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ICSI

FOCUS

‘प्रगतिश्च विकासश्च जीवनं जीवनं खलु!’

Monthly Bulletin of Western India Regional Council of The Institute of Company Secretaries of India.



दधि मधुरं मधु मधुरं. द्राक्षा मधुरा सुधापि मधुरैव ।
तस्य तदेव हि मधुरं. यस्य मनी यत्र संलग्नम् ।।



From the Chairman

Dear Members,

I cannot but recall the splendid association many of us had with Shri V. S. Rao, Member, Company Law Board, and former Regional Director, Western Region, Ministry of Corporate Affairs, who breathed his last on 6th October, 2009. At this hour of grief, his calm and endearing demeanour, his words of encouragement to members of all hues of our profession and his keenness to share his knowledge and wisdom come readily to one's mind. May his soul rest in everlasting peace.

I am extremely glad to inform the continuation of the good work ICSI-WIRC had embarked upon itself in providing topical academic development programmes on relevant subjects addressed by the best of faculty available. While a seminar on FEMA UPDATES covering all notifications issued up to 1st, June, 2009, was held on 21st and 22nd September, the three-day Workshop on Multi-Skilling Opportunities for practising members, old and young, inaugurated by Shri Vinayak Khanvalkar, Vice-President of our Institute, provided several insights into many relevant aspects of the practising side of the profession and attracted members from as far as Srinagar and Kochi.

As part of its efforts to professionalise the Inspection/Investigation mechanism, the Ministry of Corporate Affairs has recently initiated a move to delegate Technical Scrutiny of Balance-Sheet and Profit and Loss Account of companies to all three professional bodies. With a view to enable our practising members to take advantage of this important development, ICSI-WIRC arranged a two-day workshop addressed by experts who emphasised on the caution to be exercised in such assignments. In his keynote address Shri M. R. Bhat, Jt. Director, MCA and a Member of our Institute also stressed on the need for such delegation and urged the members to become extended arms of the Ministry in fulfilling this enormous trust reposed on the professionals. A lively debate on the nature of the assignment, fees prescribed and the expectations from members was the highlight of the Workshop.

I am equally pleased to inform you that in an attempt to make the newly acquired premises of ICSI-WIRC, functional and operational without much loss of time, distribution of study materials to students was resumed from its offices at Nariman Point.

As ICSI migrates towards the New Training Structure comprising Student Induction Programme (SIP), Executive Development Programme (EDP) and Management Skills Orientation Programme (MSOP) ICSI-WIRC organised its 41st and 42nd Training Orientation Program (TOP) the final and concluding ADP and as I write this message to you, the 92nd SMTP of ICSI-WIRC is in progress.

May I take this opportunity to wish each and everyone of you and your family members a very HAPPY DIWALI.

Yours sincerely,
With regards

Atul Mehta
Chairman
ICSI-WIRC

Editorial Board :

CS Ashish Garg : Editor

*Other Members of Editorial Board : CS S. N. Ananthasubramanian, CS Ashish Doshi,
CS D. K. Jain (Dr.), CS Rakesh Garg,
CS Vikas Khare, CS Atul Mehta, CS Makarand Lele*

Meaning : Yogurt is sweet, Honey is sweet. Grapes taste sweet, Nectar also tastes sweet. He whose heart is involved in a thing, finds that thing sweet. Moral: You can enjoy a thing if you do it with all your heart.



CASE LAW DIGEST

by CS Ajay Kumar, *Mumbai*

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

1. SPECIAL RESOLUTIONS AND CONFIRMATION BY CLB REQUIRED FOR ALTERATION OF SITUATION CLAUSE UNDER SECTION 17

Petitioner-company filed Petition under section 17 for confirmation of alteration to situation Clause in Memorandum of Association of company for shifting of registered office of company from State of West Bengal to Delhi, as approved by a special resolution passed in accordance with section 189, at its annual general meeting. However, two ex-employees of company, raised objections stating that Court proceedings initiated by them against company were pending and, as such, they would be prejudicially affected by such transfer of registered office. Objection of ex-employees of company on ground of pending Court cases could not be said to be a valid ground to stall shifting of registered office of company through alteration of situation clauses of Memorandum of Association of company, as mandated by members of company. Having regard to rights and interests of members and creditors of Petitioner-company, it was just and proper that Petition should be allowed subject to condition that interest of none of employees at registered office of company would be prejudiced by retrenchment or otherwise. – **KWALITY ICE CREAMS (INDIA) (P) LTD., IN RE. [2009] 91 SCL 231 (CLB - KOL.)**

2. OFFICER IN DEFAULT

Criminal liability of a director would arise only when he is an officer-in-default within meaning of section 5. In view of facts stated under 'Company, incorporation of' since directors who had been arraigned as accused were not among board of directors when alleged misrepresentations were made in preferential offer document and they were neither directors of "SIL" nor "SGL" at that time, they could not be said to be involved in either inducement or entrustment and, therefore they could not be held vicariously liable for offence committed by Petitioner-companies. – **SESA GOA LTD. vs. STATE OF MAHARASHTRA [2009] 89 SCL 169 (BOM.)**

3. AFFIRMATION OF SUPPORT BY MAJORITY SHAREHOLDERS FOR NEWLY CONSTITUTED BOARD OF DIRECTORS. RECOGNITION OF COLLECTIVE WISDOM OF MAJORITY BY COMPANY—JURISDICTION OF COMPANY LAW BOARD TO INTERFERE WITH THE DAY-TO-DAY MANAGEMENT OF COMPANY—SECTION 397/398/399

Where the shareholders controlling more than 70 per cent of shares have affirmed their support & there is no legal impediment because of the pending proceedings initiated before the High Court by certain shareholders, the Company Law Board has to

recognize the collective wisdom of the majority of the members & respect the corporate democracy of a company in managing its affairs, notwithstanding the dispute raised by respondents regarding the shareholding, without support either by any pleading whatsoever or necessary documentary proof. The Company Law Board should not interfere with the day-to-day functions, management & administration of a company, unless it was proved that decisions taken by the members at the general meeting are ultra vires the Act or the articles of association of the company – **S. BALASUBRAMANIAN V. ARUNA THEATRES & ENTERPRISES (P) LTD. [2008] 83 CLA 107 (CLB)**

