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FOCUS

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“प्रगतिश्च विकासश्च जीवनं जीवनं खलु।”

A MONTHLY JOURNAL FOR CORPORATE EXECUTIVES & PROFESSIONALS

“Educate”



“Execute”



“Empower”



'.....A New Beginning'

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'FOCUS' GREETES AND CONGRATULATES SHRI NESAR AHMAD AND SHRI S. N. ANANTHASUBRAMANIAN ON THEIR ELECTION AS PRESIDENT AND VICE PRESIDENT RESPECTIVELY OF THE INSTITUTE FOR THE YEAR 2012-13 AT THE COUNCIL MEETING HELD ON 19.01.2012



Shri Nesar Ahmad has been elected as President of the Institute of Company Secretaries of India (ICSI) w.e.f. 19th January, 2012. He was Vice President of the ICSI in the year 2011. He is a member of the Central Council of ICSI for the term 2011-2014. He is a graduate in Commerce and a fellow member of the Institute of Company Secretaries of India.

He has been member of the Central Council of the ICSI for the terms 2004-2006 and 2007-10. Previously, he held various positions in the ICSI (Northern Region) as Editor, Treasurer, Secretary, Vice-Chairman, and was its Chairman in 1998 (August-December) and also in the year 2000. He has been associated with Social Organizations (NGOs) and Welfare Society in Delhi Including SMILE FOUNDATION. He has been member of the Expert Committee on Company Law and Competition Policy constituted by ASSOCHAM (from 2002 to 2008).

As Central Council Member, he has been Chairman as well as member of various committees and Secretarial Standards Board (SSB) of the ICSI and has also appeared before Parliamentary Standing Committee (Law & Justice) on the National Tax Tribunal Bill, 2003 and Parliamentary Standing Committee (Finance) on Limited Liability Partnership (LLP). In 2009, the Ministry of Corporate Affairs appointed Shri Ahmad as one of the members to administer the Investor Education & Protection Fund (IEPF) for two years term. The Bombay Stock Exchange has appointed Shri Ahmad as a Member of 'Panel of Arbitrators' of Delhi Region Arbitration Centre.

He has been nominated by Indian Institute of Corporate Affairs (IICA) established by the Ministry of Corporate Affairs, expert on the panel of IICA for the subject related to Corporate Laws & General Issues.

He has been a regular faculty in the seminars / workshops / training programmes organized by ICSI, Ministry of Corporate Affairs, UGC, NGOs and various other Institutions and bodies.



Shri S N Ananthasubramanian has been elected as the Vice President of the Institute of Company Secretaries of India (ICSI) w.e.f. 19th January, 2012. A member of the Council of ICSI since 2007, he was re-elected in 2010 for the term 2011-2014. Shri Ananthasubramanian, B.Com (Hons), FCS has been in practice as a Company Secretary at Thane since 1991, having been in employment from 1976.

It was primarily due to the initiatives taken by Shri Ananthasubramanian that the RBI introduced in 2008, Diligence Report to be obtained by Banks in respect of multiple-banking arrangements from professionals preferably, Practising Company Secretaries. He has been actively associated with formulation of Compliance Certificate for companies seeking listing on the SME platform of BSE and NSE; introduction of Networth Certificate by PCS in respect of broking firms by BSE and NSE; formulation of IPO/FPO Certification; tie-ups with IIM, Indore, Indian Institute of Banking and Finance (IIBF) and Insurance Institute of India (III), Mumbai.

He is member of various Committees of the Council of the ICSI and was member of the core Group for Formulating the ICSI-Vision 2020. As Chairman, Management Committee of ICSI -Centre for Corporate Governance, Research & Training, Navi Mumbai between 2007-10, he has successfully spearheaded the turnaround of the ICSI-CCGRT and its activities.

As member of Syllabus Review Committee in 2007 and 2011, he has contributed significantly in the development of contemporary syllabus for Company Secretaryship Course. He was the Chairman of the Task Force on Training which introduced the New Training Structure from 2009, and was re-nominated as the Chairman of the Core Group for reviewing the Existing Training Structure. Shri Ananthasubramanian also piloted the Guidelines for Advertisement by Company Secretary in Practice in 2007.

Shri Ananthasubramanian has contributed to the visibility and growth of the profession as member of ICSI-WIRC between 2001 and 2006. As its Chairman in 2005, he was actively associated in ICSI-NSE Collaboration towards the inclusion of Corporate Governance Module in National Certificate in Financial Markets (NCFM) and as its Secretary, facilitated the formation of Thane Chapter of ICSI in 2003.

A strong votary of good governance practices, Shri. Ananthasubramanian anchored the Special Debate on Corporate Governance during the National Award for Excellence in Corporate Governance held in Mumbai in 2009. He has also attended the Training of Trainers programme organised by the Global Corporate Governance Forum, IFC, Washington. A regular speaker at Seminars, Workshops, Conferences, his views and articles have appeared in leading newspapers in India. Shri Ananthasubramanian is also associated with public charitable institutions in Thane and Mumbai.

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Mahavir Lunawat
Chairman
ICSI-WIRC

Shri Mahavir Lunawat by qualification is an Hons. Graduate from St. Xavier's College, Kolkata, a Fellow Member of the Institute of Company Secretaries of India (ICSI) and CFA. He is a Law Graduate as well. He also holds Post Graduate Diploma in Securities Law and Diploma in Export Management. He has also been awarded Certificate of Graduation (with Hons.) by the Bank of New York Mellon Corp., New York on completion of Depository Receipt training in UK & US. Mr. Lunawat has many awards and accolades to his credit including the FIRST RANK ALL INDIA in the finals of Company Secretaryship (June 2001), the National Scholarship of the Government of India for 'Excellent Performance in Graduation' and ICSI-EIRC Award for 'Outstanding Contribution to Backgrounders - Year 2003'.

Mr. Lunawat is Senior Manager, M&A - Tax & Regulatory, PricewaterhouseCoopers and earlier had worked with Reliance Industries Limited and ITC Limited. Mr. Lunawat has wide experience in the fields of Mergers & Acquisitions, Euro Issues, Company Law, Securities Law, Corporate Governance and Knowledge Management.

Mr. Lunawat is a regular speaker at programs conducted by ICSI, ICAI, BSE and B-schools. He has written numerous papers, articles and columns for business dailies and professional publications of national level. Mr. Lunawat has also co-authored 'SEBI Compendium (2010 Edn.)'.

Mr. Lunawat has participated in various committees and special groups formed by ICSI and ICSI-WIRC including Special Group for preparation of Model Listing Agreement, Compliance Certificate and Guidance Note on Listing of Securities, and formulation of representations on various regulatory proposals. Since 19th January, 2012, Mr. Lunawat has taken over as the Chairman of ICSI-WIRC for the year 2012.



Hitesh Buch
Vice Chairman
ICSI-WIRC

Shri CS Hitesh Buch is a Graduate in Management and Law (Special), and Fellow Member of ICSI having overall experience of more than 28 years in industry and practice, and more than 22 years as Company Secretary. He is practicing as Company Secretary and possesses wide spectrum exposure and rich experience in corporate secretarial and legal matters, including appearance before CLB, SAT, SEBI and Consumer Courts.

He has been contributing as an active member since last about 20 years to the activities of the ICSI at Chapter and Regional level. He is a regular faculty for programs and training sessions conducted by ICSI - Ahmedabad Chapter. He has held membership and chairmanship of various Committees at ICSI - Ahmedabad Chapter and WIRC. He held the Chairmanship of ICSI-Ahmedabad Chapter in 1996. He was also elected to WIRC for 2004-2006.



Ragini Chokshi
Secretary
ICSI-WIRC

She is secretary of WIRC for the year 2012. She was treasurer of WIRC in 2011 and is a council member of WIRC since 2005. She was Chairman of various committees in past such as professional development, practising company secretary, public relations, library, training and education committee.

She is Practising Company Secretary since 1991 and partner of Ragini Chokshi & Co.



Ashish Garg
Treasurer
ICSI-WIRC

Shri Ashish Garg is a Post Graduate in Economics and Commerce and Graduate in Law from the Vikram University, Ujjain and a Fellow Member of the Institute of the Company Secretaries of India. He is a member of the Western India Regional Council of The ICSI for 2007 to 2010 and again re-elected for 2011-2014. Presently he is the Treasurer of WIRC for 2012. Earlier he was the Chairman of Information Technology Committee of the WIRC in 2007 and part in recommendation and implementation of IT Policy in New Look - WIRC and Editor of monthly journal FOCUS of WIRC in 2008 and 2009 and commenced the circulation of Focus into an Electronic Newsletter and Chairman of Practising Company Secretary Committee of WIRC for 2011. He was the Secretary and Vice Chairman of Indore Chapter of the ICSI in 2004 and 2005.

He is Practising Company Secretary at Indore since more than last one decade and having specialization in corporate laws, organizational restructuring and corporate legal counseling to companies and appearances before CLB, RD, MCA.

Mr. Ashish Garg is highly concerned about Profession and he actively participates in the activities of the Institute. He is a visionary, good organizer and a friendly gentleman. He has been the visiting faculty at various Management Institutes of Indore for MBA and other Professional courses and delivered lectures regularly as invited speaker in the conference of Company Secretaries and Chartered Accountants.



NESAR AHMAD
President

I am happy to note that the ICSI-WIRC monthly Newsletter "FOCUS" has been serving the cause of professionalism and knowledge updation for the last three decades. The newsletters being published by the Regional Councils and Chapters are one of the important link between the institute and its members and students as they serve as repository of information on matters of interest to the profession.

I am sure the FOCUS will continue to serve the profession with more value added information in times to come.

I wish all the very best for the success of the 'FOCUS'.



S. N. ANANTHASUBRAMANIAN
Vice President

I appreciate WIRC for continuous updation of knowledge and dissemination of information to the members and students of Western Region, through its Newsletter 'FOCUS' for the last 30 years.

Being a member from Western Region, I have seen 'FOCUS' growing strength to strength, by enriching the knowledge base of members and students and providing them a common forum to share their professional experience.

I wish all success to WIRC and many more issues of its monthly Newsletter, 'FOCUS'.



N. K. JAIN
*Secretary &
Chief Executive Officer*

I compliment the WIRC for its commitment towards providing value added services to members and students of Western Region. I am happy to note that its Newsletter 'FOCUS', one of the important medium of communication, has been serving the cause of profession for the last three decades.

I am sure this Newsletter will receive more accolades from its readers in times to come.

I convey my best wishes for the success of the monthly Newsletter 'Focus'.



Dear All,

"Coming together is a beginning.
Keeping together is progress.
Working together is success."
- Henry Ford

I am extremely pleased and highly privileged to communicate to you through this first edition of 'Focus' after assuming the august office of the Chairman of one of the leading regional councils of our prestigious - The Institute of Company Secretaries of India.

My heart is full of ecstasy and am indeed grateful to each one of you and all my council colleagues for reposing confidence in me - more than once including unprecedented response in bringing me on board of the Western India Regional Council, whole-hearted support in my stint as chairman of various committees of ICSI-WIRC and choosing me, with one voice, to serve the Region as Chairman, ICSI-WIRC.

The feeling of ecstasy has relegated to the remotest corner of my mind and what comes to the forefront is the serious sense of responsibility :

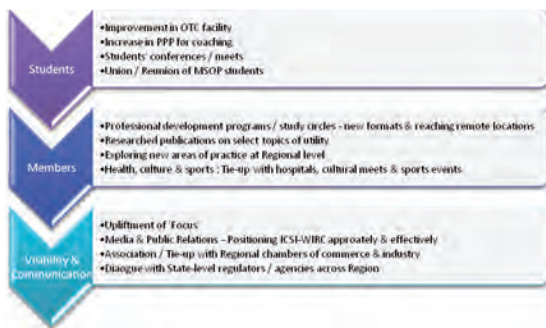
- Responsibility to carry the baton of ICSI-WIRC, which has been led by several stalwarts over three decades;
- Responsibility not only to meet but to beat your expectations and rise to the occasion through performance and performance; and
- Responsibility to deliver within short turn-around time.



The task is enormous, ardent and ambitious - but I am sure with collective efforts, I will be able to keep up to expectations of all our stakeholders and meet the need of the hour.

Of-course, it's easier said than done and it becomes imperative to identify priority areas, be aware of given constraints and pen-down specific plan of action with responsibility matrix alongwith target timeframe. Immediately after selection of the new office bearers, we all had extensive discussion on the plan-2012 and drew a broad sketch. I consider it as my duty to share with you all, some key areas identified for the year 2012.

Some Key Priority Areas



Besides, I accept the dire need of improving several other areas concerning WIRO and Chapter functioning and am sure with the proactive support from ICSI-HO, Regional Council would be able to make a difference in this aspect as well. Some of tasks which I aspire to undertake include renovating WIRO headquarters at Mumbai, institutionalize systems and processes and putting in place a structured governance framework and also strengthening WIRC Chapters spanning across five States.

Friends, as the saying goes, 'wisdom does not lie at the top', it is possible that any specific



area or aspect might have been missed out, which I would be glad to hear from you. Please write to me at cschairman.wirc@gmail.com. Your suggestions and inputs would help achieve the overall objectives towards our theme of the year 2012 - "Educate, Empower & Execute".

With this, I consider it a great honour paying tribute to the work done and milestones achieved by all my predecessors and once again thanking each and every member of CS family and readers of 'Focus' for visiting this column.

Best Wishes,
Sincerely

Mahavir Lunawat
Chairman - ICSI-WIRC





Dear Readers,

**“Power does not mean that you can treat people the way you like,
but it means people cannot treat you the way they like”**

With great pleasure, I on behalf of the Editorial Board of FOCUS would like to congratulate our new President CS Nesar Ahmed, Vice President CS S.N. Ananthsubramanian and Chairman CS Mahavir Lunawat and expressing my gratitude to our previous Chairman CS Makarand Lele for his outstanding efforts and many achievements during his tenure.

The journey of FOCUS began in the year 1982 and since then we are continuously getting the better version every month with the restless efforts of our council members, Editorial Board and other officials of Western region.

I am feeling privileged and honored in delivering my first address after taking up the responsibility of this August office of Editor-FOCUS and assure you that I will give the best of my efforts and time for incorporating more useful and meaningful content in the upcoming issues. I express my sincere gratitude to my esteemed council, colleagues and predecessors who had set high standards and at the same time assures you for further improvement to enhance the prestige of the profession.

With the support and motivation of our new Executive Committee, we are introducing some new columns like Corporate Developments, Compliance Calendar, Quiz, Interviews, Health Tips, Members Feedback, special section reserved for women, Corporate jokes and regular articles on different subjects like Corporate Law, SEBI, FEMA, Capital Market, Accounts, Finance, Taxation, NBFC, Foreign Exchange and other emerging areas for members like IPRs, LPO etc. and one article for soft and communication skills and personality development. We are also trying to involve the members and chapters across the region through different articles and news and appeal all the beneficiaries for their constructive and fruitful suggestions and advice for the betterment of FOCUS.

CS Amit Kumar Jain

“Never continue in a job you don't enjoy. If you're happy in what you're doing, you'll like yourself, you'll have inner peace. And if you have that, along with physical health, you will have had more success than you could possibly have imagined.”

- Johnny Carson

CASE LAW DIGEST



by CS Ajay Kumar, Practising Company Secretary, Mumbai

A Bird's-Eye View : Recent Judgements on Company Law

A BIRD'S EYE VIEW: RECENT JUDGEMENTS ON COMPANY LAW

1. COMPROMISE AND ARRANGEMENT

Even after an order sanctioning a scheme is passed, Court is empowered, under section 392(1)(b), to order modification of scheme, if Court considers it necessary for proper working of scheme and can even order winding up of company, if it is satisfied that a compromise or arrangement already sanctioned under section 391 cannot be worked satisfactorily. Agreement reached in Court convened meeting by a majority of shareholders and/or a majority of creditors to have a scheme is a mere gate pass to gain entry into next enclosure, where Court takes up for consideration all other issues necessary for determining whether sanction should be accorded or not; at that stage, right of shareholder or creditor, to speak up and place all material facts necessary for Court to arrive at a proper decision, cannot be scuttled merely by showing consent that he gave in meeting. There are no fetters on right of shareholders/creditors, who had earlier given consent for proposed scheme, to place before Courts, relevant materials to show that requirements of proviso to section 391 (2) are not satisfied or that scheme is not financially viable. A person, who did not participate in Court convened meeting, cannot be taken to have accorded his implied consent; in any case, in view of indications contained in section 392(2), such a person cannot be taken to have forfeited his right to point out to Court, deficiencies in the scheme and submissions made by such a person in course of hearing of application under section 391, if any relevance or bearing on issues of public interests, can always be taken into consideration by Court. - **SUBHIKSHA TRADING SERVICES LTD., IN RE [2011] 108 SCL 13/11 223 (MAD.)**

2. QUORUM FOR MEETINGS AND PROCEEDINGS

Section 170(2)(b) and section 174(1) as found in Annexure B referred to in rule 7 of Companies (Central Government's) Central Rules and Forms, 1956 will hold field insofar as meetings of a class of members are concerned. As per said rule while it is not permissible for a company to provide in its articles anything to contrary than what is provided in sections 171 to 186 insofar as general meetings are concerned, it is certainly permissible for a company to adopt these provisions with modifications insofar as meetings of any class of members are concerned. Therefore, prescription of a quorum of two or three members under articles, even if contrary to section 170(1)(i) insofar as general meetings of company are concerned, is in tune with section 170(2)(b) and section 174(1) as found in Annexure B

referred to in Rules insofar as meetings of a class of members are concerned and fixing a quorum of three members for meeting of members to consider scheme of amalgamation cannot be said to be violative of statutory provisions. - **SUBHIKSHA TRADING SERVICES LTD., IN RE [2011] 108 SCL 13/11 223 (MAD.)**

3. STOCK EXCHANGE OBJECTING TO SCHEME BEING SANCTIONED ON GROUND THAT IT HAS NOT APPROVED SCHEME, AND COMPANY COURT LOSES ITS POWER TO CONSIDER IT - HOW FAR TENABLE - SECTION 394 READ WITH CLAUSE 24(F) LISTING AGREEMENT

There is no provision in the Act which provides for approval of any stock exchange being taken before the scheme of amalgamation is to be presented before the court. It is not open to any stock exchange to contend that the company court loses its power to consider scheme of amalgamation for approval under section 394 once stock exchange has declined its approval to the scheme. - **QUIPPO INFRASTRUCTURE EQUIPMENT LTD. AND SREI INFRASTRUCTURE FINANCE LTD., IN RE. [2011] 101 CLA 392 (CAL)**

4. JURISDICTION OF HIGH COURT TO REAPPRECIATE IN APPEAL EVIDENCE ANALYSED BY COMPANY LAW BOARD (CLB) - SECTION 10F

The Company Law Board is a final authority on facts, and, therefore, while exercising powers under section 10F, the company court cannot reappreciate the evidence analysed by the Company Law Board. The interference by the company court in appeal under section 10F can only be on a question of law, that is, when there is a perverse finding given on no evidence or like finding is arbitrary. - **M PALANISAMY V. S V T SPINNING MILLS (PETITIONER.) LTD. [2011] 101 CLA 346 (MAD)**

5. JURISDICTION OF COURT TO INTERFERE WITH ORDER PASSED IN APPLICATION FOR CONVENING MEETINGS OF SHAREHOLDERS DISPENSING WITH MEETING WHILE CONSIDERING AN APPLICATION FOR SANCTIONED SCHEME - SECTION 391

The court cannot in an application for sanction of scheme of arrangements or compromise set aside the order passed on an application for convening meetings of shareholders or creditors dispensing with the meeting inasmuch as that application has been disposed of and no appeal has been preferred from that order and no interference with that order is called for - **SINGHAL ENTERPRISES (P.) LTD., IN RE. [2011] 101 CLA 375 (CAL.)**

"When a Company compromises its principles one time, the next compromise is right around the corner." - Zig Ziglar

Circulars & Notification

Complied by CS Piyush Bindal, Company Secretary

Excise Law

1. **Clarification regarding admissibility of exemption under area-based Notifications No. 49/2003-CE and 50/2003-CE, both dated 10.06.2003 in specific situations - reg.**

Circular No. 960/03/2012-CX, Dated 17.02.2012

Source. www.cbec.gov.in

As per Notifications No. 49/2003-CE and 50/2003-CE, both dated 10.06.2003 which provide full exemption from excise duties to specified goods cleared from industrial units in the states of Uttaranchal and Himachal Pradesh for a period of ten years from the date of commencement of commercial production. The exemption is available to new units set up or existing units which have undergone substantial expansion in terms of the said Notifications and commence commercial production before the cut-off date, that is, on or before 31.3.2010.

