



Mysuru Chapter
e-Magazine

September 2020
197th Edition



Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इत्येकं कृतं त्पुके, अनेकेषु कृतं विदुः।

Mission

"To develop high calibre professionals facilitating good corporate governance"

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Introducing a new column: *Help Yourself - Food for Thought*

"Reading is to the mind what exercise is to the body and prayer is to the soul. We become the books we read." - Hal Elrod. This is a new column that aims to pave a way for self-development and help you grow as better professionals as well as better individuals. Look for this column in every further issue of this e-magazine which will bring to your bite-sized knowledge from various self-help books, biographies, autobiographies or other relevant genres, one book at a time.

-A new column which introduces you to new books and gives a bird's eye view about books.



From the Desk of Chairman

CS Parvathi K R
Chairperson
Mysuru Chapter

Dear Professional colleagues,

Greetings from the Mysuru Chapter of ICSI.

Happy Teachers day to all Teachers who supported us from time to time!

We know, only in India we hear the sayings "आचार्य देवो भव" || It has 2 meanings: Let teachers become God-like in thoughts and actions. Secondly let teachers are adored as divine personalities. I believe, only the Nation having such teachers can become a teacher to the whole world.

ICSI celebrating Teachers week from 5th September to 11th September 2020. In line with the same, we at ICSI Mysuru Chapter is planning to conduct programme / conference to empower educators and also to express our gratitude and Pranamas to all Teachers here and everywhere.

You will find details of various activities conducted during the month in other part of this eMagazine. We sincerely thank you for active participation and look forward to continued support.”

Feel free to share inputs, feedback, and suggestions to continue this journey of growing together!



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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Chapter Activities

Career Awareness Program

Organized one Career Awareness Programs during the month through online mode. The details are as follows

S. No	Date	College Name	Speaker	No of Participants
1	12.08.2020	Vidya Vikas PU College	CS Phani Datta D N	55

Webinar on Deposits under Companies Act 2013

Organized a webinar on “Deposits under Companies Act 2013” on 12th August 2020 for the members. CS Turab M Chimthanawala from Mumbai was the guest speaker for the session. CS Parvati K R., Chairperson of Mysuru Chapter welcomed the participants & introduced the Speaker. CS Turab M explained about the Deposit, what is not a Deposit, types of companies that can accept deposits, Procedures for accepting deposits from Members etc., Also he clarified the various doubts raised by the participants. Around 25 members participated in the session.

Special Lecture on Public Speaking & Interpersonal Skills

To increase the communication skills of the students Chapter a Special Lecture on “Public Speaking & Interpersonal Skills” on 16th August, 2020. Ms. Deepali Dwarakanath, Toastmaster from Bengaluru was the speaker for the session. Around 15 students from various levels of CS Course attended the session.

Mock Exam for CSEET Students

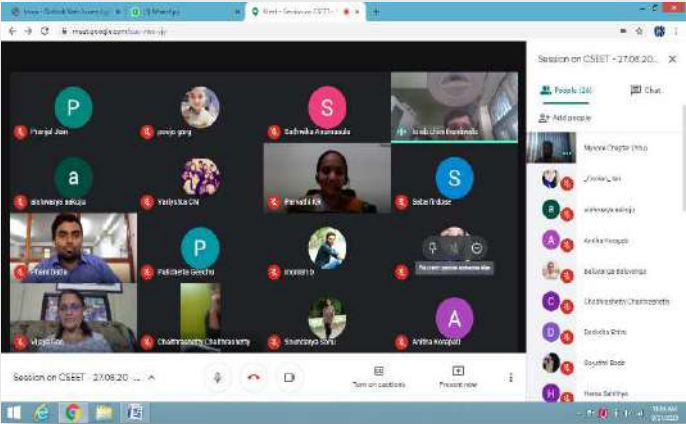
In order to prepare the students for the 1st CSEET exam, Mysuru Chapter conducted two mock tests for the CSEET Students on 24th & 26th of August, 2020. Students were interestingly attended the mock tests and got benefitted.

Special Lecture on CSEET Exams

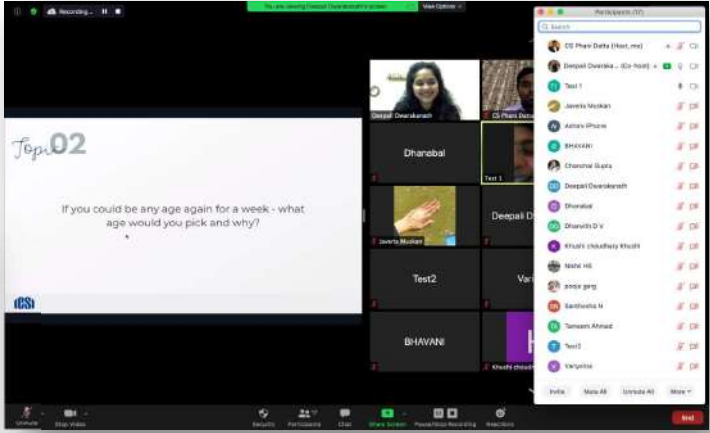
To motivate the CSEET students Chapter organized a special session on “CSEET Exams & Do’s & Don’ts on 27th August, 2020. CS Parvati K R., Chairperson welcomed the students & speakers. CS Turab M Chimthanawala addressed the students on the various techniques to be followed while taking the exams & motivate the students. CS Phani Datta D N., Treasurer addressed on the Do’s & don’ts on the CSEET exams. 28 CSEET Students participated in the session. CS Vijaya Rao, Vice Chairperson proposed the vote of thanks.

Webinar on Annual Compliances

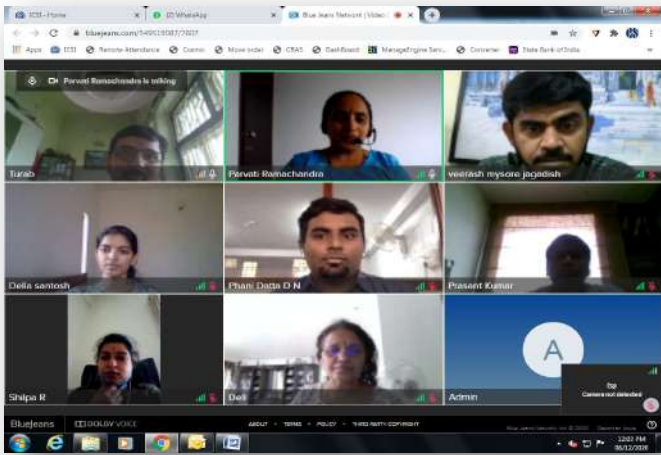
Chapter organized a webinar on “Annual Compliances for Public & Private Companies” on 31st August, 2020 for the members. CS Divesh Goyal, PCS from New Delhi was the guest speaker for the session. CS Parvati K R., Chairperson of Mysuru Chapter welcomed the participants & introduced the speaker. In his address the speaker explained about the various Compliances to be followed by the public & private companies. Also he clarified the various doubts raised by the participants. CS Harsha A, Secretary of the chapter proposed the vote of thanks. Around 25 members participated in the session.



Webinar on Deposit



Public Speaking & Interpersonal Skills



Special Lecture on CSEET



Webinar on Annual Compliances

FEMA and Compounding of Offences



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- **Foreign Exchange Management Act (“FEMA”)**

The Foreign Exchange Management Act, 1999 (FEMA) was passed by parliament in the year 1999, came into act on 01st day of June, 2000, introduced as a replacement for the Foreign Exchange Regulation Act (FERA) which was introduced in the year 1973 "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India"



In short:

FEMA is a regulatory mechanism that enables the RBI to pass regulations, amendments, notifications & Circulars and the Central Government to pass rules relating to foreign exchange in tune with the Foreign Trade policy of India and also enabled a new foreign exchange management regime consistent with the emerging framework.