4. DISPUTE RELATING TO TRANSFER OF SHARES ON FORGED SHARE CERTIFICATES – TENABILITY OF CONTENTION THAT PETITIONERS CEASED TO BE SHAREHOLDERS MERELY ON THE STRENGTH OF DISPUTED TRANSFER DEEDS – SECTION 111

Where the background of dispute relating to transfer of shares on allegedly forged share certificates in the alleged absence of original share certificate is shrouded with controversies, it cannot be contended that the petitioners ceased to be shareholders merely on the strength of disputed transfer deeds produced before the Company Law Board & consequently the preliminary objection raised by the respondents on the maintainability of the company petition does not survive. More so, when transferees do not also produce any proof of consideration for purchase of shares from the petitioner – **G. RAMANA REDDY VS. VIJAYA DURGA ESTATES (P) LTD. [2008] 83 CLA 135 (CLB)**

5. NOTICE TO COMPANY BEFORE ADMISSION OF PETITION – CAUTIONARY ORDER BY COMPANY JUDGE AT THIS STAGE, HOW FAR CONSTITUTES AUTHORISATION FOR PUBLICATION — SECTIONS 433(F) AND 439 READ WITH RULE 96 OF COMPANIES (COURT) RULES, 1956

Where Notice is given to company for hearing as to why winding up Petition be not admitted, and a cautionary order is passed saying that any alienation of assets of the company except in due course of its business, shall be subject to final order to be passed, this order at a nascent stage is no interim order indicating any restraint, much less authorisation for publication. Any person making unauthorised publication will be guilty of abuse of process of court – **AMRITSAR SWADESHI TEXTILE CORPORATION (P) LTD. VS. VINOD KRISHAN KHANNA [2008] 82 CLA (SNR.) 2 (PUNJ & HAR.)**





PATENT LICENSE

CS Nayan Rawal, Advocate & IP Attorney and CS Amit K. Trivedi, PCS & IP Attorney
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A patent is an exclusive right granted by the State for an invention that is new, involves an inventive step and is capable of industrial application. It is a powerful business tool for companies to gain exclusivity over a new product or process, develop a strong market position and earn additional revenues through licensing. A patent is granted by the national patent office or a regional patent office for a group of countries. It is valid generally for 20 years from the date of filing of the patent application, provided that the required maintenance fees are paid on time

The traditional patent strategy was about sole ownership of an invention, but due to the unpredictable nature of innovation, there has been the emergence of a complex set of models and relationships in creating value from patents.

From a corporate perspective, IP and in particular patents, are gaining increasing importance in business strategy. What a lot of companies have been doing is looking ahead to where the markets will be in the future and what technology products will be needed to thrive in those markets. They have been filing their own patents, licensing-in technology or acquiring patents in order to enhance their technological expertise.

Take for example the case of Sony and its video format Betamax technology. Sony had refused to license its Betamax technology to other companies/manufacturers and kept it solely for its own products. Their competitor JVC however, licensed the use of their VHS technology to other companies worldwide. What was the result of that? VHS became the industry standard, dominated the global market place in home videos and cameras and Sony lost out to its competitor JVC. In order to avoid a similar fiasco, when Sony first started producing its "Nifty Memory Stick" it immediately licensed the technology to six Japanese electronics manufacturers to make and market its Nifty Memory Stick, and gadgets using the memory device. Sony's aim was to popularize its new memory stick in the electronics industry by licensing other manufacturers to make video recorders, digital cameras and personal computers using their data storage device.

Other than by a holder of a patent itself exploiting that patent, licensing is perhaps the most likely, and therefore most common commercialisation pathway.

But, sometimes, the assignment of a patent can be a pathway to commercialisation that not just warrants consideration, but in fact, depending upon the occasion, may be the more desirable or even necessary pathway.

On each occasion, the appropriateness or inappropriateness of licensing, or assignment, needs to be considered.

Sometimes an assignment is mandatory, such as where employee inventions are assigned by an employee to the employer, or, in some circumstances, by an employer to an employee, and a license is simply inappropriate. Depending upon the needs and expectations of the patent holder, and the person with whom a deal is proposed, either licensing or assignment may present a better pathway, or a more remunerative pathway, than the other.

A license of patent typically contains performance obligations upon a licensee.

These performance obligations will be of two types: pre market entry milestones, and post market entry sales targets.

Pre market entry milestones require a licensee to achieve or meet the agreed milestones. The milestones may for example be: undertaking a trial or validation, producing a prototype, producing a pilot plant, meeting regulatory requirements, progressing through clinical trial phases, etc.

By achieving or meeting those milestones, the licensee travels the pathway to market entry, and continues to enjoy the licensed rights.

If the licensee fails to achieve or meet those milestones, the licensor may terminate the license, with reversion of the patent back to the licensor.

In this way, a licensor ensures that the licensee does not shelve the patent, that is, does not become an inactive rights holder, with no commercialisation, and no financial benefits back to the licensor.

A licensee, for any number of prudent commercial reasons, may not progress the development of the patent.

A licensor will be concerned that without pre market entry performance obligations, the shelving of the patent by the licensee will result in there never being market entry, and result in the licensor not earning any royalties.

Sales targets are performance obligations which commence once market entry has occurred.

Sales targets require a licensee to achieve minimum sales of products and services by which the licensed patent is exploited.

By having sales targets in this way, a licensor ensures that there is exploitation by a licensee to at least the minimum extent represented by the minimum sales targets, and this in turn ensures that the licensor can expect the minimum royalties represented by those minimum sales targets.

Performance obligations like these pre market entry commercialisation milestones, and sales targets are a critical part of the obligations upon a licensee in a license.

Failure to achieve these performance obligations typically results in the termination of the license, with reversion of the patent back to the licensor, and the licensor then being able to license the patent to another person that does have the capability to meet these performance obligations.

However, putting performance obligations such as these in an assignment is a challenge.

Not unexpectedly, an assignee, having purchased the patent, will have the view that performance obligations such as these are inappropriate.

Further, an assignment of patent being absolute and irrevocable, termination for failure to meet performance obligations is not possible.

