

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

**Governance
&
Integrity**



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Highlights of the Union Budget for 2013-14



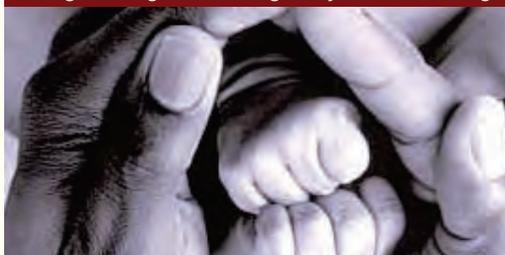
**THE INSTITUTE OF
Company Secretaries of India**

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

COMPANY SECRETARIES BENEVOLENT FUND

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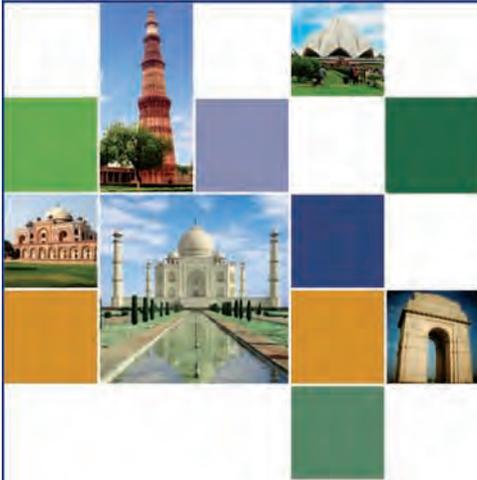
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2nd CSIA International Corporate Governance Conference, 2013

Date: April 5-6, 2013 | **Venue:** The Ashok, New Delhi



Corporate Governance for Sustaining Prosperity and Posterity

Corporates are the modern engines of growth and development. They need to be governed in harmony with the nature while balancing the interests of various stakeholders. Their governance holds the key to sustain prosperity of the society and the economy as well as the posterity on the earth. The corporate secretaries, being the in-house governance professionals, have a bounden duty to promote and nurture governance standards in the corporates. The challenges are many. This conference would address some of the challenges and the way forward.

Who should attend ?

- Corporate Secretaries • Board Secretaries • Corporate Governance Professionals
- Compliance Professionals • Chief Executive Officers • Managing Directors
- Chief Financial Officers • Chief Operating Officers • Directors

Delegate Fee : USD 500/INR 15,000 (for Indian delegates)
Networking sightseeing - Delhi Heritage Tour (Free)
CPD Hours of respective countries would be applicable



Corporate Secretaries International Association (CSIA), a Geneva-registered global organisation, is dedicated to developing and growing the study and practice of secretaryship to improve professional standards, the quality of governance practice and to improve organisational performance. Its vision is to be "The Global Voice of Corporate Secretaries and Governance Professionals".

To find out more about the Conference, please visit

www.csiaorg.com

Supporting Organisations





Service tax liability of Practising Company Secretaries under new taxation pattern by the Finance Act, 2012

» P-272

T. N. Pandey

Service Tax on Practising Company Secretaries (PCS) was imposed from 16.10.98 under the Selective Scheme of taxation, introduced by the Finance Act, 1994. The pattern of taxation was changed by the Finance Act, 2012 to 'comprehensive coverage' from 01.07.12. PCSs were taxable under the previous regime and continue to be so under the changed regime also. The PCSs are not exempt by the Negative List or the exemption Notification dt.20.06.12. This article comprehensively covers various facets relating to taxation in the cases of PCSs both before and from 01.07.12 under the new scheme.

Principles of Responsible Investments and Environmental, Social and Governance issues: The Emerging Horizon of Sustainability-based Decision-making in Finance

» P-276

Dr. Manipadma Datta

There has been a gradual paradigm shift in the world of financial decisions in recent times. Particularly, since Rio 1992, environmental and other factors are becoming more and more strategically important in business decisions including corporate finance in view of the fact that nothing is sustainable if it fails to pass through the environmental, social and governance (ESG) test. It is not that the idea is a noble and fanciful one. The business world has started experiencing that the new mantra of sustainability has a great latent market. Business can safely leverage on it too. There are evidences that the firms that take care of the ESG issues well are more competitive in creating wealth for their stakeholders. This article is an attempt to capture this emerging horizon of sustainability-based decision making process in finance.

