effort has been made by SSB to address multiple grey areas in the law and incorporate best practices being followed by the corporates in the country; simultaneously facilitating the professionals and benefitting the industry, your comments, views and suggestions on the same is vital in order to bring out effective and acceptable Standards.**

**In the light of the above, your specific comments or suggestions are solicited on the Revised Exposure Drafts on:**

- Secretarial Standard on Meetings of the Board of Directors (SS-1) and
- Secretarial Standard on General Meetings (SS-2)

Comments should be sent electronically (Instructions for giving comments electronically are placed below by way of a Note) under the following heads:

## 1. Drafting Errors or Improvements

Under this, we are concerned with deviations from the standard use of English as understood by a company. If you feel that

the communication at any place is not effective or the standard is not clear and concise and can be improved kindly suggest the manner in which it should be expressed.

## 2. Areas not covered in law suggested to be covered in the Standard

Under this, we are concerned with situations where neither the Act nor the rules make provision to cover a given situation or the rules have not provided to make an exception where it is otherwise warranted.

## 3. Contradictions with the Act or Rules

Under this, you may point out any aspect of the standard which is not consistent with or contradicts any of the provisions of the Companies Act or Rules or Forms thereunder.

## 4. Contradictions with any other law

Under this, you may point out any aspect of the standard which is not consistent with or contradicts any of the provisions of any other Act or Regulations or Rules.

## 5. Multiple or diverse Interpretations of any part of the standard

The attempt of the standard is to have only one interpretation i.e. the endeavour is to make the standard unambiguous. Kindly point out in this section, if you find any part of the standard which is capable of multiple or diverse interpretations or ambiguity.

## 6. Conflict with Judicial Pronouncements

Under this, you may point out if any part of the standard differs from or contradicts or is conflicting with any judgement of either the Supreme Court or High Court or any clarification by a regulatory authority like MCA, SEBI, stock exchange, etc.

## 7. Best Secretarial/ Industry Practices

Under this, you can share any good practices being followed by your organisation or industry, in respect of any of the areas which the standard seeks to cover, which removes the barriers that might have been hindering industry from complying with any of the provisions of the Act or Rules and/or facilitates better corporate governance.

## 8. Typical Situations/Scenarios not addressed in the Standard

Under this, you can list any critical issues or special circumstances encountered by you, which you consider are not addressed in the standard and which could be added.



**9. Any other Suggestions not covered above**

If you have any other suggestions or if you feel that the standard is not accurate or complete, you may respond under this. Otherwise, please confine your suggestions under the points enumerated above.

The texts of the Exposure Drafts are placed below.

**The last date for giving comments is Monday, June 30, 2014.**

Chairman  
Secretarial Standards Board

Issue Date: May 30, 2014

Note:

**1. Instructions for log-in for giving comments:**

- Visit <http://www.icsi.edu/ssb>
- Sign up by creating your own user id and password by filling up your e-mail addresses and requisite details. (While doing so, please select appropriate occupation from the drop-down menu)
- Once you receive an e-mail confirmation of your registration, you can log-in to <http://www.icsi.edu/ssb> with your user-id and password and give your comments at any time on or before the last date.

**2. Please do not wait for the last date to give your comments.**

# SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS

The following is the text of the Secretarial Standard-1 (SS-1) issued by the Council of the Institute of Company Secretaries of India, on "Meetings of the Board of Directors".

Adherence by a company to this Secretarial Standard is mandatory, as per the provisions of the Companies Act, 2013.

***(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards'. Both the Standard portions and the background material have equal authority).***

**INTRODUCTION**

This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related there to.

All the powers vested in the Directors are exercisable by them only collectively as a Board. Except in the case of One Person Company, in which there is only one Director on its Board, no individual Director has the power to act on behalf of the company unless such power has been delegated to such Director by the Board.

**SCOPE**

This Standard is applicable to the Meetings of Board of Directors of all companies incorporated under the Act except One Person Company (OPC). The principles enunciated in this Standard for meetings of the Board of Directors are also applicable to meetings of Committee(s), unless otherwise stated herein or stipulated by any other applicable guidelines, Rules or Regulations.

**DEFINITIONS**

The following terms are used in this Standard with the meaning specified:

**"Act"** means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

**"Articles"** means the Articles of Association of a company, as originally framed or as amended from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.<sup>1</sup>

**"Chairman"** means the Chairman of the Board, or the Chairman appointed or elected for a Meeting.

**"Committee"** means a Committee of Directors constituted by the Board.

**"Electronic Mode"** means electronic medium of communication including video conferencing or other audio-visual means or other electronic communication facility capable of being recorded, as may be applicable.

**"Interested Director"** means a Director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.<sup>1</sup>

**"Maintenance"** means keeping of registers and records either in

<sup>1</sup> As per Clause 2 (49) of the Companies Act, 2013

physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

“*Meeting*” means a duly convened, constituted and conducted meeting of the Board or any Committee thereof.

“*Minutes*” or “*Minutes Book*” means Minutes or Minutes Book maintained in physical or in electronic form.

“*National Holiday*” means and includes a day declared as National Holiday by the Central Government.

“*Non-interested Director*” means a Director who is not an Interested Director.

“*Original Director*” means a Director in whose place the Board has appointed any other individual as an Alternate Director.

“*Quorum*” means the minimum number of Directors whose presence is necessary for holding of a Meeting.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

## SECRETARIAL STANDARDS

### 1. Convening a Meeting

#### 1.1 Authority

**1.1.1 Any Director of a company may, at any time, summon a Meeting of the Board, and the Manager or Secretary on the requisition of a Director, shall convene a Meeting of the Board, unless the Articles provide otherwise.**

**1.1.2 The Chairman may, with the consent of the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.**

#### 1.2 Time, Place and Mode of Meeting

**1.2.1 A Meeting may be held at any time and place, on any day.**

The place of a Meeting held through Electronic Mode shall be deemed to be in India. Notice of the Meeting in such cases shall clearly mention a place in India, whether registered office or otherwise, to be the place of the Meeting and it shall be the place where the Chairman would be present.

A Meeting adjourned for want of Quorum shall not be held on a National Holiday.

**1.2.2 A Meeting may be held by Physical or through Electronic Mode, unless the Act or any other law specifically requires any items of business not to be dealt through Electronic Mode.**

Approval of the annual financial statements, Board’s report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover shall not be dealt with in a Meeting through Electronic Mode.

Similarly, Meetings of the Audit Committee for consideration of accounts of the company shall not be held through Electronic Mode.

#### 1.3 Notice

**1.3.1 Notice in writing of every Meeting shall be given to every Director by hand or by post or by courier or by facsimile or by e-mail at his address registered with the company or by any other Electronic Mode.**

The Notice shall be sent to the postal address in India or e-mail address or fax number registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses or fax number appearing in the Director Identification Number (DIN) registration of the Director.

Where a Director specifies a particular mode, the Notice shall be given to him by such mode.

**1.3.2 The Notice shall specify the day, date, time and full address of the venue of the Meeting.**

**1.3.3 In case the facility of participation through Electronic Mode is being made available, the Notice shall inform the Directors about the availability of such facility and provide them necessary information to access such facility.**

Where such facility is provided, the Notice shall seek advance confirmation from the Directors as to whether they will attend the Meeting through Electronic Mode. The Notice shall also contain the contact number or e-mail address (es) of the Chairman or Secretary or any other authorised person, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be presumed that he will physically attend the Meeting.

**1.3.4 The Notice of a Meeting shall be given even when Meetings are held on pre-determined dates or at pre-determined intervals.**

**1.3.5 Notice convening a Meeting shall be given at least seven days before the date of the Meeting unless the Articles prescribe a longer period.**

In case of a listed company, a period of seven days shall exclude the date of Notice and the Meeting.

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.



### **1.3.6 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the directors at least five days before the date of the Meeting.**

In case of a listed company, a notice of seven days, excluding the date of Notice and the Meeting shall be given in respect of a Meeting wherein periodic financial results or financial statements are proposed to be considered.

Agenda and Notes on Agenda shall be sent to all Directors by hand or by post or by courier or by e-mail at their address registered with the company or by any other Electronic Mode. These shall be sent to the postal address in India or e-mail address or any other electronic address registered by the Director with the company separately or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

Where a Director specifies a particular mode, these papers shall be sent by such mode.

The Notice, Agenda and Notes on Agenda shall be given to the Original Director also, even if they have been given to the Alternate Director.

Supplementary Notes on any of the Agenda Items may be circulated at or prior to the Meeting.

### **1.3.7 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that may enable the directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest of any Director in the proposal, if any, which the Director had earlier disclosed. Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting.**

Unpublished Price Sensitive Information such as financial results may be tabled at the Meeting, if agreed to by the majority of Independent Directors. "Unpublished Price Sensitive Information" means any information which is material and is generally not known or is not published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company. Such information includes periodic financial results, intended recommendation of dividend, announcement of bonus shares, rights issue and other corporate benefits, issue of securities, buy back of securities, any major expansion plans or execution of new projects, amalgamation, merger and takeovers, disposal of the whole or substantial part of the undertaking, any significant changes in policies, plans or operations of the company, and such other information as may affect the earnings of the company.<sup>2</sup>

<sup>2</sup> Adapted from SEBI's definition

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at Annexure 'A'.

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at Annexure 'B'.

### **1.3.8 Each item of business to be taken up at the Meeting shall be numbered.**

Numbering shall be in a manner which would enable ease of reference or cross-reference.

### **1.3.9 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include atleast one Independent Director, if any.**

In case of absence of Independent Directors, if any, at such Meeting, the Minutes shall be final only after atleast one Independent Director, if any, ratifies the decision taken in respect of such item. In case the company does not have an Independent Director, the decision taken in respect of such item shall be final only on ratification thereof by a majority of the Directors of the company.

### **1.3.10 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above.**

The proposal to hold a Meeting at a shorter notice shall be stated in the Notice.

At least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company.

## **2. Frequency of Meetings**

### **2.1 Meetings of the Board**

**The Board shall hold its first Meeting within thirty days of the date of its incorporation and thereafter shall hold at least four Meetings in each calendar year with a maximum interval of one hundred and twenty days between any two consecutive Meetings.**

In the calendar year of incorporation, it shall be sufficient if, after the first Meeting, one Meeting is held in each quarter, subject to a maximum interval of one hundred and twenty days between two consecutive Meetings.