2. References have been received from field formations as well as from trade and industry seeking clarification regarding admissibility of benefit under area-based exemption Notifications No. 49/2003-CE and 50/2003-CE, both dated 10.06.2003, in the following situations:
 - a. When there is a change in the ownership of a Unit already availing of the benefit of an area-based exemption Notification;
 - b. When a Unit availing of the exemption physically shifts to a new location within the areas specified in the exemption Notification; and
 - c. When a Unit availing of the exemption under an area-based Notification expands by acquiring a plot of land adjacent to its existing premises and installing new plant/machinery on such land.
3. The above issues have been examined by the Board. As the exemption is extended to a 'Unit', any change in its ownership would not jeopardize the admissibility of exemption for the remaining part of the ten year exemption period subject to the condition that the new owner exercises his option in writing to avail of the benefit of the exemption Notification before effecting the first clearance.
4. So far as the case of an eligible unit physically shifting to a new location is concerned, it is clarified that the exemption in such cases should be available for the residual period of exemption. However, the cases of relocated units should be examined on a case - to-case basis and the exemption should be allowed to continue subject to certain safeguards like establishing through proper inventorisation and certification by a

Chartered Engineer that the unit has relocated its plant, machinery, equipment, manpower etc. and relocation to areas specified in the relevant Notification only and not across States and/or Notifications.

5. In the context of expansion of a Unit by acquiring an adjacent plot of land and installing new plant and machinery on such land, attention is invited to Board's Circular No. 939/29/2010-CX dated 22.12.2010 wherein it was, inter alia, clarified that any growth in the production/output of a unit by installing fresh plant and machinery would be eligible for exemption under these area-based Notifications. The situation of expansion of an eligible unit by acquiring an adjacent plot of land and installing new plant and machinery on such land, is akin to expansion by way of installing new plant and machinery inside the existing plot/premises. It is, therefore, clarified that in such cases, the exemption should continue to be available for the residual period of exemption.
6. Trade, industry and field formations may be suitably informed.

2. **Revised Treaty of Trade between India and Nepal.**

Circular No. 958/1/2012-CX Dated 13-01-2012

Source. www.cbec.gov.in

Pursuant to Revised Treaty of Trade between Government of India and Government of Nepal, exports to Nepal have been put at par with exports to other countries (except Bhutan). In this regard, six Notification Nos. 24/2011-Central Excise(N.T), 26/2011-Central Excise(N.T), 27/2011-Central Excise(N.T), 28/2011-Central Excise(N.T), and 29/2011-Central Excise(N.T), all dated 5.12.2011 have been issued to amend earlier Notification Nos 19/2004-Central Excise(N.T) dated 6.09.2004, 42/2001-Central Excise(N.T) dated 26.06.2001, 43/2001CE(N.T) dated 26.06.2001, 44/2001-Central Excise(N.T) dated 26.06.2001 and 45/2001-Central Excise(N.T) dated 26.06.2001, respectively. Notification no. 25/2011-Central Excise(N.T) dated 5.12.2011 has rescinded the earlier Notification No. 20/2004-Central Excise(N.T) dated 6.09.2004. These amendments abolish the existing DRP for exports to Nepal and puts export to Nepal at par with exports to other countries (except Bhutan). All these notifications have been made effective from 1st March, 2012.

2. Difficulties anticipated/ faced, if any in implementation of the revised procedure, may be brought to the notice of the Board.
4. Field Formations and Trade may also be suitably informed.

"Two men look out the same prison bars; one sees mud and the other stars. - "Frederic Langbridge"

Corporate Laws

1. Filing of conflicting returns by contesting parties - clarification

General Circular No. 1/2012 Dated 10.02.2012

Source. www.mca.gov.in

Ministry's circular No. 19 and 20 of 2011 issued on 02.05.2011 laying down certain procedure to regulate cases wherein filing of conflicting returns with regard to appointment of Directors or change of Director/Directors was laid down. In the light of some specific cases wherein it appears that either there was lack of consent of the removed/changed director or due process of Law were not followed, it has been decided to supercede the circulars.

2. In order to avoid such eventualities wherever there is management Dispute, the company is required to mandatorily file the attachment relating to cause of

cessation alongwith Form 32 with the ROC concerned irrespective of the ground of cessation, viz (a) retirement; (b) disqualification; (c) death; (d) resignation; (e) vacation of office u/s 283 or 313 or 260; (f) removal u/s 284; (g) withdrawal of nomination by appointing authority or (h) absence of re-appointment.

3. In case, any Director is aggrieved with his cessation in the company, he may file complaint in the Investor Complaint Form. On receipt of complaint, the ROC concerned will examine the complaint and mark the company as having 'management dispute'. Also, the ROC will issue a letter to the company and the parties to settle the matter amicably or get an order/interim order from a Court or Tribunal of competent jurisdiction. Till such dispute is settled, the documents filed by the company and by the contesting groups of Directors will not be approved/registered/recorded and will thus not be available in the registry for public viewing. ■■■

LEGAL UPDATES

Compiled By: CS Hemant V Pandya, Company Secretary

"Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011 (Amendment Rules)"

Key Highlights

- The definition of 'preferential allotment' has been modified to include issue of instruments convertible into shares on a preferential basis under Section 81(1A) of the Companies Act, 1956.
- Any offer of securities to more than forty-nine persons has been excluded from the definition of 'preferential allotment'.
- All monies payable on subscription of securities will be paid through cheque, demand draft or other banking channels and not by cash.
- Any allotment of securities will be completed within sixty days from receipt of application money. If the company is unable to allot the securities within sixty days it shall repay the application money within 15 days thereafter, failing which the company will be required to re-pay the application money with interest chargeable at the rate of 12% per annum.
- No company offering securities shall release any public advertisement or utilize any media, marketing or distribution channels to inform the public about such an offer.

"Company Secretaries (Amendment) Act, 2011"

Key Highlights

- Concept of 'Firm' and 'Partnership' includes LLP and Sole proprietorship registered with the institute (ICSI) as against the earlier act wherein the concept of 'partnership' was confined only to the partnership as defined in the Partnership Act, 1932 and did not include any distinct legal entity other than natural persons. The new amendment expands the definition by including LLP as a partner in a partnership.
- 'Partner' shall have the meaning to be a partner as per the Indian Partnership Act, 1932 and Limited Liability Partnership, 2008.

100% FDI allowed in single brand retail sector

Key Highlights

- Earlier regulation restricted Foreign Direct Investment (FDI) in single brand retail to only 51%.
- The New regulation will enable FDI in single brand retail upto 100%. But the regulation specifies that the out of the total valuation of the product, 30% should be routed through Indian SMEs. This means that if the valuation of the product, in which FDI was allowed upto 100% then 30% of the valuation should be routed from Indian SMEs.
- Regulation defines the SME as to those valuing up to Rs.1 mn. This means that the SME those value its assets upto Rs. 1 mn, those SMEs are to be considered.

"We are all inventors, each sailing out on a voyage of discovery, guided each by a private chart, of which there is no duplicate. The world is all gates, all opportunities".

- Ralph Waldo Emerson

COMPANIES BILL-2011-ANALYSIS OF THE MAJOR PROPOSALS REGARDING BOARD MANAGEMENT

CS Ramaswami Kalidas, Company Secretary

Introduction

The long awaited Companies Bill, 2011 has finally been placed in parliament. One can only hope, at this juncture that the bill will eventually be transformed into a Law unlike its previous incarnations which, for reasons many died a premature deaths..The Companies Act, 1956 which has survived close to six decades is an anachronism in the context of the present day, and it has to perforce yield place to a new law, given the contours of change that have characterized the Indian economy ever since the reform process was set rolling in the 1990s. As the Bard had remarked years ago, " The old order changeth yielding place to a new". It is appropriate that the old Act should yield place to a contemporary legislation which is relevant to the needs of the present day.

We begin this segmental exposition by taking an over view of the proposed law.

An over view of the proposed bill reveals the following conspicuous characteristics:

- There is an obvious over emphasis on sub-ordinate legislation in the form of Rules to regulate most of the clauses. Hence a conjoint reading of the Bill with the Rules which are yet to be prescribed would perforce be necessary for an objective evaluation of the ramifications of the proposals.
- Where it comes to listed companies, quite a few provisions in the listing agreement have been brought within the ambit of the proposed legislation, thus leading to scope for duplication in the matter of compliance. Furthermore, the definition of terms such as "Independent director"(Clause 149(5)), "Price sensitive information"(Explanation(b)under Clause 195(1), "Related Party" (Clause2(76) are different respectively from the listing agreement, AS-18 and the SEBI Regulations for prohibiting Insider trading, thus leaving scope for a potential conflict between the two.
- There are some obvious drafting anomalies- Witness the requirement under Clause 173(5) as applicable to a One Man company as regards the need for holding one Meeting of the Board in each half of the financial

year, subject to the condition, that the gap between two meetings shall not exceed Ninety days! or for that matter the requirement of the proviso under Clause 181 that the prior permission of the company in general meeting for making contributions to *bona fide* charitable and other funds. The proviso does not clarify whether the permission of the members has to be by an ordinary or special resolution. Again, while the bill gives a definition to the term "officer" (Clause2(59), ironically the term" principal officer" has been used in the proviso to Clause 179 which term has not been defined, leaving scope for conjecture.

It is only fair to state that when a *Magnum opus* such as the existing legislation is sought to be rewritten it is inevitable that such aberrations should inevitably crop up. It is expected that these errors will be eliminated in the process of passage of the legislation.

Having said this, it would be now be appropriate to make an examination of some of the specific proposals. Given the limitations of a discussion paper, we have chosen to introspect on only some of the provisions relating to Board Management and procedures. In the process of dissecting the provisions, we hope we would be able to provide enough food for thought.

• Number of Board Meetings in a Year-Clause 173(1)

This clause which corresponds to Section 285 in the 1956 Enactment(hereinafter referred to as the "old Act") stipulates, inter alia, that the first meeting

of the Board of directors should be held within 30 days from the date of incorporation. The old Act does not expressly mandate such a requirement although an inference can be drawn from a reading of section 224(5) in the old Act which directs that the first Auditors of the company should be appointed within 30 days from the date of incorporation of the Company. From the above,it obviously follows that the Board should meet within 30 days as it is the Board alone that can decide on the appointment of the first Auditors.

The Clause further provides that there shall be held a minimum of four Meetings of the Board in a year and



that the gap between two Meetings shall not exceed 120 days as against the requirement in the old Act that a Meeting shall be held once in every three months.

The power of the Central Govt. to exempt any class of companies from the ambit of the above provision as existing in the old Act has been retained.

- **Participation of Directors through Video conferencing- Clause 173(2)**

The Directors shall be given the opportunity to participate at Board Meetings through Video conferencing or other Audio visual means and such participation shall count for the purposes of the quorum. The equipments to be used for this purpose shall be of such quality as to facilitate recording, recognizing the participation of the directors, storing the proceedings of Meeting along with date and time.

It is pertinent to note that as a precursor to the above proposal, MCA had through its circulars dated May 20, 2011, as part of its green initiative, envisaged participation of directors/members through such electronic mode. It is important to state that the subject circulars were not legally tenable as they ran contrary, to an extent to the Mother legislation.

The clause further provides that the Central Govt. shall through notification specify such matters which cannot be transacted electronically.

This is a welcome initiative which is appropriate and in keeping with the dynamics of business where India Inc. is concerned.

- **Issue of Notice for Meeting: Clause 173(3)**

Although the requirement of issuing a written notice already exists under Section 286 of the old Act, the requirement that the Notice should be issued seven days before the Meeting to every Director is new. At present, the requirement of issuing a notice seven days prior to the date of the Meeting applies only to listed Companies, as mandated by Clause 41(III) of the Listing agreement particularly where it comes to Meetings of the Board at which the financial results of the company are to be considered.

The above Notice can be served electronically also.

If on account of the need for transacting any urgent item of business, the required length of notice cannot be ensured, the Proviso to the above Clause does permit the holding of a Meeting at shorter Notice, provided that at least one Independent Director shall be present at such a Meeting. If the independent Director is not present at the meeting, the decisions taken at the Meeting shall not be effective unless it is ratified subsequently by at least one independent Director.

The revised prescriptions in the above Clause are salutary in that they will elevate the level of Secretarial practice even in unlisted Companies.

- **Periodicity of Board Meetings for One Man Companies (OMCs)-Clause 173(5)**

It is proposed to permit OMCs, small and dormant companies to have only one Meeting of the Board in each half of a calendar year. It is intriguing, however, to note the stipulation that the gap between two such Meetings shall not exceed 90 days! It is somewhat paradoxical that when listed companies are permitted an interval of 120 days between two Meetings, small Companies should be called upon to ensure that the minimum two Meetings in the year should be separated only by a 90 day interval. This obviously cannot be the intention of the proposed Statute and only hopes that this drafting anomaly will be ironed out during the passage of the bill.

- **Passing of Resolutions by circulation- Clause 175(1)**

The existing requirements as provided under Section 289 in the old Act have been retained substantially whereby the Board and its Committees shall have the facility of passing Resolutions through circulation to the Board/Committee Members. However, one significant change that is proposed in this area is that in the event that 1/3 rd of the directors are desirous that the resolution proposed to be passed by circulation, must be decided at a Board Meeting, the Chairman shall direct that the matter should be resolved at Board Meeting only. As the above provision is intended for application to both resolutions to be passed by the Board and its Committees, the proviso under the above Clause needs to be suitably amended to provide that a similar treatment would be meted out in respect of the resolutions of the Board Committees intended originally to be passed by circulation as the words "Committee there of" as appearing in the Clause are conspicuous by their absence in the proviso to the above clause.

Clause 175(2) provides that a resolution passed by



"I want to be thoroughly used up when I die, for the harder I work the more I live. I rejoice in life for its own sake."

- George Bernard Shaw

circulation should be made a part of the Minutes of the subsequent meeting of the Board/Committee. This will lead to standardization in Secretarial procedure in that at present while some Companies have the practice of reproducing entirely the resolution passed by circulation in the Minutes of the next Meeting, others merely make a note of the resolutions passed by circulation, while keeping a separate record of the resolutions so passed by circulation.

• **Audit Committee – Clause 177**

Every listed Company and such class of companies to be



prescribed shall have an Audit Committee. At present this requirement applies to listed companies through the aegis of the Listing Agreement and to Companies which have a paid-up capital of Rs.5 Crores or more as provided u/s 292A of the old Act.

• **Composition of Committee- Clause 177(2)**

The committee shall comprise of a minimum of three Directors of which the majority shall be independent directors. In as much as the requirement of an Audit Committee is proposed to be applied not only to listed companies but also to other class of companies to be prescribed, the fact that the committee is expected to consist of a majority of independent directors obviously leads to a logical conclusion that even unlisted Companies answering to the class to be prescribed will have to appoint independent directors.

At present, the composition of the Committee has been prescribed in the Listing Agreement and also in Section 292A of the old Act .

• **Terms of reference of the Audit Committee- Clause 177(4)**

The terms of reference of the committee shall be as mandated by the Board in writing.

However, the terms shall necessarily include items as

listed out in the above clause which is substantially a mirror image of the items already listed out in Clause 49 of the Listing Agreement However, the ambit of coverage has been enlarged to cover the following areas:

- Approval or modifications of transactions with related parties as opposed to disclosure as at present.
- Scrutiny of Inter-corporate loans and investments.
- Valuation of undertakings or assets of the Company where ever it is necessary.
- **Right of Auditors and Key Management Personnel(KMPs) to be heard at Meetings of Committee – Clause 177(7)**

The Auditors and key Management personnel (read CEO/MD/Whole time director/Company secretary/CFO) shall have the right to be heard when the committee discusses the Auditors' Report but they shall not have the right to vote. The provision of this right is in contrast with the present requirement of extending invitations to such persons to attend the Meetings of the committee as Invitees.

- **Board's non-acceptance of committee's recommendations to be reported- Clause 177(8)**

The composition of the Audit Committee should be included in the Board's report to the Members and in case the Board does not accept any recommendations of the committee, the same is to be reported with reasons there for. The latter disclosure requirement is new and will definitely elevate the level of Governance.

- **Compulsory Establishment of Vigil Mechanism(Whistle Blower Mechanism)- Clause 177(9)**

Every listed company and such other class of Companies as may be prescribed should have a whistle blower mechanism or a vigil mechanism. At present this requirement is non mandatory in nature where listed companies are concerned. Details of the mechanism should be disclosed in the Board's report. The mechanism should provide for safeguards t against victimization of the Whistle Blower and should provide the facility of direct access to the Whistle blower to the chairman of Audit Committee in appropriate circumstances.

- **Nomination and Remuneration Committee compulsory- Clause 178(1)**

At present the need to constitute the above committee is a non mandatory requirement in the listing Agreement. Unlisted companies also need to constitute such a Committee as per the dictates of Schedule XIII in the old Act, in cases where remuneration is payable to KMPs in situations where there is either an absence or inadequacy of profits.

Even unlisted companies answering to a class to be prescribed will have to form such a Committee which should consist of non-executive Directors with one half or more being independent Directors.

The Committee shall be entrusted with the responsibility of identifying persons for appointment as Directors and for senior Management Positions (read as the hierarchy which is one level below the Board). The Committee shall also review performance of directors, formulate a remuneration policy for Directors and the senior management. The policy shall form a part of the Board's report to members.

• **Stakeholders' Relationship Committee-Clause 178(5)**

The Listing Agreement at present provides mandatorily for the constitution of a shareholders'/Investor grievances Committee for handling the grievances of shareholders. This requirement is proposed to be extended to bring with its ambit, the redressal of grievances of other stake holders such as, debenture holders, deposit holders and any other security holders where their number exceeds 1000. The committee shall resolve the grievances of all stake holders and the chairman of the Committee shall attend General Meetings of the Company as contemplated in the Listing Agreement. The need for setting up such a Committee shall obviously apply both to listed and unlisted companies which have a stake holder population of 1000 or more.

• **Corporate Social Responsibility Committee-Clause 135(1)**

Every Company with a net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or net profit of Rs. 5 Crore or more should set up the above Board committee.

An endeavour shall be made by the companies satisfying the above criteria, to spend at least 2% of their net profit based on three years average towards discharging its corporate social responsibility. In the event, the above



expenditure is not incurred by the company in any year, the Board's report should provide the reasons there for.

The Committee shall formulate the policy for CSR

which will cover activities listed out in schedule VII of the Bill.

It shall also recommend the expenditure to be incurred for CSR activities and also monitor the CSR policy from time to time.

• **Exercise of Board's Powers only at Board Meetings - Clause 179(3)**

The above clause corresponds to section 292 in the old Act. While the existing items as per section 292 have been retained, in addition, the following matters can be transacted only at a duly convened Meeting of the Board.

- To issue securities including debentures whether in or outside India.
- To approve the financial statements and the Report of the Directors.
- To diversify the business of the Company.
- To approve amalgamations, mergers or reconstructions.
- To take over a company or to acquire controlling interest in a company.
- Any other matter as may be prescribed.

The above clause also contemplates as per the existing section 292 the delegation of certain powers to a Committee of directors, the Managing Director, the Manager or any other *principal officer* (*Emphasis supplied*) of the Company.