Accordingly, where performance obligations such as pre market entry commercialisation milestones and sales targets are sought, and this invariably occurs when long term royalties is the remuneration to the grantor of commercialisation rights, a license is the prudent commercialisation pathway to follow, not assignment.

Therefore, a competitive and enforceable advantage can be derived from the strategic use of ideas/inventions that have been patented. This of course allows companies to have a higher sustainable return on their capital.

Source:

#WIPO/IP/DAM/07/10- INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT Damascus, May 15 to 17, 2007

*To License a Patent – or, to Assign it: Factors Influencing the Choice by Philip Mendes, Partner, Innovation Law as featuring on www.WIPO.int



LIMITED LIABILITY PARTNERSHIP

FAQs on Incorporation

By M/s. Makarand M. Joshi & Co., Practising Company Secretaries

- | | |
|---|--|
| <p>1. How many partners are required to form an LLP?</p> <p>A minimum of two partners are required to form an LLP. There is no maximum limit on number of partners. (Section 6(1) of the LLP Act, 2008)</p> | <p>7(3) of the LLP Act, 2008 and Rule 7 of the LLP Rules, 2009)</p> |
| <p>2. How many designated partners are mandatory in an LLP?</p> <p>A minimum of two designated partners are mandatory in an LLP. (Section 7(1) of the LLP Act, 2008)</p> | <p>7. Are there any other procedures with respect to designated partners before incorporation of an LLP or appointment of designated partners?</p> <p>Every individual or nominee of a body corporate, who is intending to be appointed as a designated partner of a body corporate of an LLP is required to obtain a Designated Partner Identification Number (DPIN) from the Central Government. (Section 7(6) of LLP Act, 2008 and Rule 10 of LLP Rules, 2009)</p> |
| <p>3. Who can be a partner and designated partner of an LLP?</p> <p>Any individual or body corporate may be a partner in an LLP. However, only an individual can be a designated partner of an LLP.</p> <p>(Sections 5 and 7(1) of the LLP Act, 2008)</p> | <p>8. What is the procedure for obtaining DPIN?</p> <p>The following procedure needs to be followed for acquiring DPIN : —</p> <ol style="list-style-type: none"> a. Log-in on the relevant link provided on Ministry of Corporate Affairs website – www.llp.gov.in b. Download and fill of Form 7. c. Pay filing Fees of Rs. 100/- through credit card (Master/Visa card) d. Submit application form online, provisional DPIN will be generated e. Take a printout of the application form, affix a latest photograph & sign on the application form. f. Get the application form along with proof of identity and proof of residence attested/certified by certified persons. g. Submit entire set of documents to the Office of Registrar, Ministry of Corporate Affairs, 3rd Floor, “Paryavaran Bhawan”, CGO Complex, Lodhi Road, New Delhi-110 003, for approval. <p>(Rule 10 of LLP Rules, 2009)</p> |
| <p>4. What is the requirement regarding residential status of partners and designated partners of an LLP?</p> <p>The LLP Act, 2008 or the LLP Rules, 2009 do not mention anything about the residential status of the partners of an LLP. However, at least one of the designated partners is required to be a resident in India. (Section 7(1) of the LLP Act, 2008)</p> | <p>9. Can the payment of fees for DPIN be made through offline mode?</p> <p>No, payment of fees for DPIN cannot be made through offline mode. The payment can be made</p> |
| <p>5. Is it mandatory that all designated partners of an LLP must also be partners of the LLP?</p> <p>No, it is not mandatory that all designated partners of an LLP must also be partners of the LLP. In case of an LLP in which any or all partners are bodies corporate, the nominees of such bodies corporate shall act as designated partners. (Proviso to section 7(1) of the LLP Act, 2008)</p> | |
| <p>6. Is there any requirement for consent of designated partners before incorporation of an LLP or before their appointment?</p> <p>Every individual proposed to be appointed as a designated partner of an LLP is required to give his prior consent to the LLP in Form 9 (Section</p> | |



- only through online mode; i.e., credit card (Master / Visa Card)
- 10. What is the time frame for submission of physical documents after generation of provisional DPIN?**
- A DPIN generated online shall be valid for 60 days from the date on which it is generated, after which it shall lapse. Hence, the physical documents need to be submitted within 60 days from the date of generation of provisional DPIN.
- 11. Who can attest / certify a DPIN application form and its supporting documents?**
- A DPIN application form and its supporting documents of a resident can be attested / certified by the following persons:-
- A Gazetted Officer of the Central or State Government,
 - A Notary Public,
 - A Chartered Accountant, Cost Accountant or Company Secretary holding a certificate of practice under the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 respectively.
- In case of a Non-Resident, the certification can be done by any of the following persons:—
- Notary Public of Home Country of the Applicant
 - Designated Partner of the LLP
- In case of a non-resident, passport copy is compulsorily required to be submitted.
- 12. What procedure is required to be followed by a proposed designated partner after the approval of his DPIN?**
- After the approval of DPIN, the proposed designated partner shall intimate his DPIN to the LLP in Form 9 before the date of his appointment as a designated partner. (Rule 10(8) of the LLP Rules, 2009)
- 13. Whether DIN can be used interchangeably with DPIN?**
- No, DIN cannot be used interchangeably with DPIN. An individual possessing DIN cannot be appointed as a designated partner of an LLP unless he obtains DPIN.
- 14. What are the guidelines for seeking name availability of an LLP?**
- The name of an LLP shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 or any of the restrictions mentioned under Rule 18(2) of the LLP Rules, 2009.
- 15. Whether prefix / key word / reflection of object mandatory of LLP?**
- The LLP Act, 2008 or LLP Rules, 2009 do not provide any mandatory provisions to the effect that the name of an LLP should contain a prefix/key word/reflection of object of an LLP.
- 16. Which form is required to be filed for seeking name availability letter?**
- Form 1 is required to be filed for seeking name availability letter for incorporation of an LLP. (Rule 18(5) of LLP Rules, 2009)
- 17. How much process time is required for approval of name?**
- The process time for approval of name by the registrar shall be ordinarily 7 days from the date of receipt of application. (Rule 18(5) of LLP Rules, 2009)
- 18. Whether the powers for approval of name/ registration of LLP are being given to regional ROCs?**
- Yes, the powers for approval of name/ registration of LLP are being given to regional ROCs where the registered office of the LLP is proposed to be situated. (Rule 18(4) of LLP Rules, 2009)
- However, this rule has not yet been enforced yet. As of now, all powers for approval of name / registration of LLP are vested with the Registrar of LLPs, a separate department established by the Ministry of Corporate Affairs which is based in New Delhi.
- 19. For what period will a name approved by the Registrar be available for registration of an LLP?**
- A name, once approved by the Registrar, shall be available for registration of an LLP for a period





of 3 months from the date of intimation by the Registrar. (Rule 18(6) of LLP Rules, 2009)

20. If LLP is using the key name of any existing Company/LLP, whether NOC is required to be attached to Form 1?

If a LLP proposes to use the key name of any existing Company/LLP in existence, NOC from such existing Company/LLP is to be attached to Form 1.