- **Understanding of Compounding and Offences**

Offences: Contravention of provisions related to FEMA, considered as civil offence. The Terms Contravention refers to breach of the provisions of the FEMA, 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under, involving money laundering, national and security concerns involving serious infringement of the regulatory framework.

Compounding: The term ‘compounding’ has not been defined under the provisions of FEMA, 1999. It is a process of voluntarily admitting the contravention, pleading guilty and seeking redresses. It can be defined as settlement mechanism to settle contravention matter by monetary payment, in lieu of other liability/ prosecution.

Compoundable Vs Non - Compoundable

Compoundable Offence	Non - Compoundable Offence
Contraventions / offences which do not attract imprisonment as a mandatory penalty are compoundable	Contraventions / offences which are specifically punishable with imprisonment only or imprisonment and fine are not compoundable

- **Provisions/Laws Related to Compounding under FEMA, 1999**

Section (s) / Rules	Provision (s)

Section 13	Penalties for contraventions which are compounded
Section 15	Powers to compound contraventions and empowers the Compounding Authority to compound the contraventions.
Master Direction	Reporting under Foreign Exchange Management Act, 1999 (Updated as on April 04, 2019)
Master Direction	Master Direction- Compounding of Contraventions under FEMA, 1999 (Updated as on April 04, 2019)

• **Powers to Compound contravention under FEMA**

Delegation of powers to Regional Offices:	Delegation of powers to FED CO Cell:
<ul style="list-style-type: none"> • Issue of shares without approval of RBI/FIPB or Government, wherever required. • Delay in submission of form FC-TRS • Taking on record transfer of shares by Investee Company. • Delay in reporting the downstream investment to Secretariat for Industrial Assistance, DPIIT. • Delay in reporting inward remittance received for issue of shares. • Delay in filing form FC(GPR) after issue of shares. • Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA). • Delay in issue of shares/refund of share application money beyond 60/180 days, mode of receipt of funds, etc. • Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by Limited Liability Partnerships (LLPs)/ delay in reporting disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice-versa) in case of LLPs. • Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the Reserve Bank of India. 	<ul style="list-style-type: none"> • Contraventions relating to acquisition and transfer of immovable property in India; • Contraventions relating to establishment in India of Branch office, Liaison Office or project office; • Contraventions relating to acquisition and transfer of immovable property outside India; • Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000

<ul style="list-style-type: none"> • Violation of pricing guidelines for issue/transfer of shares. • Issue of ineligible instruments. 	
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Kindly note that:

1. Kochi and Panaji Regional offices can compound the contraventions for an amount of below INR 1,00,00,000/-.
2. The contraventions for amounts of INR 1,00,00,000/- or more under the jurisdiction of Panaji and Kochi Regional Offices shall be compounded at Mumbai RO and Thiruvananthapuram RO respectively.
(Stated in ICSI FEMA Master Classes)

a) Pre-Requisite for Compounding Process:

Following are the key parameters needs to be considered before applying for Compounding of Contraventions with RBI:

1. No compounding for similar contravention before expiry of 3 years;
2. Any subsequent contravention committed after the expiry of 3 (three) years from the date on which the contravention was previously compounded shall be deemed to be a first contravention and Compounding application can be filed.



b) Prior Approval Requirements:

Prior approval is mandatory required from concerned Government / statutory authority to make a application for Compounding of Contraventions where any contravention made in a transaction where prior approval/ permission from the Government/ statutory authority is required and have not been obtained.

c) Investigation by Directorate of Enforcement (DOE):

Contraventions which are sensitive and serious in nature involving:

1. Suspected Money Laundering,
2. Terror financing, affecting sovereignty and integrity of the nation; and
3. Non-payment of compounding sum within time limit.

Kindly note that: Cases where adjudication has been done by the Directorate of Enforcement and an appeal has been filed before the Special Director or Appellate Tribunal.

• Process of Compounding of Offences under FEMA:

Step 1: Filing of Compounding Application

An application in the prescribed format and along with other required documents for compounding shall be submitted, Post Identification of contravention suo-moto by the defaulter or by AD Bank / RBI.

Payment details: Demand draft of Rs. 5000/- drawn in favor of “Reserve Bank of India” and payable at the concerned office.

Required attachments:

Memorandum of Association	Latest audited B/S; Undertaking as per prescribed format confirming no pending enquiry/ investigation/ adjudication before DOE/CBI etc.;	ECS mandate	Other details as per Annex II of Master Directions. https://m.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10190 https://rbidocs.rbi.org.in/rdocs/content/pdfs/13MDR020616_A2.pdf
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Step 2: Examination and Scrutiny of application by RBI

Post receipt of Application RBI shall examine the application and assess whether contravention is quantifiable and, if so, the amount of contravention. In case of any doubt or clarification, RBI may call for additional information, record or any other documents.

Step 3: Replying to the queries / information required by RBI

Applicant must submit additional information, record or any other documents / clarification required from RBI. If reply is not satisfactory, the application for compounding will be liable for rejection.

Step 4: Compounding order and payment of fee:

Compounding order shall be passed within 180 days from the date of application. If there is any sufficient cause for further investigation, the RBI may refer the matter to Directorate of Enforcement.

Key Notes:

- Amount Imposed under Compounding of Offences, as per section 13 of FEMA, can be up to 3 (three) times the amount involved in the contravention.
- Compounding fee to be paid by way of DD in favor of the “Reserve Bank of India” within 15 days of compounding order.
- In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to RBI. Such cases will be referred to the Directorate of Enforcement for necessary action.
- To ensure more transparency and greater disclosure, it has been decided to host the compounding orders passed on or after June 1, 2016 on the Bank’s website (www.rbi.org.in). The data on the website will be updated at monthly intervals in the following format:

Sr. No.	Name of Applicant	Amount imposed under the compounding order	Whether the amount imposed has been paid	Download order

- **Power to compound by Reserve Bank**

If any person contravenes any provisions of FEMA, 1999 except Section 3 (a) of that Act which deals with willful, malafide and fraudulent transactions, the same will be compounded in the following manner:

S. No.	Amount involved in Contravention	RBI Officer having Power
1	Less than or equal to Rs. 10 lacs	Assistant General Manager
2	More than Rs. 10 lacs but less than Rs. 40 lacs	Deputy General Manager
3	More than or equal to Rs. 40 lacs but less than Rs. 100 lacs	General Manager
4	Rupees 100 lakhs or more,	Chief General Manager

As per rule 4 (1) of the Reserve Bank of India (Compounding Authority)

Every officer specified under the above rule shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.

CONCLUSION:

Compounding is process “to settle a matter by a money payment, in lieu of other liability.” Under FEMA Provisions, the power to compound the offence is vested with Reserve Bank of India (RBI). Only those Contraventions / offences are compoundable which do not attract imprisonment as a mandatory penalty. The content of this article is intended to provide an overview of provisions related to Compounding of Offences under FEMA Act, 1999.



Dividend and IEPF – Provisions and Process



CS Vipin Mehta

Practicing Company Secretaries
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The Indian Government is frequently taking various measures to build investor confidence in Indian Market which includes ease of doing business, changes in FDI Policy, use of technology, removing entry barriers and so on. One of the steps is changes made in provisions related to Dividend and Investor Education and Protection Funds (hereinafter referred as “IEPF”). The said changes include two major changes:

- a) Transfer of shares to IEPF a/c along with transferring of unclaimed/unpaid dividend; and
- b) Re-claiming the dividend amount or shares transferred in IEPF.

The investors, who invest in equity instruments, can gain either by way of appreciation in stock price or by way of dividend. The changes made in IEPF Rules have ensured return of unclaimed/unpaid amount from IEPF a/c. Earlier to this there was no provisions in erstwhile Act/Rules which allows return of unclaimed amount from IEPF once it is transferred to IEPF.