It is pertinent to note that as in Section 292 of the old Act, the term "principal officer" has not been defined. In the absence of such a definition, as per the established canons of judicial interpretation, the definition given to the term such as in the Income Tax Act, 1961 (Section 2(35) is used by Companies. The definition to the term has not been unfortunately been provided in the Bill, thus leaving scope for ambiguity.

• **Board's Consent required for related party transactions-Clause 188**

The bill contemplates that without the consent of the Board, related party transactions cannot be entered into for the following purposes;

- Sale or purchase of goods or provision of services.
- Sale or purchase of any property.
- Lease of any property.
- Appointment of agents for sale/purchase of goods/ services.
- Appointment of a related party to an office of profit in the company.
- Any under-writing arrangement involving securities or derivatives.

The term "Related party" has been defined in Clause 2(76) of the bill and the language of the definition is different from the prescription contained in Accounting Standard-18. It would have been preferable if the definition of the term as in the bill were in consonance with the definition already available in AS-18.

The justification for entering into the above types of transactions shall be provided in the Board's report.

"It was a high counsel that I once heard given to a young person, "Always do what you are afraid to do." - Ralph Waldo Emerson

The above proposal will ensure that there is greater transparency and dissemination of information to the Members. However, it will lead to some practical difficulties particularly in the context of a group of companies.

- **Prohibition from forward dealings in securities/ Insider Trading-Clause 195**

At present the fetter as far as prohibition of insider trading by the Directors and by the senior Management of a listed company is concerned, is provided by the SEBI (Prohibition of Insider trading) Regulations 1992 in terms of which it is, *inter alia*, mandatory for a company to draw up a code for prohibition of Insider trading and make it applicable to the higher echelons of the corporate Management.

The Bill seeks to provide that no Director or key managerial person (KMP) shall be involved in any derivatives trading on the company's securities nor shall he be involved in insider trading. The terms "insider trading" and "price sensitive information" have both been defined. It is pertinent to note that the SEBI Regulations do not provide a definition to the term "Insider trading".

In addition, it is observed that definition of "price sensitive information" as given in the bill is much narrower than the definition given in the SEBI Regulations. This will cause confusion in practice.

The bill should have expressly provided that the above clause shall have application only for listed companies.

Conclusion

In the above exposition we have restricted ourselves to a limited area of the bill. One observation we would like to share before closing is that the bill has been drafted in simple language, the clauses have been subdivided into sub-clauses to facilitate easy reading. The bill is therefore, easier on the eye as also on the mind. Long winding convoluted provisions as existing in the old Act, have given way to a simple and lucid style. The fact that the bill contains only 470 clauses as against the gargantuan size of the old Act should not however lead to an erroneous conclusion that the bill is slimmer and sleeker in keeping with the times that we live in. The fact that there is so much scope for sub-ordinate legislation in the form of Rules would perhaps suggest that the Bill which has to be necessarily read in tandem with the Rules which are to be prescribed will be no less tardy than its predecessor. ■■■



Understanding Compulsorily Convertible Debentures

By CS Vinod Kothari, Company Secretary

As corporate treasurers become more savvy and sophisticated, the use of debt as a component of the capital structure increases. Debt has several advantages over equity - its servicing cost is lower, it has positive impact on return on equity, it creates leverage which is essential to attain higher earnings on equity and higher valuations, it is more flexible and may be brought down when needed while equity may be highly inflexible, it does not result into dilution of control, and so on. Bonds and debentures are capital market instruments of sourcing debt. As the

use of bonds and debentures becomes wide-spread, there are numerous varieties of debentures being used. While convertible/non-convertible debentures have been used over decades, recently, preparing for Basel III, European banks have also used contingently convertible bonds, interestingly called Co-co bonds, which convert into equity in a defined contingency - for example, if the capital ratio of the bank falls below a certain threshold. Hence, the various types of debentures, based on convertibility feature, may be as shown in the diagram below:

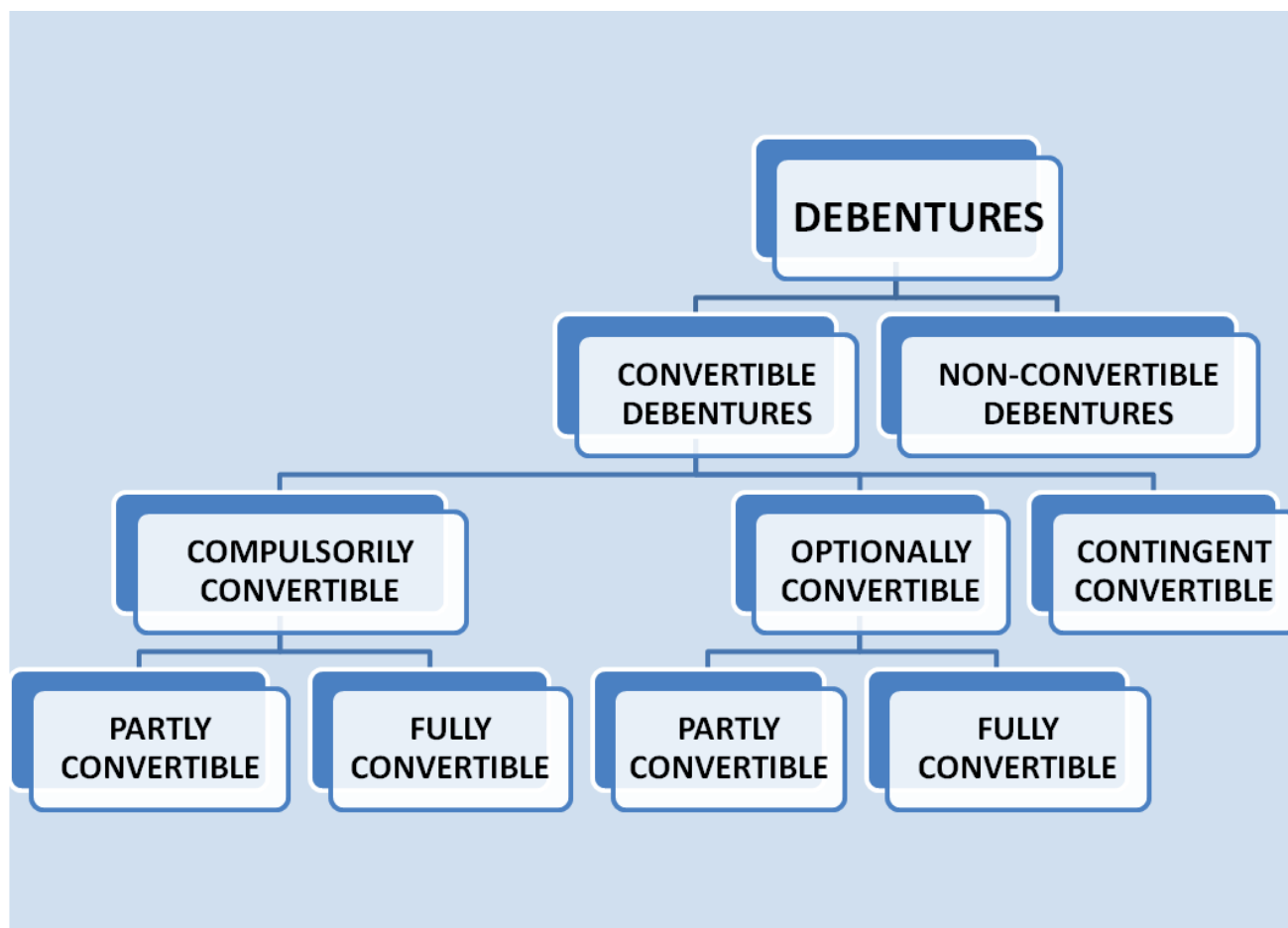


Fig: TYPES OF DEBENTURES

¹The difference between bonds and debentures is almost that of usage - the term bonds has been more prevalent in US markets while debentures in traditional UK literature have represented debt instruments carrying floating charge over assets. In present day parlance, the difference is completely insignificant. In this article, we continue to use the two terms interchangeably.

This article focuses on compulsorily convertible debentures (CCDs), which are increasingly being used by lots of investors, particularly private equity (PE) investors. A CCD is a queer instrument as it is a mix of debt and equity features – it is debt now, but equity in future. It sometimes becomes very interesting to ascertain whether, and in what context, will a CCD be treated as equity, and where will it be still a debt instrument. This article examines CCDs from a variety of viewpoints. CCDs are also known as “mandatory convertible debt” in US banking parlance.

Why does a company issue CCD?

A CCD is a debt instrument mandatorily and automatically convertible into equity at a specified time, or on happening of specified events, into equity. In that sense, it is difficult to call it “debt” as debt implies an obligation to pay. In view of its mandatory conversion feature, a CCD is a deferred equity instrument.

There may be several reasons for issuance of a CCD. One of the reasons is that while it provides several of the advantages of equity (as may be appreciated by the discussion below), it defers the issuance of equity. To the issuer, this may provide tax advantages, as also potentially better equity pricing based on future value. To an investor, say a PE investor, it is a decent way of ensuring a fixed rate of return with an upside on conversion, whereas straight equity cannot promise any fixed rate of return. As a device of offering fixed returns with a possible upside, a CCD is far preferable to a preference share which has higher servicing costs (as dividends are not tax-deductible).

Legal nature:

One of the earliest and most commonly cited rulings in India that has discussed the nature of CCDs is Supreme Court ruling in Narendra kumar Maheshwari v. Union of India 1989 AIR SC 2138. This was a case pertaining to capital issues control on issuance of securities – the Controller of Capital Issues as it existed then. Whether the CCDs in that case were actually debt or equity was not the moot question before the Apex court. Nevertheless, the one-liner that the court used in the case has been cited enough number of times: “A compulsorily convertible debenture does not postulate any repayment of the principal. Therefore, it does not constitute a ‘debenture’ in its classic sense.”

The ruling of the Apex court that it is not debt or debenture in its classic sense cannot be taken to mean that a CCD is not a debt at all, or not a debt in legal sense. In fact, whether a CCD is debt or equity is a question of form versus substance. The legal form of a CCD, until conversion, is still that of debt. Its substance, however, is that there is no debt as debt postulates payment of money. Therefore, the SC ruling in Narendra Kumar Maheshwari cannot be taken to mean that CCDs are not debt at all.

In fact, the Full Bench of the MRTPC in DGIR vs Deepak Fertilisers 81 Comp Cas 341 held as follows: “The question

is whether convertible debentures are to be treated as equity straightaway, that is, ipso facto on the issue of debentures and even before allotment. The answer must, in our humble view, be in the negative. Indisputably, in the event of the company being wound up before the allotment, the debenture holder shall be entitled to the payment of principal together with interest thereon...”

In a taxation context, the Authority for Advance Rulings in AAR no 769 of 2007 [http://aarrulings.in/it-rulings/uploads/pdf/1250754142_769.pdf] examined the question in the following words: “Does it cease to be a debt merely because the bonds are redeemed not by returning the money but by getting shares of the equivalent value? Does convertibility of debentures affect the characteristic of debt and transform it into something else? We do not think so. If the mode of discharging the debenture debt is by issuing equity shares in lieu of payment in cash, it does not in any way detract from its legal character as debt.”

The AAR in the above case cited ruling of SC in CWT vs Spencer and Co 88 ITR 429 which ruled as follows:

The fact that under certain circumstances the assessee, instead of paying back the debt in cash, could discharge the same by transfer of shares, as provided in the resolution quoted above, does not change the character of the liability. The mode of discharging a liability does not change its true character.”

The AAR also cited from an old SC ruling in Eastern



Investments vs CIT WB 20 ITR 1 whereby deduction for payment of interest on debentures was in question: “In principle, there appears to us no difference, if instead of paying in cash the payment of the price is in the shape of giving over shares of the company when the transaction is not challenged on the ground of fraud and is approved by the Court..”

The tax rulings above may not be precedents in examining the generic nature of CCDs, but it seems clear that a CCD is a debt until its conversion; and it becomes equity only on conversion. For example, one of the issues raised in the

ruling of Deepak Fertilisers above was – if the issuing entity goes into winding up before the schedule date of conversion of CCDs, will they rank for payment as debt, or distribution as equity? The answer is clearly the former. Hence, the legal nature of a CCDs is a debt, dischargeable by issue of equity of the entity. However, as we realize throughout this article, wherever substance of the instrument matters, CCDs have been reckoned at par with equity.

Regulations on issue of securities:

SEBI ICDR Regulations treat both optionally convertible and compulsorily convertible debentures as securities covered by the Regulations, however, in case of CCDs, the parity with equity shares becomes evident. For example, SEBI has a power to grant exemption from compliance with the preferential issue guidelines in case of issue of equity shares and CCDs, if SEBI has granted exemption in terms of Reg 29A of the Takeover Regulations. To compute the holding period of equity shares, if the equity shares have resulted out of conversion of CCDs, the holding period of the two is reckoned together.

Regulations on foreign direct investments:

RBI controls on capital account inflows into India broadly takes two forms – external commercial borrowings (ECBs), and foreign direct investment (FDI). While there was confusion till recently on what debentures are covered by FDI, and what will be covered by ECB norms, the confusion was removed in mid 2007 by an amendment in the FDI policy. Currently, only fully and mandatorily convertible debentures are taken as FDI; the rest are taken as ECBs. This is clear from the definition of “capital” in para 2.1.5 of the FDI Circular [Circular 2 of 2010] which states: “‘Capital’ means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures.”

FDI norms stipulate that the pricing and terms of conversion must be fixed upfront. A change was made in the FDI Circular of 1 July 2011 to provide that instead of agreeing on a fixed price, parties may agree on a pricing formula. However, the norms do not lay down what should be the conversion period.

Accounting purposes:

Accounting standards are concerned with nature of a financial instrument issued by the entity from viewpoint of whether it is debt or equity. Financial statements compute the net wealth of the entity – if it is a debt, it reduces the net assets. If it is equity, it does not. Besides, present-day financial statements compute analytical measures like return on equity or earning per share. Here also, if an instrument is debt, its servicing is a deduction from the earnings; if it is

equity, the servicing is not a deduction, and such instrument will form a part of the denominator for computation of earnings per share.

The distinction between debt and equity is laid down by IAS 32 – Presentation of Financial Instruments. The key principle of distinction between equity and debt is laid down in Para 15 which states that the substance of the instrument will be the basis for classification. Para 16 lays down conditions for an instrument being taken as equity. Reading para 16 (b) carefully, the conclusion is that if a CCD is convertible into a fixed number of equity shares, then the CCD will qualify as equity from inception.

- For example, say an entity issues CCDs of Rs 10 crore, convertible into equity shares at 10% lower than the market value prevailing at the time of conversion. Such an instrument results into issue of a variable number of equity shares of the company. It is almost like settling the obligation to repay debt by issuing equity shares. This instrument cannot be treated as equity from inception.
- Now, let us change the assumption. Say the entity issues CCDs of Rs 10 crore, convertible into 100000 equity shares at a price of Rs 100. In this case, the

number of equity shares to be issued on conversion is determinate. Hence, it is like having issued equity rightaway.

This position is further clarified in Para 21 and 22 of IAS 32.

For the purpose of computing EPS, IAS 33 distinguishes between equity shares and potential equity shares. Where a CCD is treated as equity as per principles of IAS 32, it is taken as equity share straightaway. If a CCD is treated as liability, the underlying option to

convert into equity may give rise to potential equity shares, resulting into dilution of EPS. This is separately disclosed as diluted EPS.

For capital regulations:

A key question in case of banks, financial institutions and NBFCs, each of which are covered by minimum capital regulations in form of capital adequacy ratio (CAR) is, whether a CCD will be considered as equity or debt?

As per text of Basel II [para 49 (xi)], a mandatory convertible debt instrument qualifies as hybrid capital instrument, includible as a part of Tier 2 capital, that is, supplementary capital. Annexure 1a to the Basel II document lays the features of such hybrid capital instruments to be qualified as capital:

- they are unsecured, subordinated and fully paid-up;
- they are not redeemable at the initiative of the holder or without the prior consent of the supervisory authority;



- c. they are available to participate in losses without the bank being obliged to cease trading (unlike conventional subordinated debt);
- d. although the capital instrument may carry an obligation to pay interest that cannot permanently be reduced or waived (unlike dividends on ordinary shareholders' equity), it should allow service obligations to be deferred (as with cumulative preference shares) where the profitability of the bank would not support payment.

Feature (a) is easy to satisfy in case of CCDs, as they don't have to be secured. No apparent purpose would be satisfied by securing them, as they do not envisage any repayment. Feature (b) is automatically satisfied, as CCDs are not redeemable at all. Feature (c) implies that on the assets of the issuing entity falling due to losses, bankruptcy of the institution should be triggered only if the value of the assets is less than the par value of liabilities, excluding CCDs. That is to say, the bankruptcy of the issuing institution should be triggered only if losses have wiped out both equity and the CCDs. This feature may be ensured by making loss of equity as a trigger for conversion of CCDs. Feature (d) implies that the interest payable on a CCD should be contractually capable of being deferred, that is, non-payment of interest should not be a bankruptcy event.

Possibly in line with the above features, RBI has come up with guidelines for so-called Innovative Perpetual Debt Instruments, which would qualify for inclusion in Tier 2 capital of banks. However, the perpetual debt instruments miss the advantages of CCDs. CCDs are far more flexible and investor-friendly, as they allow the investor the upsides and downsides of equity both. A perpetual debt instrument as per RBI parlance is far more restrictive, as compared to a CCD.

It may be noted that CCDs will not be treated as "deposits" under regulations pertaining to acceptance of deposits, as fully convertible debentures fall outside the definition of "deposits".

Tax issues:

For income tax purposes, several questions arise as regards CCDs. First obvious question is – will CCDs be regarded as debt, and therefore, will interest on CCDs qualify as deduction from taxable income? This question has been answered in the affirmative in the ruling of the AAR cited above.

In addition, the question of deductibility of expenses on issue of CCDs comes up. As is well known, an expenditure on issue of capital will not qualify as revenue expenditure. Expenses on issue of debt instruments will qualify. Whether CCDs are capital instruments, or debt instruments?

One of the early rulings on the issue is Ashima Syntex vs ACIT 100 ITD 247 (ITAT – SB). After citing several rulings on the subject of substance over form, such as Juggilal Kamlapat, Sunil Siddharthbhai v. CIT and CIT v. B.M. Kharwar, etc., and after referring to accounting standards pertaining to EPS, the Tribunal held as follows: "We uphold the contention of the Revenue that debentures in this case are fully convertible and there being no liability to repay but retained as capital by conversion into equity shares, it was not a borrowing and consequently the expenditure on issue would not be allowable as deduction". In this case, the Tribunal held CCDs at par with advance for share capital, akin to share application money.

Subsequently, in the case of Ganesh Benzoplast v ACIT [2007] 111 TTJ 385 (Mumbai), the ITAT distinguished the facts of the case from Ashima Syntex. The case here was deductibility of interest on the debentures, whereas in Ashima, it was on allowability of expenses on issue.

The Rajasthan High Court in C.I.T. Udaipur V/S M/S Secure Meters Ltd., order dated 20.11.2008 held that expenses on issue of debentures were deductible, even if the debentures were convertible. It is not clear from the facts of the case whether the debentures were compulsorily convertible or optionally. An SLP by the Deptt against this ruling was dismissed by the Supreme Court on 11th Aug 2009. It, therefore, seems to be the law of the land now that expenditure on issuance of CCDs will also be allowable as an expenditure.

It may also be noted that on conversion of CCDs (in fact, any convertible bonds) into equity shares, capital gain does not arise, as the conversion of debentures into shares is treated as transfer by virtue of sec. 47 (x) of the Income-tax Act.

Conclusion:

CCDs provide an excellent tool for balancing the capital structure and attracting investors. For financial entities, it may be an excellent tool for support Tier 2 capital, falling outside the purview of "deposits". While being a de facto capital instrument, CCDs have several tax privileges not applicable in case of equity or preference shares.