21. Can a foreign LLP or a foreign Company reserve its existing name by which it is incorporated in the country of its incorporation?

Yes, a foreign LLP or a foreign Company can reserve its existing name by which it is incorporated in the country of its incorporation by applying in Form 25 along with requisite fees mentioned in Annexure A to the Registrar. (Rule 18(3) of LLP Rules, 2009)

22. For what period will the name reserved by a foreign LLP or a foreign company by applying to the Registrar in Form 25 be valid?

The name reserved by a foreign LLP or a foreign Company by applying to the Registrar in Form 25 shall be valid for a period of 3 years from the date of approval by the Registrar. (Proviso to Rule 18(3) of LLP Rules, 2009)

23. Is there a concept of Registered Office in case of LLP, as in case of a company?

Yes, there is a concept of registered office in case of LLP also, as similar to the one in case of a company, which needs to be intimated to the Registrar at the time of incorporation of the LLP. (Section 13(1) of LLP Act, 2008)

24. Which forms and documents are required to be filed with MCA at the time of incorporation of an LLP?

At the time of incorporation of an LLP, the following forms and documents are required to be filed with MCA:—

- Form 2; i.e., incorporation document, containing a declaration by an advocate, a Company Secretary, a Chartered Accountant or a Cost Accountant, and any one of the subscribers, to the effect that all the requirements of the LLP Act, 2008 and LLP Rules, 2009 have been complied with.

- Authorisation letter in case where one of the partners is an LLP or a company, whether incorporated in or outside India.
- in case where one of the partners is an LLP or a company incorporated outside India, in countries which are signatories to The Hague Apostile Convention, 1961, their signatures and addresses on the incorporation documents are required to be notarized in their country of origin and be duly apostilled in accordance with The Hague Convention.
- Address proof of proposed registered office of the LLP.
- Form 3, containing LLP Agreement as an attachment.
- Form 4, containing details of partners and designated partners.
- Form 9 containing consent from proposed designated partners.
- Form 12, if it is proposed to receive all documents at a place other than registered office of LLP.

25. Which schedule of LLP Rules, 2009 govern the filing fees? What are the different slabs of fees based on contribution?

Annexure A of the LLP Rules, 2009 govern the filing fees payable by an LLP. The different slabs of fees based on contribution are as follows:—

Sr. No.	Contribution slabs	Amounts
1.	up to Rs. 1 lakh	Rs. 500/-
2.	above Rs. 1 lakh and up to Rs. 5 lakhs	Rs. 2000/-
3.	above Rs. 5 lakhs and up to Rs. 10 lakhs	Rs. 4000/-
4.	above Rs. 10 lakhs	Rs. 5000/-

26. How much process time is required for registration of an LLP?

The process time for registration of an LLP is 14 days from the date of submission of all the aforesaid documents and filing of registration fees. (Rule 12(1) of LLP Act, 2008)





27. Whether ROC generates any number like CIN in case of a company for each LLP on its registration?

Yes, ROC assigns a Limited Liability Partnership Identification Number (LLPIN) for every LLP which is registered with the said Registrar, as in case of a Company. (Rule 14(2) of the LLP Rules, 2009)

28. Whether LLPIN is different for each state?

LLPIN shall be issued in a specific series. So, it shall not be different for each state.

29. Whether the ROC gives the Certificate of Incorporation to a representative of the LLP or is it sent by post?

The Certificate of Incorporation or any other document shall be sent to the LLP or its designated partner by (i) electronic transmission, and (ii) courier, at the address indicated by the LLP as Registered office address in the incorporation document, or such other place as may be indicated by the LLP for service of documents. It is not physically given to a representative of the LLP. (Rule 16 of LLP Rules, 2009)

30. Whether LLP Agreement is required to be filed with MCA?

No, the LLP Agreement is not mandatorily required to be filed with MCA at the time of incorporation of the LLP as well as whenever there is any alteration of the LLP Agreement. It is an optional attachment to Form 3. However, the ROC deserves a right to call for a physical copy of the LLP Agreement to be submitted at their office.

31. How much stamp duty is required to be paid on LLP Agreement?

The stamp duty applicable for Partnership Agreements under the respective State Stamp Acts is payable on the LLP Agreement on the basis of contribution.

32. What are the minimum / mandatory clauses to be incorporated in an LLP Agreement?

The minimum / mandatory clauses to be incorporated in an LLP Agreement are as follows:—

- Name, date and place of agreement
- Address of Registered office
- Business to be carried on by the LLP

- Details of partners and designated partners of the LLP
- Powers of designated partners, which they can exercise on their own, in compliance with the provisions of LLP Act, 2008 or LLP Rules, 2009
- Powers of designated partners, which they can exercise with the consent of all or requisite number of partners
- Obligations of partners towards contribution, individually and total monetary contribution
- Powers, duties and authorities of each partner
- Mutual rights and duties of partners
- Mutual rights and duties of LLP and partners
- Restrictions on partners' authority
- Bifurcation of acts, matters or things, which can be done:—
 - (i) with the consent of all the partners
 - (ii) with the consent of majority of partners
 - (iii) with the consent of requisite number or percentage of partners
- Manner of obtaining consent of partners
- Procedure of convening and holding meetings of partners of the LLP
- Provision of common seal of the LLP and the custody of the same
- Indemnity clause
- Clauses relating to the following events and the obligations, rights, entitlements of partners in specific events:-
 - (i) admission of a new partner
 - (ii) retirement of a partner
 - (iii) cessation of a partner
 - (iv) expulsion of a partner
 - (v) resignation of a partner
- Clauses relating to settlement of disputes (i) between the partners or (ii) Partners and the LLP
- Whether the LLP is incorporated for a specific duration
- Clauses relating to winding up of LLP
- Place of service of all documents relating to the LLP; i.e., whether at the registered office address or at any other address