Further, it shall be sufficient if One Person Company, Small Company and Dormant Company hold one Meeting of the Board in each half of a calendar year and the gap between the two Meetings is not less than ninety days.

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the adjourned Meeting.

## 2.2 Meetings of Committees

Committees shall meet at least as often as stipulated by the Board or as prescribed by any law or authority.

## 3. Quorum

### 3.1. Quorum shall be present throughout the Meeting.

Quorum shall thus be present not only at the time of commencement of the Meeting but also while transacting business.

A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether in physical or electronic form, during discussions on such item. An Interested Director shall before the consideration of such item at the Meeting, disclose to the Board his interest in the transaction.

A Director shall not be deemed to be interested in a contract or arrangement if his interest in the other company is by virtue of solely shareholding and he himself alongwith two or more Directors holds not more than two percent of the paid-up share capital in the other company.

### 3.2 Directors participating in a Meeting through Electronic Mode shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.

Such restricted items of business include approval of the annual financial statements, Board's Report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover and consideration of accounts of the company by the Audit Committee.

Directors shall not participate through Electronic Mode in the discussion on such restricted items.

### 3.3 Meetings of the Board

#### 3.3.1 The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.

Any fraction contained in the above one-third shall be rounded off to the next one.

Where the Quorum requirement provided in the Articles is higher

than one-third of the total strength, the company shall conform to such higher requirement.

Total strength for this purpose, shall not include Directors whose places are vacant.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the quorum during such time.

If a Meeting of the Board could not be held for want of Quorum, then, unless the Articles otherwise provide, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place.

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

#### 3.3.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.

The continuing Directors may act notwithstanding any vacancy in the Board; but if and so long as their number is reduced below the Quorum, the continuing Directors or Director may act only for the purpose of increasing the number of Directors to that fixed for the Quorum, or for summoning a general meeting of the company for this purpose.

## 3.4 Meetings of Committees

### 3.4.1 The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board.

Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.

## 4. Attendance at Meetings

### 4.1 Attendance registers

#### 4.1.1 Every company shall maintain an attendance register of the Meetings of the Board and Committees. Separate registers shall be maintained for Board Meetings and for Committee Meetings.

If an attendance register is maintained in loose-leaf form, it shall be bound periodically.

#### 4.1.2 The register shall contain the following particulars: date of the meeting; in case of a Committee Meeting name



**of the Committee; place of the Meeting; time of the Meeting; names of the Directors and signature of each Director present; name and signature of any other person in attendance and preferably also of persons attending the Meeting by invitation.**

**4.1.3 Every Director, every person in attendance and every invitee who attends a meeting of the Board or Committee thereof shall sign the attendance register at that Meeting.**

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors. For this purpose, at the commencement of the Meeting, the Chairman/ Secretary shall take a roll call. The Chairman/ Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the Minutes. The proceedings of such Meetings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

The Attendance Register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded by the Chairman or the Secretary in the Attendance Register and the Minutes of the Meeting.

"Invitee" for this purpose would mean a person, other than a Director or a Key Managerial Personnel, who attends a Meeting of the Board by invitation or with the permission of the Chairman.

**4.1.4 The register shall be maintained at the Registered Office of the Company or such other place as may be approved by the Board.**

The register may be taken to any place where a Meeting of the Board or committee is held.

**4.1.5 The register is open for inspection by the Directors.**

A Member of the company is not entitled to inspect the register.

The Practising Company Secretary appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can inspect the register in the course of audit.

Officers of the Registrar of Companies, or other Government or regulatory bodies, if so authorised by the Act or any other law, during the course of an inspection, can also inspect the Minutes.

**4.1.6 Entries in the register shall be authenticated by the Secretary of the Company or by any other person authorized by the Board for the purpose, by appending his signature to each page.**

**4.1.7 The register shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.**

The recording of proceedings of Meetings through Electronic Mode

shall be preserved for at least eight financial years and may be destroyed thereafter with the approval of the Board.

**4.1.8 The register shall be kept in the custody of the Secretary of the Company or any other person authorized by the Board for the purpose.**

**4.2 Leave of absence shall be granted to a Director only when a request for such leave has been received by the Secretary or by the Chairman.**

The office of a Director shall become vacant in case the Director is absent from all the Meetings of the Board for a continuous period of twelve months with or without seeking Leave of Absence of the Board.

## 5. Chairman

### 5.1 Meetings of the Board

**The Chairman of the Board shall conduct the Meetings of the Board. If no person has been so designated or if the designated Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of them to chair and conduct the Meeting of the Board, unless the Articles provide otherwise.**

It would be the duty of the Chairman to see that the Meeting is duly convened, constituted and conducted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.

If the Chairman is interested in any item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-interested Director and resume the Chair after that item of business has been transacted. The Chairman shall also not be present at the meeting during discussions on such items.

In case some of the Directors participate through Electronic Mode, the Chairman and the Secretary shall safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures. The Chairman and the Secretary shall ensure that no person other than the Director concerned has access to the proceedings of the Meeting through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.

If the Articles so provide, the Chairman shall have a casting vote.

### 5.2 Meetings of Committees

**A member of the Committee elected by the Board or by the Committee as Chairman of the Committee shall conduct the**

**Meetings of the Committee. If the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless the Articles provide otherwise.**

## **6. Passing of Resolution by Circulation**

The Act requires certain business to be approved only at Meetings of the Board. However other business that does not require detailed discussion or requires urgent decisions can be approved by means of resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

### **6.1. Authority**

**6.1.1 The Chairman of the Board or the Managing Director or in his absence, the Whole-time Director shall decide whether the approval of the Board for a particular business shall be obtained by means of a resolution by circulation.**

If the resolution is proposed by any other Director, the approval of any of the aforesaid Directors, if there is one, shall be obtained before the draft resolution is circulated to all the Directors.

An illustrative list of such items which shall be placed before the Board at its Meeting and shall not be passed by circulation is given at Annexure 'A'

**6.1.2 Where there is no Chairman or Managing Director, any Director shall decide whether the approval of the Board for a particular business shall be obtained by means of a resolution by circulation.**

**6.1.3 Where not less than one-third of the total number of Directors for the time being require the resolution under circulation to be decided at a Meeting, the Chairman shall put the resolution for consideration at a Meeting of the Board.**

Interested Director shall not be excluded for the above purpose.

### **6.2. Procedure**

**6.2.1 A resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, individually to all the Directors on the same day.**

The resolution together with all papers shall be sent to all Directors including Interested Directors and Directors who are usually residing abroad.

**6.2.2 The draft of the resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by post or by courier, or by email or by any other Electronic Mode.**

The draft Resolution and the necessary papers shall be sent to

the postal address in India or e-mail address registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

If the draft Resolution and the necessary papers are circulated by hand or by post or by courier, these shall be sent to all the Directors at their addresses in India as registered with the company.

**6.2.3 Each business proposed to be passed by way of resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that may enable the directors to understand the meaning, scope and implications of the proposal and the draft of the resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the resolution proposed and the date by which the Director shall respond.**

Each Resolution shall be separately explained.

The decision of the Directors shall be sought for each Resolution separately.

A maximum of seven days from the date of circulation of the draft of the resolution may be given to the Directors to respond and the last date shall be computed accordingly.

### **6.3. Approval**

**6.3.1 The resolution is passed when it is approved by a majority of the directors entitled to vote on the resolution, unless not less than one-third of the total number of Directors for the time being requires the resolution under circulation to be decided at a Meeting.**

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the resolution shall be passed only with the assent of such special majority or such affirmative vote.

For this purpose, a Director whose interest in a contract or arrangement is by virtue of solely shareholding in the other company and he himself alongwith two or more Directors holds not more than two percent of the paid-up share capital in the other company, shall be entitled to vote.

**6.3.2 The resolution shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors have been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.**

Directors shall signify their assent or dissent by signing the resolution to be passed by circulation or by e-mail or any other Electronic Mode.



Directors shall append the date on which they have signed the resolution. In case a Director does not append a date, the date of receipt by the company of the signed resolution shall be taken as the date of signing.

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director shall disclose his interest before the last date specified for the response and abstain from voting.

In case any of the Directors wishes the matter to be discussed and decided at a Meeting, the concerned Director shall communicate the same before the last date specified for the response.

In case the Director doesn't respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the resolution shall be considered as not passed.

Giving Retrospective effect to a resolution shall be avoided unless permitted by law.

#### 6.4. Recording

**6.4.1 Resolutions passed by circulation shall be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the minutes of such Meeting.**

Minutes shall also record the fact that the Interested Director did not vote on the resolution.

#### 6.5. Validity

**6.5.1 Passing of resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.**

This would not dispense with the requirement for the Board to meet at the specified frequency.

### 7. Minutes

Every company is required to keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

#### 7.1. Maintenance of Minutes

**7.1.1 Minutes shall be recorded in books maintained for that purpose.**

**7.1.2 A distinct Minutes Book shall be maintained for**

**Meetings of the Board, each of its Committees, members of the company, creditors and others as may be required under the Act.**

**7.1.3 Minutes may also be maintained in electronic form in such manner as may be prescribed under the Act.**

The Secretary or Managing Director or any other Director or Officer of the company as the Board may decide shall be responsible for the maintenance and security of Minutes in electronic form.

**7.1.4 The pages of the Minutes Books shall be consecutively numbered.**

This shall be followed irrespective of a break in the Book arising out of periodical binding.

In the event any page in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

**7.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.**

**7.1.6 Minutes of the Board Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.**

There shall be a proper locking device to ensure security and proper control and to prevent removal or manipulation of the loose leaves.

**7.1.7 Minutes of the Board Meeting may be kept at the Registered Office of the company or such other place as may be approved by the Board.**

#### 7.2. Contents of Minutes

##### 7.2.1 General Contents

**7.2.1.1 Minutes shall begin with the type of the Meeting, name of the company, day, date, venue and time of commencement.**

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of quorum, a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.