In the present Article provisions related to declaration and payment of dividend and also provisions related to IEPF were discussed.

A. Source of payment of Dividend

Dividend can be declared and paid to the Shareholders out of the profits or reserve as follows:

- **Interim Dividend:** Interim Dividend is a Dividend which is not final dividend and can be declared any time during the year. The Interim Dividend is declared by the Board in the Board Meeting and for which no shareholders’ approval is required.
 1. **When can be declared?**
 - a) During the financial year; or
 - b) During the period from closure of financial year till holding of the AGM
 2. **Source to declare and pay interim dividend?**
 - a) Out of the surplus in the profit and loss account;
 - b) Out of profits of the financial year for which such interim dividend is sought to be declared; or
 - c) Out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

Example: Interim Dividend for the financial year 2019-20 can be declared between 01.04.2019 till 31.03.2020. Also it can be declared before conducting the AGM for the financial year 2019-20 i.e. before September 30, 2020 (considering the AGM held on last date).

Interim Dividend can be declared out of following sources:

- a) Out of the credit balance lying in Profit and loss account appearing in Balance sheet. In above case, out of the profit and loss account appearing in the liabilities side of the Balance Sheet as on 31.03.2019; or
- b) Out of profits of the financial year for which such interim dividend is sought to be declared. In above case, out of the profit earned during the financial year 2019-20; or
- c) Out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. In the above case profit generated till during the period 01.04.2020 to 30.06.2020, if dividend declared after 01.07.2020 but before AGM.

3. Limit of rate of dividend?

There is no limit up to which Interim dividend can be declared however, in case there is loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the Company during the immediately preceding three financial years.

- **Final Dividend:** Final Dividend is a Dividend which is declared by the Members, on the recommendation of the Board, in the Annual General Meeting. The Members has right to declare the dividend at the rate recommend by the Board or a rate lower than what is recommended by the Board. Even shareholders can decline to declare the dividend.

1. When can be declared?

The final Dividend can be declared only in the Annual General Meeting, on recommendation of Board of Directors.

2. Source to declare and pay final dividend?

- a) out of the profits of the Company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of Schedule II of the Act and remaining undistributed; or
- b) Out of the profits of the Company for that year arrived at after providing for depreciation in accordance with the provisions of Schedule II of the Act; or
- c) Out of profit as mentioned in clauses (a) and (b) above; or
- d) out of money provided by the Central Government or a State Government for the payment of dividend by the Company in pursuance of a guarantee given by the Government; or
- e) Out of the accumulated profits earned by Company in previous years and transferred to the free reserves, in case of inadequacy or absence of profits in any financial year.

However, declaration of dividend out of the free reserve is subject to following conditions:

- The rate of dividend shall not exceed the average of the rates at which dividend was declared by the Company in three years immediately preceding that year.

Above clause is not applicable to a Company which has not declared any dividend in each of the three preceding financial year.

- The total amount to be used for dividend drawn from free reserve shall not exceed 1/10th of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

- Before using the said amount for declaration as dividend it is first to be utilized to set off the losses incurred in the financial year in which dividend is declared; and
- The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Further, the utilization of profit for declaration of dividend is subject to conditions that carried over previous losses and depreciation not provided in previous year or years are set off against profit of the Company for the current year and then remaining profit be utilized for distribution.

For calculating profits under clauses (a) or (b) above, any amount representing unrealized gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded.

3. Limit of rate of dividend?

There is no limit upto which final dividend can be declared in case of dividend declared out of Profit however; in case of dividend is declared out of Free Reserve, limit as given above in clause (e) needs to be followed.

B. Transfer to Reserve:

There is no compulsion to transfer amount to Reserve however, the Company may voluntary transfer any profits for that financial year to the reserves of the Company before declaration of any dividend in any financial year

C. Manner of payment of dividend:

The dividend shall be paid in cash and not in kind. The payment of dividend payable in cash may be paid by cheque or warrant or through any other allowed electronic mode.

D. To whom to be paid:

Dividend once declared cannot be withdrawn and can be paid to:

1. Registered shareholder whose name appearing in the Register of shareholders in case shares are held on physical mode, or Register of Beneficial Holder, in case shares held in demat mode as on record date or book closure date fixed for dividend (hereinafter referred as “eligible shareholders”); or
2. To other person as per the instruction of eligible shareholders; or

E. Time Line:

The timeline for payment of dividend is as follows:

SL. NO	Compliance	Provisions	Compliance Calendar
1.	Declaration of dividend in Board (Interim) or in AGM (Final)	Section 123	A
2.	Deposit the dividend amount in separate bank account maintained with a scheduled bank.	Section 123(4)	A+4
3.	Pay dividend to the eligible shareholders as on cut-off/record date (Comply Regulation 12 of Listing Regulation)	Section 124(1)	A+29

4.	Transfer unclaimed /unpaid dividend amount to unclaimed/ unpaid account opened in separate bank account with Schedule Bank	Section 124(1)	A+29+7 (B)
5.	Upload on website of the Company details of unpaid/ unclaimed dividend amount.	Section 124(2)	B+90
6.	In case of any dividend is unclaimed or unpaid, the Company shall file every year till completion of the 7 years, form IEPF-2 providing the details of unclaimed amounts as on the date of closure of financial year, the account of which are to be adopted in the AGM, on MCA and on the website of the Company. (Corresponding to form 5INV)	Rule 5{8} of the IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. ("herein after referred as IEPF Rules")	Within 60 days of AGM or due date of AGM#
7.	File form IEPF-6 on MCA stating therein the amount due to be transferred in fund in next financial year.	Compliance in point no. 5 and 6 seems to be duplication and create confusion.	Within 30 days of end of financial year (stand removed w.e.f. August 20, 2019)
8.	Transfer the unpaid and unclaimed divided amount online to IEPF along with filing form IEPF-1 (Corresponding to form 1INV) Along with dividend, transfer all shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred to IEPF.	Rule 8{1} of the IEPF Rules	B+7years+30 (C)#
9.	File form IEPF-4 with details of shares transferred to IEPF.	Section 124(5) & (6) and Rule 5(1), (6)(c) of the IEPF Rules	Within 30 days of the corporate action taken#
10.	File form IEPF-4 with details of benefits accruing on shares already transferred to IEPF and credited to DEMAT account of IEPF.	Rule 6{5} of the IEPF Rules	Within 30 days of the corporate action#
11.	File form IEPF-6 when amount transferred to IEPF is different from amount mentioned in for IEPF-6 filed earlier under point 7 stating therein the reasons of deviation, if any and actual amounts transferred to the Fund.	Rule 6{8} of the IEPF Rules	Within 30 days of end of FY in which amount transferred to IEPF (stand

			removed w.e.f. August 20, 2019)
12.	File Form IEPF-3 providing details of shares and unclaimed or unpaid dividend not transferred to IEPF due to Order of Court/tribunal/statutory authority or where such shares are pledged or hypothecated or shares already been transferred to IEPF.	Rule 8{2} of the IEPF Rules	Within 30 days from end of the financial year
13.	File IEPF-7 for reporting dividend transferred directly to IEPF Authority on such shares which have already been transferred to IEPF (as reported in IEPF-4).	Rule 6{12} of the IEPF Rules	To be filed when shares are already transferred to IEPF and Company declares dividend on such shares#
14.	File IEPF - 1A by every Company which have transferred any amount referred to in Section 205C (2) (a) to (d) of the Companies Act, 1956 to IEPF or Central Government, but have not filed the statement or have filed the statement in any format other than in excel template shall submit details mentioned in Rule 5(1) along with excel template.	Rule 5{4A} of the IEPF Rules	On or before October 18, 2019#
15.	File IEPF - 2 providing details of Nodal Officer and Deputy Nodal Officer of the Company attaching copy of Board resolution. Also display the name of Nodal Officer and his e-mail ID on Company's website.	Rule 7{2B} of the IEPF Rules	Within fifteen days from publication of these Rules i.e. on or before September 3, 2019. Subsequent changes within 7 days.