- Procedure for changing of registered office address of the LLP
 - Procedure for change of name of the LLP
 - Procedure for removal of auditor of the LLP
 - Procedure for alteration of contribution of the LLP
- 33. What is the difference in procedure at the time of conversion of a Partnership firm into an LLP?**
- For conversion of a partnership firm into an LLP, the following difference can be found in the procedural aspects:—
- All the partners of the partnership firm shall only be the partners of the LLP and no new partners.
 - An application to the Registrar for conversion of partnership firm into an LLP shall be made in Form 17.
 - Within 15 days from the date of registration, the LLP shall inform the Registrar of Firms with which it was registered under the Indian Partnership Act, 1932 about its conversion in Form 14.
- 34. What is the difference in procedure at the time of conversion of a Company into an LLP?**
- For conversion of a company into an LLP, the following difference can be found in the procedural aspects:—
- All the shareholders of the company shall only be the partners of the LLP and no new partners.
 - There is no security interest in its assets subsisting or in force at the time of application for conversion.
 - An application to the Registrar for conversion of a company into an LLP shall be made in Form 18.
 - Within 15 days from the date of registration, the LLP shall inform the Registrar of Companies with which it was registered under the Companies Act, 1956 about its conversion in Form 14.

CAREER AWARENESS PROGRAMME ORGANISED BY WIRC

Date	College Name	Member (s) / Officials involved	Total No. of participants
08 September 09	ACHARYA & MARATHE College	Mr. Bharat Upadhaya (PCS) , Ms.Lachhmi bhatt (DO)	268
08 September 09	D.G.RUPAREL COLLEGE OF ARTS, SCIENCE & COMMERCE	Ms.Lachhmi bhatt (DO)	425
10 September 09	Management college of MARATHE COLLEGE	ACHARYA & Ms.Lachhmi bhatt (DO)	680
10 September 09	Junior College of ACHARYA & MARATHE COLLEGE	Mr. Antony Paul (Past JD – CCRT) Ms.Lachhmi bhatt (DO)	425
15 September 09	NATIONAL COLLEGE	Mr. Mukesh Shah, Ms. Vadhi Doshi (PCS), Ms.Lachhmi bhatt (DO) & Mr. Bharat Rathod (Sr. Librarian)	565
16 September 09	Sanskardham Kelavani Mandal's jashbhai Maganbhai Patel College of Commerce,	Mr. Raj Kumar Tiwari (PCS), Mr. Bharat Rathod (Sr. Librarian)	480
18 September 09	S.N.D.T. COLLEGE OF ARTS, COMMERCE & SCIENCE 1	Mr. Kaushik Jhaveri (PCS) & Ms. Lachhmi Bhatt (DO)	386
22 September 09	Lilavatibai Senior secondary school - ICSE	Ms. Kiran Golla (PCS) , Ms. Lachhmi Bhatt (DO) & Bharat Rathod (Sr. Library Attender)	498
22 September 09	Sanskardham Kelavani Mandal's jashbhai Maganbhai Patel College of Commerce, Junior College	Mr. Raj Kumar Tiwari (PCS), Ms. Lachhmi Bhatt (DO) & Bharat Rathod (Sr. Library Attender)	564
24 September 09	MULUND COLLEGE OF COMMERCE	Mr. Bharat Pathak , Mr. M.P.Sharma (PCS) & Ms. Lachhmi Bhatt (DO)	57
26 Sep 09	BAHVAN'S COLLEGE	Mr. Raj Kumar Tiwari & Mr. Kaushik jhaveri (PCS)	380



IFRS CORNER

R. N. Bhave

After a successful VC based webinar in 75 cities and 100 VC locations of Reliance on overview of IFRS for 1139 registered participants, WIRC ICSI is pleased to start this column called IFRS CORNER by R N Bhave, CS, CMA, CA, IFRS course done from ICAI and renowned faculty for IFRS of ACCA gold partners for Dip. In IFRS and Dr Mrs Anjali Bhave, CMA, Ph.D. for gearing up IFRS knowledge of professional colleagues. This is the 2nd article in the series and members, students and others are welcome to seek further guidance by writing to mohanbhave@gmail.com

This column is specially started from Sept 2009 for

1. **Sharing and imparting IFRS Knowledge**
2. Responding to IFRS queries
3. Creating general awareness about IFRS
4. They will be explained in Layman's language for common man's understanding, more in simple words than in strict legal words.

This month we are focusing on Fair value concept in IFRS

FAIR VALUE

What is fair value in IFRS ?

Fair value is defined in IFRS as the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

Why is it important in IFRS?

Existing GAAPs mainly rely on historical cost while fair value is extensively used in IFRS. It means for many assets and liabilities as well as equity a reporting entity is required to find and report their fair values. The entity is also required to record the fair value change in comprehensive income or other comprehensive income as per the requirements of the applicable IAS or IFRS.

Is it the same as Mark to Market (MTM)?

Fair value is determined with reference to the market price. But if market price is not available estimates are used in its determination.

Why use of fair values is advocated?

The use of fair values in accounting statements is advocated to disclose to the users of the statement the economic reality which may not be reflected by the historical accounting.

Is fair valuation to be done only at the reporting date?

The various standards prescribe the use of fair value at the time of recognition and measurement. For example IAS 39 Financial Instruments - Recognition and Measurement

requires determination of fair value of financial instruments at the time of initial recognition. Standards like **IAS 16 PROPERTY, PLANT AND EQUIPMENT** give the reporting entity an accounting policy choice to use either cost or revaluation model.

Who are 'knowledgeable, willing parties'?

The terms are defined explained in **IAS 16 PROPERTY, PLANT AND EQUIPMENT** as

'Knowledgeable' means that both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the investment property, its actual and potential uses, and market conditions at the end of the reporting period.