**7.2.1.2 Minutes shall record the names of the Directors present in physical and Electronic Mode and the Secretary in attendance at the Meeting.**

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair followed by the name of the Vice-Chairman, if any.

### 7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, Key Managerial Personnel, Secretarial Auditors, Practising Company Secretary or Auditors, shall be deemed to have been duly approved by the Board.

### 7.2.2 Specific Contents

#### 7.2.2.1 Minutes shall inter-alia contain:

- (a) Record of appointment, if any of the Chairman of the meeting.
- (b) Record of presence of quorum
- (c) The names of officers in attendance and invitees, if any, for specific items and mode of their attendance if through Electronic Mode.  
The capacity in which an invitee attends the Meeting and where applicable, the name of the entity such invitee represents and the relation, if any, of that entity to the company shall also be recorded.
- (d) The names of Directors who were not present at the Meeting and whether with or without leave of absence.
- (e) If any Director has participated only for a part of the Meeting, the agenda items in which he did not participate.
- (f) The mode of attendance of every Director whether personally or through Electronic Mode.
- (g) In case of a Director joining through Electronic Mode, his particulars, the location from where and the agenda items in which he participated.
- (h) The fact that an Interested Director was not present during the discussion and did not vote.
- (i) The fact of the dissent and the name of the Director who expressly dissented or abstained from the decision.
- (j) The views of Independent Director, if specifically insisted upon by the respective Independent Director, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.
- (k) The text of the resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.
- (l) Noting of the Minutes of the last Meeting.
- (m) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter notice and the transacting of any item other than those included in the Agenda.
- (n) Record of the qualifications, observations or comments on the financial statements or matters which have any adverse effect on the company, as mentioned in the reports of the Secretarial Auditors and Auditors.

#### 7.2.2.2. Apart from the Resolution or the decision, Minutes

**shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.**

The decisions shall be recorded in the form of resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

Where a resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes shall record the same and also refer to the Articles which empowers the Chairman to exercise the second or casting vote.

### 7.3. Recording of Minutes

#### 7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

The Secretary or any other authorised person of the company shall record the proceedings of the Meetings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

#### 7.3.2 Minutes shall be written in clear, concise and plain language.

Minutes shall be written in third person and in the past tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

#### 7.3.3 Each item of business taken up at the Meeting shall be numbered.

Numbering shall be in a manner which would enable ease of reference or cross-reference.

#### 7.3.4 Any document, report or notes placed before the Board and referred to in the Minutes may be identified by initialling of such document, report or notes by the Secretary or the Chairman or the concerned Director.

Wherever any approval of the Board is taken on the basis of certain papers laid before the Board, proper identification may be made by initialling of such papers by the Secretary or the Chairman or any other Director and a reference thereto shall be made in the Minutes.



**7.3.5 Where an earlier resolution or decision is superseded or modified, Minutes shall contain a reference to the earlier resolution or decision.**

**7.3.6 Minutes of the preceding Meeting shall be noted at the next Meeting.**

**7.3.7 Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of signing of such Minutes.**

#### **7.4. Finalisation of Minutes**

**7.4.1 Within fifteen days from the date of the conclusion of the Meeting of the Board, the draft Minutes thereof shall be circulated in physical mode or by e-mail or by any other Electronic Mode to all the members of the Board for their comments.**

Where a Director communicates in writing to the Chairman or Board or to the Secretary to send him the draft Minutes in a particular mode, they shall be sent to him by such mode.

The Directors, whether present at the Meeting or not, shall communicate their comments in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

If the draft Minutes are sent in physical mode, two days may be added for the purpose of reckoning the prescribed period of seven days.

If any Director communicates his comments after the expiry of the said period of seven days, the Chairman shall have the discretion to consider such comments.

In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director.

The decision of the Chairman whether or not to record the comments of the Directors in the Minutes shall be final.

In case a Meeting of the Board was held at a shorter notice and no Independent Director, if any, was present at the Meeting, the Minutes shall be final only after atleast one Independent Director, if any, ratifies the decisions taken at such Meeting. In case the company is not required to have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors.

A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not. Such Director shall communicate his comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof.

#### **7.5. Entry in the Minutes Book**

**7.5.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

**7.5.2 The date of entry of the Minutes in the Minutes Book shall be recorded by a Director or the Secretary.**

**7.5.3 Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered, other than grammatical or minor corrections, shall be made only by way of express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered.**

Such alteration and correction shall be supported by initial or signature of the Chairman.

#### **7.6. Signing and Dating of Minutes**

**7.6.1 Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.**

It is not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting signed. Such Minutes may be signed by the Chairman of the Meeting at any time before the next Meeting is held.

**7.6.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which he has signed the Minutes.**

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

#### **7.7. Inspection and Extracts of Minutes**

**7.7.1 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.**

A Director is entitled to inspect the Minutes of the Meetings of the Board held during the period of his directorship, even after he ceases to be a Director.

A Member of the company is not entitled to inspect the Minutes of Meetings of the Board.

The Practising Company Secretary appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can inspect the Minutes in the course of audit.

Officers of the Registrar of Companies, or other Government or

regulatory bodies, if so authorised by the Act or any other law, during the course of an inspection, can also inspect the Minutes.

Inspection of Minutes Book may also be provided in electronic form.

**7.7.2 Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the draft of that Resolution had been placed at the Meeting.**

Extracts of the duly signed Minutes may also be provided in electronic form.

A Director who has attended a Meeting of the Board is entitled to receive a copy of its signed Minutes, even if he ceases to be a Director.

## 8. Preservation of Minutes and other Records

**8.1 Minutes of all Meetings shall be preserved permanently in physical or electronic form.**

**8.2 Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

**8.3 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.**

**8.4 Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

**8.5 Minutes Books shall be kept in the custody of the Secretary of the company or any Director duly authorized for the purpose by the Board.**

## 9. Disclosure

The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.

## EFFECTIVE DATE

This Standard shall come into effect from \_\_\_\_\_.



## Annexure 'A'

(Para 1.3.7)

- **Illustrative list of items of business which shall be placed before the Board at its Meeting and shall not be passed by circulation**

### General Business Items

- Noting Disclosure of interest by a Director.
- Noting notice of disclosure of Directors' shareholdings.
- Approving Quarterly and half-yearly financial results.
- Approving annual financial statements and the Board's Report.
- Appointment of Secretarial Auditors and Internal Auditors

### Specific Items

- Borrowing money otherwise than by issue of debentures.
- Invitation or Acceptance or Renewal of public deposits and related matters and/or review or change in the terms and conditions thereof
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions
- Calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager
- Appointment or Removal of Key Managerial Personnel
- Noting Appointment or Removal of senior managerial personnel one level below Key Managerial Personnel.
- Appointment of a person as a Managing Director / Manager in more than one company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Purchase and Sale of material investments, subsidiaries/assets or which are not in the normal course of business.
- Approve Payment to Director for loss of office

### Corporate Actions

- Authorise Buy Back of securities
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business
- Takeover another company or acquiring controlling or substantial stake in another company.

## Annexure 'B'

(Para 1.3.7)

### Illustrative list of items of business for the Agenda for the First Meeting of the Board of the Company

1. To appoint the Chairman of the Meeting.

2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarized copy of lease / rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors
10. To adopt the Common Seal of the company.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.
16. To authorise Director(s) of the company to file a declaration with the ROC under Section 11 of the Act.

## SECRETARIAL STANDARD ON GENERAL MEETINGS

The following is the text of the Secretarial Standard-2 (SS-2), issued by the Council of the Institute of Company Secretaries of India, on “General Meetings”.

Adherence by a company to this Secretarial Standard is mandatory as per the provisions of the Companies Act, 2013.

***(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal type, and in the context of the ‘Preface to the Secretarial Standards’. Both the Standard portions and the background material have equal authority).***

### INTRODUCTION

This Standard seeks to prescribe a set of principles for the convening and conduct of General Meetings and matters related thereto.

The decision-making powers of a company are vested in its Members and the Board of Directors (the Board). Such powers are exercisable through Meetings of the Members and the Board respectively. Except where the law expressly provides that certain powers of a company are to be exercised only by the company in General Meeting, the Board is entitled to exercise all the powers of the company.

Every company other than a One Person Company, is required to hold every year, a Meeting of its Members called the Annual General Meeting and may also hold any other General Meeting, as and when required or on the requisition of Members. The

business to be transacted at an Annual General Meeting may consist of items of ordinary business as well as special business. The items of ordinary business specifically required to be transacted at an Annual General Meeting shall not be transacted at any other General Meeting.

If a company defaults in holding its Annual General Meeting in any year, any Member of the company has a statutory right to approach the prescribed authority to call or direct calling of the Annual General Meeting of the company.

A Meeting of its Members or class of Members or debenture-holders or creditors of a company under the directions of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by the rules, regulations and directions prescribed for the conduct of such Meeting.

### SCOPE

This Standard is applicable to the General Meetings of all companies incorporated under the Act except One Person Company (OPC). The principles enunciated in this Standard for General Meetings are applicable to meetings of Members, debenture-holders and creditors and any class thereof as also meetings convened on the directions of the Court or the CLB or the NCLT or any other prescribed authority, unless the directions themselves prescribe otherwise.

This Standard also deals with conduct of e-voting and postal ballot.

## DEFINITIONS

The following terms are used in this Standard with the meaning specified:

“*Act*” means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

“*Agency*” means agency approved by the Ministry of Corporate Affairs and appointed by the company for providing and supervising electronic platform for voting.

“*Articles*” means the Articles of Association of a company, as originally framed or as amended from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.”

“*Chairman*” means the Chairman of the Board or the Chairman appointed or elected for a Meeting.

“*Maintenance*” means keeping registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

“*Meeting*” or “*General Meeting*” or “*Annual General Meeting*” or “*Extra-Ordinary General Meeting*” means a duly convened Meeting of Members.

“*Minutes*” or “*Minutes Book*” means Minutes or Minutes Book maintained in physical or in electronic form.

“*National Holiday*” means and includes a day declared as National Holiday by the Central Government.

“*Ordinary Business*” means business to be transacted at an Annual General Meeting relating to the (i) consideration of financial statements, consolidated financial statements and the reports of the Board of Directors and Auditors; (ii) declaration of any dividend; (iii) appointment of Directors in the place of those retiring; and (iv) appointment or ratification and fixing of remuneration of the Auditors.