Twitter and The Indian Law

» P-283

Rodney D Ryder and Ashwin Madhavan

In the past five years social networking has revolutionized the way people across the world communicate. One such social networking site is the successful microblogging website called Twitter.com. The authors of this article look at the possible liability issues that could be raised in India in terms of content on Twitter as well issues raised against the company Twitter Inc. if it fails to remove objectionable content posted by its vast user base from its website. The article serves to function as a guide and analysis on potential liability issues for anyone writing online.

ETFs: A New Investment Vehicle in Indian Market

» P-287

D. Muthamizh Vendan Murugavel

Exchange traded funds are in their infancy stage in India and many investors are hardly conversant with their functioning. ETFs represent a basket of securities that is traded on an exchange, similar to a stock. Hence, unlike conventional mutual funds, ETFs are listed on a recognised stock exchange and their units are directly traded on stock exchange during the trading hours. Exchange Traded Funds in India listings include gold, silver and currencies. It is similar to a mutual fund that one can buy and sell in real time at a price changes during the trading session. In India, the two popular ETFs are index ETFs and commodity ETFs. Most ETFs in India are index funds that hold securities. They try to mirror the performance of a stock market index.

Basel III - Will it Ensure better Financial Stability for Banks?

» P-292

Mahesh Kumar

Basel III has landed and contains a comprehensive set of reform measures, developed by the Basel Committee on Banking Supervision. The required capital adequacy framework is designated as Basel III and G20 endorsed the new Basel III capital and liquidity requirements in November 2010 Summit in Seoul. This Article discusses the comprehensive reform package in the Banking System. These reforms strengthen banks' ability to absorb financial crisis, micro prudential regulation, which will help raise the resilience of individual banking institutions to combat in periods of stress. The reforms also have a macroprudential focus, addressing system-wide risks that can build up across the banking sector as well as the procyclical amplification of these risks over time. The reforms raise both the quality and quantity of the regulatory capital base and enhance the risk coverage of the capital framework. These are eclipsed by Capital ratios, leverage ratios and liquidity ratios that supplement the risk-based capital requirements and serve as a backstop to the risk-based capital measures, and provide an extra layer of protection against model risk and measurement error.

Law Relating to Dishonour of Cheques In India: An Analysis of Section 138 of The Negotiable Instruments Act

» P-298

Suhita Mukhopadhyay

To ensure promptitude and remedy against defaulters and to ensure credibility of the holders of the negotiable instrument, a criminal remedy of penalty was inserted in Negotiable Instruments Act, 1881 by the Banking, Public Financial Institutes and Negotiable Instruments Laws (Amendment) Act, 1988 which were further modified by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. Section 138 creates an offence for which the mental elements are not necessary. It is enough if a cheque is drawn by the accused on an account maintained by him with a banker for payment of any amount of



money to another person from out of that account for discharge in whole or in part, of any debt or other liability due. Therefore, whenever the cheques are on account of insufficiency of funds or reasons referable to the drawer's liability to provide for funds, the provisions of section 138 of the Act would be attracted.

An Analysis of Minorities Rights Under section 397/398

» P-303

R Rajesh

Protection of minorities' rights is also a fundamental and essential aspect of good corporate governance. The recognition of minorities' rights acquire great importance as and when the situation arises for the management to take major decisions which require the support of the minorities. Minorities at times could cause serious trouble to the management if their grievances are not redressed on time and the present Companies Bill, 2012 also recognizes and empowers the minorities who are members/depositors to even file Class action suit against the Company, directors, auditor etc. and claim compensation or damages against certain acts committed by them.

» Legal World (LW 24 - 36)

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- ▶ **LW.21.03.2013** SEBI attaches the properties and assets as well as freezes the accounts of two Sahara Group companies and their promoters for not complying with the directions of the Supreme Court in refunding the OFCDs to the depositors.
- ▶ **LW.22.03.2013** The appellants have failed to show how the listing permission granted by NSE by the impugned circular has affected their legal rights or caused legal wrong or injury to the appellants.[SAT]
- ▶ **LW.23.03.2013** Calcutta High Court permanently stays the winding up petition on the ground that the company's inability to pay its debts has not been made out and the facts as pleaded do not warrant consideration of the petition for winding up on the just and equitable ground.
- ▶ **LW.24.03.2013** Delhi High Court upholds the holding of EGM as per the order of the CLB, which was passed sans complying with the provisions of sections 169 and 186.
- ▶ **LW.25.03.2013** Delhi High Court refuses to admit winding up as the company raised bonafide dispute.
- ▶ **LW.26.03.2013** Division Bench set asides the restoration of the company's name made under the order of the Single Judge. [Cal]
- ▶ **LW.27.03.2013** When nothing on record displays a willful default on the part of the assessee, the extended period of limitation could not be invoked against the assessee. [SC]
- ▶ **LW.28.03.2013** The word "or" used in between the words "taken" and "utilised" in Rule 14 of the CENVAT Credit Rules 2004 (CRR) has to be read disjunctively and not conjunctively.[CESTAT]
- ▶ **LW.29.03.2013** When the assessee had discharged the service tax liability before the issue of show cause notice, no penalties can be imposed on the assessee.[CESTAT]
- ▶ **LW.30.03.2013** Successive fixed term appointments in a

permanent post and dismissing after the expiry of the fixed term is retrenchment and does not fall under the exemption.[Del]