"If you want to succeed in the world must make your own opportunities as you go on. The man who waits for some seventh wave to toss him on dry land will find that the seventh wave is a long time a coming. You can commit no greater folly than to sit by the roadside until some one comes along and invites you to ride with him to wealth or influence".

- John B. Gough

FAST TRACK EXIT MODE: A ROAD BLOCK

Amita Saxena, FCS, Company Secretary in Practice

Ministry of Company affairs is facing an acute problem of non compliance of legal provisions by number of companies as far as filing of documents with Registrar of Companies is concern. A large number of such defaulting companies is comprises of such Companies which are registered under the Companies Act, 1956 but due to various reasons they are inoperative since incorporation or become inactive at a later date and not filing Balance Sheet and Annual Return with the Registrar of Companies. Maintaining record of such companies is a cumbersome process that is adversely affecting the scare resources. To remove names of such companies from the register of Companies the Ministry has come out with various Schemes in past. Despite such schemes there is number of defaulter companies those have yet either to comply the provisions or to apply for strike off their names.

As such there exists a provision in the Act itself under Section 560 wherein Registrar of Companies can strike off the name of such companies. Option is also available to the Companies to make application to ROC to strike off their name under the said section of the Act. However since the pre-condition for making application under the said section by the Companies was first to file all pending document and secondly the time being taken to approve the application made under section 560 was very long this provision was not being utilized in general. Considering this Ministry of Corporate Affairs has modified the procedure as available under section 560 vide general circular No. 36/2011 dated 7th June 2011 and come out with Fast Track Exit (FTE) mode. Under this "Fast Track Exit mode" Ministry has modified the existing route of filing application in e-Form 61 and dispensed with the requirement of filing of all pending statutory return before making application to Registrar of Companies.

APPLICABILITY OF GUIDELINES:

These guidelines for Fast Track Exit mode are applicable to all defunct companies having nil asset and liability those either has not either commenced any business activity or operation since incorporation or not carrying over any business activity for last one year before making application under FTE. This ETE mode is not applicable to following Companies:

- (a) Listed Companies
- (b) Companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws.

- (c) Companies registered under section 25 of the Companies Act, 1956.
- (d) Vanishing Companies
- (e) Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court
- (f) Companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court

(g) Companies against which prosecution for non compoundable offence is pending in court

(h) Companies accepted public deposits which are either outstanding or company is in default in repayment of the same

(i) Company having secured loan

(j) Company having management dispute

- (k) Company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority
- (l) Company having dues towards income tax or sales tax or central excise or bank and financial institutions of any other Central Government or State Government Department or authority or any local authority.

PROCEDURE FOR MAKING APPLICATION:

Any Company desirous of getting its name strike off from the Register of Companies has to make application in new e-Form FTE stating that it has nil assets and liabilities and as a proof thereof to attach a statement of account declaring nil assets and liabilities duly certified by a chartered accountant. Along with the Form FTE it has to submit affidavit from each director to the effect that the Company has not carried on any business since incorporation or that the company has discontinued its business for last one year or more. An Indemnity by every director individually or collectively is also to accompany the Form FTE to the effect that any losses, claim and liabilities on the Companies be met in full by the directors even after the name of the Company is struck off the Register of Companies. The Fee payable towards filing of Form FTE is Rs. 5000/- irrespective of authorized capital of the Company.



OTHER EASE OF PROCEDURES APPLICATION TO FTE:

While making application under section 560 in Form FTE companies are not required to file all pending statutory returns. Even if the companies are defaulter in filing Form 32 or DIN 3 and their director names are not available in the data base of MCA, they need not to update the record and a certificate obtained from practicing professional will serve the purpose. For filing Form FTE directors are also not required to obtain digital signature as the Form can be filed by the practicing professional using their digital signature.

RESTRICTIVE CLAUSES APPLICABLE TO FTE / NIL ASSETS & LIABILITY:

To apply under FTE companies are necessarily required to meet two criteria. Firstly the Company should not have any assets and liability. Secondly either the Company has not commenced any business activity or at least one year must have been passed since last business activity. These two criteria seem to be contradictory of each other. A company can be incorporated if and only if it has minimum prescribed paid up capital. In case it is inoperative since incorporation the paid up capital shall reflect as cash balance and would form the part of asset, such company are not able to apply under FTE. Further no business can become inoperative as soon as its cash balance reaches to zero. Either on realizing that funds are not sufficient or after putting some more fund as loan management decides that to continue the operation is not feasible. In both of these cases where Company is having insufficient fund or unsecured loans from directors/members the statement of account would not reflect nil assets and nil liability and accordingly company shall not be able to make application for strike off its name under FTE.

PRACTICE FOLLOWED PRIOR TO FTE INCASE ASSETS AND LIABILITIES ARE NOT ABSOLUTELY NIL:

Prior to introduction of FTE even if Company is not having

nil assets and liabilities it can apply under section 560. In such cases Registrar of Companies has discretion to decide whether the assets or liability as existing is significant or not. In number of cases a small cash balance was considered as insufficient to carry on any business and being ignored. Similarly in case of unsecured loan from directors/ members their declaration that they do not intend to claim the same was considered as sufficient discharge of liability. Even in previous exit schemes as provided by MCA in 2010 and 2011 the criteria of having nil assets and liability was not applicable.

DISCONTINUATION OF APPLICATION IN E-FORM 61:

Since introduction of FTE, MCA has withdrawn the option available to the companies to apply in e-Form 61. Now all defaulting companies, if desirous, are necessarily required to make application in Form FTE only. In view of this a Company that not meets both of the criteria applicable to FTE can not apply for strike of its name under section 560.

CONCLUSION

Though having good intention to get rid of inoperative companies and providing a speedy exit rout to such companies the FTE scheme introduces by the MCA has resulted in a road block. As such instead of providing a speedy gate way it has blocked the only rout available

to the Companies to get their name struck off by way of filing application in e-Form 61. In view of this it would be beneficial for all stakeholders if the Form FTE is revised and conditions of having nil assets and nil liabilities be modified to having insufficient assets and having non material liabilities. This modification would help the companies that are having insufficient fund, redundant assets or unclaimed non material liabilities to avail the scheme and Ministry could also achieve its object of getting rid from the defunct companies.



Remuneration for rendering professional services

- CS Gaurav Pingle, Company Secretary, Pune.

Today's corporate world is a world of "Super Specialization", For Example:- If a professional specializes in a domain of Corporate and Securities Laws, now it has become equally important to further specialize into "Corporate Litigation" or "Corporate Restructuring" or "Takeover Code" or "Managing Public Issues" or "Corporate Secretarial Practice" or any other relevant area. Therefore, the saying "Jack of all trades and Master of none" has almost become redundant in this context.

After gaining practical exposure, the professional gains "special" knowledge in a specific domain area and over a period of time, he will be known for his area of practice and expertise in the corporate world. The Corporations prefer appointing such Professionals as Directors in their Company because of their expertise in a specific area, independence and Brand Value in the market. When such Professionals are appointed as Directors in a Company and perform certain duties and assignments which require special expertise, such services are in capacity of a "Consultant" or "Advisors" or "Expert" or "Specialist" or "Practicing Professional".

Many Indian and International Universities offer Specialized and Professional Courses (with research facilities) in the field of engineering, science, management, finance, law and architecture confers Professional Degrees like PhD or Master of Science (M.S or MSc.) after its successful completion.

The provisions of the Companies Act, 1956 ("Act") takes into consideration the abovementioned arrangement between a Specialized Professional (who is a Director) and the Company. The relevant provision is Proviso to Section 309 (1) of the Act. The Section 309 relates to "Remuneration of Directors". The Section 309 (1) states that:-

"The remuneration payable to the directors of a company, including any managing or whole time director, shall be determined, in accordance with and subject to the provisions of Section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so required, by a special resolution, passed by the company in general

meeting and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity:-

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if:-

- a) the services rendered are of a professional nature, and
- b) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession."

(A) INTERPRETATION OF SECTION 309 (1) AND ITS PROVISO:

The remuneration payable to the Directors (including Managing or Whole Time Director), shall be determined in accordance with and subject to the provisions of Section 198 and 309 of the Act. The remuneration payable to any Director shall be inclusive of the remuneration payable to such Director for the services rendered by him in any other capacity.

The remuneration payable in any other capacity will not be a part of limits prescribed by Section 198

and 309 of the Act, if following Two (2) conditions are satisfied:-

- a) The services rendered are of a Professional nature, and
- b) In the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession.

Therefore, in order to exclude the amount paid to a Director for services rendered by him in any other capacity; it is necessary to satisfy the two aforesaid Conditions.

The Act has neither defined "Profession" nor "Services of Professional Nature".



The Black's Law Dictionary (5th Edition), defines "Profession" as "A vocation or occupation requiring special, usually advanced, education and skill. The labor involved in a profession is pre dominantly mental or intellectual, rather than physical or manual. The term originally contemplated only theology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill."

(B) VIEWS OF THE DEPARTMENT OF COMPANY AFFAIRS (NOW, MINISTRY OF CORPORATE AFFAIRS - "MCA"):

I. In the Tenth Annual Report on the Working and Administration of the Companies Act, 1956 - Year ended 31 March, 1966, it was made clear that:-

"Exemptions under Section 309(1) will be made only in respect of those directors who possess requisite qualifications for practicing the profession in respect of which they render special services."

II. The Department of Company Affairs (DCA), (now, "MCA"), issued a Circular F. No. 6 (8) - CL - VII/67 to define "in any other capacity". It states that:-

"The Amending Act of 1965 has made it clear that Section 309 limited the remuneration of director including remuneration payable to him for services rendered by him "in any other capacity". Hence, the remuneration paid to a director as a partner of the Sole-Selling Agents is for services rendered in "other capacity" and is received by him "directly or indirectly" in excess of the limit prescribed. Hence, prior sanction of the Central Government is necessary.

III. The DCA issued Letter No. 3/54/87-CL-V, dated 14 February, 1988 stating that (relevant part is mentioned):-

- (1) The expression of opinion by the Central Government under the proviso to Section 309 (1) of the Act is required for rendering services by any director, which are of a professional nature. The said proviso is also applicable for practice of the profession as an Advocate as per express provisions made there under.
- (2) The company, in which the Advocate concerned is a director, should apply to the Central Government.
- (3) While making an application, the company should, inter alia state the name (s) of the company (ies) in which the Advocate/Director is a director. The expression of opinion will be required separately for each such director by each such company, is so desired.

(4) Section 309 deals with remuneration of directors individually and not with the firms in which such a director is a partner. The proviso to sub-section (1) refers to services rendered by any director in any professional capacity and, therefore, the question of seeking approval by the Advocates' firms does not arise.

(C) CRUX OF SOME LANDMARK JUDGMENTS ON "SERVICES RENDERED IN ANY OTHER CAPACITY":

I. RAMABE A. THANAWALA V/s JYOTI LIMITED (1957):-

The Bombay High Court held that "What was sought to be controlled (by Section 309) was the cost of management, and if what was sought to be controlled was the cost of management, then what



had to be considered was managerial remuneration and not remuneration paid for any other purpose. Even on principle this seems to be the correct view, because it is difficult to understand why a company could employ a technical expert and pay him whatever amount it thinks proper and there should be no control with regard to it, and yet the company should be prohibited from making use of the technical knowledge of a director and pay him a proper remuneration."

II. R. GAC ELECTRODES LTD. AND ANOTHER v. UNION OF INDIA AND OTHERS. (1982):-

The Kerala High Court held that "The question is whether Section 310 which provides for increase of remuneration has anything to do with the payment of remuneration for Professional Services. The increase can only be an increase of Remuneration. As per Section 309, the remuneration payable to a director takes on only managerial remuneration and remuneration for services of a non-professional nature rendered by him in any other capacity, and remuneration the increase for which permission

"If you believe you can, you probably can. If you believe you won't, you most assuredly won't. Belief is the ignition switch that gets you off the launching pad." - Denis Waitley

is required under Section 310 will take in only the above remuneration. As remuneration for services of a professional nature will not be remuneration determined under Section 309(1) the payment of the same to a director will not increase the remuneration he is entitled to under s. 309(1). So, it goes without saying that for the payment of remuneration for services of a professional nature no previous sanction of the Central Govt. under Section 310 is necessary."

III. RUBY MILLS LIMITED AND ANOTHER v. UNION OF INDIA AND ANOTHER (1984):-

The Bombay High Court held that "It is not the object of the Companies Act to regulate and control the practice or the fees of qualified professionals. That jurisdiction vest elsewhere and, what is more, but for the conditional legislative exception under the proviso to Section 309(1) which, on compliance, exempts Professional Fees and Charges from "Remuneration", the restriction de hors (without) the said proviso may well become unreasonable and absolute in its effect and consequently render itself vulnerable to a constitutional challenges as violating one's fundamental right to practise his profession, merely on becoming a company director simpliciter."

IV. STUP CONSULTANTS LTD. v. UNION OF INDIA AND ANOTHER (1986):-

The Delhi High Court upheld of the Judgment of "R. Gac Electrodes Ltd" and further stated that "It is not disputed by the Respondents that Section 309(1) enables a company to seek the opinion of the Central Government regarding possession of requisite qualifications, as the provision exists in the Companies Act. Upon the power being invoked

by a company it is necessary and incumbent upon the Central Government, indeed it is its duty, to express an Opinion t h e r e o n . The Central Government, cannot side-track the issue by requiring compliance with

another provision, or any other aspect of company law as a pre-condition to the expression of opinion by it."



V. SREE GAJANANA MOTOR TRANSPORT CO. LTD. AND ANOTHER v. UNION OF INDIA (1991):-

The Karnataka High Court held that "There is nothing in Section 309 of the Act which empowers the Central Government to restrict the remuneration payable to a director for services rendered by him in a professional capacity. Once the Central Government is satisfied that the director possessed the requisite qualifications to render professional services, it is not permissible for the Central Government to put any restriction on the remuneration payable to him by the company in respect of the professional services."

(D) APPLICABILITY OF SECTION 309:

The provisions of Section 309 of the Act are applicable to Public Companies and Private Limited Companies which are Subsidiaries of Public Limited Company.

Typically, the Non Executive Directors (NEDs) fall under the category of "Super Specialized Director" and any amount paid to NED for obtaining his professional services, in any other capacity, would fall under proviso of Section 309 (1) of the Act.

(E) OTHER COMPLIANCES:

In this Article, I have focused only on proviso to Section 309 (1) of the Act. But, at the same time we should also take into consideration the other "sister concerned" provisions in the Act i.e. Section 297, 299, 300, 301 and 314. The said Sections along with Section 309 are independent and hence independent compliance is necessary. The disclosures under Accounting Standards - 18 (AS - 18) shall also be taken into consideration along with Accounting Standards Interpretation (ASI) 21 and 23.

For listed companies, it would be desirable to disclose (in accordance with Clause 49 (I) (B) of the Listing Agreement) the Professional Fees paid to NEDs for obtaining their specialized services as a part of good Corporate Governance Practice.

(F) CONCLUSION:

In the era of "Super Specialization" the provisions of Proviso to Section 309 (1) of the Act are extremely crucial. The need for precise and professional consultancy and services by confidential personnel (i.e. Directors) has become need of the hour. At the same time, we should appreciate the fact that the Act takes into consideration the professional services rendered by directors. The only critical part is that Opinion of the Central Government needs to be sought that Director possesses the requisite qualification.

Acknowledgement:

Shri. Vineet Deshpande for providing valuable inputs.



"Its not what happens to you that determines how far you will go in life; it is how you handle what happens to you."

- Zig Ziglar

OVERVIEW OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND THE RECENT PROPOSED AMENDMENTS

By CS Rajkumar S. Adukia, Company Secretary

Introduction

Money is the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion etc. The term Money Laundering refers to the conversion or "Laundering" of money which is illegally obtained, in order to make it appear to originate from a legitimate source. In simple terms, money laundering can be defined as washing of dirty money to make it appear to be legitimate. There are several reasons, why people launder money which include hiding wealth, avoiding prosecution, evading taxes, increasing profits and to provide legitimacy to business.

The estimated amount of money laundered globally in one year is 2 to 5% of global GDP, or \$800 billion - \$2 trillion in current US dollars.

Money laundering process and methods

Money laundering is not a single act but is in fact a process that is accomplished in three basic steps. These steps can be taken at the same time in the course of a single transaction, but they can also appear in well separable forms one by one as well. The first step is called placement. This is the act of moving the ill-gotten funds into a financial institution. Placement can take place via cash deposit, wire transfer, check, money order, or other methods. The second step is layering. This is a series of complex financial transactions meant to throw anyone who comes looking off the trail of the money. The final, and most important, step in the process is integration, also called 'cleaning' the money. In integration, the illegal funds are accounted for by adjusting a legitimate transaction.

Prevention of Money Laundering Act, 2002 (PMLA 2002)

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and the Rules notified thereunder came into effect on July 1, 2005. The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule. Amendments were made to this Act vide The Prevention of Money laundering (Amendment) Act, 2005 and Prevention of Money laundering (Amendment) Act, 2009.

The object of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

According to Section 3 of PMLA 2002, whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property will be guilty of offence of money-laundering.

PMLA 2002 deals with the obligations of banking companies, financial institutions and intermediaries to maintain records of all transactions of prescribed nature and value, furnish information of such transactions and verify and maintain the records of the identity of all its clients. Records may be maintained in the form of books or stored in a computer or such other prescribed form. Every banking company, financial institution and intermediary should submit Cash Transaction reports, Suspicious Transaction Reports, Counterfeit Currency Reports and Non Profit Organisation reports to the Director.

The Director, FIU-IND is the competent authority for the purpose of the provisions relating to maintenance of records and filing of information. The Directorate of Enforcement is the competent authority for the provisions relating to search, seizure, confiscation of property, prosecution, etc.

The Prevention of Money Laundering (Amendment) Bill of 2011

The Prevention of Money Laundering (amendment) Bill of 2011 was introduced in the Lok Sabha on 27th December, 2011. It was referred to the Standing Committee on Finance on 5th January, 2012. There are 33 clauses of amendments brought about in the Bill of 2011.

1. New definitions of "beneficial owner", "client", "corresponding law", "dealer", "person carrying on designated business or profession" and "reporting entity" have been included in the Bill.
2. Definitions of "financial institution", "intermediary" have been substituted.



3. Amendment of Section 3 of PMLA Act, 2002 to include acts of concealment, acquisition, possession and use of the proceeds of crime within the provision of offence of money-laundering.
4. Amendment of Section 4 to omit the fine of five lakh rupees.
5. Amendment of Section 5 relating to attachment of property involved in money-laundering to facilitate attachment of proceeds of crime in all cases, irrespective of in whose possession the property is, and also provides for attachment in cases where report has been filed under the corresponding law of any other country.
6. Amendment of Section 8 relating to adjudication to delink the attachment of the property to the pendency of the proceedings relating to the Scheduled offence and links it to the money laundering offence.
7. Amendment of Section 9 and 10 relating to vesting of property in Central Government by taking away the power to confiscate the attached property from the Adjudicating Authority and vesting it with the Special Court.
8. Substitution of Section 12 to introduce the expression "reporting entity" in the place of "banking company, financial institution or intermediary"
9. Insertion of new Section 12A relating to access to information to empower the Director to call for records of transaction or any additional information that may be required and for the power to make enquires for non-compliance of reporting entities to the obligations imposed upon such reporting entities.
10. Amendment of Section 13 relating to powers of Director to impose fine by the Director on the designated Directors and the employees of the reporting entities.
11. Substitution of Section 14 not to make liable to any civil or criminal proceedings against the reporting entity, its directors and employees in certain cases for furnishing information under clause (b) of sub-section (1) of section 12.
12. Substitution of Section 15 relating to procedure and manner of furnishing information by reporting entities.
13. Amendment of Section 17 relating to search and seizure and includes provision for freezing any property, so that it can be seized or attached and confiscated later.
14. Amendment of Section 18 relating to search of persons.
15. Substitution of Sections 20 and 21 relating to retention of property and retention of records respectively. It proposes, to increase the period of withholding of releasing of property or records, as the case may be, from the existing forty-five days to ninety days so as to allow sufficient time to the officers of Enforcement Directorate to file appeal and obtain a stay in the cases required.
16. Amendment of Section 22 relating to presumption as to records or property also to include cases such as where any record or property is produced by any person or it



has been seized from the custody or control of any person or has been frozen under the Act or under any other law for the time being in force.