“*Voting by postal ballot*” means voting by physical ballot or electronic means.

“*Proxy*” means an instrument in writing signed by a Member, authorizing another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also means the person so appointed by a Member.

“*Quorum*” means the minimum number of Members whose presence is necessary for holding of a Meeting.

“*Secretarial Auditor*” means a practicing company secretary appointed to conduct secretarial audit of the company.

“*Special Business*” means business other than the Ordinary Business to be transacted at an Annual General Meeting and all business to be transacted at any other General Meeting.

“*Voting right*” means the right of a Member to vote on any matter at a meeting of members or by means of e-voting or postal or physical ballot;

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

## SECRETARIAL STANDARD

### 1. Convening a Meeting

#### 1.1 Authority

##### 1.1.1 A General Meeting shall be convened on the authority of the Board.

The Board of its own accord or on the requisition of Members who, as on the date of the receipt of the requisition, hold not less than one-tenth of the paid-up share capital carrying voting rights or voting power of the company, shall, convene or authorize convening of an Extra-ordinary General Meeting of the company.

If, on a requisition having been made in this behalf, the Board, within twenty-one days from the date of receipt of a valid requisition, fails to convene a Meeting on any day within forty-five days from the date of receipt of such requisition, the requisitionists may themselves call the Meeting within three months from the date of requisition, in the manner prescribed under the Act.

If the requisition pertains to an item which is required to be passed by means of a postal ballot under the Act or any other law, the Board shall proceed to conduct the voting by postal ballot, within twenty-one days from the date of receipt of such requisition. If the Board does not proceed to conduct the postal ballot, the requisitionists may conduct the postal ballot themselves.

#### 1.2 Notice

##### 1.2.1 Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

Notice shall be given to all persons entitled to receive such Notice, at the address provided by them. In the case of joint-shareholders, the Notice shall be given to the person whose name appears first in the Register of Members or in the records of the depository, as the case may be.



Where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:

- where securities are held singly, to the Nominee of the single holder;
- where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders ;

In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.

In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.

**1.2.2 Notice shall be sent by hand or by post or by courier or by facsimile or by e-mail or by any other electronic mode.**

In case the Notice and accompanying documents are given by electronic mode, these shall be sent to the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

In case of the Directors, Auditors, Secretarial Auditors and others, if any, the Notice and accompanying documents shall be sent at the e-mail addresses provided by them to the company, if being sent by electronic mode.

**1.2.3 In case of public companies, the Notice alongwith the site map of the venue of the Meeting shall be hosted on the website, if any, of the company.**

In case of listed companies, an abridged version of the Notice, listing the items of business and the day, date, time and full address of the venue of the Meeting alongwith the link of the website address where the Notice is hosted, may be published in English in a leading national newspaper.

**1.2.4 The Notice shall specify the day, date, time and full address of the venue of the Meeting.**

Meetings shall be called during business hours i.e. between 9 a.m. and 6 p.m., on a day that is not a National Holiday. A Meeting on Requisition of Members shall be convened only on a working day.

Annual General Meetings shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas other General Meetings may be held at any place within India. A Meeting on Requisition of Members shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

The Notice of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, shall prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and that a Proxy need not be a Member. In case of companies where Proxy shall be a Member only, a statement to that effect shall appear in the Notice prominently. A Proxy shall be a Member in case of companies registered under the Act with the object of promotion of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, which intends to apply its profits, if any, or other income in promoting its objects and also prohibits the payment of any dividend to its Members.

**1.2.5 The Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.**

The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:

- Directors and Managers,
- Other Key Managerial Personnel and
- Relatives of the persons mentioned above.

In case any item of Special Business to be transacted at a Meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager, and of every other Key Managerial Personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid-up share capital of that company, also be stated in the explanatory statement.

Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the Registered Office of the company and copies thereof shall also be made available for inspection in physical or electronic form as prescribed at the head/corporate office of the company, if such office is situated elsewhere, and also at the Meeting.

In all cases relating to the appointment or re-appointment of Directors/Manager or variation of the terms of remuneration, details of each such Director/Manager, including age, qualifications, experience, terms and conditions of appointment/re-appointment including details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, membership/ Chairmanship of Committees of other Boards shall be given in the explanatory statement. In case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.

In case a valid special notice has been received from Member(s), the company shall give notice of the resolution to all its Members at least seven days before the Meeting, exclusive of the day of dispatch of notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

Where this is not practicable, the notice shall be published a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district, at least seven days before the Meeting, exclusive of the day of publication of the notice and day of the Meeting. Such notice shall also be hosted on the website, if any, of the company. In case of listed companies, the notice may also be published in a leading national newspaper.

**1.2.6 Notice and accompanying documents shall be given atleast twenty-one clear days in advance of the Meeting.**

**1.2.7 Notice may be given at a shorter period of time if consent in writing is given thereto, by physical or electronic mode, by not less than ninety-five per cent of the Members entitled to vote at such Meeting.**

Consent for shorter Notice shall be obtained before the Meeting.

There is no provision in the Act for sending the Copies of Financial Statements, Directors' Report and Auditors' Report at a shorter period of time.

**1.2.8 No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given.**

However, any accidental omission to give Notice to, or the non-receipt of such Notice by any Member or other person who is entitled to such Notice for any Meeting shall not invalidate the proceedings of the Meeting.

**1.2.9 No items of business other than those specified in the Notice shall be taken up for consideration at the Meeting,**

**except those specifically permitted under the Act.**

No Resolution shall be valid if it is passed in respect of an item of business not contained in the Notice convening the Meeting or an item specifically permitted under the Act.

Items specifically permitted under the Act which may be taken up for consideration at the Meeting are:

- Proposed Resolutions, the notice of which has been given by Members,
- Resolutions requiring Special Notice, if received with the intention to move
- Candidature for directorship, if any such notice has been received.

Where Special Notice is required of any Resolution and Notice of the intention to move such Resolution is received by the company from the prescribed number of Members, such item of business shall be placed for consideration at the Meeting after giving Notice of the Resolution to Members in the manner prescribed under the Act.

Any amendment to the Notice, including the addition of any item of business, can be made provided the notice of amendment is sent to all persons entitled to receive the Notice of the Meeting and is sent within the time limit prescribed for giving of the original Notice.

**1.2.10 The Notice shall be accompanied, by postal ballot papers in the case of listed companies and, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.**

**1.2.11 A Meeting convened upon due Notice shall not be postponed or cancelled.**

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reconvene the Meeting after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

## 2. Frequency of Meetings

### 2.1 Annual General Meeting

**Every company other than a One Person Company shall, in each calendar year hold a General Meeting called the Annual General Meeting.**

Every company shall hold its first Annual General Meeting within



nine months from the date of closing of the first financial year of the company and thereafter in each calendar year within six months of the close of the financial year, with an interval of not more than fifteen months between two successive Annual General Meetings. The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies.

If a company holds its first Annual General Meeting, as aforesaid, it shall not be necessary for the company to hold any Annual General Meeting in the calendar year of its incorporation.

## 2.2 Extra-Ordinary General Meeting

Items of business of an urgent nature which need to be transacted before the next Annual General Meeting may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot.

## 3. Quorum

### 3.1 Quorum shall be present throughout the Meeting.

Quorum shall thus be present not only at the time of commencement of the Meeting but also while transacting business.

Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be:

- (a) in case of a public company,—
- (i) five Members personally present if the number of Members as on the date of Meeting is not more than one thousand;
  - (ii) fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;
  - (iii) thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand;
- (b) in the case of a private company, two Members personally present.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirements.

Members need to be personally present at a Meeting to constitute the Quorum.

Proxies are to be excluded for determining the Quorum.

A duly authorised representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys

all the rights of a Member present in person.

One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member for the Quorum. However, to constitute a meeting, at least two individuals shall be present in person, e.g., in case of a public company with a Quorum requirement of five Members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so alongwith another Member personally present.

Members who have voted by electronic mode have the right to attend the General Meeting, where they shall be counted for Quorum.

## 4. Presence of Directors and Auditors

### 4.1 Directors

#### 4.1.1 If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.

The Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other member of any such Committee authorised by the Chairman of the Committee, shall attend the General Meeting.

#### 4.1.2 Directors who attend the General Meetings of the company shall be seated with the Chairman.

### 4.2 Auditors

**The Auditors, unless exempted by the company, shall, either by themselves or through their authorised representative, attend all General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.**

The authorised representative who attends the General Meeting of the company shall also be qualified to be an Auditor.

### 4.3 Secretarial Auditor

**The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorised representative, attend all General Meetings and shall have the right to be heard at such Meetings on that part of the business which concerns them as Secretarial Auditors.**

The authorised representative who attends the General Meeting of the company shall also be qualified to be a Secretarial Auditor.

## 5. Chairman

### 5.1 Appointment

**5.1.1 Where the Articles so provide, the Chairman of the Board shall take the chair and conduct the Meeting. If there is no Chairman either of the Board or appointed for the purpose or if he is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, the Directors present shall elect one of themselves to be the Chairman of the Meeting. If no Director is willing to take the chair or if no Director is present within fifteen minutes after the time appointed for holding the Meeting, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting.**

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the Meeting.

The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted.

## **5.2 The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.**

The Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.

## **5.3 The Chairman shall not propose any Resolution in which he is deemed to be concerned or interested.**

If the Chairman is interested in any item of business, he shall entrust the conduct of the proceedings in respect of such item to the Vice-Chairman, if there is one, or to any non-interested Director or to a Member and resume the Chair after that item of business has been transacted.

A person, who so takes the Chair, can exercise his casting vote in the event that a vote on such item of business results in a tie, if the Articles provide for casting vote by the Chairman.

## **6. Voting**

### **6.1 Proposing a Resolution**

**6.1.1 Every Resolution shall be proposed by a Member and seconded by another Member entitled to vote thereon.**

### **6.2 E-voting**

**6.2.1 Every listed company and other companies as prescribed shall provide e-voting facility to its Members to exercise their right of voting at Meetings.**

Companies having not less than one thousand Members are required to provide e-voting facility to its Members as an alternative to exercising their right to vote at a Meeting.