» From the Government (GN 44 - 66)

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- ▶ Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode for the Financial year commencing on or after 01.04.2011.
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- ▶ Gold Exchange Traded Fund Scheme (Gold ETFs) Investment in Gold Deposit Scheme (GDS) of Banks
- ▶ Introduction of Periodic Call Auction for Illiquid Scrips and Extension of Pre-open Session to all Scrips
- ▶ Liquidity Enhancement Schemes for Illiquid Securities in Equity Cash market
- ▶ Increase in FII debt limit for Government and Corporate Debt category
- ▶ Time Period for initial offering and allotment of units of Mutual Fund Scheme eligible under Rajiv Gandhi Equity Savings Scheme, 2012 (RGESS)
- ▶ Scheme of Arrangement under the Companies Act, 1956 - Revised requirements for the Stock Exchanges and Listed Companies
- ▶ Guidelines on Fair Practices Code for NBFCs - Grievance Redressal Mechanism - Nodal Officer
- ▶ Permission to standalone PDs for membership in SEBI approved Stock Exchanges for trading in corporate bonds
- ▶ Memorandum of Instructions for Opening and Maintenance of Rupee/ Foreign Currency Vostro Accounts of Non-resident Exchange Houses
- ▶ Foreign investment in India by SEBI registered FIIs in Government securities and corporate debt
- ▶ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013
- ▶ Reporting under Foreign Exchange Management Act, 1999 (FEMA)
- ▶ Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI scheme allowed under the Government route
- ▶ External Commercial Borrowings (ECB) Policy - Non-Banking Financial Company - Infrastructure Finance Companies (NBFC-IFCs)
- ▶ Foreign Exchange Management (Deposit) (Amendment) Regulations, 2013
- ▶ Export of Goods and Services - Simplification and Revision of Softex Procedure at SEZs

» Other Highlights

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- ▶ News From the Regions ▶ Company Secretaries Benevolence Fund ▶ Frequently Asked Questions on Membership
- ▶ Our Members ▶ Appointment Advertisement ▶ Prize Query



From the President



"The greatest danger in times of turbulence is not the turbulence; it is to act with yesterday's logic"

– Peter Drucker



Dear Professional Colleagues,

The growth of any entity is always accompanied by turbulence in some form or other with ICSI being no exception. With membership crossing 30,000 and students upwards of 3,00,000, various processes governing the operations of the Institute needed a revisit, review and perhaps revision wherever found necessary. Thus, emerged the theme "Challenge the Status Quo" across its length and breadth; speed leadership has become the need of the hour; and the stakeholder-centricity has acquired a wholly new dimensions.

To comprehend the length and breadth of impact and the

preparedness to adapt to changing dynamism in the four regional councils and sixty-nine chapters, which have, in the last few years, contributed significantly to the growth and development of the profession, a shift in strategy was called for and this took me and the new team at the helms to their doorsteps. What followed the review of performance and potential for growth was perhaps a deeper understanding of the ground realities as also some unassailable home truths. This exercise would surely help enable us to develop and implement the Strategic Action Plan for the year. This should also pave the path for accomplishment of the work-in-progress with greater clarity and content.



The Companies Bill, 2012 and the SEBI Consultative Paper on Corporate Governance have rightly stressed on good governance practices as the underlying principle of corporate growth. In this context, we have a significant role to perform and emerge well and truly as corporate governance professionals. The narrative has changed; the expectations are sky-high; it's time for us to seize the moment. Perhaps it won't be out of place to suggest that we should strive to become the CGOs that is Chief Governance Officers of entities across the corporate landscape.

ICSI's pre-eminent position as pioneer in promoting good corporate Governance is amply accentuated by our Vision and Mission as also the enormous contribution towards the cause of good governance. In keeping with the emerging imperatives in the Bill and the Consultative Paper, the Council has decided to engage in the development of Corporate Governance Rating Model besides being associated with the Training of Directors. The necessary steps for strategising these initiatives are in place and the work will begin soon.