17. Amendment of Section 23 relating to presumption in inter-connected transactions to include the Special Court also along with the Adjudicating Authority for the purposes of adjudication or confiscation under section 8 or for trial of the money-laundering offence.
18. Substitution of Section 24 relating to burden of proof.
19. Amendments to Section 26, 28, 44, 50, 54, 63 etc.
20. Substitution of Section 42 relating to Appeals to High Court with a new section relating to Appeal to Supreme Court. This clause provides that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.
21. Insertion of new sections 58A and 58B relating to Special Court to release the property and relating to letter of request of a contracting State or authority for confiscation or release the property.
22. Amendment of Section 60 relating to attachment, seizure and confiscation, etc., of property in a contracting State or India.
23. Substitution of Section 69 relating to recovery of fine or penalty.
24. Amendment of Section 70 relating to offences by companies. Inserted a new Explanation after the existing Explanation to clarify that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.
25. Amendment of Schedule as it substitutes Part A with new Part so as to include the existing paragraphs 1 to 25 of Part B in Part A and also amends Part C.

The Benami Transactions (Prohibition) Bill, 2011 also seeks to amend the Benami Transaction (Prohibition) Act, 1988 wherein the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 will be the Adjudicating Authority and the Appellate Tribunal for the purposes of the Bill. The Bill also proposes to make consequential amendments in the Prevention of Money-Laundering Act, 2002.

Conclusion

The Government has introduced amendments to the existing law on money laundering to bring it on par with international standards and obviate some of the deficiencies that have been experienced by the implementing agencies. As India has become the 34th member of the Financial Action Task Force (FATF) – an intergovernmental body which sets standards and develops and promotes policies to combat money laundering, it has become even more important to make the existing money laundering Act in tune with the practices being followed world over.

"Without inspiration the best powers of the mind remain dormant. There is a fuel in us which needs to be ignited with sparks".

- Johann Gottfried Von Herder

MCA Initiative Retrograde for Banks / Financial Institutions

K. G. Saraf, FCS, Practising Company Secretary

Of late, MCA (Ministry of Corporate Affairs) has been releasing circulars inculcating certain Green Initiatives undertaken by the Ministry. These steps have yielded results in regulating the Corporate behavioral pattern. The stakeholders benefit has been emancipated all throughout.

- Rationalization of Expenditure through e-mailing of Annual Reports.
- Electronic voting by shareholders at the AGM resulting into cutting down unproductive travel to the AGM Venue.
- Introduction of Video Conferencing as a tool at the Board Meeting to take management decisions without entailing enormous expenditure.

While all these Initiatives are ably supported by the provisions under The Information Technology Act, 2000, these are yet to be governed through effective amendments in The Companies Act, 1956 and rules thereunder.

A Companies Amendment Bill is presently expected to be placed before the Monsoon session of the Parliament after Cabinet Approval.

Among other Initiatives undertaken by MCA the most vulnerable perhaps is in regard to hastening the process of filing documents such as Balance Sheets and Annual Returns with the office of Registrar of Companies (RoC). Of course, it is mandatory for all Companies to file with RoC Annual Accounts and Returns within 30 days or 60 days respectively of holding its AGM statutorily required to be convened under section 166 read with section 210 of The Companies Act, 1956. These provisions were in vogue for a long time since inception of The Companies Act, 1956.

During the MCA regime, prior to electronic filing Companies have been avoiding the statutory obligations of filing Annual Returns & Reports. The reasons being that it used to be unnoticed by RoC and consequently no action initiated. But with the advent of MCA 21, in the year 2006, with the aid of advanced software, programmes and techniques Ministry could detect errant Corporate who have not filed their Annual Statutory Returns.

While the interests evinced by MCA are appreciable, the speed with which the Initiatives are pursued is questionable, resulting into derailing the financial discipline hither to practiced. For example, recently, MCA has come out with a directive among others to prevent Companies indebted to the Banks and Financial Institutions to file e-forms with MCA where the directors being signatory to the e-form is a director in a Company, whose due Annual Accounts and Annual Returns have not been filed.

MCA vide its Circular No.33/2011 dt. 01.06.2011 informed all stakeholders that no event based e-forms shall be accepted

from the defaulting Companies, with effect from 03.07.2011 unless up-to-date Balance Sheets & Annual Returns are filed with RoC. These restrictions have been imposed to make available records on the MCA Portal for inspection to the public under the provisions of the Companies Act, 1956. Event based e-forms are those which are required to be filed by the company with RoC, based on certain action taken by the Board or members in the General Meeting. For instance, Appointment of Directors by the Board, or Members, borrowing from Banks and Financial Institutions and creating security and passing certain Special Resolutions like Managerial Remuneration.

While the rationale behind these objectives is certainly tenable, it should be put in perspective. Two questions arise. Firstly, out of about 7,50,000 Companies hardly a lakh Companies are the companies where public is substantially interested in inspecting documents relating to Balance Sheets & Annual Returns. The majority of them are closely held or private companies where public interest is never involved. Secondly, these companies are capable of borrowing amounts from public sector banks & Financial Institutions where huge public interest is envisaged. By preventing on account of defaulting companies nexus, these Banks & Financial Institutions to create charge on the assets of companies in respect of their lending jeopardize lenders interest in its entirety. The Banks are unable to create /

modify charge in their favour expeditiously against the loan availed by the Company and the loan remains unsecured. A Bank's / FI's unsecured debts cannot be enforced in any court of law & likelihood that the debt may become NPA (Non-Performing Assets). **It is advisable therefore Form 8 / 17 be not construed as an event based e-form & kept out of the realm of circular.**

The other pertinent point for consideration by Ministry is that mere fact that the director of the borrowing company is a director of the defaulting company does not mean that the former has controlling interest in the defaulting company or is able to influence decision in the said company.

MCA, instead, could have adopted different approach to enforce the provisions of statutory filing. In its anxiety to increase the revenue by way of fees, there was no necessity to hasten the process. Prior notice could have been given to the Companies on such arrangements being contemplated. The net result is that at the cost of streamlining the procedures in MCA the debt of Ministry of Finance suffers.

It is also pertinent to note that error notice disclosed by MCA does not indicate the name of the Company in which the director is in default. A quick remedial action is expected.



MAXIMS

Compiled and edited by: C. S. Kelkar, Company Secretary in Practice

Here is an attempt, to submit the meaning of some of the popular or more used maxims. This attempt is based upon the readings from one very old book published in the year 1933.

Acta exterior indicant interior secreta - This maxim means 'overt acts proclaim a man's intention and motives'. Thus outward acts show the nature of the internal secretions - as is expectation. The nature of the act could be relied upon to establish the mental element essential to a criminal assault.

Accusare nemo se debet, nisi coram Deo - The meaning is 'No one is in duty bound to accuse himself unless before God'. In other words the accused is fully entitled to plead not guilty whatever the facts may be. This is similar to the another maxim 'nemo tenetur seipsum accusare' which also means that 'no one is bound to incriminate himself'. Of course this principle does not apply in the examination room before the courts of Law.

Action personalis moritur cum persona - Which means 'A personal right of action dies with the person'. This maxim was in use when common law actions were divided into real actions, personal actions and mixed actions. However as of today this may not be holding good as the right of action is being carried forward through the 'person' responsible for that particular action dies.

Actus Dei nemini facit injuriam - This means 'the act of God does injury to no man'. The fundamental principle is that where the law imposes a duty on one party in favour of another and the former without any fault of his own is disabled from performing it by an act of God, the law excuse performance. The clause 'Force majeure', which appears in all the contracts, is based upon the same principle.

Donatio perficitur possession accipientis - the meaning of this maxim is 'a gift is perfected by the possession thereof by the donee'. The essentials of a title by gift are a. there should be an intention of giving - parting with the ownership and b. possession should be given up by the donor and assumed by the donee. If a gift is made to you and before you 'touch' the donor dies or change his mind, the consequences you can imagine.

Expressum facit cessare tacitum - this maxim is useful while drafting any agreement or resolution. This maxim means 'when all the terms are expressed nothing can be implied'. For example a conveyance of land shall be deemed to include 'general words' to pass all the actual and reputed rights of enjoyment such as ways and easements associated with the land conveyed. There may be a large number of such rights. If while drafting the deed, the draftsman choose to insert express words to pass such rights, only those that are actually specified in such express words will pass. ■■■

ICSI-WIRC Programmes Membership Scheme

For Professional Development Programmes for Members of ICSI-WIRC

The Western India Regional Council (WIRC) of the Institute of Company Secretaries (ICSI) organizes number of high quality professional development programmes on contemporary issues and on topics of emerging importance. In order to facilitate the members to register for the programmes and pay fees and get benefits, ICSI- WIRC is pleased to announce continuation of its popular Programme Membership Scheme.

The details of the Scheme are as follows;

Credit Hours: Credit Hours would be granted to member (s) attending programme as per guidelines of the ICSI.

Validity: The Membership is valid for one year from the date of registration (subject of maximum of 8 full day/ half day Programmes).

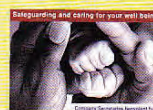
Annual Fees:

1. Individual Members of ICSI: Rs.6500/- (Individual Members will not be eligible to depute any other person.)
2. Corporate Members: Rs.10,000/- (Corporate Members may depute any one person from their organization/ Firm of PCS to attend the programme, who need not be a member.)
3. Senior Citizen members (Age - above 60 years) : Rs. 6000/-
4. C.S. Students : Rs.5,000/-

Members will be provided with free backgrounders and refreshments during the Seminars / Programmes.

The fee may be paid by way of cheque / demand draft in favour of "WIRC of ICSI" payable at Mumbai and forward the same to ICSI-WIRC, 13 Jolly Maker Chambers No. 2, First Floor, Nariman Point, Mumbai - 400021.

COMPANY SECRETARIES BENEVOLENT FUND HOW TO BECOME THE LIFE MEMBER



Company Secretaries Benevolent Fund

Application for life membership of CSBF has to be submitted in the prescribed Form-A (available on the website of the Institute i.e. www.icsi.edu) and should be accompanied by Demand Draft or Cheque (payable at par) for Rs. 5,000/- drawn in favour of "Company Secretaries Benevolent Fund" payable at New Delhi and the same can be deposited in the offices of any of the Regional Councils located at Delhi, Kolkata, Chennai and Mumbai. However for immediate action, the applications should be sent to: **The Secretary & CEO, The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi-110 003.**

The members can also apply online.

For further information/clarification please contact Mrs. Meenakshi Gupta, Joint Director or Mr. J.S.N. Murthy, Administrative Officer on telephone No.011-45341047 / 45341049, mobile No. 9868128682 or through e-mail lds.csbf@icsi.edu or member@icsi.edu.

Following benefits are presently provided by the CSBF:

<p>Financial Assistance in the event of Death of a member of CSBF:-</p> <p>Upto the age of 60 years:</p> <ul style="list-style-type: none"> ■ Group Life Insurance Policy for a sum of Rs. 2,00,000; and ■ Upto Rs. 1,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time. <p>Above the age of 60 years:</p> <ul style="list-style-type: none"> ■ Upto Rs. 1,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time. <p>Other benefits subject to the Guidelines approved by the</p>	<p>Managing Committee from time to time:-</p> <p>Reimbursement of Medical Expenses</p> <ul style="list-style-type: none"> ■ Upto Rs. 40,000 <p>Financial Assistance for Children's Education (one time)</p> <ul style="list-style-type: none"> ■ Upto Rs. 10,000 per child (maximum for two children) in case of the member leaving behind minor children.
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THE MANAGING COMMITTEE OF THE COMPANY SECRETARIES BENEVOLENT FUND (CSBF) IN ITS MEETING HELD ON 29TH SEPTEMBER 2011 HAS DECIDED TO INCREASE THE FINANCIAL ASSISTANCE FROM RS. 3.00 LAKHS TO RS.5.00 LAKHS TO THE NOMINEE(S) OF THE DECEASED MEMBERS OF THE FUND UPTO THE AGE OF 60 YEARS (W.E.F. 1ST APRIL 2012).

THE COMMITTEE HAS ALSO DECIDED TO INCREASE THE LIFE MEMBERSHIP SUBSCRIPTION FOR ENROLMENT AS A MEMBER FROM RS. 5,000 TO RS. 7,500 W.E.F. 1ST APRIL, 2012.

THE MEMBERS WHO ARE NOT THE MEMBERS OF THE CSBF ARE REQUESTED TO BECOME THE MEMBERS OF THE FUND.

FOR FURTHER DETAILS PLEASE VISIT: www.icsi.edu/csbf

Ministry of Corporate Affairs and ROC Offices

Compiled by : Kaushik M. Jhaveri (FCS), Practising Company Secretary

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*"To find what you seek in the road of life, the best proverb of all is that which says:
"Leave no stone unturned."*

-Edward Bulwer Lytton

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GOOD / POLITE PRACTICES IN WORKPLACE

CS Rohit Jain, FCS, Consultant & Company Secretary

"Today's casual workplace has endangered professional courtesy". Practicing the golden rule or treating others as we ourselves would like to be treated should be more commonplace than it is today. We may explain or excuse our laxity as "being more informal," but most of the time we're just being rude.

Many a times we wonder why people talk very highly about some companies and not so praiseworthy about others albeit the not so talked may be worth more in terms of business they do, people they employ, profits they make and many other things. **"Organizations are often judged by the way their employees behave, both inside and outside the workplace."**

Same way, with us as Professionals what actually makes us a PROFESSIONAL is not the qualification we possess but the way we conduct ourselves. 'Office manners' are one such parameter which can elevate one from being an ordinary to extraordinary. **"Good manners may make or break a career."**

Before I try and outline some of the good practices which should be followed by us as well as people in the organization, I will briefly lay its benefits.

Benefits

- More productive, professional work relationships
- Mutual feelings of respect between co-workers and supervisors
- Improved self esteem
- Productive teamwork
- Increased trust in the workplace
- Effective problem solving
- Increased likelihood of good performance reviews, promotions, career growth, etc.

Good Manners: Workplace Impact

- Yelling across an office, snooping around someone else's desk, and, gossiping are rude behaviors. Co-workers can become distracted by employees with poor manners and productivity and good work relationships suffer. **These are POOR MANNERS, avoid them.**
- Good manners facilitate open communication, problem solving and enhance trust and respect. These are the building blocks for good work relationships. **Its sets the tone for work relationships.**
- Most of us work in cubicles without much privacy.

Good manners and respect for those around us reduce stress, motivate employees and improve morale. **It makes life at work more bearable.**

- If you have to conduct personal business during the workday, save it for lunchtime. If making personal calls, pay for them or use personal phone.
- Don't use the resources, to which you have access, for personal business without permission. Company fax, letterhead and office supplies are for office use only.
- Refrain from using vulgarities and swear words. Profanity is rude and never appropriate in the workplace.
- Avoid crying, shouting, or allowing yourself other emotional outbursts. If you're uncontrollably sad or angry, close your office door, go in the restroom, or otherwise seclude yourself until you've regained your composure.
 - Don't groom yourself in public. Personal hygiene is just that--personal--and should be done in the restroom or before leaving home.
 - Don't ask co-workers personal questions regarding finances, marital status or about employment status such as promotions and salary.
 - Don't ask a subordinate to do personal chores such as buying a personal gift or running an errand unless these terms were established at the time of hiring.



Your Attitude

There is a polite way to do anything.

- Follow the Golden Rule: "Do unto others as you would have them do unto you."
- Clean up after yourself.
- Don't make promises you can't keep.
- Be considerate of others' time.
- Make saying "please" and "thank you" routine.
- Be patient.

I hope I have been succinct as well as sensible in whatever I have shared above. Pardon me if I have, unknowingly, through my words hurt some readers' sentiments.

Let's get started and try a few things to make us a better Professional.

"Any fact facing us is not as important as our attitude toward it, for that determines our success or failure. The way you think about a fact may defeat you before you ever do anything about it. You are overcome by the fact because you think you are." - Norman Vincent Peale

How to manage Investment and Taxation

By CS Hemant V. Pandya, Company Secretary

In today's competitive world where we don't get time for our self and for our family member, saving and investing our harden money is the biggest Question and the worry area. On top of that, we are having so many instruments availability in the market with lots of offer through different agents of different financial institutions / companies.

Before going further many are having some of Questions in their mind. Focusing two frequent question of our day to day life:

1. Are we follow the correct path for investment?
2. Are we investing are money at correct time in correct instrument with proper tax planning?

Like most other things in personal finance, the solutions differ from person to person. But there are some broad principles we one can follow (covered under Section 80C)

Provident Fund:

Provident Fund is instrument which has compulsory deduction under section 80C. Also for most of the people there is compulsorily investment and there is no running away from it!

Home loan Principal:

In India people are keen to invest into property, as it also allows having deduction, this one is automatic too! So, it is the closest one which one can consider second.

Life Insurance Premiums:

By thumb rule, it is advisable to all earning people to have 10-12 times of insurance coverage of their annual income. This will make sure that their dependent will live their life comfortably. So this we will consider next preference for investment.

Voluntary Provident Fund (VPF) / Public Provident Fund (PPF):

Possibilities are there that there is also a group of people to whom advantage of Provident Fund is not available through their company. They will fall into this category, also if one thinks that the PF being deducted from your salary is not enough , this comes as an another choice to invest come more in VPF, or in PPF.

Equity Linked Savings Scheme (ELSS):

After the above, if you have not reached the limit of Rs.100000 then you should invest in the portion of the balance amount in ELSS. Equities are the only instrument which will provide inflation-beating return in the long horizon of 10-15 years. One should include this instrument into his / her portfolio.

So, tell me that, after all, what can be better than something that gives great return and at the same time provide you the tax benefit.....?

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STATUTES

BANKING LAWS

- Housing Loans by Commercial Banks - Loan to Value (LTV) Ratio - CIRCULAR NO. DBOD. NO. BP. BC. 78/08.12.001/2011-12, DATED 03-02-2012.
- Factoring Regulation Act, 2011 - (NO. 12 OF 2012), DATED 22-01-2012.

COMPANIES ACT

- Company Secretaries (Amendment) Act, 2011 - Notified date from which provisions of said Act shall come into force - NOTIFICATION NO.S.O.192(E), DATED 30-01-2012.
- Cost & Works Accountants (Amendment) Act, 2011 - Notified date from which provisions of said Act shall come into force - NOTIFICATION NO. S.O. 191(E), DATED 30-01-2012.
- Chartered Accountants (Amendment) Act, 2011 - Notified date from which provisions of said Act shall come into force - NOTIFICATION NO.S.O.190(E), DATED 30-01-2012.
- Refund of Statutory Fees Paid for Certain Services - PRESS RELEASE, DATED 30-01-2012.

FEMA

- Master Circular on Memorandum of Instructions Governing Money Changing Activities - MASTER CIRCULAR NO.13/2011-12 (UPDATED AS ON 31-1-2012).
- Master Circular on External Commercial Borrowings and Trade Credits - MASTER CIRCULAR NO. 09/2011-12 (UPDATED AS ON 20-1-2012).
- Master Circular on Compounding of Contraventions under FEMA, 1999 - MASTER CIRCULAR NO. 8/2011-12 (UPDATED AS ON 20-1-2012).

INSURANCE LAWS

- AML/CFT guidelines - CIRCULAR NO. IRDA/F&I/CIR/ AML/028/01/2012, DATED 27-01-2012.