This would not dispense with the requirement of holding a General Meeting by the company.

### **6.3 Physical ballot**

**6.3.1 Every company, which has provided e-voting facility to its Members as above, shall also put every resolution to vote at the Meeting through physical ballot.**

In case any Member, who has voted by electronic mode, votes again at the Meeting, his vote at the Meeting shall be treated as invalid.

### **6.4 Show of Hands**

**6.4.1 Resolutions in respect of companies which are not required to provide e-voting, shall be put to vote on a show of hands, unless a poll is validly demanded.**

A Proxy cannot vote on a show of hands.

### **6.5 Poll**

**6.5.1 Before or on the declaration of the result of the voting on any resolution, a poll shall be taken by the Chairman of the Meeting on a demand made in that behalf by such Members as prescribed under the Act.**

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

The poll may be taken by the Chairman, on his own motion also.

### **6.6 Voting Rights**

**6.6.1 Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.**

Every Member entitled to vote on a Resolution and present in person shall, on a show of hands, have only one vote irrespective of the number of shares held by him.

A Member present in person or by Proxy shall, on a poll, have votes in proportion to his share in the paid up equity share capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

Preference shareholders have a right to vote only in certain cases



as prescribed under the Act; their voting rights on a poll shall be in proportion to the share in the paid-up preference share capital of the company.

Proportion of voting rights of equity shareholders to the voting rights of preference shareholders shall be in the same proportion as the paid-up capital in respect of equity shares bears to the paid-up preference share capital of the company.

**6.6.2 A Director, who is a Member, is entitled to vote on any Resolution in which he is deemed to be concerned or interested, except a Special Resolution in respect of a transaction in which the Director is a related party. In the case of listed companies, a Director who is a Member, is not entitled to vote in respect of concerned material related party transactions.**

### 6.7 Casting Vote

If the Articles so provide, the Chairman shall have a casting vote.

## 7. Proxies

### 7.1 Right to Appoint

**A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and a Proxy need not be a Member.**

However, a Proxy shall be a Member in case of companies registered under the Act with the object of promotion of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, which intends to apply its profits, if any, or other income in promoting its objects and also prohibits the payment of any dividend to its Members.

A Proxy shall act on behalf of a number of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights.

However, a Member holding more than ten percent of the total share capital of the company carrying voting rights may appoint a single person as Proxy and such person shall not act as a Proxy for another person or shareholder.

If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received in date as valid.

### 7.2 Form of Proxy

**7.2.1 An instrument appointing a Proxy shall be either in**

**the Form specified in the Articles or in the Form set out in the Act.**

The instrument of Proxy shall be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

**7.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.**

### 7.3 Stamping of Proxies

**An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.**

### 7.4 Execution of Proxies

**7.4.1 The Proxy-holder shall prove his identity at the time of attending the meeting.**

**7.4.2 An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.**

### 7.5 Proxies in Blank and Incomplete Proxies

**7.5.1 A proxy form which does not state the name of the Proxy shall not be considered valid.**

**7.5.2 Undated Proxy shall not be considered valid.**

**7.5.3 If a company receives multiple Proxies for the same holdings of a Member, the proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.**

### 7.6 Deposit of Proxies

**7.6.1 Proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.**

Any provision in the Articles of a company which specifies or requires a longer period for deposit of proxy than forty-eight hours before a meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit.

**7.6.2** If the Articles so provide, a Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.

### 7.7 Revocation of Proxies

**7.7.1** If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

**7.7.2** A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

**7.7.3** A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

An undated notice of revocation of Proxy shall not be accepted. A notice of revocation shall be signed by the same Member (s), in the case of joint membership, who had signed the Proxy.

A Proxy need not be informed of the revocation of the Proxy issued by the Member.

**7.7.4** When a Member appoints a Proxy and both the Member and Proxy attend the Meeting, the Proxy stands automatically revoked.

### 7.8 Inspection of Proxies

**7.8.1** Requisitions, if any, for inspection of Proxies shall be received in writing from a Member entitled to vote on any resolution at least three days before the commencement of the Meeting.

**7.8.2** Proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

Inspection shall be allowed between 9 a.m. and 6 p.m. during such period .

**7.8.3** A fresh requisition, conforming to the above requirements, shall be given for inspection of Proxies in case the original Meeting is adjourned.

### 7.9 Record of Proxies

**7.9.1** All Proxies received by the company shall be recorded chronologically in a register kept for that purpose.

**7.9.2** In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.

## 8. Conduct of e-voting

**8.1** Every company that is required or opts to provide e-voting facility to its Members shall comply with the provisions of the Act in this regard.

**8.2** The company shall offer e-voting facility, if provided, to all its Members, irrespective of whether they hold shares in physical form or in dematerialised form.

**8.3.** E-voting shall be completed three working days prior to the date of the General Meeting.

The date of the General Meeting shall be excluded for the purpose.

### 8.4 Board Approval

The Board shall:

a) **appoint one scrutiner, who may be a Practising Company Secretary, Practising Chartered Accountant, Practising Cost Accountant, or an advocate and any other person of repute who can scrutinize the e-voting process in a fair and transparent manner.**

He shall however not be an officer or employee of the company.

b) **appoint an Agency, as prescribed;**

c) **authorise the Chairman to receive the scrutiner's register, report on e-voting and other related papers with requisite details.**

The scrutiner is required to submit his report within a period of not exceeding three working days from the date of conclusion of the e-voting.

### 8.5 Notice

**8.5.1** Notice of the Meeting shall be sent either by registered post or speed post or by courier or by facsimile or by e-mail or by any other electronic mode.

The Notice should clearly specify the mode of voting which would be treated as valid in case the Member votes by more than one mode.

Once the vote on a resolution is cast by the Member electronically, he shall not be allowed to change it subsequently.

**8.5.2** Notice shall inform the Members about availability of such facility and provide necessary information thereof to enable them to access such facility.

The Notice shall also clearly specify the date and time of commencement and end of e-voting and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the voting by electronic



mode. Notice of an adjourned Meeting need not however specify the above details.

The Notice shall also specify the mode of declaration of the results of e- voting.

An advertisement containing prescribed details shall be published, not less than five days before the date of beginning of the voting period, atleast once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and atleast once in English language in an English newspaper, both having a wide circulation in that district.

## 8.6 Declaration of results

**8.6.1 Based on the scrutiniser's report on e-voting and voting at the Meeting, as the case may be, the Chairman shall declare the result of the voting within two days of the Meeting.**

The results shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

The results shall be declared on the basis of the results of e-voting and voting at the Meeting.

**8.6.2 The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be placed on the website of the company, if any.**

In the case of listed companies, the above, except the scrutiniser's report shall also be published in a leading national newspaper.

**8.7 The Resolution, if passed by a requisite majority, shall be deemed to have been passed on the date of the relevant General Meeting.**

**8.8. Custody of scrutiniser's register, report and other related papers**

The scrutiniser's register, report and other related papers received from the scrutiniser shall be kept in the custody of the Secretary or any other person authorised by the Chairman in writing for this purpose.

## 9. Passing of Resolutions by Postal Ballot

### 9.1

**9.1.1 Every company, except a company having not more than two hundred Members, shall transact items of business as may be prescribed, only by means of postal ballot.**

The Illustrative list of items of businesses requiring to be transacted only by means of a postal ballot is given at *Annexure*

'A'.

The Board may however opt to transact any other item of business, not being an ordinary business and any business in respect of which directors or auditors have a right to be heard at the Meeting, by means of postal ballot.

Adoption of accounts of the company, declaration of dividend by the company and appointment of auditors and directors of the company shall not be transacted by means of a postal ballot.

**9.1.2 Every listed company shall provide e-voting facility to its Members in respect of those items, which are required to be transacted through postal ballot**

## 9.2 Board Approval

9.2.1 The Board shall:

- a) identify the businesses to be transacted through postal ballot;
- b) approve the notice of postal ballot incorporating proposed resolution(s) and explanatory statement therefor;
- c) authorise the Secretary or any Director of the Company to conduct postal ballot process and sign and send the Notice along with other documents ;
- d) appoint an Agency, as prescribed, in respect of e-voting for the postal ballot;
- e) appoint a scrutiniser for the postal ballot.  
Scrutiniser shall be a Practising Company Secretary or a Practising Chartered Accountant or a Practising Cost Accountant or an Advocate, or any other person of repute who is not in employment of the company and, who can scrutinize the postal ballot process in a fair and transparent manner.
- f) decide the record date for reckoning voting rights and ascertaining those Members to whom the Notice and postal ballot forms should be sent.
- g) decide on the calendar of events.
- h) authorise the Chairman or any other person to receive the scrutiniser's register, report on postal ballot and other related papers with requisite details.

The scrutiniser is required to submit his report within seven days from the last date of receipt of postal ballot forms.

## 9.3 Notice

**9.3.1 Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.**

**9.3.2 The Notice shall be sent either by registered post**

**or speed post, or by courier or by e-mail at the address registered with the company.**

An advertisement shall be published 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, about having dispatched the ballot papers.

In case of listed companies, the Notice may also be published in a leading national newspaper.

**9.3.3 The Notice of the postal ballot shall also be placed on the website of the company forthwith after Notice is sent to the Members and such Notice shall remain on such website till the last date for receipt of the postal ballot forms from the Members.**

**9.3.4 The Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.**

The Notice and the advertisement should, inter alia, the following matters:

- i. a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
- ii. the date of completion of dispatch of notices;
- iii. the date of commencement of voting (physical and e-voting);
- iv. the date of end of voting (physical and e-voting);
- v. the statement that any postal ballot forms received from the member will not be valid after thirty days from the date of dispatch of Notice;
- vi. a statement to the effect that members who have not received postal ballot forms may apply to the company and obtain a duplicate thereof;
- vii. contact details of the person responsible to address the queries/grievances connected with the voting by postal ballot including voting by electronic means; and
- viii. day, date, time and venue of declaration of results.

The Notice should also clearly mention record date as on which the right of voting of the Members has been reckoned and state that a person who is not a Member as on the record date should treat this Notice for information purposes only.