Note: All IEPF form can be downloaded from IEPF website however, IEPF form needs to be uploaded on MCA Portal. Further, Excel file needs to be uploaded on IEPF Website.

#Post submission of form, Investor-wise details needs to be submitted on IEPF website.

Disclaimer

Please note that information contained herein is author's personal view. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation and provisions applicable at that point of time

Secretarial Audit – is Form MR 3 Adequate?



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The only constant in life is change”-Heraclitus

In Honduras, Central America, the government built a new bridge over the river Choluteca to connect it to a new bypass road. For a country known for its fiery hurricanes, they should build a bridge in such a way that it should withstand Nature’s fury. And they did it. A Japanese firm built the bridge with the latest technology available.

The construction began in 1996 and ended in 1998. After a few months, Hurricane Mitch hit Honduras and deposited 75 inches of rain in four days, equivalent to what they received in six months. The river Choluteca flooded the country. Over 7000 people lost their lives. The hurricane damaged or destroyed most of the bridges except one. The new Choluteca Bridge remained unaffected. It withstood the hurricane’s fury. But there was a ‘small’ problem.

The river changed course. It formed a new channel. It no longer flowed beneath the bridge. The river flowed beside the bridge. The Choluteca Bridge became a bridge to nowhere.

Moral of the story is that we need to change with the ever changing world, Pandemic Situations, Major companies looking forward to do business in India and the enthusiastic Central government always looking at facilitating ease of doing business

The Secretarial Audit is governed by Section 204(1) of the Companies Act, 2013. The requirement of Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 relating to Secretarial Audit Report has come into effect from April 1, 2014

Since then lot of water has flown under the bridge & many a change has occurred for example:

1. Recently the government has mandated private companies with outstanding debts above a certain threshold to undergo a mandatory secretarial audit (which was earlier restricted to only listed companies)
2. Markets regulator SEBI came out with the format for listed entities for preparing their annual secretarial audit and compliance reports. This would also be applicable for the "material unlisted subsidiaries" of the listed entities, the regulator said in a circular.

Therefore, today all listed companies, their unlisted subsidiaries, Public Companies with certain threshold limits, and lately even Private Limited Companies are getting covered.

Under the circumstances it is time we are look & Revisit the concept of Secretarial Audit, Format of the Secretarial Audit Report in Form MR3, and Audit Requirements.

As per the FAQs of the ICSI:

Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company.

The Secretarial Auditor expresses an opinion as to whether there exist adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Secretarial Audit thus provides necessary comfort to the management, regulators, and the stakeholders, as to the statutory compliance, good governance and the existence of proper and adequate systems and processes.

In terms of Form MR-3, the Secretarial Auditor needs to examine and report on the compliance of the following five specific laws:

1. The Companies Act, 2013 (the Act) and the rules made thereunder;
2. The Securities Contracts (Regulation) Act, 1956 („SCRA“) and the rules made thereunder;
3. The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
4. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
5. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 („SEBI Act“):-
 - a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
 - e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
 - g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998; In addition, the form MR-3, point (vi) also refers to „Other laws as may be applicable specifically to the company.“

The Council of the ICSI at its 226th meeting held on November 21, 2014 decided on the Scope of Secretarial Audit as regards “point (vi)(other laws as may be applicable specifically to the company)”, which is placed as under:

1. Reporting on compliance of “Other laws as may be applicable specifically to the company? which shall include all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.
2. Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws etc.

It is to be noted that nowhere in the Audit Report or guidelines or the formats there is any clear mention of “Labour Laws & HR practices” of the companies which needs to be audited which are more or less common for all types of companies & Factories as the case may be, This area can lead to potential loses & penalties and also imprisonment of the Occupier of the Factories if there is Noncompliance , moreover handling non compliances in the Labour Department or for that matter the Labour Tribunals & Labour Courts is horrendous task with the MD of the company invariably getting harassed

Factories Act - A Draconian Law

Two years simple imprisonment of the Managing Director and General Manager (works) of the TATA steel Limited by the magistrate court for Strict tortuous liability being the OCCUPIER of the company had sent shock Waves in the corporate world.

There are two opinions that the liability for such mishaps must be fixed on the top management otherwise the unscrupulous factory owners will go scot free by cocking the snook to the law, yet the law has twin objectives of facilitating & regulating. If it is merely regulating with spite, it will certainly blow incalculable damage to the growth of the industries with the new advent of MNC’s & other liberalization & opening up of the economy by the government.

Section 2 (n) of the factories act defines “Occupier of a factory means the person who has ultimate control over the affairs of the factory” the words “and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory” was omitted by the Factories Amended Act 1987 w.e.f 1-12-1987.

On plain reading of the section it seems that only one of the directors can be occupiers of the factory as they are the only persons who can be said to have ultimate control over the affairs of the factory.

Until the judgment of the Supreme Court in J.K.Industries Vs. the Chief inspector of factories & boilers which laid to rest the controversy as to who can be occupier of the factory there were several judgments upholding the fact that the occupiers need not be directors of the company & they can in fact be the works managers (seems to be somewhat correct considering the practical situation).

With the concept of Corporate Governance & the listing agreement providing that majority of the directors should be independent & non-executive directors, the company has no choice but to nominate the executive director who is in charge of the factory & who can control its affairs as occupier.

The Government to facilitate “Ease of Doing Business” is trying to dilute the Labor Laws to make it more business friendly and in the regard The Ministry of Labor And Employment vide Notification G.S.R. 432(E). have the following draft rules, which the Central Government proposes to make in exercise of the powers conferred by section 67 of the Code on Wages, 2019 (29 of 2019) read with section 24 of the General Clauses Act, 1897 (10 of 1897) and in supersession of the -

- (i) Payment of Wages (Procedure) Rules, 1937; (ii) Payment of Wages (Nomination) Rules, 2009; (iii) Minimum Wages (Central) Rules, 1950; (iv) Minimum Wages (Central Advisory Board) Rules, 2011.

These rules are called the Code on Wages (Central) Rules, 2020, which has completely modified the Payment of Wages under the Employment Laws for ease of Compliance to Maintain Register under various Labor Laws like the Payment of Bonus Rules, 1975; Equal Remuneration Rules, 1

976; and Central Advisory Committee on Equal Remuneration Rules, 1991.

Scope of Secretarial Audit of “other laws” for an Industry which manufactures & deals in Consumer goods

Audit under Labour Laws:

1. PF Act
2. ESIC Act
3. Factories Act
4. Other details to be verified
 - Any notices for conciliation, arbitration or adjudication pending un-attended
 - Reminders to be sent to long absentees (at least to people absenting un-authorize more than a week)
 - Payment of minimum wages to all employees including Contractor roll
 - Payment of wages
 - Environment Audit report - pollution
 - Application for Consent - Pollution
 - Minimum wages
 - Standing Orders
 - Apprentice Act
 - Contract Labour
 - Equal Remunerations
 - Labour Welfare Funds
 - Maternity benefits Act
 - Payment of Gratuity
 - Workmen compensation
 - Industrial Disputes
 - Pollution Control
 - Labour Unions if any & their settlements agreements (wage settlement)
 - Payroll details & process followed to prevent fraudulent transfers
 - HR Handbook & its legalities

Other applicable Labour Laws shall also be verified as applicable depending on the nature of the industry.

Audit under Legal Metrology Laws

The Packaged Commodity Rules OR the Legal Metrology Laws in India, are driven by a simple logic - “protection of a customer’s interests by making the originator (be it the manufacturer, packer or importer) of goods accountable for such products”, which are meant for consumption by the general public.