A willing buyer is motivated, but not compelled, to buy. This buyer is neither over-eager nor determined to buy at any price. The assumed buyer would not pay a higher price than a market comprising knowledgeable willing buyers and sellers would require.

A willing seller is neither an over-eager nor a forced seller, prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in current market conditions. The willing seller is motivated to sell the investment property at market terms for the best price obtainable.

What does 'arm's length transaction' mean?

An arm's length transaction is one between parties that do not have a particular or special relationship that makes prices of transactions uncharacteristic of market conditions.

How is fair value determined?

The standards which prescribe the use of fair value also lay down the mechanism of determination of fair value.

For example fair value of investment property is the price at which the property could be exchanged between knowledgeable, willing parties in an arm's length transaction. If current prices in an active market are not available, fair value is determined with reference to information from a variety of sources like

- (a) current prices in an active market for properties of different nature, condition or location adjusted to reflect those differences
- (b) recent prices of similar properties on less active markets, with adjustments to reflect any changes in economic conditions since the date of the transactions
- (c) discounted cash flow projections based on reliable estimates of future cash flows



Fair value of a financial instrument in IAS 39 is defined in terms of a price agreed by a willing buyer and a willing seller in an arm's length transaction. The appropriate quoted market price for an asset held or liability to be issued is usually the current bid price and, for an asset to be acquired or liability held the asking price. If a published price quotation in an active market does not exist for a financial instrument in its entirety, but active markets exist for its component parts, fair value is determined on the basis of the relevant market prices for the component parts.

If the market for a financial instrument is not active, an entity establishes fair value by using a valuation technique. Valuation techniques include using

- recent arm's length market transactions between knowledgeable, willing parties
- current fair value of another instrument that is substantially the same,
- discounted cash flow analysis and option pricing models.
- valuation technique commonly used by market participants to price the instrument demonstrated to provide reliable estimates of prices obtained in actual market transactions

The valuation technique should make maximum use of market inputs and rely as little as possible on entity-specific inputs. Estimate of the fair value using a valuation technique should be based on reasonable representation of market expectations and the risk-return factors inherent in the financial instrument. It should reflect how the market could be expected to price the instrument. It should be consistent with accepted economic methodologies for pricing financial instruments.

The fair value of a financial instrument will be based on one or more of the following factors (and perhaps others).

- (a) The time value of money
- (b) Credit risk
- (c) Foreign currency exchange prices
- (d) Commodity prices
- (e) Equity prices
- (f) Volatility
- (g) Prepayment risk and surrender risk

What are the perceived advantages of using fair value?

- Better transparency by providing current values
- Reporting of numbers as they are on the reporting date
- Statement of profit / loss after considering fair value changes

What are the apprehensions in using fair value?

- Subjectivity of fair values especially where estimates are used
- Difficulty in determination of fair values especially when markets are not active and liquid
- Reliability of fair value
- The volatility that fair value can introduce in reported income
- The value of assets in use for a business may be different from the value the market attaches to it
- In the fair value hierarchy, market based values rank first, but market prices may not be the true barometers of value in all the cases
- Use of fair values may shift the focus of reporting to short term while continuity of business is an important assumption of accounting

The IASB has published an Exposure Draft on FAIR VALUE MEASUREMENT which is available on its website. The draft states that guidance on measuring fair value is dispersed across many IFRSs and it is not always consistent. The current guidance is incomplete, in that it provides neither a clear measurement objective nor a robust measurement framework. The Board believes that this adds unnecessary complexity to IFRSs and contributes to diversity in practice.

The Board's objectives for publishing the proposed IFRS are:

- (a) to establish a single source of guidance for all fair value measurements required or permitted by IFRSs to reduce complexity and improve consistency in their application
- (b) to clarify the definition of fair value and related guidance in order to communicate the measurement objective more clearly; and
- (c) to enhance disclosures about fair value to enable users of financial statements to assess the extent to which fair value is used and to inform them about the inputs used to derive those fair values





NEWS FROM WIRC AND CHAPTERS

WIRC NEWS

Two Days Intensive and Interactive Workshop on FEMA was organized by ICSI-WIRC on Friday & Saturday, 18th & 19th of September 2009 at WIRC premises, Nariman Point, Mumbai. In the inaugural Session Shri Kiran Deshpande, CIO of Deutsche Asset Management Company and Shri V. Sithapathy, Director of VIG Insurance graced the occasion with their terse and insightful speeches. There were five technical session. In the first technical session, Shri Dwarkoo Khilnani, Ex Manager, Foreign Exchange Department, RBI and NRI Consultant dealt with the Practical Issues in dealing with FEMA. He also covered following important aspects of FEMA in question and answer format.

1. ADR/GDR/FCCB /ECB
2. Approval Route/Automatic Route
3. Capital Account/Current Account
4. Import & export of goods & services
5. Specific discussion on bringing in and taking out foreign exchange from India, Export matters
6. Imports matters (imports by nominated banks, operational guidelines of goods & services), time limits for settlements for import payments, insurance and other matters
7. NRI investments
8. Recent RBI notifications & circulars & Cases would be referred as well

Shri Asit Mehta, an eminent faculty for FEMA in the third technical session, which dealt with Legal Angle in dealing with FEMA issues and Cross Border Investments and Inbound FII and FVCI regimes and exchange control enlightened the audience with his eloquent speech, full of cases. Shri Deepak Kumar, Deputy General Manager, RBI in the fourth technical session, elaborated mainly on the Rationale behind the RBI policy of FEMA. Ms. Sudha Gupta, CA & CS explained on entry strategy for FEMA. Shri Rajesh Doshi, VP Future Capital - NBFC took the last technical session on compliances on FEMA.