The Notice should also specify the mode of voting which would be treated as valid in case the Member votes by more than one mode.

**9.3.5 Notice shall inform the Members about availability of such facility and provide necessary information thereof to enable them to access such facility.**

The Notice shall also clearly specify the date and time of commencement and end of e-voting and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the e-voting for postal ballot.

The Notice shall also specify the mode of declaration of the results of postal ballot.

**9.3.6 In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.**

#### 9.4 Postal ballot forms

**9.4.1 The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.**

A single postal ballot Form may provide for multiple items of business to be transacted.

**9.4.2 The postal ballot form shall contain instructions as to the manner in which the form is to be completed, assent or dissent is to be recorded and its return to the scrutiniser.**

The postal ballot form may specify instances in which such Form shall be treated as invalid or rejected and procedure for issue of duplicate postal ballot Forms.

**9.4.3 A postal ballot form shall be considered invalid if:**

- a) A form other than one issued by the company has been used;
- b) It has not been signed by or on behalf of the Member;
- c) Signature on the postal ballot form doesn't match the specimen signatures with the company
- d) It is not possible to determine without any doubt the assent or dissent of the Member;
- e) Neither assent nor dissent is mentioned;
- f) Any competent authority has given directions in writing to the company to freeze the voting rights of the Member;
- g) The envelope containing the postal ballot form is received after the last date prescribed;
- h) the postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;
- i) It is received from a Member who is in arrears of payment of calls;
- j) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;
- k) It is not filled in accordance with the instructions for filling and executing the form.



**l) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.**

A postal ballot form which is otherwise complete in all respects and is lodged within the prescribed time limit but is undated should be considered valid.

### 9.5 Declaration of Results

**9.5.1 Based on the scrutiniser's report, the Chairman shall declare the results of the postal ballot, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not on the date, time and venue specified in the Notice.**

The result shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

**9.5.3 The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not along with the scrutiniser's report shall also be placed on the website of the company, if any.**

In the case of listed companies, the above, except the scrutiniser's report shall also be published in a leading national newspaper.

**9.5.4 The Resolution, if passed by requisite majority, shall be deemed to have been passed on the last date specified by the company for receipt of duly completed postal ballot forms or e-voting, unless a General Meeting is held in that behalf.**

### 9.6 Custody of scrutiniser's registers, report, Postal Ballot forms, and other related papers

**9.6.1 The postal ballot forms, other related papers, register and scrutiniser's report received from the scrutiniser shall be kept in the custody of the Secretary or any other person authorised by the Chairman in writing for this purpose.**

### 9.7. Rescinding the Resolution

**9.7.1 A Resolution passed by postal ballot should not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.**

## 10. Conduct of Poll

**10.1 When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.**

**10.2 In the case of a poll, which is not taken forthwith, the**

**Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairman may permit any Member who so desires to be present at the time of counting of votes.**

If the date, venue and time of taking the poll cannot be announced at the meeting, the Chairman shall inform the Members, the modes and the time of such communication, which shall in any case be within twenty four hours of closure of the Meeting.

A Member who did not attend the Meeting can participate and vote in the poll in such cases.

### 10.3 Each Resolution put to vote by poll shall be put to vote separately.

One ballot paper may be used for two or more items.

**10.4 The Chairman shall appoint such number of scrutinisers, as he deems necessary, who may include a Practising Company Secretary, Practising Chartered Accountant, Practising Cost Accountant, or an Advocate or any other person of repute, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.**

At least one of the scrutinisers shall be a Member who is present at the Meeting and is not an officer or employee of the company.

**10.5 Based on the scrutiniser's report, the Chairman shall declare the result of the poll, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.**

The result shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

The Chairman of the Meeting shall have the power to regulate the manner in which the poll shall be taken and shall ensure that the poll is scrutinised in the manner prescribed under the Act.

**10.6 The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the notice board of the company at its Registered Office and its Corporate/Head Office, if such office is situated elsewhere, and also placed on the website of the company, if any.**

In the case of listed companies, the result of the poll as above except the scrutiniser's report shall also be published in a leading national newspaper.

The result of the poll shall be deemed to be the decision of the Meeting on the resolution on which the poll was taken.

## 11. Withdrawal of Resolutions

**Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn.**

## 12. Rescinding of Resolutions

**A Resolution passed at a Meeting shall not be rescinded other than by a Resolution passed at a subsequent Meeting.**

## 13. Modifications to Resolutions

**Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the amended Resolution shall be duly proposed, seconded and put to vote.**

No amendment to any proposed Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical and factual errors, if any, may be corrected or converted into more formal language and, if the precise text of the Resolution was not included in the Notice, it may be corrected into a formal Resolution, provided there is no departure from the substance as stated in the Notice.

## 14. Reading of Reports

**14.1 The qualifications, observations or comments on the financial transactions or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Auditor's Report shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.**

**14.2 The qualifications, observations or other remarks if any, mentioned in the Secretarial Audit Report issued by the Practising Company Secretary, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.**

## 15. Distribution of Gifts

**No gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the Meeting.**

## 16. Adjournment of Meetings

**16.1 A duly convened Meeting shall not be adjourned arbitrarily by the Chairman. The Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.**

Meetings may be adjourned for want of requisite Quorum. The

Chairman may adjourn a Meeting in the event of disorder or other like causes, where it becomes impossible to conduct the Meeting and complete its business.

**16.2 If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.**

**16.3 If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' notice specifying the day, date, time and venue of the Meeting, to the members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district. In the case of listed companies, notice thereof specifying the day, date, time and venue of the Meeting shall also be published simultaneously in a leading national newspaper.**

**16.4 If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a National Holiday, and at such other time and place as may be determined by the Board.**

If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

**16.5 If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand dissolved.**

**16.6 At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.**

Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

## 17. Minutes

### 17.1 Maintenance of Minutes

**17.1.1 Minutes shall be recorded in books maintained for that purpose.**

**17.1.2 A distinct Minutes Book shall be maintained for Meetings of the Board, each of its Committees, Members of the company, creditors and others as may be required under the Act.**



Resolutions passed by postal ballot shall be recorded in the Minute books of General Meetings if these were passed in the General Meeting.

**17.1.3 Minutes may be maintained in electronic form in such manner as may be prescribed under the Act.**

Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its Minutes in electronic form in such manner as decided by the Board.

Every company shall however follow a uniform and consistent system of maintaining the Minutes. Any deviation in such maintenance shall be authorised by the Board.

The Managing Director or Company Secretary or any other Director or Officer of the company as the Board may decide shall be responsible for the maintenance and security of Minutes in electronic form.

**17.1.4 The pages of the Minutes Books shall be consecutively numbered.**

This shall be followed irrespective of a break in the Book arising out of periodical binding.

In the event any page in the Minutes Book is left blank, it shall be scored out and initialled by the Director who signs the Minutes.

**17.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.**

**17.1.6 Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.**

There shall be proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

**17.1.7 Minutes Books shall be kept at the Registered Office of the company.**

**17.2 Contents of Minutes**

**17.2.1 Minutes shall begin with the type of the Meeting, name of the company, day, date, venue and time of commencement.**

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of quorum a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.

**17.2.2 Minutes shall record the names of the Directors and the Secretary present at the Meeting.**

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair followed by the name of the Vice-Chairman, if any.

**17.2.3 Minutes shall, *inter alia*, contain:**

- (a) **The Record of appointment of the Chairman of the Meeting.**
- (b) **The fact that certain registers, documents and qualifications, observations or comments, if any, in the Auditor's Report and Secretarial Audit Report, were available for inspection.**
- (c) **The number of members present in person including representatives.**
- (d) **The Record of presence of Quorum.**
- (e) **The number of proxies and the number of shares represented by them.**
- (f) **The presence of the Chairmen of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorised representatives.**
- (g) **The presence if any, of the Secretarial Auditor, the Auditors, or their authorised representatives, the Court/Tribunal appointed observers or scrutinisers.**
- (h) **Reading of qualifications, observations or comments on the financial transactions or matters which have any adverse effect on the functioning of the company, as mentioned in the report of the Auditors.**
- (i) **Reading of qualifications, observations or other remarks as mentioned in the report of the Secretarial Auditor.**
- (j) **Summary of the opening remarks of the Chairman.**
- (k) **Summary of the clarifications provided on various Agenda Items.**
- (l) **In respect of each resolution, the type of the resolution, the names of the persons who proposed and seconded and the majority with which such resolution was passed. Where a motion is moved to modify a proposed resolution, the result of voting on such motion shall be mentioned. If a resolution proposed undergoes modification pursuant to a motion by shareholders, the Minutes shall contain the details of voting for the modified resolution.**
- (m) **In the case of poll, the names of scrutinisers appointed and the number of votes cast in favour and against the resolution and invalid votes.**
- (n) **If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair.**

**17.2.4 In respect of Resolutions passed by e-voting / postal ballot, a brief report on the e-voting / postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutiniser's report shall be recorded in the Minutes Book and signed by the Chairman or**

**in the event of death or inability of the Chairman, by the Vice Chairman or any Director duly authorised by the Board for the purpose, within thirty days from the date of declaration of the result of the e-voting / postal ballot.**

Where the Minutes have been kept in accordance with the Act then, until the contrary is proved, the Resolutions passed by postal ballot shall be deemed to have been duly passed.

### 17.3. Recording of Minutes

**17.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.**

The Secretary or any other authorised person of the company shall record the proceedings of the Meetings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as is deemed fit.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are defamatory, irrelevant or immaterial or which are detrimental to the interests of the company.

**17.3.2 Minutes shall be written in clear, concise and plain language.**

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

**17.3.3 Each item of business taken up at the Meeting shall be numbered.**

Numbering shall be in a manner which would enable ease of reference or cross-reference.

### 17.4. Entry in the Minutes Book

**17.4.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

**17.4.2 The date of entry of the Minutes in the Minutes Book shall be recorded by a Director or the Secretary.**

**17.4.3 Minutes, once entered in the Minutes Book, shall not be altered. However, minor errors may be corrected and initialled by the Chairman even after the Minutes have been signed.**

### 17.5. Signing and Dating of Minutes

**17.5.1 Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by the Vice-Chairman or by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.**

**17.5.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which he has signed the Minutes.**

Any blank space in a page between the conclusion of the Minutes and signature of the Director shall be scored out.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

### 17.6. Inspection and Extracts of Minutes

**17.6.1 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.**

Minutes of all General Meetings shall be open for inspection during business hours of the company, without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

The Practising Company Secretary appointed by the company or the Secretarial Auditor or Statutory Auditor of the company can inspect the Minutes in the course of audit.