We have, over a period of time, become credible partners to our Regulators who engage with us on issues of topical interest and it is in this context, gratifying to report the audience we received when we met the Chairman, SEBI and other senior officials. Our initiatives in several areas were informed to them and it is hoped our capabilities in many connected matters would get noticed sooner than later.

In recognition of the role of SMEs in economic development of the country, SEBI and Stock Exchanges have laid down a conducive regulatory framework for raising resources by SMEs from the market, keeping in view the interests of investors. According to the framework, a SME meeting the norms of listing on SME Platform of a Stock Exchange can raise resources from the market.

One of the inputs the Exchanges have taken is the Compliance Certificate issued by a PCS. Our Institute in consultation with the Exchanges have developed the format of Compliance Certificate to be issued by a PCS and also a Guidance Note for their use. The Guidance Note of ICSI requires the PCS to verify the level of adherence of the SME to the SEBI Act, Securities Contracts (Regulation) Act and the Rules/Regulations made thereunder. The Compliance Certificate and the Guidance Note thereon is available on our website.

The 12th National Award for Excellence in Corporate Governance is being held on 5th April, 2013 in New Delhi and I extend a warm invitation to you to support the event in full measure.

With kind regards,

Yours sincerely,

New Delhi
March 02, 2013

(CS S N ANANTHASUBRAMANIAN)
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Service tax liability of Practising Company Secretaries under new taxation pattern by the Finance Act, 2012

- The scope and applicability of service tax had been widened. Instead of 'specific service base' a comprehensive taxation base and the concept of negative list had been introduced. Notification dated 20 June 2012 sets out services exempt from tax. The benefit of exemption had not been extended to the services rendered by Practising Company Secretaries and such services continue to be taxed on the same basis as they were prior to 1 July 2012.

Tax on services was imposed for the first time in the year 1994 by the then Finance Minister, Shri Manmohan Singh (now Prime Minister) considering the fact that 'services' constitute a major part (more than 50%) of GDP and therefore there was "no sound reason for exempting services from taxation". Hence a beginning was made by levying such tax on three services which as the years passed rose to 119 services by the end of 31.3.2012 as per the provisions of various Finance Acts from 1994 to 2011. The scheme of taxation was "specific services" based which implied that only those services were taxed which were declared taxable by the various years' Finance Acts.

REVIEW OF THE SCHEME OF TAXATION IN THE YEAR 2012

The scheme was reviewed by the Finance Minister while formulating the Budget proposals for the financial year 2012-13. In para 158 of the Budget Speech for this year, the FM observed

as under:

"Service Tax

158. At the end of June this year, this tax will attain adulthood by completing 18 years. It is therefore time to shift fears and accelerate ahead. However, service tax needs to confront two important challenges to sustain the journey. These are:

- *The share of services in taxes remains far below its potential. There is a need to widen the tax base and strengthen its enforcement;*
- *Service tax law is complex and sometimes avoidably different from Central Excise. We need to bring the two as close as possible in the light of our eventual goal of transition to CST."*

The FM changed the scheme of taxation from 'specific services base' to a 'comprehensive' based taxation. He said that from the declared date i.e. 1st July, 2012 "all services except those in the negative list" would be taxed (para 160 of the Budget Speech). In para 163 of the Speech he has mentioned about exemptions by saying that "in addition to the negative list, there is a list of exemptions which include health care, services provided by charities, religious persons, sportspersons, performing artists in folk and classical arts, individual advocates providing services to

* Former Chairman, Central Board of Direct Taxes and Special Secretary, Ministry of Finance.



non-business entities, independent journalists, and services by way of animal care or car parking." Thus the new scheme of service of taxation is a major shift in the method of taxation switching over to comprehensive taxation of the entire service sector (barring those in the negative list or specifically exempted) avoiding the complexities of classification of services.

SERVICE TAX ON PRACTISING COMPANY SECRETARIES SERVICES

Practising Company Secretaries services along with Practising Chartered Accountants Services and Practising Cost Accountants services were brought under the service tax net by the Finance (No.2) Act 1998 w.e.f. 16.10.1998. In many respects the legal provisions concerning taxation are common for these three services. In the later discussion the scheme of taxation of such persons (hereinafter referred to as 'PCS' for short) is being examined under two heads, namely (i) from inception to 30.06.2012; and (ii) from 1.7.2012.

Scheme of taxation under earlier scheme i.e. upto 30.6.2012

These services were brought to tax for the first time by the Finance (No.2) Act 1998 w.e.f. 16.10.1998. There have been changes in the law as originally enacted and these will be considered in later paras.