The numerous and complex compliance requirements for different types of products and vendors, a lack of practical procedures render these laws highly impractical, ambiguous and prone to litigation.

Compliances to be checked:

Sl No	Particulars	Compliances
1.	Maximum Retail Price (MRP):	The commodities to have the Maximum Retail Price (MRP) printed on the packages along with the words “inclusive of all taxes”.
2.	MRP once printed cannot be increased.	Certain items may be packed to offer any free quantity provided it is included in the standard size and the MRP is reduced proportionately.
3.	Principal display panel	Total area of the pack where all the mandatory requirements are specified in one place, on one side of the pack. No separate sticker should be affixed;
4.	Statutory Declarations on Products	The following mandatory declarations shall be made on the packages either at the factory level or at manufacturing level (depot of the factory). <ul style="list-style-type: none"> a. The name and address of the manufacturer or packer or importer. b. The common or generic name of the commodity. c. The net quantity of the content. d. Month and year of manufacturer or packing or import e. Retail sale price: MRP (including all taxes) f. Size/dimension of the commodity when relevant. g. Name, address and telephone no. of the Consumer complaint Cell. h. Marking "GM" for genetically modified food items.
5.	Re-stickering: Re-stickering is not permissible	Packers are not permitted to affix individual stickers or labels on the package for altering or making declarations. However for reducing the MRP, a sticker with revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, on the label of the package.
6.	Import of Products:	To ensure that proper registration is obtained for importing the products. The pre-packed commodities to carry the specific declarations on their labels as specified in the import policy.

		The importer has to comply with all the necessary declaratory compliances before selling, distributing, delivering, displaying or storing the imported goods.
7.	Double stamping	A weight or measure or product manufactured in one state and sold or transferred to another state will require double verification and stamping - both at the end of manufacturing state and at the end of user state.

Consumer Protection Act

The Emergence of a Digital Age and a new era of commerce and digital branding, has brought in new set of customer expectations, to address the new set of challenges faced by consumers in the digital age, the Indian Parliament, on 6 August 2019, passed the landmark Consumer Protection Bill, 2019 which aims to provide the timely and effective administration and settlement of consumer disputes

Key Highlights of the New Act:

1. Covers E-Commerce Transactions
2. Enhancement of Pecuniary Jurisdiction:
3. E-Filing of Complaints:
4. Product Liability & Penal Consequence
5. Penalties for Misleading Advertisement:
6. Establishment of Central Consumer Protection Authority

Audit Checks under the new Act

1. Compliance officer. E-commerce entities are required to appoint a nodal person or senior designated functionary to ensure compliance with the Act and the E-Commerce Rules.
2. Disclosures. E-commerce entities are required to disclose information about: (a) themselves, including their legal name, location of offices, details of website, and contact details of customer care and a grievance officer; and (b) location from where goods are imported, the details of the importer or the seller. Details of goods and services offered for sale (including country of origin, details of grievance officer, and guarantee related to authenticity of products). Marketplace e-commerce entities are required to obtain an undertaking from each seller to confirm that the information provided by such seller is true.
3. Grievance redressal. E-commerce entities are required to establish an adequate grievance redressal mechanism.
4. Records. Marketplace e-commerce entities are also required to record details of sellers where they repeatedly offer goods or services that were previously removed under the Copyright Act, 1957, the Trade Marks Act, 1999, or the Information Technology Act, 2000.
5. Advertisements Sellers offering goods and services through a marketplace e-commerce entity are required to, among other requirements, (a) ensure that advertisements are consistent with the goods or service, (b) there is no misrepresentation of facts, and (c) they do not refuse to accept returns if such goods or services are defective, deficient, or delivered late (other than owing to force majeure), (d) execute a written contract with the marketplace e-

commerce entity; and (e) appoint a grievance officer. The company must follow and adhere to the Advertisement guideline & codes in general

Looking at the above we can see that “Secretarial Audit” cannot be confined to just Compliance under the SEBI OR Companies Act alone & must cover a plethora of other laws some of them may be general in nature & some of them may be specific to particular industry, Therefore the CS engaged in audit must prepare an Audit Requirement Checklist after detailed study of the particular Company & its business activities , the audit report must cover comments under all the acts & rules in general & specific laws, as may be applicable to a particular company.

So, in Conclusion must the audit report be in MR 3 format or does this require a change, ICSI must come out with specific guidelines on these aspects

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Social Cause Marketing



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Due to generation gap perhaps the old grandy's will be diagonally opposite to my views on other matters but they certainly will agree to the fact that there is an absolute face lift and tremendous Improvement In the advertising Industry. From still photographs to high tech ads: the impact of audio-visual advertisements on the minds of the masses is increasing manifolds and also with the inquisitive nature of man; the floating of new ideas to get recognition in the market Is a welcome sign.

One of the potential areas of marketing the product is to relate yourself with a social cause or burning problem in the society and try to establish your name along with problem and this way you may end up with a phenomenon of remembrance by the general public, whenever they think of the stated problem. Many of the business managers have started realising that if they act ethically and identify themselves with certain social issues then the ultimate yield will be long term business success.

Sometimes the product you are dealing with corresponds to social cause and sometimes there may not be a remote connection between the advertised product and social cause. For example, in the former case the example can be UNICEF/Cry greeting cards where in the message was clear for the upliftment of child and the example for later is western group who is establishing the name with motto- Save the environment and earth. One can imagine without any prejudice, how can a shipbuilding and repairing facility of Western Gadgil has got an impact of saving the environment or saving the earth.

Cable Television Network (Regulation) Amendment Bill, 2000, the Advertising Codes of Doordarshan, and the All India Radio, Norms for Journalist Conduct issued by the Press Council of India prohibit any advertisement directly or indirectly promoting the production, sale, or consumption of wine, liquor, or other intoxicants. The Press Council of India too strictly bars any advertisement that promotes directly or indirectly production, sale or consumption of wine, alcohol, liquor, and other intoxicants. The Advertising Standard Council of India too has laid down specific rules and guidelines prohibiting direct and surrogate advertising of alcohol.

These rules are defied and circumvented by other roots. More than twenty brands directly dealing in Alcohol use various types of surrogate advertisements that include adventure sports, bravery awards, competitive games, real-life adventures, energy drink, fashion, music events, Cricket - IPL, soda, sports etc like Royal Stag Mega music Award, Blenders Pride Fashion Tour, Kingfisher Ginger drink, Tuborg Soda, Bagpiper soda, cassettes, CDs, Imperial Blue cassettes & CDs, Hayward's soda, Royal Challenge golf accessories, club soda and mineral water etc. to name a few.

On the other hand, one of the decent and acceptable social cause marketing advertisement can be quoted as 'We also make steel' campaign of Tata wherein they focus on various social causes that we do these and these activities for society and the end line is We also make steel.

One can find advertisements on TV and in print media depicting the evils of alcohol, drugs, aids, early marriages, importance of education, adult education and so on. This list is endless. Some of the advertisements are prepared by concerned ministries In the Government while other advertisements are either created by private agencies or Companies and are sponsored by big industrial houses in general public Interest as a social obligation of the business. In this way the business houses are able to get their names/products advertised at either no cost or at concessional cost and are also able to develop a feeling In the minds of the masses that this Is the company which cares for the problem or Is presumably doing some spade work or research work to overcome the cause.



The companies who have got nothing to do with the conservation and preservation of the forests and perhaps many of them not having any basic data about forestation in the country go on beating the drum about the benefits of herbs and shrubs while advertising their products.

There is no harm in advocating the Social Cause Marketing. One thing is amply clear that when the business houses apply their mind, resources and energy in identifying the cause making an advertisement etc. then they deserve to be rewarded by way of suitable recognition in the field. The basic fact that they are also trying to popularize a Cause simultaneously with their product should not be ignored. But this is open to a controversy because this needs to be done ethically and the critics give more emphasis on ethics because the social Cause marketing tends to politicize the business.