Officers of the Registrar of Companies, or other Government or regulatory bodies, if so authorised by the Act or any other law, during the course of an inspection, can also inspect the Minutes.

Inspection of Minutes Book may also be provided in electronic form.

**17.6.2 Extracts of the Minutes shall be given only after the Minutes have been duly signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairman, if the draft of that Resolution had been placed at the Meeting.**

Extracts of the duly signed Minutes may also be provided in electronic form.

When a member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company shall furnish the same within seven working days of receipt of his request, subject to payment of such fee as may be specified in the Articles of the company. In case a Member requests for the copy of the Minutes in electronic form, in respect of any previous General Meetings



held during a period immediately preceding three financial years, the company shall furnish the same without any fee.

## 18. Preservation of Minutes and other Records

**18.1 Minutes of all Meetings shall be preserved permanently in physical or electronic form.**

**18.2 Office copies of Notices, scrutiniser's report, and related papers shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

**18.3 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.**

**18.4 Office copies of Notices, scrutiniser's report, and related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

**18.5 Minutes Books shall be kept in the custody of the Secretary of the company or any Director duly authorised for the purpose by the Board.**

## 19. Report of the Annual General Meeting

**Every listed company shall prepare a report of the Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.**

Such report which shall be a fair and correct summary of the proceedings of the Meeting shall contain:

- i) the day, date, time and venue of the Annual General Meeting;
- ii) confirmation with respect to appointment of Chairman of the Meeting;
- iii) number of members attending the meeting;
- iv) confirmation of quorum;
- v) confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;
- vi) business transacted at the Meeting and result thereof;
- vii) particulars with respect to any adjournment, postponement of Meeting, change in venue; and
- viii) any other points relevant for inclusion in the report.

It shall be signed and dated by the Chairman of the Meeting or in

case of his inability to sign, by any two directors of the company, one of whom shall be the Managing Director, if there is one and Secretary of the company.

Such report shall be filed with the Registrar of Companies within thirty days of the conclusion of the Annual General Meeting.

## 20. Disclosure

**The Annual Return of a company shall disclose the date of Annual General Meeting held during the financial year.**

## EFFECTIVE DATE

This Standard shall come into effect from \_\_\_\_\_.

## **Annexure 'A'**

(Para 9.1.1)

### **Items of business which shall be passed only by postal ballot**

1. alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum
2. 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
3. change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12
4. change in 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
5. issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43
6. variation in the rights attached to a class of shares or debentures or other securities as specified under section 48
7. buy-back of shares by a company under sub-section (1) of section 68
8. election of a director under section 151 of the Act
9. sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180
10. giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186
11. any other resolution prescribed under any applicable law, rules or regulations

# REQUIREMENT FOR COMPANY SECRETARY

A Group engaged in Mutual fund activities having Listed Companies based in South Mumbai requires

## Company Secretary

Incumbent prerequisites are:

- a) The incumbent should have 3-5 years experience of listed companies as a Secretary.
- b) Should have excellent academic working track record with English Medium throughout academic career.
- c) Should have experience of Conversion of partnership firm into (P) Ltd. Co. and Conversion of (P) Ltd. Co. into L.L.P.
- d) Should have handled public issue and open offer for buy back formalities with BSE — NSE — SME — SEBI — ROC.
- e) Assisted in preparing Merger & Demerger Schemes and Valuation Reports.
- f) Should have handled petition u/s. 397-398 filed by share holders before the Company Law Board.
- g) Should have handled winding up petitions filed by Company or by shareholder or by creditors
- h) Should have handled conversion of preference Shares and Debentures and bonds into Equity or convertible shares.
- i) Should have handled Acceptance of deposits u/s 58
- j) Should have deep knowledge of public Circulars concerning NBFCs.
- k) Should have excellent communication skill.
- l) Age group 35 — 45.
- m) Should have stable record in employment.
- n) Should have leadership qualities — cohesiveness.
- o) Salary as per industry standards plus suitable increment on the present CTC
- p) Should give minimum 3 references.

**Interested candidates shall mail their resume within 10 days to  
jobvacancy124@gmail.com**



**Eight PCH for Members  
Sixteen PDP for Students**



## **THE INSTITUTE OF Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

# 15<sup>th</sup>

## **NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES**

Dates (days): **June 27 & 28, 2014 (Friday & Saturday)**

Venue: **The Orchid, Mumbai**

### **Theme**

**PCS: The facilitator for Corporate Growth**

#### **Sub Themes**

- **Opportunities under the Companies Act, 2013**
- **Exploring New Areas of Practice**
- **Independent Director**
- **Enhancing Quality of Professional Services**



### **PCS: THE FACILITATOR FOR CORPORATE GROWTH**

The theme of the Conference reiterate and reinforce the worldwide focus on 'growth enhancing governance'. The ever evolving dynamics of growth and governance spawns dynamic challenges. It is bounden duty of the company secretaries, who are fast emerging as responsible governance professionals, to support and guide the corporates to meet such challenges of growth enhancing governance structure. The role of professionals like

practising company secretaries is of utmost importance in day to day activities of corporates, they act as guide and facilitator to make them well governed corporates. It is under these underpinnings the theme of the Conference will be deliberated in four technical sessions as under:

#### **Session 1: Opportunities under the Companies Act, 2013**

The profile of the company secretary has been witnessing a turnaround over the last few decades. The path breaking provisions

in the Companies Act, 2013 place strategic importance on the profession of company secretaries in governance architecture of any corporate. The opportunity must be seized by the profession to upgrade its role. The enormous opportunities posed upon company secretaries need to be handled with utmost diligence in order to establish a robust compliance culture in the country. Secretarial Audit, Annual Return Certification are major areas of practice for company secretaries. In addition, a practising company secretary can act as scrutinizer for e-voting and independent valuer. The session will deal with the opportunities available to practising company secretaries with special emphasis of Secretarial Audit, Annual Return certification, Valuation and e-voting.

### Session 2: Exploring New Areas of Practice

Non-governmental organizations, trusts, co-operative societies are important constituents of economic system and play a crucial role in economic development and social welfare. The governance of these sets of economic agents must avoid conflict of interest to pursue their objectives harmoniously. In addition, there are areas like Banking, Insurance, Service Tax, IPR, SMEs and Financial Market, etc. which need to be nurtured by providing value added services by practicing company secretaries. The deliberations at the session would focus on how to venture into these areas of practice for company secretaries.

### Session 3: Independent Director

Globally, corporate governance is synonymous to disclosure, transparency and accountability and the objectivity of the Board in decision making. In India the Companies Act, 2013 which specifically speaks about disclosures and transparency in governance architecture, for the first time specifies the grounds of independence and prescribes the roles, responsibilities of an independent director coupled with risks of acting as an Independent Director. In this backdrop the session has been designed to deliberate upon the role, responsibilities of an independent director and the risks associated with their position as independent director in a company.

### Session 4: Enhancing Quality of Professional Services

The economics of professions lies in quality of services rendered by the professionals. A professional is expected to compete with himself, his fellow professionals and professionals from other disciplines. He, however, survives and excels only if he goes beyond the expected. A quality conscious approach supplemented by continuing professional education holds him in good stead. He, however, needs setting up service benchmarks, each with specific performance metrics, best practice guidelines and measurable results. As any other professional, a company secretary is also bound by the code of conduct and disciplinary mechanism of the Institute. He is also an officer in default. The session would provide insights into the penalties under the Companies Act,

2013; the Institute's Code of Conduct and enable the participants to appreciate the concept of Peer Review towards enhancing the quality of professional services.

## Tentative Programme

DAY 1 – FRIDAY, JUNE 27, 2014	
9:00 am to 10:00 am	Registration
10:00 am to 11:00 am	Inaugural Session
11:00 am to 11:30 am	Tea / Coffee
11:30 am to 1:30 pm	Technical Session 1 - Opportunities under the Companies Act, 2013
1:30 pm to 2:30 pm	Lunch
2:30 pm to 4:30 pm	Technical Session 2 – Exploring New Areas of Practice
4:30 pm to 5:00 pm	Tea / Coffee
5:00 pm to 6:00 pm	Technical Session 3 - Independent Director
DAY 2 – SATURDAY, JUNE 28, 2014	
9.15 am to 10.30 am	Interactive Session (for Members of ICSI only)
10:40 am to 12:00 noon	Technical Session 4 – Enhancing quality of professional services
12:00 pm to 12:30 pm	Tea / Coffee
12:30 pm to 1:30 pm	Valedictory Session
1:30 onwards	Lunch

## Backgrounder-cum-Souvenir

It is proposed to bring out a Backgrounder-cum-Souvenir containing theme articles and other relevant information. Members who wish to contribute papers for publication in the backgrounder-cum-Souvenir or for circulation at the Conference are requested to send the same on or before June 15, 2014 through email to CS Saurabh Jain, Deputy Director, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110 003 at saurabh.jain@icsi.edu with a copy to sudhir.saklani@icsi.edu. The paper / article should not normally exceed 15 typed pages. Members whose papers/articles are published in the Backgrounder-cum-Souvenir of the Conference would be awarded FOUR Programme Credit Hours and would also receive an honorarium of Rs. 2,500/-. The decision of the Institute shall be final in all respects.

## Speakers

Eminent speakers with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

## Participants

Company Secretaries and other Professionals in Secretarial, Legal and Management disciplines would be benefited by participating in the Conference.



**Delegate Registration Fee (Incl. of service tax)**

Delegates	Registering on or before 15 <sup>th</sup> June, 2014	Registering after 15 <sup>th</sup> June, 2014
Member/ Licentiate / Student / Spouse / Children / Non-Member	Rs. 4750/-	Rs. 5500/-

Registration fee is inclusive of service tax, covers the cost of background material, lunch, tea (both days) and dinner (Friday, 27th May, 2014).