TWO DAYS SEMINAR ON SCRUTINY OF BALANCE SHEETS ON 9TH & 10TH OF OCTOBER 2009 HELD AT M.C. GHIA HALL, K. DUBASH MARG, MUMBAI

ICSI-WIRC organized Two Days Seminar on Scrutiny of Balance Sheets on 9th & 10th October 2009 at M.C. Ghia Hall, K. Dubash Marg, Mumbai. On the First day of the seminar, Shri Mahesh Athavale, Past President of ICSI and Partner, Kanj & Associates, deliberated on CARO with interesting and insightful cases. Shri Vikas Khare, Past Chairman, WIRC and Partner, Kanj & Associates, made presentation on Excise, Service Tax areas. Shri Pankaj Adukia,

Chartered Accountant explained at length, the Balance Sheet and Audit Report for Scrutiny. On the second day, the seminar began with the Inaugural speech of Shri M.R. Bhatt, Joint Director, MCA. He threw light on the rationale, objective and key macro issues. Shri Vijay Mishra, Company Secretary and Chartered Accountant took an interactive session on the Practical side of Balance sheet, Examination and Scrutiny. Ms. Sudha Gupta, Company Secretary discussed the FEMA and Balance Sheet aspects. A panel discussion, consisting of Shri Atul Mehta, Chairman, Shri S.K. Jain, Smt. Ragini Chokshi, Chairperson, PDC of WIRC alongwith other prominent CS members discussed on why & how CS professionals would fit into the scrutiny of balance proposed to be offered by ROC.

THREE DAYS RESIDENTIAL WORKSHOP FOR PRACTISING COMPANY SECRETARIES HELD ON 2ND, 3RD & 4TH OCTOBER 2009 AT CCRT, NAVI MUMBAI

ICSI-WIRC organized three Days Residential Workshop for Practising Company Secretaries on "Multi Skilling for Growth and Prosperity" on 2nd, 3rd & 4th October 2009 at ICSI-CCRT, Navi Mumbai. On the First Day, Shri Vikas Khare, Programme Director and Past Chairman, WIRC introduced the theme for the Workshop. The inaugural session was graced by the presence of the chief guest, Shri V.S. Khanvalkar. In his welcome speech he elaborated various facets concerning the prospects and challenges for the profession of CS today. The first session for the seminar was also taken by Shri V.S. Khanvalkar, who explained the Critical Issues in Incorporation of a Company including Availability of Name, Incorporation of Section 25 Company, and all allied aspects. Shri Sharad Abhyankar's (an eminent Lawyer) session was on the Drafting of Memorandum and Articles of Association. He deliberated the criticality of harmonizing Shareholder agreements with MoU and AA. Shri Nitin Mukadam, ex CEO of a BPO company addressed the seminar on Presentation Skills and Business Etiquettes and professional excellence. He cited many terse and interesting real life examples mainly sourced from his rich professional experiences. The Second day of the workshop began with the Registration process of LLP – Drafting, Conversion and other aspects of LLP which was deliberated by Shri Prakash Pandya, Practising Company Secretary. Dr. K.R. Chandratre, Past President of ICSI and Practising Company Secretary took a session on Legal Drafting in Plain English. In his characteristic style & ease he expressed his views on various nuances of legal drafting. The technical session on Labor Law which included Various Registration Under Labor Laws, Labor Law Audit – Methodology and Draft Report was taken up by Shri Lancy D'Souza, a law yer and labor law consultant. On the third and last day of the Workshop Shri Ajay Kumar, Practising Company Secretary, Mumbai briefed the issues relating to Petitions to Company Law Board and other procedural aspects. Shri Mahesh Athavale, Past President of ICSI and Partner, Practising Company Secretary, discussed the issues on Pleadings at CLB, Reference, appellate remedies and all relevant areas. He along with Shri Ajay Kumar took a session on Mock CLB, which was even more interesting due



to spontaneous participation of the delegates. The issues on Basic Registrations and how to obtain procedural aspects, service Tax, Central Excise Registration, Importer Exporter Code, Export Oriented Unit and STPI was explained by Shri Vikas Khare, Past Chairman, WIRC and Shri Sunil Nanal, Practicing Company Secretaries. Shri Vishvajit Honap, Chartered Accountant, explained the Procedural Aspects including Income Tax, PAN, TAN, VAT, PT in Basic Registrations. The chief guest for the valedictory session, Shri M K Gupta, ROC of Mumbai, MCA in his speech elaborated scope & importance of the profession of company secretaries. In his vote of thanks, Shri Vikas Khare, on a lighter side, revealed anecdotal elements of the participants, who came from as far flung areas as Srinagar & Cochin, cutting across regional barrier.

STUDENTS' PROGRAMME

WIRC conducted two Training Orientation Programme and One Academic Development Programme and 92nd Secretarial Modular Training Programme is getting underway in CCRT. It is worthwhile to mention here that from now on SIP, EDP & PDP will be the constituents of the training programmes for CS students in WIRC

NAGPUR CHAPTER — STUDENTS PROGRAMME

5th Training Orientation Programme held at Nagpur Chapter of WIRC of the ICSI

Nagpur Chapter of Western India Regional Council (WIRO) of the Institute of Company Secretaries of India (ICSI) and organized 5th Training Orientation Programme (TOP). It was inaugurated by Mr. O. S. Bagadia, Regional Council Member of WIRC of the ICSI on Monday, 7th September, 2009 and concluded on Friday, 11th September, 2009. Dr. Raja Iyer of Quality Management Systems Audit (QMSA) was the Chief Guest at the Valedictory Session. He stressed on the importance of soft skills to the participants. He said that in a survey conducted by Oxford University in 2001, it was found that Soft Skills contributed more towards success of a professional than his knowledge.

30 Students from all over Maharashtra attended the Programme.

Eminent personalities from various fields like CA Girish Deodhar, Personality Development Trainer, Mr. Milind Apte, Executive Director, Provincial Academy for Career & Learning Excellence (PACLEX), Mr. Sanjay Jog, General Manager, Corporate Communications for Maharashtra, Tata Teleservices Maharashtra Circle, Mrs. Medha Dixit, Lecturer, CA. Madhur Hirani, CA. Nitin Narke, Mr. Vivek Deshpande, Assistant Editor, Indian Express, Nagpur, CS (Mrs.) Khushboo Pasari, Mr. Dilip Deodhar, Futurologist, Mr. Arvind Khare, Retired Lecturer, Adv. Apurva De, Ms. Ketki Arbat, Personality Development Trainer and Entrepreneurs like Mr. Narendra Jog, Mr. Vishal Chaudhari, Mr. Vishal Raina delivered lectures on various topics like Selt-audit and Swot Analysis, Aptitudes and Orientation, Motivation, Group Communication. Body Language, Professionalism, Time Management, Interview Etiquettes, Work Culture, Media, Mutual Funds, Human Development Index, Entrepreneurship, IPRS, Assertiveness, etc.