The argument can be given that the business ethics are too abstract or disconnected from business realities to be able to provide practical guidance in defining the ethical practices. Moreover, there is a feeling in mind that the business managers are not qualified enough to identify the social cause and in the whole exercise of advertising: the aim to promote their product takes over the cause which becomes akin to an unruly horse wherein the rider does not know 'where the horse is going to take him.

There may be consumers who may prefer to pay more than the competitive prices or may even be ready to accept the inferior products because of their social preferences. Social Cause marketing can succeed only if there is a sizeable number of consumers who are willing to make the market choices based upon their social preferences and with this view it is both democratic and also in consonance with the consumer sovereignty. Since the consumers are free to refuse to do business with the company or may share their loyalty, therefore, it is of utmost importance that the representation of the social position of company and social characteristics of its product should be treated in comparison with the traditional market representation of their products and characteristics, for example, for some consumers it is important that the packages are recyclable or not even if they may or may not look attractive.

Any misrepresentation of the social characteristic has got an impact of misleading the consumer resulting in to his action detrimental to his social preferences and beliefs and can cause an irreparable injury to the consumer having devastating long range effect on the product in question. Media has to play an important role in this. One of the important advantages of this kind of marketing is that the companies are able to obtain free / concessional publicity as a substitute for expansive marketing. Companies are able to get attention through press releases and write ups and attract publicity. In this regard the media has to ensure that the claims are reasonable legitimate and media owes a special obligation to public. They must also ensure that the coverage is given in interest of masses and not to particular business house or to a colorable phenomenon which sub serves the political Interest because the ultimate Judgment of the consumer is bounded by the information and time constraints

Applicability of Sec. 10A of IBC – Prospective or Retrospective?



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Covid19 has caused a turbulence in the day to day life of not only individuals but also other entities around the world resulting in severe financial crisis faced by both Corporates and non-Corporates hence necessitating the creditors to press the panic button resulting in pushing the debtors against the wall in order to recover their money and those who are incapable of showing any resistance would succumb to pressure and in most cases companies would get into liquidation is a general forecast. Considering the crisis situation faced by the Corporates under the Indian context and to prevent any imbalance between the Creditors and the Debtors in so far as applicability of IBC is concerned the Central Government had thought it fit to introduce two important changes under the IBC Law and the first being the Ministry of Corporate Affairs (MCA) by exercising its powers conferred under the 'Proviso' of Sec. 4 issued a notification dt. 24.03.2020 whereby the threshold limit for the minimum amount of default has been increased from Rs. 1 lakh to Rs. 1 Crore. Hence the applications U/s. 7, 9 or 10 of Insolvency and Bankruptcy Code (IBC), 2016 can no longer be filed against a Corporate Debtor unless the minimum amount of default is Rs. 1 Crore.

The second change brought about by the Central Government is insertion of Sec. 10A in IBC vide an Ordinance promulgated by the President w.e.f. 05.06.2020. The legislative difference in these two changes are, in so far as increasing or decreasing the threshold limit for minimum amount of default is concerned, the legislature i.e. the Parliament has already delegated/vested this power under the Proviso of Sec. 4 with the Central Government i.e. the Executive to decide on its own to fix the limit anywhere between Rs. 1 lakh to 1 crore hence the power which is delegated to the Executive by the legislature has now been exercised by the Central Government and similarly in future the Central Government can even once again exercise this power so as to reduce the threshold limit below Rs. 1 Crore. With regard to introduction of Sec. 10A is concerned, it is an amendment brought in an existing law i.e. IBC, 2016 so as to insert the

said section between Sec. 10 and 11 and this power can only be exercised either by the Legislature under Part XI of the Constitution of India or by the President by issuing an Ordinance under Article 123 of the Constitution of India. Since the Parliament is not in session the President has exercised his powers to issue an Ordinance to introduce Sec. 10A in IBC law which has come into effect from 05.06.2020.

Sec. 10A of IBC reads as follows:

10A. Suspension of Initiation of corporate insolvency resolution process.

Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:



Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March 2020.

The purpose of introducing Sec. 10A is well known in order to protect the corporate debtors who commit default during Covid19 period particularly due to lockdown and situation beyond their control hence necessitating the grant of breathing period for the corporate debtors to recover from the financial stress and administrative loss suffered during the said period or else their fate is well predictable.

The subject matter of this topic being whether Sec.10A has a prospective effect or retrospective effect in view of the fact that Sec. 10A came into force only on 05.06.2020 hence does it cover the period between 25th March 2020 till 04th June 2020 during which an application if any, filed either U/s. 7, 9 or 10 against a Corporate Debtor could be entertained or not by virtue of the fact that Sec. 10A bars initiation of Corporate Insolvency Resolution Process (CIRP) against a Corporate Debtor for the default committed between 25th March 2020 up to a period of 6 months and a maximum of 1 year as may be notified by the Central Government in this regard. Sec. 10A also clarifies that even in future no application can ever be filed towards default arising during the said period. The Explanation in the said section also clears the doubt that the bar in respect of filing an application is only limited to the said period during which the default arises but for otherwise an application can always be filed against a Corporate Debtor for a liability arising for any period other than the period as specifically mentioned in sub-section(1) of Sec. 10A.

Sec. 10A no doubt has dealt with the period during which if a default arises which is to be reckoned for the purpose of exclusion from initiating CIRP against a Corporate Debtor but has left a hollow by not dealing with the applications that has already been filed between 25th March 2020 until 05th June 2020 prior to introduction of Sec. 10A thereby leaving a little scope for adjudication by the NCLT on prospective or retrospective effect of Sec. 10A which the Chennai Bench



had an occasion recently to deal with it and pass a judgment in this regard in 'Siemens Gamesa Renewable Power Pvt. Ltd. vs. Ramesh Kymal' on 09.07.2020. In this case, the petition was filed U/s. 9 of IBC, 2016 by an Operational Creditor (OC) Mr. Ramesh Kymal against the Corporate Debtor (CD) M/s. Siemens Gamesa Renewable Power Pvt. Ltd. for initiation of CIRP on 11.05.2020 towards a default of Rs. 104.11 Crore and the date of default as alleged in the said petition is 30.04.2020. During the pendency of

the main petition, the CD filed a maintainability application for dismissal of the main petition on the ground that the insertion of Sec. 10A in IBC has resulted in the main petition not being maintainable in view of the fact that the claim made in the petition is in respect of a default committed during the period which is dealt with U/s.10A. But during the course of arguments the OC represented by its counsel took an exception to the applicability of Sec. 10A on the ground that since the words 'shall be filed' is used in Sec. 10A it is prospective in nature and the said section having been introduced only from 05.06.2020 the bar shall not apply to the applications that are already filed prior to 05.06.2020 and the fact remains that the CD has admitted its liability therefore would automatically disentitle them from raising any objection towards maintainability of the petition.

The NCLT relying upon the 'Objects and reasons' for the promulgation of the Ordinance so as to introduce Sec. 10A in IBC, 2016 and the necessity to understand the said Section in true spirit and the purpose for which it has been enacted and also the usage of the phrase 'shall ever be filed' in the Proviso to Sec. 10A would mean and include that the applicability of Sec. 10A is retrospective in nature so as to cover even the applications that were filed prior to insertion of Sec. 10A w.e.f. 05.06.2020 provided default claimed is arising on or after 25th March 2020. The Tribunal is also of the view that Sec. 10A relates back to the date of 25.03.2020 in reckoning the date of default and the prohibition therefore would equally apply to all those applications filed between 25.03.2020 and 05.06.2020 provided the default has been caused for the period as prescribed in Sec. 10A. In view of the fact that an Ordinance can also be promulgated with a retrospective effect to a provision, the Tribunal allowed the application thereby dismissed the main petition on the ground that it is hit by Sec. 10A which has a retrospective effect from 25.03.2020.