SEBI ACT

- Offer for Sale of Shares by Promoters through the Stock Exchange Mechanism - CIRCULAR NO. MRD/DP/05/2012, DATED 01-02-2012.
- SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2012 - NOTIFICATION NO. LAD-NRO/GN/2011-12/34/2499, DATED 30-01-2012.
- Eligibility criteria for Qualified Depository Participant - CIRCULAR NO. IMD/FII&C/4/2012, DATED 25-01-2012.

CASE LAWS

COMPANIES ACT, 1956

- Oppression and mismanagement : Bald denial of siphoning off funds without any explanation with regard to withdrawal of funds constituted an admission of siphoning off funds - [2012] 18 taxmann.com 40 (DELHI)
- Mere act on part of financial institution in handing over possession of secured asset to provisional liquidator in pursuance of an order of company court and in seeking assistance of Court for sale of secured asset would not tantamount to relinquishment of security - [2012] 17 taxmann.com 268 (MAD)
- Reduction of share capital by company due to recessionary conditions in manufacturing sector was to be allowed - [2012] 17 taxmann.com 246 (KAR.)
- An inter-corporate depositor (ICD) cannot be classified as a secured creditor merely because it has a decree and certain shares are pledged with it - [2012] 17 taxmann.com 214 (DELHI)
- Existence of arbitration clause is no ground to dismiss an application seeking winding up - [2012] 17 taxmann.com 213 (AP)

COMPETITION ACT

- Question as to whether BEST had abused its dominant position as per provisions of Competition Act, 2002, would depend entirely on extent of protection available to BEST under section 42(3) of Electricity Act, 2003 by virtue of being a local authority - [2012] 17 taxmann.com 237 (CCI)

SECURITY EXCHANGE BOARD OF INDIA

- Prohibition contained in regulation 3 of Insider Trading Regulations, 1992, apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise - [2012] 18 taxmann.com 15 (SAT)
- Whenever a substantial shareholder exceeds limit of two per cent in change of its shareholding in company from date of last disclosure, whether in a single transaction or in tranches, provisions of regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulation, 1992 are attracted - [2012] 17 taxmann.com 240 (SAT)
- Guidelines for consent orders and compounding of offences do not confer a vested right in any person to insist on acceptance of a proposed settlement - [2012] 17 taxmann.com 236 (BOM.)

COMPLIANCES FOR THE MONTH OF MARCH

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections / Rules/ Clauses is covered	Due Date before which you need to comply the activity	You need to submit this to
TAX RELATED COMPLIANCES					
1	Pay excise duty on the goods removed from the factory or warehouse for the previous month	Rule 8(1)	Central Excise Rules, 2002	March 5	Excise Authorities
2	Pay excise duty on the goods removed from the factory or warehouse for the previous month (E- payment)	Rule 8(1)	Central Excise Rules, 2002	March 6	Excise Authorities
3	Submit monthly Central Excise E.R.1 Return (E.R. 2 return for 100% EOU / units in FTZ / SEZ)	Rule 12 (1) / 17 (3)	Central Excise Rules, 2002	March 10	Excise Authorities
4	Submit monthly return by manufacturer of Final Product (N.A. for SSI)	Rule 9(7)	CENVAT Credit Rules, 2004	March 10	Supritendent of Central Excise
5	Submit return containing information of principal input for the preceding month in Form No. E.R.6	Rule 9A(3)	CENVAT Credit Rules, 2004	March 10	Supritendent of Central Excise
6	Submit monthly Return for availment of CENVAT Credit for preceding month in Form No. ER 1	Rule 9 (7) & Rule 12	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	March 10	Supritendent of Central Excise
7	Submit monthly return for receipt of inputs & capital goods for the preceding month in Form No. E.R.2	Rule 9 (7) & Rule 12	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	March 10	Supritendent of Central Excise
8	Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year for the previous month i.e. February	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	March 15	Excise Authorities
9	where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a financial year (E- payment)	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	March 16	Excise Authorities
10	Pay excise duty on the goods removed from the factory or warehouse during month i.e. March	Rule 8(1)	Central Excise Rules, 2002	March 31	Excise Authorities
11	Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year for the month March	Second Proviso to Rule 8(1)	Central Excise Rules, 2002	March 31	Excise Authorities
12	Monthly payment of excise duty for the month of March SSI Units in Form GAR- 7 (E-payment & Manual Payment)	Rule 8	CENVAT Credit Rules, 2004 & Central Excise Rules, 2002	March 31	Excise Authorities

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections / Rules/ Clauses is covered	Due Date before which you need to comply the activity	You need to submit this to
INCOME TAX RELATED COMPLIANCE					
1	Deposit TDS from salaries for the previous month in Challan No. 281	Section 192	Income Tax Act, 1961	March 7	Designated Bank / Income Tax Authorities
2	Deposit TDS on interest on Securities, Dividends other than dividends referred to in Section 115O, Interest other than interest on Securities, Winnings from Lotteries & crossword puzzles, Winning from Horse Races	Section 193, Section 194 to Section 194BB	Income Tax Act, 1961	March 7	Designated Bank / Income Tax Authorities
3	Deposit TDS on Contractor's Bill / Rent Advertising / Professional Service Bill deducted in the previous month	Section 194C to Section 194H	Income Tax Act, 1961	March 7	Designated Bank / Income Tax Authorities
4	Deposit TDS on payment to non-resident, Foreign company being holder of mutual fund units, Units held by an offshore fund, Income from foreign currency bond, Income of FIIs from securities	Section 195, Section 196 A to 196 D	Income Tax Act, 1961	March 7	Designated Bank / Income Tax Authorities
5	Payment of Securities Transaction Tax for the previous month (Challan No. ITNS 283)	Section 100	Income Tax Act, 1961	March 7	Designated Bank / Income Tax Authorities
6	Payment of Tax Collected at Source	Section 206	Income Tax Act, 1961	March 7	Designated Bank / Income Tax Authorities
7	Payment of 3rd installment (in case of an assessee other than a company) or 4th installment (in case of a company) of Advance Income Tax for the Assessment Year 2010-2011 in Form ITNS 280	Section 211	Income Tax Act, 1961	March 15	Designated Bank / Income Tax Authorities
8	Submit return in respect of Securities Transaction Tax for FY 2010-11 in Form 1 (Stock exchange) Form 2 (Mutual Fund)	Section 101	Income Tax Act, 1961	March 31	Designated Bank / Income Tax Authorities
9	Issue TDS Certificates in Form 16A to vendors (with respect to TDS deducted in previous month)	Section 203	Income Tax Act, 1961	March 31	Income Tax Authorities
FINANCE ACT & SERVICE TAX RELATED COMPLIANCE					
1	Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	March 5	Service Tax Authorities
2	Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7 (E-payment)	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	March 6	Service Tax Authorities
3	Pay Service tax collected during month (i.e. March) by persons other than individuals, proprietors and partnership firms in G.A.R-7	Section 68 read with Rule 6 (Proviso 3)	The Finance Act, 1994 read with The Service Tax Rules, 1994	March 31	Service Tax Authorities
4	Pay Service tax collected during the quarter (i.e. January to March) by individuals, proprietors and partnership firms in G.A.R-7	Section 68 read with Rule 6	The Finance Act, 1994 read with The Service Tax Rules, 1994	March 31	Service Tax Authorities

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections/ Rules/ Clauses is covered	Due Date before which you need to comply the activity	You need to submit this to
COMPANY LAW RELATED COMPLIANCES					
1	Payment of monthly Provident Fund dues (Corporate) for previous month in prescribed challan	Section 418	Companies Act, 1956	March 15	(i) Post Office Saving Bank Account or (ii) Special Account with SBI or any Scheduled Bank
2	Filing return of fixed deposit	Rule 10	Companies (Acceptance of Deposits) Rules, 1975	March 31	Registrar of Companies & RBI
3	Obtain declaration of Interest from Directors (Form 24AA - renewal of notice for General disclosure of interest)	Section 299	Companies Act, 1956	March 31 (Last month of the Financial Year)	Company - Company Secretary
ECONOMIC , INDUSTRIAL & LABOUR LAW RELATED COMPLIANCES					
1	Pay monthly Provident Fund dues (non-corporate)	Paragraph 38	Employees' Provident Funds Scheme, 1952	March 15	Provident Fund Authorities
2	File monthly return for employees leaving in form No. 10/ joining in form No. 5 during the previous month i.e. May	Paragraph 20(2) read with Paragraph 36(1) & (2)	The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	March 15	Provident Fund Commissioner
3	File monthly return in Form no. 2(IF) of employees entitled for membership of Insurance Fund	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	March 15	Provident Fund Commissioner
4	File monthly return in Form no. 3(IF) for members of Insurance Fund leaving service during the previous month i.e. January	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	March 15	Provident Fund Commissioner
5	File monthly return in Form no. F4(PS) of members joining service during the month	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	March 15	Provident Fund Commissioner
6	Submit Register of Accidents in Form 30	Rule 123	Factories Act, 1948	March 15	Inspector of Factories
7	Pay ESI contribution for previous month i.e. February	Regulation 31	Employee State Insurance Act, 1948 Employees State Insurance (Gen) Regulations,	March 21	ESIC Authority
8	Submit monthly return of Provident Fund for the previous month in Form No. 12A	Paragraph 38	Employees' Provident Funds Scheme, 1952	March 25	Provident Fund Commissioner
9	Submit a Consolidated Statement of dues and remittance in Form No. 12A	Paragraph 36 (1) & Paragraph 20(4)	Employees' Provident Funds Scheme, 1952 and Misc. Provision Act, 1952	March 25	Provident Fund Commissioner

Sr. No	Things you need to do	Sections / Rules / Clauses prescribing the activities to be done	Acts / Regulations / Circulars under which the Sections/ Rules/ Clauses is covered	Due Date before which you need to comply the activity	You need to submit this to
10	In case of graduate, technician or technician (vocational), send a Form Apprenticeship 3 in Schedule III	Section 2 Rule 14(11)	Apprentice Act 1961 and Apprenticeship Rules, 1962	March 31	Director - Regional Board of Apprenticeship Training
11	Submit return of declaration in Form 3 & 1-A	Regulation 14	Employees State Insurance (General) Regulations, 1950	Within 10 days from the date of receiving the relevant papers	ESIC Authority
12	Issue Notice for payment of Gratuity and Notice for Inadmissible claim in Form L&M	Section 8	Payment of Gratuity Act, 1972	Within 15 days of receipt of application	Applicant employee or legal heir
13	Submit Return of Contributions in Form 6 and 7	Regulation 26	Employees' State Insurance Act, 1948 and Employees' State Insurance (Gen) Regulations, 1950	Within 42 days of termination of the contribution period	ESIC Authority
RBI (NBFC) RELATED COMPLIANCES					
1	File return of exposure of capital markets in Form NBS-6	Para 22	NBFC-D Prudential Norms Directions, 2007	March 7	RBI
2	File a monthly return in prescribed format (NBC-ND)	Circular No. DNBS (RID) CC No. 57/02.02.15/2005-06	Department of Non-Banking Supervision, RBI	March 7	RBI
SEBI RELATED COMPLIANCES					
1	Certificate on demat/remat of shares	Regulation 54(5)	SEBI (Depositories & Participants) Regulations, 1996	March 31	Stock Exchanges
2	publish its unaudited financial results in one English daily newspaper circulating in the whole of India and in a newspaper published in the language of the region where the Head Office is situated	Regulation 59	SEBI (Mutual Funds) Regulations, 1996 amended 2000	March 31	Board / Stock Exchange
IRDA RELATED COMPLIANCES					
1	Submit monthly business number - unaudited	None	Requirement of IRDA	March 5	Insurance Regulatory & Development Authority
2	Submit capital market exposure report	Regulation 6	IRDA (Investment) Regulation, 2000	March 7	Insurance Regulatory & Development Authority
3	List of Risk underwritten under para 19(v)(Insurance of Large Risk)	None	Guidelines No. 021 / IRDA / F&U / Sep-06 dated 28.9.06	March 7	Insurance Regulatory & Development Authority
4	Monthly Report to be filed with IRDA - under para 17(4) of F&U Guidelines of 28.09.2006 on the risks underwritten in the previous month falling under category 19(v) i.e. large risks	None	Circular. No. IRDA/009 / F&U/07-08 dated 14.05.07	March 15	Insurance Regulatory & Development Authority
5	Submit Monthly Report under para 15(i) of F&U Guidelines of 28.09.2006 on the Business Written - Gross Direct plus Reinsurance Accepted	None	Circular No. I R D A / 0 0 9 / F&U/07-08 dated 14.05.07	March 15	Board of Directors
6	Details of opening new place of business	None	Circular no. 035/ IRDA/LIFE/JAN-06 dated Jan.20, 2006	within 15 days from the date of opening	Insurance Regulatory & Development Authority
7	Details of places of Business as at closure/ relocation	None	Circular no. 041/ IRDA/BOO/Dec-06 dated Dec. 28 ,2006	within 1 month from the date of closure / relocation	Insurance Regulatory & Development Authority
<p>Though all precautions have been taken in compiling this calendar, WIRC of ICSI should not be held responsible in case of any discrepancy. In case of doubt, please refer to relevant law/rules.</p>					



WIRC News

WIRC Report

Seminar on Fund Raising & Valuation on 13th January 2012 at Maharashtra Chamber of Commerce, Industry & Agriculture, Mumbai.

ICSI- WIRC organized a seminar on Fund Raising & Valuation on Friday 13th January 2012 from 02.00pm to 5.30pm at Maharashtra Chamber of Commerce, Industry & Agriculture.

Fund Raising is the prime part of any organization. Fund raising is continuous and ongoing process and needs lot of expertise, efforts and innovative approach. There are various Fund Raising options available in India.

Valuation of Business & Securities is important not only for fund raising but also for internal or external restructuring.

With a view to get expert knowledge on various Fund Raising options, approach to Fund Raising, methods of fund raising, Valuation options & methods, Legal Requirements, Taxation Aspect etc WIRC-ICSI has organized this seminar.

Faculty CA Shrirang Tambe, Managing Director, Ourea Capital Advisor Pvt. Ltd. shared his knowledge and experience on this topic.

About 50 participants attended this seminar.

Study Circle Meeting on Recent Updates in Corporate Laws held on 27th January 2012, at ICSI- WIRC Premises.

ICSI- WIRC organized Study Circle Meeting on Recent Updates in Corporate Laws on 27th January 2012 at ICSI- WIRC Premises Nariman Point Mumbai. CS Sanjeev Shah,

senior manager of Deloitte, deliberated on Recent Updates in Corporate Laws. Around 44 members were present for the meeting.

Study Circle Meeting on Prospects of Company Secretary in Employment & In Practice under Changing Scenario & Opportunity & Scope of LLP Among Members of ICSI/ ICAI/ ICWAI on 29th January 2012 at Sardar Vallabhbhai Engineering College, Andheri (West)

Shri. Jayesh Thakur, (Associate Director, Tax & Regulatory Service PwC) addressed the delegates on the theme of LLP among members of three professional bodies. Andheri Study Circle took the opportunity to felicitate Vice President, ICSI Shri. S. Ananthasubramanian & New Council Members Shri. Mahavir Lunawat Chairman, ICSI- WIRC and Ms. Ragini Chokshi, Secretary, ICSI-WIRC There was a record attendance of 158 members.

Seminar on Changing Regulatory Landscape : Challenges & Opportunities on 10th February 2012 at BSE International Convention Hall, Mumbai.

This programme was inaugurated by Special Invitees like Shri Ashish Chauhan, Dy. CEO, BSE, Shri P.K.Malhotra, Member, and acting presiding officer, SAT, Shri Ananta Barua, Executive Director, SEBI. WIRC took the opportunity to felicitate Shri Nesar Ahmad, President of ICSI, Shri S.N. Ananthasubramanian, Vice President of ICSI, Shri N.K. Jain, Secretary & CEO of ICSI. With an insightful address, Shri Alok Saraf- Executive Director, M&A, PwC dealt the theme of why and how of M&A in a Changing M&A regulatory Landscape. Shri Susanta Kumar Das, AGM, SEBI & Shri Pavan Kumar Vijay, Past President, ICSI elaborated the topic of New Takeover Code. Shri. R. Rajgopalan, General Manager, RBI deliberated on key changes on FDI, ECB & outbound investments norms. Dr. S.D. Israni, Advocate provided critical changes in the domain of corporate Law was covered. There was an august gathering of nearly 400 delegates. BSE was the principal sponsor of the programme.

Study Circle Meeting on Investments in Gold on 12th February 2012 at SE International School Borivali- W Mumbai.

The first meeting of Borivali Study Circle (which would be held on second Sunday of every month) was held on 12th February, 2012 at S. E. International School, Borivali West on the topic "Investment in Gold." The meeting was inaugurated by Shri. Prakash Pandya and Shri. Hitesh Kothari, Council Members of WIRC of ICSI. The speaker for the meeting was Mr. Balwantraj Jain, CFO & Company Secretary of Apna Paisa Private Limited. He enlightened the members on the various modes available for investment in Gold and the tax implications for the same. The meeting was attended by 45 members.

KANDIVALI STUDY CIRCLE OF ICSI - WIRC

STUDY CIRCLE MEETING HELD ON: SUNDAY, 5TH FEBRUARY, 2012

TOPIC: IFRS & RELATED MATTERS,

PRESENTED BY: MR. RAM MOHAN BHAVE, MEMBER OF ICAI/ICSI/ICAI:

Mr. Ram Mohan Bhave, Chartered Accountant, Company Secretary and Cost Accountant, after a brief introduction by Mr. Jatin Popat, PCS, made a Power Point Presentation on International Financial Reporting System (IFRS) and related matters and addressed the members in detail regarding the various principles, legal aspects and different issues involved in IFRS. Each topic was addressed in detail by Mr. Bhave by way of illustrations.

Before his presentation, Mr. Bhave gave a background of International Financial Reporting System (IFRS). There was a lively interaction with members and Mr. Bhave responded to various queries raised by the participants.

Thereafter MR. S. N. ANANTHASUBRAMANIAN, VICE-PRESIDENT OF ICSI FOR 2012-2013 addressed the members about the state of the profession, the initiatives made by ICSI and the way forward.

Mr. S. N. Ananthasubramanian, Vice-President of ICSI for the year 2012-2013 was welcomed by Mr. Jatin Popat, PCS who also introduced him.

Mr. S. N. Ananthasubramanian shared his experience as a member of the Regional and Central Council. He also briefed about his commitments and responsibilities towards the profession in general and ICSI in particular. He also acknowledged the contribution made by KANDIVALI STUDY CIRCLE in professional development activities and complimented the STUDY CIRCLE on its successful completion of fifteen years.

AHMEDABAD CHAPTER

42ND SIP FROM 05TH JAN TO 11TH JAN, 2012

Ahmedabad Chapter arranged 42nd SIP at Chapter premise from 05th January 2012 to 11th January 2012. SIP was inaugurated by EO- Ahmedabad - Anu K Varghese followed by general instructions and briefing of the programme to all the 100 participants. The soft skill topics and Institute subjects were conducted by experienced faculties. The Valedictory session was commenced with farewell speech by EO. The participants spoke on feedback of faculties and topics covered in 42nd SIP.

5th EDP FROM 17th JAN to 25th JAN, 2012

Ahmedabad Chapter arranged 5th EDP- Executive Development Programme at Chapter premise from 17th January 2012 to 25th January 2012. EDP was inaugurated by EO- Ahmedabad - Anu K Varghese and Treasurer - CS Chetan Patel followed by general instructions and briefing of

the programme to all the 100 participants. The sessions were combination of both soft skill topics and CS technical topics which was taken by Central Council Member - Shri Umesh Ved, WRIC Vice Chairman - Shri. Hitesh Buch and WRIC Member - Shri. Ashish Doshi along with other experienced faculties. The Valedictory session was commenced with farewell speech by EO with a note of feedback on the conduction of 5th EDP

Republic Day Celebration and FLAG HOISTING CEREMONY on 26th January, 2012

On the eve of Republic Day the chapter was decorated and national flag and ICSI flag were hoisted in presence of senior members and students of the Institute and past Chairmen and present managing committee members of the chapter. CS Umesh Ved- Central Council Member, CS Hitesh Buch - Vice Chairman WIRC, CS Ashish Doshi - Member WIRC, CS Rajesh Parekh - Chairman Ahmedabad Chapter of WIRC of ICSI, CS Ravi Kapoor - Past Chairman WIRC, unfurled National Flag & ICSI's flags respectively. Then after, national anthem was sung. The ceremony ended with sweet distribution, tea followed by snacks to all kids and dignitaries who were approx. 55 in number.