**Hotel Accommodation**

Accommodation on 'first come first serve basis' has been arranged at the conference venue i.e. Hotel The Orchid, Nehru Road, Adjacent to Domestic Airport, Vile Parle (E), Mumbai for outstation delegates.

**Room Tariff**

On twin sharing basis – Rs. 3300/- (inclusive of all taxes) per person per night

On single occupancy basis – Rs. 6500/- (inclusive of all taxes) per person per night

- Standard Check in: 27th June, 2014 (12 Noon) / Standard Check out: 28th June, 2014 (12 Noon).
- Any extra stay will be charged separately, subject to availability of rooms and receipt of reservation charges in advance.
- Any extra facilities availed by the delegate during the stay have to be paid directly to hotel The Orchid.

**Delegate Registration Procedure**

The delegate registration fee is payable in advance and is not refundable once the nomination is accepted. The registration form duly completed along with a crossed demand draft may be sent in favour of "The Institute of Company Secretaries of India" Payable as New Delhi/Mumbai at the address given below. Delegates may register by 15th June, 2014 in case hotel accommodation is required and by 20th June, 2014 in case hotel accommodation is not required, to-

1. Mr. Devender Kapoor, Assistant Director, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110 003
2. Mr. Pramod Keot, WIRC of ICSI, 13 Jolly Maker Chambers No. 2 (First Floor), Nariman Point, Mumbai – 400 021

Delegates may also register online at the link: <http://www.icsi.edu/15PCS.aspx>

**Venue**

"The Orchid", Nehru Road, Adjacent to Domestic Airport, Vile

Parle (E), Mumbai - 400 099

Tel : 91-22-26164040 / Fax: 91-22-26164141 / E-mail: [res@orchidhotel.com](mailto:res@orchidhotel.com)

For clarification please contact the following :

**For General Queries**

Mr. K C Kaushik, *Deputy Director*  
Tel: 022-22844073; email: [kailash.kaushik@icsi.edu](mailto:kailash.kaushik@icsi.edu)

**For submission of articles for backgrounder-cum-souvenir & programme details**

Mr. Saurabh Jain, *Deputy Director*  
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**For Sponsorship**

Ms. Arti J Shailendar, *Deputy Director*–  
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**For registration and accommodation**

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**CS Anil Murarka**

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Council Member  
Chairman, PCS Committee  
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**CS Atul H Mehta**

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Programme Director,  
15th National Conference of PCS  
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**CONGRATULATIONS**

**Sh. Pramod S. Shah**, FCS, Practising Company Secretary and Former Chairman of WIRC & Former Central Council Member, The ICSI on his being appointed as 1. Chairman of Legal Affairs & Arbitration Committee of Maharashtra Chamber of Commerce, Industry & Agriculture for the year 2014-2015. 2. Managing Committee Member of Indian Institute of Public Administration (Maharashtra Wing) for a term of 2 years and 3. Elected as Honorary Secretary of Bombay Management Association (Affiliated with All India Management Association, New Delhi) for the year 2014-15.

**Shri S.K. Aggrawal**, FCS, Director, Vimal Organics Ltd., Ghaziabad on his being nominated by FICCI to represent India on SAARC Chamber of Commerce and Industry (SCCI) as an Executive Committee Member for the years 2014-2016.

# COMPANY SECRETARIES BENEVOLENT FUND



The Company Secretaries Benevolent Fund (CSBF) provides a safety net to Company Secretaries who are members of the Fund and their family members in distress.

## CSBF

- Registered under the Societies Registration Act, 1860
- Recognized under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund is eligible for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 10,000

## Eligibility

A member of the Institute of Company Secretaries of India is eligible for a membership of the CSBF.

## How to join

- By making an application in Form A (available at [www.icsai.edu.in](http://www.icsai.edu.in)) along with one time subscription of ₹ 7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute's web portal: [www.icsai.edu](http://www.icsai.edu). Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹ 7500 drawn in favour of 'Company Secretaries Benevolent Fund', of any of the Offices of the Institute of Regional Offices/Chapters.

## Benefits

- ₹ 1,00,000 in the event of death of a member under the age of 60 years
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- Upto ₹ 25,000 (over and upto his children) for educational expenses of minor children of a deceased member in diseaseing cause
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- Limited benefits for Company Secretaries who are not members of the CSBF

## Contact

For further information/clarification, please write an email to [info@csbf.org](mailto:info@csbf.org) or contact Mr. Anil Mishra, Section Officer on telephone no. 011-48341043.

For more details please visit [www.icsai.edu/bsbf](http://www.icsai.edu/bsbf)



# PMQ COURSES

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The Membership Qualification Course (PMQ) in Corporate Governance is offered to enable the candidates to gain accurate, timely and thorough knowledge relating to various aspects of corporate governance.

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- 2. Corporate and Board Management
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#### Group II

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- 2. Corporate Governance – Codes and Practices

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Rs. 12,500/- payable after completion of Part-I and before commencement of Part-II

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- 2. Strategic Options for Corporate Restructuring
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- 4. Professional and Ethical Practices for Insolvency Practitioners

Module B : Compulsory Workshop

#### Course Fee

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Rs. 25,000/- at the time of Workshop

#### ELIGIBILITY CRITERIA AND REQUISITES FOR THE PMQ COURSE(S)

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A copy of the prospectus giving the registration procedure and other details can be obtained on payment of Rs. 500/- from the Director, Headquarters at ICE House, 22, Institutional Area, Lodi Road, New Delhi - 110 003.



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6. Fill other fields.
7. Click on the option "Make Payment" for effecting necessary payments. (Payment is to be made either by credit/debit card / net banking or through bank challan system)
8. After making payment students shall get user name & password at their registered e-mail ID / or Mobile No. for uploading their documents. User name of the student is "Student's Registration Number" which student gets instantly after making payment.
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  - File size of documents should not exceed 5 MB
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**NOTE:** Archived help to do an the registration is also available on [www.icsi.edu](http://www.icsi.edu) help menu for details for online registration.

For any further information / clarification regarding online registration, please contact Ms. Beetanjali S. Rathore,  
Administrative Officer (Student Services) at E-mail Id [grsc@icsi.edu](mailto:grsc@icsi.edu) or at Tel. No. **0120-4522055**



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For further information write to:  
The Editor,  
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# Articles in Chartered Secretary Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
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10. The article shall be accompanied by a summary in 150 words and mailed to ak.sil@icsi.edu
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## Congratulations



**Shri Arun Jaitley**

Honorary Fellow Member of the Institute on assuming the office of Minister for Finance, Corporate Affairs, and Defence, Govt. of India.

## ICSI ANNOUNCES 9th INTERNATIONAL PROFESSIONAL DEVELOPMENT FELLOWSHIP PROGRAMME – 2014

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including  
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at  
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**Theme & Sub-Themes**

### Theme

“Convergence of Company Law and Corporate Governance  
– Recent Trends”

### Sub - Themes

- Development of Company Law in Asian Region
- Intersection between Company Law & Corporate Governance
- CSR issues addressed under the new Company Law
- Role of ethics in governance
- Role of Governance Professionals under new regulatory dispensation

**For details please visit ICSI website [www.icsi.edu](http://www.icsi.edu)**

## CS QUIZ

**T**he paid-up capital and free reserves of a private limited company is Rs. 3 crores. Before coming into force the applicable section of the Companies Act, 2014 the said company has borrowed Rs.5 crores. On 15<sup>th</sup> April, 2014 the Board of Directors approved a further borrowing of Rs.2 crores. Is the Board competent to make such a borrowing? Support your answer with reference to subsisting statutory provisions in this regard.

### Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8<sup>th</sup> July, 2014.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed ‘Prize Query June, 2014 Issue’ and addressed to :

### Joint Director (Publications)

The Institute of Company Secretaries of India, ‘ICSI House’, 22, Institutional Area, Lodi Road, New Delhi-110003.

## SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out special issues of Chartered Secretary on the following topics during the year 2014

- Rules under the Companies Act, 2013 (July, 2014)
- Secretarial Standards and Secretarial Audit (September, 2014) and
- Direct Taxes Code, 2013 (November, 2014).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues

The articles may kindly be forwarded to :

The Joint Director (Publications), The ICSI, 22, Institutional Area, Lodhi Road, New Delhi 110003

E.Mail : [ak.sil@icsi.edu](mailto:ak.sil@icsi.edu)

## OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following members:

**Shri Rakesh Kumar Singhal** (01.07.1963 –11.03.2014), a Fellow Member of the Institute from Mumbai.

**Shri A K Chakrabarti** (19.12.1941 –15.11.2013), a Fellow Member of the Institute from Kolkata.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

## I KEEP MINUTES, BUT GUARD EVERY SECOND.

Over one million companies in the country are custodians of huge resources of the society and public. They drive the growth of the economy. It is, therefore, imperative that their operations should be so carried out that they exist forever to contribute to prosperity of the society and the economy even as they balance the interests of various stakeholders. This requires care for and adherence to law and justice, ethics, compliance, governance, risk management, conflict resolution etc. A Company Secretary, who is a regulated professional, ensures just that.

**I am a member of ICSI.  
Only I do what I do.**



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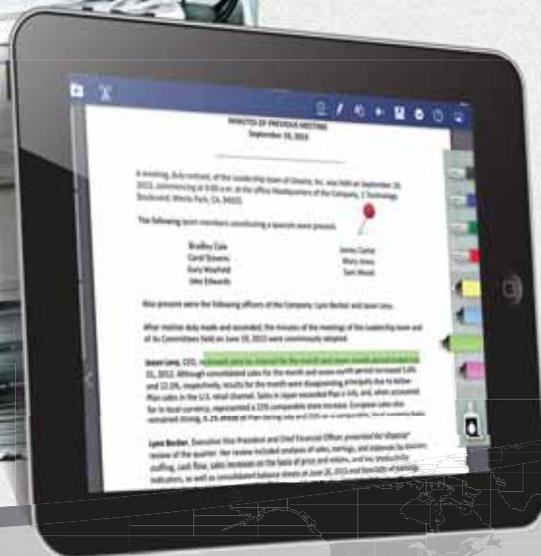
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