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Commentary on Removal of Directors - Series-24 - Part I

Provisions: Section 169 of the Companies Act, 2013 ('the Act'):

1. A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

2. A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
3. On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director,

Whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

4. Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,-
 - a. in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - b. send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is



not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

5. A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).
6. A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.
7. If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from the office shall not be re-appointed as a director by the Board of Directors.

8. Nothing in this section shall be taken—
 - a. as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
 - b. As derogating from any power to remove a director under other provisions of this Act.

COMMENTARY: For easy understanding of the provisions, it can be divided into 5 parts:

- Part I - Basic Conditions;
- Part II - Special Notice;
- Part III - Principle of Natural Justice and opportunity of being heard;
- Part IV - Procedure at General Meeting; and
- Part V - Other related matters.

Part I - Basic Conditions

1. **What is removal of director:** it means, termination from the office of a director before the completion of his term as director.
2. **Applicability:** As the term used herein is 'company', provision is applicable to all companies including public, private companies.
3. **Statutory right:**

- a. The right given to the members to remove the directors is derived from the Act itself. As a result of the same, any clauses in memorandum or articles or by any contract or documents does not have any power to take away this right. If it is sought to be taken away, such provision will be void as per Section 6 of the Act.
- b. Any director or any person is not having any right to restrict or prevent the members from placing the matter of removal of directors at the general meeting.
- c. The board of directors or any director shall not have any right to restrict the members to call the meeting or for passing the resolution for removal of director.
- d. The director appointed for a lifetime shall also falls within the ambit of section 169 of the Act. Hence even though he is a lifetime director as per AOA wordings, but there is no concept called permanent directorship as per aforesaid provisions.

4. Type of Resolution for removal:

- a. In case of independent director: who is re-appointed for a consecutive second term u/s 149(10) of the Act, shall be removed only by passing the special resolution.
- b. All other directors - By ordinary Resolution.
- c. General meeting - It may be AGM or EGM.
- d. AOA cannot provide for special resolution for removal when it Act itself mandates ordinary resolution. If provides, it will be void as per Section 6 of the Act.

5. Who can't be removed - Exceptions

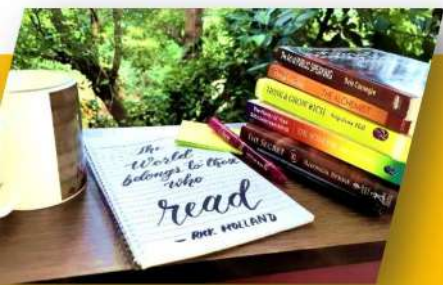
- a. Director(s) appointed by the NCLT u/s 242
- b. Principal of proportional representation director as per Section 163;
- c. Nominee Director.

The director appointed by the small shareholders in accordance with section 151 of the Act, can also be removed with due compliance of section 169 of the Act.

- 6. When a director can be removed:** Before the expiry of the period of his office. In case of non-reappointment of a director after the completion of his period of office shall not be considered as removal and the provisions u/s 169 of the Act are not applicable

(To be continued....)





HELP YOURSELF

Food for Thought



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Would reading just a few paragraphs about a book be of any help to you? Most likely yes, for it will help you to get the choicest of information enshrined in a book and help you put your thinking cap on. If you like what you read here or even if you don't, grab the book and give it a read, for gaining more clarity. So, help yourself with food for thought.

Wings of Fire - An Autobiography

Dr. APJ Abdul Kalam with Arun Tiwari

As this the first article, 'Wings of Fire' would be the best pick. Dr. Abdul Kalam's way of setting goals and achieving them is an inspiration and will remain so for generations to come. His speeches and quotes are always popular, especially on the internet and social media. They are simple but impart immense wisdom. The book 'Wings of Fire' is an autobiography written by Dr. Kalam with Arun Tiwari that was released at a time when India's technological endeavors, to assert its sovereignty and strengthen its security were being questioned by many in the world.

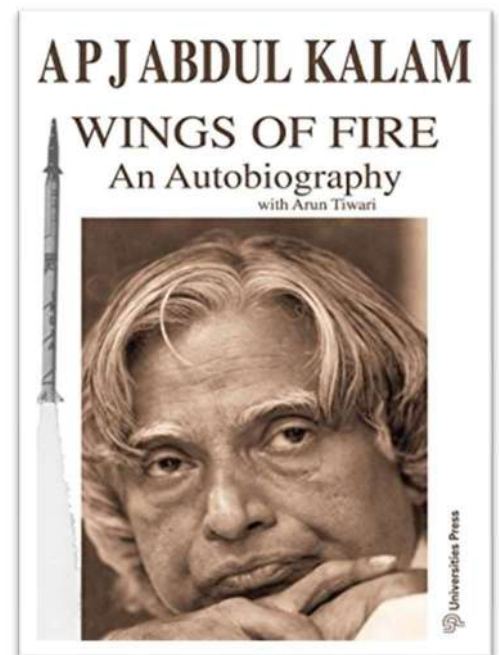
Dr. Kalam's early life in the temple town of Rameshwaram is like an account of gratitude to the people from whom he learnt fundamental life lessons that shaped him to become the inspiration he was. He vividly remembered the teachings of his parents, teachers, friends, and many others throughout his life which shows that he was a great learner and observer that later on made him a great leader and achiever.

Listing down the achievements of Dr. Kalam and his team would take more space than this entire article. As corporate professionals, we may not be dealing with rocket science like the Missile Man of India but for the challenges that we face and the responsibilities that we need to shoulder, Dr. Kalam's way of working is a true inspiration. He questioned why individuals who work hard are called 'workaholics' as it implies an illness. He opines that working towards what one desires and what makes one happy can never be an aberration.

In this book, Dr. Kalam shares short lines from his diary which often rhyme, are poetic and are rich with meaning. One such which he had written while leading the SLV-3 project, feeling grateful to his team that never exhausted his patience, is as follows:

Beautiful hands are those that do

Work that is earnest and brave and true



Moment by moment

The long day through.

Another one also written during the same project:

If you want to leave your footprints

On the sands of time

Do not drag your feet.

The book is named '*Wings of Fire*' and by knowing the meaning behind it can brighten up anyone's life - "We are born with a divine fire in us. Our efforts should be to give wings to this fire and fill the world with the glow of its goodness."



BRAINY BITS...



CS Madhur N Agrawal

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Mr. Suresh is a salaried employee working in a private company. Mr. Suresh already owns a house in his name on which he has also taken home loan. He is taking benefits of the home loan interest and principal repayment while filing his income tax returns. Mr. Suresh has a surplus cash and possibility to leverage his salary for an additional loan, therefore he decides to buy one more home with new home loan. Whether Mr. Suresh will be able to claim any tax benefits on the home loan taken on the second home in the assessment year 2021-22? To what extend?

Please send your answers to, enewsletter.icsimysore@gmail.com along with your name, qualification and designation. Name of the person with most appropriate answer with reasoning, shall be published in the next edition of eMagazine.



Opinion to Last Month's Brainy Bits

Last month question: XYZ Private Limited is proposed to issue a preference shares to their technology consultant against the consideration other than cash at par value of Rs.10/- i.e. without any premium. Now the company has question that whether they need to get the Valuation Report from the Registered Valuer for this allotment, if yes whether the valuation has to be for the shares, or for the services that the consultant had given the company, or both.

Opinion: While issuing shares in consideration other than cash U/s. 62(1)(c), the valuation report has to be obtained for Valuation of shares as well as Valuation of consideration, both to be valued by a Registered Valuer duly appointed by the Company in this regard.



RAM (Random-access memory)

Hi everyone, Hope all are Healthy and safe.

Ram is one of the important components in all devices, from computers to Mobiles, it is a very fast component that stores the data temporarily which a device needs for doing the particular task.