To commemorate the event, CS Umesh Ved, CS Hitesh Buch, CS Ashish Doshi, CS Rajesh Parekh organized an interaction meet with all the students to view their opinion on various professional issues in consideration with EO- Anu K Varghese and spoke on the prospects of CS Opportunities.

The session ended with Vote of Thanks by the Secretary - CS Chetan Patel, followed by distribution of Chocolates and Toffees to all.

3rd PROFESSIONAL DEVELOPMENT PROGRAMME 31ST JANUARY, 2012

Ahmedabad Chapter arranged 3rd PDP- Professional Development Programme at Chapter premise on 31st January 2012 from 10 am to 06 pm with provision of 08 Credit Hours to all 100 participants. Three sessions were arranged on 'Companies Bill' along with Lunch and Tea to all. The Valedictory session was commenced with farewell speech by EO - Anu K Varghese with a note of feedback on the conduction of 5th EDP followed by distribution of Certificates.

Condolence Meet on 04th February, 2012 at 06pm to 9pm

With profound sorrow and grief, we inform the sad demise of our veteran members Shri Sanatkumar P. Dave (Dave Kaka) on 15/Jan/2012 and Shri Bipinbhai Acharya (Bipin Dada) on 28/Jan/2012. The enormous contribution of these two stalwarts in the development of profession of Company Secretaries will be remembered forever.

Ahmedabad Chapter has organised a 'Condolence Meet' on 4th February, 2012 from 06 pm. to 09 pm. at Chapter premises to pay tribute to these two great personalities by praying for the peace of the divine souls followed by a light

devotional music program arranged on the occasion. The golden memories were shared by Central Council Member - Shri Umesh Ved, WIRC Vice Chairman - Shri Hitesh Buch, WIRC Member - Shri. Ashish Doshi, Chairman - Shri Rajesh Parekh and other office bearers in remembrance of the contribution given by both veteran members for the development of Ahmedabad Chapter and ICSI.

AURANGABAD CHAPTER

Study Circle Meeting

On 31st January, 2012 the Chapter had organized a Study Circle Meeting on the topic "Discussion on Competition Law in India" at the Chapter premises. CS Trivikram Guda, Company Secretary and Head of Legal & Compliances - ŠkodaAuto India deliberated on the subject. He has covered practical aspects of the topic to understand the Competition Law in easy way. Further he informed that after establishment, the competition commission of India has passed very interesting and landmark judgments in short span of time. The session was very interactive as the participants raised various queries and speaker addressed thoroughly.

CS Mahesh Singhi- Chairman of the Chapter welcomed all participants in the first study circle meeting of 2012. CS Ashish Gupta-Secretary of Chapter concluded the meeting by giving vote of thanks.

Executive Development Programme:

Chapter organized 2nd EDP Programme from 13th January, 2012 to 21st January, 2012 for CS Students at M.P. Law College, Aurangabad. Total 30 Students attended the EDP. General instruction/briefing of the EDP were given to all the students by CS Rupesh Khokle, co-ordinator of EDP. Mr. R Raghvan, eminent personality took full day session on interview Techniques and Communication Skills. Certificates were distributed on last day of the programme to the students who have attended the EDP. In Valedictory session many students expressed their views about the faculties and on other relevant matters upon calling them by chairman, CS Mahesh Singhi of the Chapter. Dr. Rao, Principle of M.P. Law College was the Chief Guest of Valedictory Session and CS A. R. Joshi-past chairman, CS L.A. Jaipurkar-vice chairman and CS Madhu Ghatiya- managing committee member were present in the Valedictory Session and vote of thanks given by CS Ashish Gupta- Secretary of Chapter.

Student Induction Programme:

7th SIP was arranged by the Chapter from 09th January, 2012 to 15th January, 2012 at M.P. Law College, Aurangabad and 60 students attended the SIP. SIP was inaugurated by CS A.R. Joshi - chairman of Aurangabad Chapter and general instruction/briefing of the SIP were given to all the students by CS Sarika, SIP co-ordinator. Dr. Rao, Principle of M.P. Law College was the Chief Guest of Inaugural session and CS Mahesh Singhi- vice chairman, CS L.A. Jaipurkar-secretary

was present in inaugural session. The SIP was conducted by experienced faculties. Appreciable presentations were given by the students in the programme.

Investor Awareness Programme:

Chapter has organized a programme on Investor Awareness on 10th January, 2012. Sudipto Pal, Jt. Director of WIRC was the eminent faculty for the programme. The programme was well appreciated by the gathering. The programme commenced with a welcome speech by CS A.R. Joshi-chairman of Chapter and concluded with a Vote of Thanks to all by CS L.A. Jaipurkar- secretary of Chapter. CS Mahesh Singhi- vice chairman and other members of managing committee were present in the programme.

BHOPAL CHAPTER

CAREER AWARENESS PROGRAMME.

Bhopal Chapter of WIRC of ICSI has organised a Career Awareness programme on 03rd Feb'12 at Vikramaditya College, Zone-II, M.P.Nagar, Bhopal.

CS Amit Kumar Jain, Member-WIRC informed the students about the Institute and CS Course and Scope of Company Secretary in Practice & Employment. CS Vivek Nayak, Management Committee Member-Bhopal Chapter informed about the various stages of CS Course and Course Curriculum.

It was very interactive session where more 70-80 students of B.Com & BBA alongwith faculty members of the college attended the programme.

INDORE CHAPTER

REPORT OF 22nd STUDENT INDUCTION PROGRAMME ORGANISED BY ICSI INDORE CHAPTER FROM 15th January, 2012 to 21st January, 2012 AT DAVV (JAGDALE COLLAGE) JAORA COMPOUND, INDORE

The Twenty Second Student Induction Programme was conducted by Indore Chapter From 15th January, 2012 to 21st January, 2012. CS Kamlesh Joshi (Chairman) was the chief guest of the Programme. Seventy Students had participated in the Programme. This Student Induction Programme was Co-ordinate by CS Ashish Karodia, Secretary of Indore Chapter of ICSI.

In Inaugural session CS Ashish Karodia Secretary of Indore Chapter of ICSI were invited to all Members for garlanding to Goddess Saraswati & Shree Ganesh and lighting the lamp. After that CS Kamlesh Joshi (Chairman) gave welcome speech & addressed the participants & explained the importance of the Guru Shishya Parampara & 15 month Training in CS & explained about growth and development of the professional function and responsibilities of Company Secretaries and the opportunities available to Company Secretaries both in employment and in practice. He also answered the queries raised the participants.

"Nothing contributes so much to tranquilize the mind as a steady purpose - a point on which the soul may fix its intellectual eye".

- Mary Shelley

During these Seven Days of Student Induction Programme various faculties from different fields delivered lectures on the topics prescribed by the institute as under.

How to improve your memory by CS Deepak Upadhyay, Company Secretary; Motivational by CS Priyanka Gupta, Company Secretary; Preparation of Examination by CS D. K. Jain, Company Secretary; SWOT Analysis by Dr. Kailash Chandra Sharma, Director of Study Center; General awareness of Indian/Global economy, business conditions, Regulatory Insight, Capital Markets, by CS Naveen Sood, Ex-chirman of ICSI Indore Chapter; Strategic Management by Mr. Mridul Dadhich, Faculty of PACE Academy; Group Dynamics by Mrs. Godhuli Dubey, Faculty of Altius Collage; Personal Grooming & Dress-up by Ms. Bhawana Pal, Faculty of Altius Collage; Oratory by Dr. Ranjan, Director of Ranjan Sir ki Class; Confidence Building & Attitude & Activities, Ms. Jalpa Jasoo, Importance of training in the Professional of Company Secretary & Professional Etiquettes by CS Sheetal Verma, Company Secretary; Decision Making & Time Management by Pro. Sourabh Singh, Faculty of Altius Collage; Personality Development by Dr. R. K. Mishra, Director of SGM Institute; Importance of Reading Newspaper by CS Pinky Shrivastava, Company Secretary; by CS Neeraj Jain, Company Secretary; Involvement of Computer in CS by CS Ishan Jain, Company Secretary; Personal Branding by CS Pallavi Parihar, Company Secretary; Financial Market & Company Secretary by CS Bhupendra Maheshwari, Company Secretary; Derivatives by Mr. Vishal Ramchandani; Faculty of PACE Academy.

In the valedictory session CS Kamlesh Joshi (Chairman) while addressing the participants explained the keys for successful practical life & inspired the participants. After that every participant was asked to cast vote also in favour of the candidate in his opinion that who was fit to be awarded as Best Participant. On the basis of individual performance in all session and number of votes received, Mr. Chandan Choudhary was finally selected best participant. Thereafter CS Ritesh Gupta (PDC Chairman) issued Course Completion Certificates to the participants and gave the award to Mr. Chandan Choudhary for the best Participant. All the participants shared their views one by one & This Batch of SIP also awarded as best SIP Group. In the last CS Ashish Karodia, Secretary of Indore Chapter gave vote of thanks to participants after that all participants back their home lots of sweet memories of the Programme.

PUNE CHAPTER

39th Foundation Day of Pune Chapter of WIRC of ICSI: 28.01.2012

39th Foundation day Programme of Pune Chapter of WIRC of ICSI was held on 28th January 2012 at S. M. Joshi Socialist Foundation Hall Ganjave Chowk, Pune. The programme was inaugurated with the Deep Prajvalan by the dignitaries present at the programme. On this occasion, Mr Kishor Desai, Chairman & Managing Director of M/s Kishor

Pumps Private Limited was present as a Chief Guest and Dr. Anand Deshpande, Chairman & Managing Director of Persistent Systems Ltd was present as a Guest of Honour. CS S N Ananthasubramanian, recently elected Vice President of the Institute of Company Secretaries of India was also present for the program.

CS Pawan Chandak, Chairman Pune Chapter of the Institute of Company Secretaries of India welcomed and felicitated Mr Kishor Desai, Chief Guest and Dr. Anand Deshpande, Guest of Honor, CS S N Ananthasubramanian, Vice President of ICSI, CS Vikas Khare, Central Council Member of ICSI, CS Makarand Lele, Past Chairman WIRC of ICSI from Pune and CS Vikas Agarwal, Past chairman of Pune chapter of ICSI were also felicitated.

CS Pawan Chandak, Chairman Pune Chapter of WIRC of ICSI addressed the gathering with a welcome speech and the same was followed by speech by CSSN Ananthasubramanian, Vice President who addressed the gathering and informed that the ICSI would work for the betterment of students and the profession.

There was a felicitation of the rank holders from Pune for the exams conducted by the Institute of Company Secretaries of India, held in December 2010 and June 2011; winners for the Best Articles in "Sanhita" a monthly magazine of Pune chapter of ICSI; and the winners of Sports week events.

The formal foundation day programme was followed by a cultural evening; having the dramas and dance performances by the members and Students of Pune Chapter of WIRC of ICSI. The Foundation day concluded with a vote of thanks by CS Shilpa Dixit, Secretary Pune Chapter of WIRC of ICSI and was followed by Contributory Dinner.

RAIPUR CHAPTER

STUDY CIRCLE MEETING AND PAPER PRESENTATIONS

Raipur Chapter of WIRC of ICSI, organized a Study Circle Meeting coupled with Paper Presentation Program by its students on 05.02.2012 in which students of CS Professional stage made their presentations.

As usual, the program started with a case law by CS S.K. Batra, who presented a case law relating to Section 25 company which has altered its articles and made a distinction in registered and unregistered members so far as the voting rights are concerned. The 33000 unregistered members who are in large majority to the registered members filed a petition alleging that there is violation of Article 14 of the Constitution of India since majority of the members are deprived of their voting rights by alteration in the articles of association. Prayer was made for quashing the alteration made to AOA creating two types of membership. After taking the opinion of all the members present in the Study Circle Meeting, CS Batra finally narrated the actual verdict of the Court giving justification for the same holding that in

"Holding on to anger is like grasping a hot coal with the intent of throwing it at someone else; you are the one who gets burned." - Buddha

view of the larger interest of the members it is not correct to distinguish the registered and unregistered members so far as the voting rights are concerned.

Thereafter three Students presented their papers on Appointment of Auditors under section 224 of the Companies Act, 1956, Role of Internal Audit in Enterprise Risk Management, Strategic Planning & Business Excellence and Financial Statement Analysis.

First presentation was made by Mr. Nitin Agrawal on the Role Of Internal Audit In Enterprise Risk Management, Stratgic Planning & Business Excellence in which he tried to cover the meaning of Internal Audit, purpose for which Internal Audit is conducted, process or the points to be kept in mind while conducting the internal audit, scope and perspectives of the internal audit, principles of internal audit, myths and facts of internal control and contents of the Internal Audit Report.

Next presentation was made by Ms. C.B.K. Sweta on Provisions relating to Auditors covering the provisions relating to appointment of first and subsequent auditors, filling the casual vacancies, appointment of auditors by Central Government and CAG, qualifications of Auditor, eligibility to be appointed as Auditor, removal of auditors, qualifications and disqualifications, rights and duties of auditors etc.

Last presentation was made by Mr. Bhagyesh Dubey on How to analyse the Financial Statements covering the necessity and usefulness of proper anlysatation of the Financial Statements, methodology and techniques to be adopted for analyzing the financial statements, how to study the Financial Statements through ratio analysis. He also explained the formula for calculating various ratio giving proper rationale behind each such formula and explained how to understand the viability of any company through profitability ratios, liquidity ratios, activity ratios, capitalization ratio, market test ratios etc.

Thereafter, CS S.K. Batra invited CS Y.C. Rao, Speaker for the Study Circle Meeting on the subject "How To Make Better Presentation". CS Y.C. Rao has given several tips small but very effective which should be kept in mind to make the Lecture effective, interesting and lively. He explained in details how the speaker should prepare himself before starting his lecture keeping in mind the time allotted to him and properly understanding the nature of audience to whom one addresses the speech. According to him timely attendance, proper dress code, eye contact, use of simple and appropriate language, division of the total speech into introduction, main part and conclusion, politeness in addressing the questions plays vital role in attaching the attention of the audience to make the speech lively and interesting. He further stated that in Power Point Presentation all the slides should numbered and only limited number of slides should be prepared so as to complete all the slides within the time allotted. Moreover instead of giving complete information in the slides itself head lines should only be shown in the slides so that attention of the audience

can be drawn towards the speaker without making them busy in reading the slides instead of listening to the speaker.

CS Neetu Agrawal and other Members and students present acknowledged the tips given by CS Y.C.Rao and stated that one should really inculcate these suggestions in their speeches to emerge himself or herself as a good speaker.

Around 25 members and students were present and there was a lively interaction throughout all the sessions.

NAGPUR CHAPTER

Report on Executive Development Program (EDP) held by Nagpur Chapter of ICSI

Nagpur Chapter of ICSI conducted 8 days EDP program from 11/01/2012 to 19/01/2012 (14th being holiday for Makar Sankranti) wherein CS Rohit Jain was the pilot faculty for all the 8 days.

The programme was structured based on the Training Structure mandated by ICSI and was made interesting through use of audio-visual aid. **CA Ranjit Dani** was the other faculty who took 3 sessions on Presentation Skills, Global & Indian Economy and Decision making techniques. His sessions very appreciated and well received by all participants.

CS Amit Pandey did apt justice to his session on '**Practical Aspects of Drafting of Minutes, Resolutions, Notices and Holding Meetings**'. With his experience of almost a decade, he gave the students a hint of what they will be required to do as CS Professionals.

CS Amit Rajkotiya stepped in with his expertise and 10+ years of experience to deliver on '**Regulatory framework for Corporates**' and beautifully highlighted role & importance of various regulators with whom a Corporate/Professional will need to deal with during some point in time or the other.

Dr. P M Navghare, Co-opetd member of Nagpur Chapter Committee did an interesting session on '**Stress Management**' and was so effective that all students were left wanting for more after his session.

The gem of all sessions '**Key to successful Interview**' was conducted by **Mr. Srikant Sampath**, a HR consultant & Trainer since last 22 years. He gave tips to students on how to appear for an interview and crack it successfully. His session is talked about by the students till date, such was his effectiveness.

Making a departure from conventional training, the EDP batch was taken on an industrial tour to '**Purti Power & Sugar Ltd.**' to help students understand various aspects of running an industry which they would otherwise read only in theory. Although the same was a bit tiring but at the same time very interesting experience for them as they saw processes of sugar manufacturing, power generation and distillery. Nagpur Chapter Chairman **CS Pradip Channe**

was the main force behind the idea and organized the same with best possible comforts and arrangements. CS Radhika Agrawal, Company Secretary of Purti and Rahul Thakwani & Saket Sugandh (personally present during the visit), CS trainees extended their whole hearted support and time in organizing the visit.

CS Rohit Jain, took various sessions like Effective Public Speaking, Listening Skills, Communications Skills and Team Building (through a simulation game). His sessions were also very interesting and students could connect very well with him. He provided them with the best of ambience, facilities and different mouth watering refreshments every day.

Just to summarize, the entire 8 days were a learning (by doing) extravaganza with elements of fun to keep the interest of participants alive. Various members of ICSI namely CS Pinkush Jaiswal, CS Preeti Pachariwala and CS Tushar Pahade also visited the training programme from time to time for a direct feedback. Report on Executive Development Program (EDP) held by Nagpur Chapter of ICSI Nagpur Chapter of ICSI conducted 8 days EDP program from 11/01/2012 to 19/01/2012 (14th being holiday for Makar Sankranti) wherein CS Rohit Jain was the pilot faculty for all the 8 days.

The programme was structured based on the Training Structure mandated by ICSI and was made interesting through use of audio-visual aid. CA Ranjit Dani was the other faculty who took 3 sessions on Presentation Skills, Global & Indian Economy and Decision making techniques. His sessions very appreciated and well received by all participants.

CS Amit Pandey did apt justice to his session on 'Practical Aspects of Drafting of Minutes, Resolutions, Notices and Holding Meetings'. With his experience of almost a decade, he gave the students a hint of what they will be required to do as CS Professionals.

CS Amit Rajkotiya stepped in with his expertise and 10+ years of experience to deliver on 'Regulatory framework for Corporates' and beautifully highlighted role & importance of various regulators with whom a Corporate/Professional will need to deal with during some point in time or the other.

Dr. P M Navghare, Co-opetd member of Nagpur Chapter Committee did an interesting session on 'Stress Management' and was so effective that all students were left wanting for more after his session.

The gem of all sessions 'Key to successful Interview' was conducted by Mr. Srikant Sampath, a HR consultant & Trainer since last 22 years. He gave tips to students on how to appear for an interview and crack it successfully. His session is talked about by the students till date, such was his effectiveness.

Making a departure from conventional training, the EDP batch was taken on an industrial tour to 'Purti Power & Sugar Ltd.' to help students understand various aspects of running an industry which they would otherwise read

only in theory. Although the same was a bit tiring but at the same time very interesting experience for them as they saw processes of sugar manufacturing, power generation and distillery. Nagpur Chapter Chairman CS Pradip Channe was the main force behind the idea and organized the same with best possible comforts and arrangements. CS Radhika Agrawal, Company Secretary of Purti and Rahul Thakwani & Saket Sugandh (personally present during the visit), CS trainees extended their whole hearted support and time in organizing the visit.

CS Rohit Jain, took various sessions like Effective Public Speaking, Listening Skills, Communications Skills and Team Building (through a simulation game). His sessions were also very interesting and students could connect very well with him. He provided them with the best of ambience, facilities and different mouth watering refreshments every day.