CS Aniket Devdhar, Programme Co-ordinator worked hard for the success of the programme.

PUNE CHAPTER

1. FELICITATION OF SUCCESSFUL STUDENTS IN JUNE 2009 EXAMS AT THE FUNCTION HELD ON AUGUST 26, 2009

Pune Chapter had organized a felicitation function for all those students who successfully cleared examinations conducted by ICSI in June 2009. Amongst those who completed the CS Examination, it was found that there was an inclination towards appearing for all the Groups at the Final Level in one attempt. The students present at the function shared their experiences and tips for studies with the gathering.

2. 18th TRAINING ORIENTATION PROGRAMME HELD FROM SEPTEMBER 5, 2009 TO SEPTEMBER 9, 2009

The 18th Training Orientation Programme was conducted by the Pune Chapter from September 1, 2009 to September 5, 2009. CS Brinda S. Adhiya and CS Vikas Vohra were the Co-ordinators for the said programme. In all 50 students attended the TOP.

3. CAMPUS INTERVIEW ON SEPTEMBER 9, 2009

Campus Interview for CS Final / Intermediate/Executive Programme passed students attending 18th Training Orientation Programme (TOP) was organized on September 9, 2009 at the Chapter premises.

Practising Company Secretaries (PCS) and Companies, requiring Apprentice Trainees / Management Trainees were invited to participate in the said Campus Interview. This facility of Campus Interview was free of cost to all the Companies and PCS.

4. FULL DAY SEMINAR ON "LABOUR LAW HEALTH CLINIC" ON SEPTEMBER 12, 2009

Pune Chapter organized a Full Day seminar on Labour Law Health Clinic on September 12, 2009 at Pristine Inn, Lane No. 13, Off Bhandarkar Road, Pune-411 004.

Mr. D. P. Pagar, Additional Commissioner of Labour, and Mr. Sambhajirao Kakade, Assistant Commissioner of Labour, Inaugurated the Seminar.

In the first technical session, Adv. Rajiv Joshi addressed the gathering on non-fiscal labour laws issues under Contract Labour Act, Workmen's Compensation Act, Maternity Benefit Act and Shops and Establishment Act.

In second and third technical sessions, Adv. Gowree Gokhale, Partner and Head of IP Law Practice Group, Nishith Desai Associates, Mumbai made presentation on the employment documentation — Important considerations in relation to Offer Letter, Employment Agreement, Employee Stock Options, Employee Handbook, Termination / Separation & Release Agreements and laws in relation to termination of employment, protection of confidential information and trade secrets, importance of assignment of intellectual property, enforceability of non-compete and non-solicit provisions, confidentiality & IP assignment

agreements, certain best practices, exit interview and issues faced in separations.

In last technical session. Adv. P. A. Noronha addressed the gathering on the practical aspects related to Provident Fund Act, Employees' State Insurance Act, Bonus Act, Minimum Wages Act and Payment of Wages Act

5. **30th SECRETARIAL AND MODULAR TRAINING PROGRAMME HELD FROM SEPTEMBER 11, 2009 TO SEPTEMBER 29, 2009**

The 30th Secretarial Modular Training Programme conducted by the Pune Chapter commenced on September 11, 2009. In all 50 students are attending the 30th SMTP. CS Brinda S. Adhya and CS Vikas Vohra are the Co-ordinators for the said programme.

WIRO has started issuing study materials from Nariman Point office and henceforth no study material will be issued from CCRT.

Attention of Members

Change of Professional and Residential addresses, Mobile number & E-mail id. of Mr. Keyoor Bakshi, Past President of the Institute

Professional Address, Mobile number and E-mail i.d.

Mr. Keyoor Bakshi, (Past President, The ICSI)
Practising Company Secretary
135, Mittal Court – A Wing, Nariman Point, Mumbai-400021
Mobile : 09321607366
E-mail: keyoorbakshi@gmail.com

Residential Address :

33, Maker Towers J, Cuffe Parade, Mumbai-400005

Dear Members,

ICSI-WIRC has brought out its monthly bulletin FOCUS in form of e-focus for the convenience of members. The link for this e-focus is <http://www.icsi.edu/wiro/efocus/wircefocus.htm>. You are requested to inform us of any change in email ids for make necessary updations.

Regards,

Ashish Garg

Chairman, Editorial Board of FOCUS

Condolence Message



The Institute of Company Secretary condoles the death of Honourable CLB Judge Shri V S Rao, in Mumbai on 6th October, 2009.

The honourable bench member, Shri V S Rao, has made invaluable contribution to the corporate law, socio-economic progress in general and development dispute settlement mechanism in India

His death is a loss for the profession in general.

We invoke the blessings of the almighty for his soul to rest in Peace and sincerely express our deepest sympathy towards his family

Shri N K Jain
CEO & Secretary
ICSI, New Delhi



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October, 2009

15

CMYK

2 Days Seminar on Scrutiny of Balance Sheet on 9 & 10th of October 2009



CS Vikas Khare



CA. Pankaj Adukia



CS. Mahesh Athavale



Scene of Audience

3 Days Residential Workshop for Practicing Company Secretaries on Multi Skilling for Growth & Prosperity On 2nd, 3rd & 4th October, 2009



CS Vinayak Khanvalkar



CS (Ms.) Ragini Chokshi, Chairperson PDC of WIRC



A Scene of Audience



Participant of the Seminar

2 Days Intensive & Interactive Workshop on FEMA on 18th & 19th September, 2009



Mr. Rajesh Doshi



Mr. Deepak Kumar



Mr. Asit Mehta



Mr. Dwarko Khilnani



Mr. Kiran Deshpande



Mr. V. Sithapathy



Ms. Sudha Gupta

5th Training Orientation Programme Organised by Nagpur Chapter of WIRC



In the photograph, along with the participants, CS Amit Pandey, Secretary of Nagpur Chapter (sitting 3rd from left), besides him are Mr. O. S. Bagadia, Regional Council Member of WIRC and CS Aniket Devdhar, Programme Co-ordinator.

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