In layman Language, RAM is nothing but a component that stores the data that a device whether let it be computers, Mobiles or gaming consoles, temporarily stores everything currently running in a device like tabs of a web browser, Files manager.

Basically RAM can be accessed hundreds of times faster than a hard drive or SSD, which is why active programs are stored into RAM. This is because reading data from RAM is much faster than reading from the hard drive or SSD. RAM prevents the CPU from digging through the device's slow storage like hard drive every time you request a new browser tab or file manager. Running Programs from the RAM allows computer to function without any lag time. RAM does not store everything forever it forgets everything the moment it loses power. You may have experienced this without saving the file if you optimize the speed or turnoff the device, everything you typed or created will be automatically deleted, that's why we need hard drives or SSD's to store data even when the power is off.

If you get a great processor like core i5 or i7, or other processors which have more processing speed, and if you get just 4gb of ram for it, it will work but to unleash the true potential of the processor you need more RAM, basically for processors like i3 or Pentium, 4GB of ram is more than enough. But for processors like i5 or i7 it requires minimum of 8GB of ram. If not , even your Processor may be working at its full potential but because of the low ram the system may become slow while using or it will lag what and you will face difficulties in running multiple applications at once.

Basically, it requires 2 to 4GB of RAM to run a OS (operating System), but having more than the minimum is important, the computer runs not only the current tasks but other tasks also in background. For example, if you open a chrome tab, file manager, MS word, Excel and you are currently using the power point. Other applications will also be running simultaneously along with the power point, so you should have more RAM to handle all the tasks at once without facing any issues.

Here is a tip to speed up your system, if you have computer or mobile which has 4GB or less ram, use these tips to fast your devices.

1. Use only those applications which you are currently working.
2. Don't close and open the same application again and again because the RAM would have stored the data and once if you close that application it clears those, instead just minimize and leave if you are going to use that later.



3. If you are facing the difficulties to use the device, like it freezes again and again, just restart the device, it will clear the existing ram and you can use it without any problem. If the problem continues then it's time for upgrading the RAM. It requires technical knowledge to install that into a computer or laptop so get it done from an expert in that field.

I think now you came to know about the RAM and its uses, I know what you are thinking WHAT IS SOLID STATE DRIVE OR HARD DRIVE, To know about it wait till the next month.

Source: Digital Trendz



Regulatory Updates



Compiled by:
Matruka B M
Professional Student
Mysore

Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Corporate Social Responsibility Policy) Rules, 2014 which shall be known as Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020,

In the principal rules, in rule 2, in sub-rule (1), in clause (e), the following proviso shall be inserted, "Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that;

- a) Such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act.
- b) Details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report".

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020

MCA has amended Companies (Management and Administration) Rules, 2014 which shall be known as Companies (Management and Administration) Amendment Rules, 2020

The following proviso shall be inserted in sub-rule (1) of rule 12 of the principal rule,

"Provided that a company shall not be required to attach the extract of the annual return with the Board's report in Form No. MGT.9, in case the web link of such annual return has been disclosed in the Board's report in accordance with sub-section (3) of section 92 of the Companies Act, 2013."

If the company has uploaded its annual return on its website and the link of such annual return is disclosed in the Board Report, then it is exempted from attaching extract of annual return in Form No MGT-9 with its Board Report.

Companies (Management and Administration) Amendment Rules, 2020



Insolvency of Personal Guarantor - Impact and Strategies

The Insolvency and Bankruptcy Code, as is well known provided for the adjudication of corporate insolvency proceedings before the National Company Law Tribunals. The bankruptcy proceedings of individuals were to proceed before the Debt Recovery Tribunals. However, the proceedings against individuals whose bankruptcy is being sought by virtue of them being personal guarantors to a company which has defaulted, would also be before the National Company Law Tribunal.

A seemingly routine notification on 15th November 2019 stipulated that some provisions of the Insolvency and Bankruptcy Code, 2016, which had hitherto been dormant, would come into effect from 1st December, 2019. This notification inter alia gave impetus to one of the heaviest powers that can be wielded under the IBC - i.e., insolvency of personal guarantor.

Thus far, we have seen proceedings under the Insolvency and Bankruptcy code divesting promoters of their control on some prominent businesses of our country. While this system did see several successful resolution and also some recoveries via liquidation, there were some lingering complaints on several grounds. First, there was some apprehension that the IBC was unable to recover sums that had been siphoned off. Second, it was alleged that in some cases the promoters had gotten away with hoodwinking their lenders by way of the IBC.

While the IBC as originally conceived provided for insolvency of the personal guarantor as well, these provisions had not been given effect to as it was felt that the system would have to be tested before being implemented whole scale.

One of the first prominent cases of insolvency of a personal guarantor, was the application filed by the State Bank of India against Anil Ambani. SBI filed an application under Section 95 of the IBC against Anil Ambani (Officially Anil Dhirajlal Ambani) in respect of his status as personal guarantor to the extent of Rs. 1200 Crores for certain facilities granted to Reliance Communications Limited (RCOM) and Reliance Infratel Limited (RITL).

It is pertinent to note that both RCOM and RITL are already undergoing the CIRP and resolution plans for both companies have also been approved by the respective COCs and was pending acceptance by the adjudicating authorities.

On the basis of the said resolution, it was contended on behalf of Anil Ambani that the debt stood discharged and that there was no liability on his part anymore. However, it was pointed out on behalf of SBI that Section 60(2) of the IBC even permits the proceedings against the company and the personal guarantor simultaneously and as such the two need can be considered separate. The NCLT in State Bank of India v. Anil Dhirajlal Ambani referred to the decision of the Supreme Court in Maharashtra State Electricity Board v. Official Liquidator (Civil Appeal 3239 of 1995 decided on

12.04.2002) to hold that the liquidation of the principal debtor company does not discharge the guarantor. Accordingly, the NCLT allowed the application of SBI and appointed one Mr. Jitender Kothari as the Resolution Professional.

Now, appeals from order of the NCLT lie to the National Company Law Appellate Tribunal. However, Mr. Anil Ambani chose to file a writ petition before the Delhi High Court challenging not only the order passed by the NCLT against him but also the provision regarding personal guarantee and bankruptcy arguing that there is no enabling provision for such order.

Upon hearing the matter, the Delhi High Court in Anil Dhirajlal Ambani v. State Bank of India and Ors. WP 5712/2020 granted an interim stay without according any reasons but at the same time restrained Mr. Ambani from disposing off any property.

While it is difficult to put a timeline on the disposal of this matter considering that the sittings of court are not as regular nor as convenient as before the pandemic, and also in light of the fact that this litigation will see further rounds of appeals, it is pertinent to note that this stay order makes way for any other similarly placed person to seek relief from insolvency proceedings against themselves.



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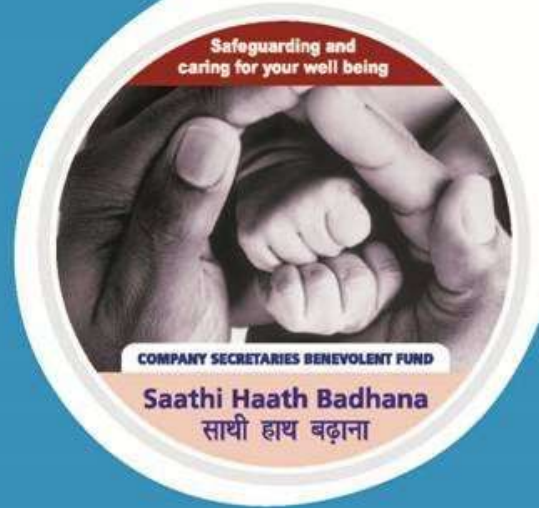
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
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CSBF

**COMPANY SECRETARIES
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The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

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Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

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3

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4

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