Just to summarize, the entire 8 days were a learning (by doing) extravaganza with elements of fun to keep the interest of participants alive. Various members of ICSI namely CS Pinkush Jaiswal, CS Preeti Pachariwala and CS Tushar Pahade also visited the training programme from time to time for a direct feedback.

VADODARA CHAPTER

Condolence meeting was held on 31st January, 2012 at the Vadodara Chapter Premises to pay tribute to Mr. Bipin S Acharya and Mr. S P Dave, Former Central Council Members and Chairman, WIRC as well as Mr. S N Makhijani, Former Chairman, ICSI - Vadodara Chapter.

Mr. Suresh Kabra, Chairman, Mr. A K Modi, Former Central Council Member, Mr. C V Mathrani, Former Chairman - WIRC and Mr. Devesh A Pathak, Former member WIRC, cherished and appreciated dedicated contributions made by the departed souls to the profession.

After observing silence for two minutes as a tribute to the departed souls, the meeting was concluded.

Study Circle Meeting organized by Vadodara Chapter of WIRC of ICSI at its premises on the theme of 'Recent Initiatives taken by MCA' was held on 31st January, 2012 at 6:00 pm.

Mr. Devesh A Pathak, Former member of WIRC of ICSI & Former Chairman of Vadodara Chapter of ICSI, while addressing, informed that MCA during the year 2011 has issued 72 circulars which may be record at its own.

He mainly dealt with circular relating to change in additional fees for belated filings, general exemptions u/s 212, XBRL filing, Green Initiatives, payment to MCA through electronic mode, name availability guidelines and amendment in schedule XIII of far reaching implications.

Earlier Mr. Suresh Kabra, Chairman introduced the theme & speaker and at last Mr. Charandeepsingh proposed a vote of thanks.

Around 65 participants had attended the meeting. ■■■

KNOW YOUR KIDNEYS & PROTECT THEM

Dr. Bharat Shah, Kidney Specialist, Lilavati Hospital

The urinary tract consists of the two kidneys, the two tubes called ureters (that lead from the kidneys to the bladder), the bladder, and the urethra (the tube that leads from the bladder to the outside).

What does our kidney do for us?

Our body is like a factory that contains a number of machines, all of which need energy in order to work together smoothly. The energy comes from the food you eat. The food is broken down, during digestion, into energy-containing substances that pass into your bloodstream. As the nutrients and energy are used up, chemical waste products are produced in the cells throughout the body. These wastes must be removed, because they would poison the cells if they were allowed to accumulate. The waste products are carried in your bloodstream to the two kidneys. In the kidneys they are filtered out of the blood and in combination with water they are excreted as urine. Formation & excretion of urine are essential to life. Kidney plays an important role in formation of urine. Besides urine formation kidneys perform various other functions.

- Removal of toxic waste products
- Regulates the water content of the body
- Regulates blood pressure.
- Produce a substance called erythropoietin - helps in forming RBCs and hence builds up hemoglobin.
- Help in bone formation by activating vitamin D.

What is kidney failure?

Kidney failure is a state where the kidneys are malfunctioning or are not functioning at all and the patient experiences the effects of the same.

Kidney failure can occur in one of two forms.

Acute renal failure (ARF): It is an illness in which your kidneys suddenly stop functioning, sometimes within a few days or even hours. The kidney failure reverses to normalcy in a few days to months.

Chronic kidney disease (CKD): It is an irreversible kidney disease, which invariably progresses insidiously to end stage kidney disease (ESKD) over years.

What is End-Stage Kidney Disease (ESKD)?

ESKD is a stage at which practically entire kidney function is lost. Kidneys can be considered to be dead. Dialysis or transplantation becomes mandatory for survival.

What are the Symptoms of kidney failure?

- Swelling of the parts of the body
- High blood pressure

- Increasing weakness and easy fatigability
- Bone pains / body ache
- Change in frequency and amount of urination
- Frothy and bloody urine

Anemia and increasing weakness could be the first manifestation of kidney disease and one must keep that possibility in mind. Bone pain may also be the first manifestation of kidney failure

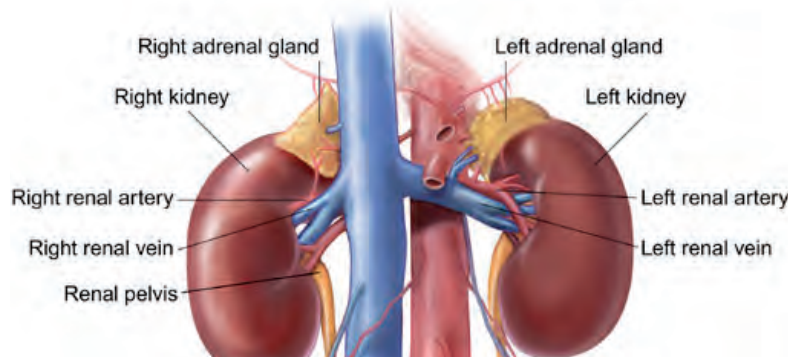
What are the common causes of CKD?

- Diabetes
- Hypertension
- Chronic glomerulonephritis (damage to the filters)
- Stone in urinary Tract
- Urinary Infections
- Long term intake of pain killers / alternative Medicines containing heavy metals.
- Others (hereditary).

How to Detect Kidney Disease at an Early Stage?

Do not neglect the symptoms

There may be no symptoms; hence patients at risk of developing kidney disease (hypertensives, diabetics etc) should frequently monitor themselves to detect



the onset of kidney failure.

What is the importance of prevention of Chronic Kidney Disease?

The incidence of Chronic Kidney Disease has been progressively increasing in our country because of increasing incidence of diabetes, hypertension, overuse of painkiller drugs and use of metals in alternative therapy. The treatment options of End Stage kidney Disease are limited (Dialysis & Transplantation) and very expensive. Even with the treatment the morbidity and mortality of patients is significantly high. Therefore every effort should be to prevent CKD. For those who already have developed CKD, it should be detected at an early stage and aggressively treated to prevent or delay its progression to End Stage Kidney Disease (ESKD).

How to prevent chronic kidney disease ?

- Control your BP and Blood sugar well within the target range prescribed by your physician.
- Avoid taking unnecessary drugs.
- If you have abnormal urinary tract anatomy or kidney stones -Do not Ignore

Once detected to have hypertension, diabetes or if you have any other signs and symptoms mentioned above, it is best to get your self evaluated by your physician at regular intervals so as to avoid being a kidney patient. ■■■

Dear Member,

Re: ICSI-WIRC Fund Raising Program on 23 March 2012

Appeal for Souvenir Advertisement / Banner Display / Business Promotion Stall

We are pleased to inform you that we have acquired additional office premises for our Western India Regional Council (WIRC) of the Institute of Company Secretaries of India ('ICSI') at Mumbai. The objective of the acquisition was to meet a long standing need for additional space in Mumbai, the business capital of the country and a premier Regional Headquarters of the Institute.

The additional space admeasuring 2206 sq.ft in Flats 56 and 57 on the fifth Floor, at Jolly Maker Chambers II, Nariman Point, Mumbai was inaugurated on 18th December, 2009 at the hands of Shri. Datla Hanumantha Raju, the then President of the Institute. **Incidentally it may be noted that the additional space is on the same building where the first office premises of ICSI is located on the first floor.**

The acquisition made at a total cost of Rs.8 crores (approx.) was funded by internal accruals of ICSI-Head Office and ICSI-WIRC. With a view to enable ICSI-WIRC to part-finance its obligations connected with the acquisition and renovation of its premises and to generate substantial corpus for future use, a Fund Raising Committee has been constituted. The Fund Raising Committee has resolved that it would be appropriate to create ICSI-WIRC BUILDING FUND for the purpose.

For the said purpose, **ICSI-WIRC is organizing a Fund Raising Program on Friday 23 March 2012 at 7pm at Sri Shanmukhananda Chandrasekarendra Saraswathi Auditorium, Sion, Mumbai. It will be a melodious musical evening by "Klub Nostalgia".** The Donors' Passes for the grant event can be obtained from ICSI-WIRC. We request you to join us for the musical evening with family and friends and have a great time.

It is proposed to commemorate the occasion by bringing out a **Souvenir**, containing the special articles, write-up on topical interest and other features. The Souvenir will be distributed at the conference to all the invitees and participants and will be widely circulated to Government officials and reputed companies. The advertisement published in the Souvenir will thus receive wide publicity.

We, request you therefore to kindly release a Back Cover / Inside Cover / Full Page advertisement in the proposed souvenir. The advertisement together with the material in the form of typed matter / artwork / bromide may be sent to the office of WIRC of ICSI at the above mentioned address on or before 15th March, 2012.

You could also publicize your product / service by displaying a banner or by putting up a business promotion stall at the venue on both the days of the conference. The banner display / business promotion stall will thus receive instant and constant publicity for your product and service among the participants and other dignitaries attending the Conference.

TECHNICAL DATA FOR SOUVENIR ADVERTISEMENT

Souvenir Size: 25 x 20 cm (10.5" x 8")

Printing Space : Full Page 20 x 15 cm (8" x 6")

Back Cover:	Rs.15,000/-
Inside Cover:	Rs.12,000/-
Full Page:	Rs.10,000/-
Display Normal Banner: (10 banners only)	Rs.7,500/-
Business Promotion Stalls: (7 stall)	Rs.25,000/-
DONORS' PASS	
Ground floor - front rows -	Rs.1,000/- per pass
Ground floor -	Rs.500/- per pass
Ground floor - back rows	Rs.300/- per pass
First floor balcony -	Rs.200/- per pass
Second floor balcony -	Rs.200/- per pass

Yours faithfully,

CS Mahavir Lunawat
Chairman
ICSI-WIRC

CS Ragini Chokshi (Ms.)
Secretary
ICSI-WIRC

CS Prakash K. Pandya
Chairman
Fund Raising Committee of ICSI-WIRC

CS Quiz

PRIZE QUERY

“ABC Limited, a public company obtaining a loan from a NBFC towards the payment of margin for purchases of shares. The loan will be secured by way of creating pledge against the shares bought in favour of NBFC. NBFC also wants a guarantor for the loan taken by ABC Limited, which XYZ Limited, another group company of ABC Limited, is ready to give. In the given situation, whether creation of charge is mandatory and also what are the implication of section 372A of the Companies Act, 1956?”

Conditions

1. Answers should not exceed one typed page in double space.
2. Last date of receipt of answer is 7th of March 2012.
3. Two prizes (a first and a second) in kind will be awarded to the best answers and the names of the contributors will be published in the journal.
4. The envelope should be superscribed ‘Prize Query February 2012 Issue’ and addressed by name to :

Amit Kumar Jain, Editor

ICSI-WIRC’s FOCUS

WIRC premises No.13, 56 & 57, Jolly Maker Chambers no.2, First Floor, Nariman Point,
Mumbai - 400021

Obituary



Shri Bipin S Acharya

With deep sense of sadness we express our heartfelt condolences on the untimely demise of Shri Bipin S Acharya, a Fellow Member and Past Council Member of the Institute of Company Secretaries of India (ICSI) on 28th January, 2012 at Ahmedabad.

Born in 1940, Shri Acharya was one of the most senior members of the Institute, contributed enormously in the growth and development of the profession.

He has been, throughout his professional career of more than 40 years, deeply involved in the activities of the Western India Regional Council of the ICSI and was instrumental in the foundation and development of the Ahmedabad Chapter, one of the most vibrant Chapters of the Institute in terms of professional development

activities and value added services to the members and students.

Shri Bipin S. Acharya became an Associate Member of the Institute as early as 1st June, 1971 and a Fellow Member of the Institute w.e.f. 12th April, 1979 and was holding Certificate of Practice (CP No. 8) w.e.f. 1st April, 1979. During the span of more than four decades, as a Member of the Institute, he held various positions including Chairman, WiRC (1988) and Member of the Council of the Institute and its various Committees for four terms (1989-1991, 1992-1994, 1998-2000 and 2004-2006).

Shri Bipin S Acharya, one of the legends of the profession of Company Secretaries has lot a trusted friend, phisosopher and guide.

May the Almighty give courage and strength to the family members and near and dear ones to bear this irreparable loss.

May the departed soul rest in eternal peace.

“The master in the art of living makes little distinction between his work and his play, his labor and his leisure, his mind and his body, his information and his recreation, his love and his religion. He hardly knows which is which. He simply pursues his vision of excellence at whatever he does, leaving others to decide whether he is working or playing. To him he’s always doing both.”

- James A. Michener

REQUIRED COMPANY SECRETARY

We require a qualified Company Secretary having 1-2 years post qualification experience. Freshers who have obtained practical experience prior to qualifying may also be considered on merits.

Interested candidates may apply within the next 15 days to:

The Directors

Ampacet Speciality Products Private Limited
408, "B" Wing, Everest Chambers, Marol
Naka, Andheri-Kurla Road, Andheri (East),
Mumbai 400 059.

E-mail: alwin.salins@ampacet.com

REQUIRED COMPANY SECRETARY

A closely held Public Limited Company is desirous of appointing a Company Secretary and invites applications from prospective candidates. The candidate should be a Member of the Institute of Company Secretaries of India, preferably possessing experience of 4-5 years in related areas. Remuneration package will be commensurate with experience. Interested candidates may apply to.

Post Box No. 47727

**The Institute of Company Secretaries of
India**

Western India Regional Council (WIRC)
13, Jolly Maker Chambers No. 2, 1st Floor,
Nariman Point, Mumbai 400 021.

REQUIRED COMPANY SECRETARY

A full time qualified Company Secretary proficient in English and well versed with company law and legal matters with experience of 1-2 years. Fresher may also apply.

Interested candidates may send their resume to:

EFG Wealth Management (India) Pvt. Ltd.
Marshal Building, 1st Floor,
Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai 400 038.
E-mail ID: info@efgindia.com

REQUIRED COMPANY SECRETARY

A full time qualified Company Secretary proficient in English and well versed with company law and legal matters with experience of 1-2 years. Fresher may also apply.

Interested candidates may send their resume to:

Strategic Capital Corporation Pvt. Ltd.
Marshal Building, 1st Floor, Shoorji
Vallabhdas Marg,
Ballard Estate, Mumbai 400 038.
E-mail ID: info@strategicindia.net

Announcement for Health Camp

Foundation Offers Free Sugar & BP screening on every Saturday between 11 am to 2 pm at it's Andheri office.

Free of cost for members and students of ICSI.

For Appointment Contact: Phone: 022 28368634 / 28254147.

Dr. Bharat Shah

*Kidney Specialist, Lilavati Hospital
Nanavati & Sevenhills Hospital*

Address:

Narmada Kidney Foundation, B-1, Nav Sanyukta Apt., Behind Jai Mata Di Temple,
Dr. Charatsingh Colony, A.G. Link Road, Chakala, Andheri- E, Mumbai-400 093.

Website: narmadakidney.org **Email :** narmadakidney@yahoo.co.in

PDC Calendar

PDC	Date	Location	Program	Topics
March	2-3	WIRO	Workshop	Understanding Financial Statements & Important Aspects of Annual Report Preparation
	3	South Mumbai	Full-Day	Secretrial Audit & Peer Review Aspects
	9	Dadar	SCM	Listing Agreement
	10	WIRC Ladies Annual Conefernce		
	11	Borivali	SCM	
	16	Ghatkopar	SCM	Managerial Remuneration
	16-17	CCGRT	Workshop	Due-Diligence
	17	Dadar	Full-Day	NBFC & CIC
	18	Mira-Bhayendar	SCM	
	23	Fund Raising Program		
	25	Andheri	SCM	
	25	Surat	Full-Day Joint	Emerging Role of Professionals
	30	WIRO	SCM	Inter-corporate Loans & Advances
31	Ghatkopar	Full-Day	Critical Aspects of Companies Act (Sections 295, 297, 314 etc.)	

"Always bear in mind that your own resolution to succeed, is more important than any other one thing." - Abraham Lincoln

Smile Please



A new manager spends a week at his new office with the manager he is replacing. On the last day the departing manager tells him, "I have left three numbered envelopes in the desk drawer. Open an envelope if you encounter a crisis you can't solve."

Three months down the track there is a major drama, everything goes wrong - the usual stuff - and the manager feels very threatened by it all. He remembers the parting words of his predecessor and opens the first envelope. The message inside says "Blame your predecessor!" He does this and gets off the hook.

About half a year later, the company is experiencing a dip in sales, combined with serious product problems. The manager quickly opens the second envelope. The message read, "Reorganize!" This he does, and the company quickly rebounds.

Three months later, at his next crisis, he opens the third envelope. The message inside says "Prepare three envelopes".

Cartoon



"I don't have time to write performance reviews, so I'll just criticize you in public from time to time."

Thanks Giving



Dear Sir/Madam,

After rendering a service of about 31 years in the various capacities in the Western India Regional Office of the Institute, Mumbai, I am demitting my office by 29th February, 2012 on superannuation.

I joined this esteem organization in the year 1980 as a junior Assistant and have served in various capacities and demitting my office as Desk Officer.

My stay in the Institute has been a wonderful experience. All through my tenure it has been my Endeavour to serve the student, member community and Regional Council Members to their entire satisfaction. During this period I enjoyed the total support received from Past

President from of the ICSI and past Chairman and Regional Council Members of the Western India Regional Council and its Chapters and present Chairman and Regional Council Members, Members of the Managing Committees of the Chapters, and earlier secretaries namely Shri T.P. Subbaraman, Dr. S.P. Narang and Shri N. K. Jain present Secretary & Chief Executive Officer of the Institute, Shri Antony Paul, Gopal Chalam past Executive Officer of ICSI - WIRO and Shri Sudipto Pal, present Joint Director, ICSI - WIRO, Dean ICSI - CCGRT, colleagues at WIRO, the officers and staff of the Head Office, Other Regional Council, CCGRT and Chapters of the ICSI and the members & students at large. I am indeed indebted to them for their whole heartedly support.

During my stay I have always tried to work in the best interest of the Institute. If during the period, I have hurt the sentiments or feelings of any one, I tender my unconditional apology. This was all unintentional without any personal bias.

I Wish you all the best.

C.V. Siva Subramanian (Mani)
Desk Officer

ICSI - WIRC Photo Gallery

Flag hoisting at WIRC Office on 26th January 2012



Flag hoisting

A Free Medical Checkup & Blood Donation Camp organised by WIRC on 26.1.2012



Addressing-CS Mahavir Lunawat, L-R - CS Hitesh Kothari, Mr. Ashok Yende & Mr. N.K. Tandon



Blood Donation Camp

Seminar on Fund Raising and Valuation held on 13.1.2012 at MACCIA, Mumbai



Addressing Mr. Shirrang Tambe

ICSI-WIRC jointly with BSE organised SEMINAR ON "CHANGING REGULATORY LANDSCAPE : CHALLENGES & OPPORTUNITIES" on 10th February 2012



Inaugural Session



Inaugural Session



Inaugural Session



Valedictory Session

Photo Gallery of Programme organized by Ahmedabad Chapter



Flag hoisting organized by Ahmedabad Chapter



Condolence Meet organized by Ahmedabad Chapter



SIP organized by Ahmedabad Chapter



EDP organized by Ahmedabad chapter

Study Circle Meeting organized by Vadodara Chapter on 'Recent Initiatives taken by MCA'



Mr. Devesh Pathak former Council Member of WIRC and former Chairman of Vadodara Chapter

Nagpur Chapter conducted 8 days EDP program from 11.1.2012 to 19.1.2012 Group Photo



Group Photo

Indore chapter conducted 22nd SIP from 15.1.2012 to 21.1.2012



Group Photo

39th Foundation Day of Pune Chapter of WIRC of ICSI: 28.01.2012



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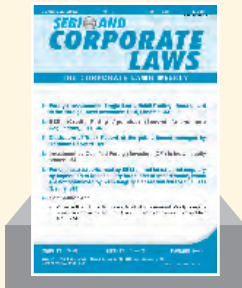
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