There was no definition of service prior to 1.7.2012. A concise definition of this term has been brought in the Act under section 65B(44) which read with the Education Guide issued by the CBEC after the Finance Act 2012 shows that a 'service' implies an act of helpful activity, an act of doing something useful, rendering assistance or help. Service does not involve supply of goods; "service" rather connotes transformation of use/user of goods as a result of voluntary intervention of 'service provider' and is an intangible commodity in the form of human effort. To have "service", there must be a "service provider" rendering services to some other person(s), who shall be recipient of such "service".

Concept of 'taxable service'

The service tax legislation contemplates tax on 'taxable services' vide section 65(105). In respect of Practising Company Secretary's service, sub-clause (u) of clause (105) of section 65 of the Act, defines taxable service as under:

" 'taxable service' means any service provided or to be provided (to any person) by a Practising Company Secretary in his professional capacity in any manner."

According to the Explanation to section 65(105), 'taxable service' shall also include any such service provided or to be provided by any unincorporated association or body of persons to its members for a consideration. The salient ingredients for

➤ Service does not involve supply of goods; "service" rather connotes transformation of use/user of goods as a result of voluntary intervention of 'service provider' and is an intangible commodity in the form of human effort. To have "service", there must be a "service provider" rendering services to some other person(s), who shall be recipient of such "service".

taxation under this category are:

- Provision of service by PCS
- Such services are provided in a professional capacity
- The services may be provided in any manner
- The services must be provided to a person

Definition of Practising Company Secretary

Clause (85) of section 65 of the Act, defines 'Practising Company Secretary' as *"a person who is a member of the Institute of Company Secretaries of India (ICSI) and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company Secretaryship."*

From the above extract, the essential ingredients of a PCS can be mentioned thus:

- (a) All PCS have to be persons who are members of the Institute of Company Secretaries of India i.e. their names should be borne on the register of Members maintained by the Institute.
- (b) The term also includes any concern which is rendering services in the field of Company Secretaryship. The term used is a 'concern' and not 'commercial concern' which means that functioning as 'CS' merely with a profit motive is not necessary.
- (c) The person has to hold a certificate of practice issued under the provisions of the Company Secretaries Act (explained later).
- (d) It also includes a concern. Thus a member of the Institute of Company Secretaries of India may practice in his individual name or in the name of a firm. It also includes a firm of the company secretaryship.

The term person again finds a reference in the context of definition of 'taxable service'. The services to be taxable have to be provided to a 'person'. This term has been substituted for the word 'client' which was in use prior to 16.5.2008. Thus the coverage of the tax has been made wider and services provided to any 'person' would be liable to tax - not necessarily to a client.



Article

Service tax liability of Practising Company Secretaries under new taxation pattern by the Finance Act, 2012

SERVICES IN A PROFESSIONAL CAPACITY

The liability to service tax is in respect of services provided in a professional capacity which implies that only those services should be liable to tax which are rendered by a Company Secretary in that capacity because of depth of specialized knowledge possessed by him in his field as a PCS (as defined in clause (85) of section 65 of the Act (*supra*). Services of other categories, such as those relating to accountancy, returns filing, tax consultancy, project financing management consultancy etc. which do not come within his expertise as CS should, normally, not be taxable in the hands of PCS. The "certificate" of practice granted to CS as per section 6(1) of the Company Secretaries Act, 1980 also confirms this view. According to section 2(2) of the Company Secretaries Act, 1980 a member of the ICSI is deemed to be in practice when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, be, in consideration of remuneration received or to be received. The services expected from a PCS are that he:

- (a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of the companies; or
- (c) offers to perform or performs such services as may be performed by-
 - (1) an authorized representative of a company with respect to filing, registering, presenting, attesting or verifying and any documents (including forms, applications and returns) by or on behalf of the company,
 - (2) a share transfer agent,
 - (3) an issue house,
 - (4) a share and stock broker,
 - (5) a secretarial auditor or consultant,
 - (6) an advisor to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development and Regulation) Act, 1951 (65 of 1951), any of the rules or bye-laws made by a recognized stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969); the Foreign Exchange Regulation Act, 1973* (46 of 1973), or under any other law for the time being in force,
 - (7) issuing certificates on behalf of, or for the purposes of a company, or
- (d) holds himself out to the public as a Company Secretary in practice; or
- (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or



- (f) renders such other services, as in the opinion of the Council, are or may be rendered by a Company Secretary in practice.

It may also be noted that in terms of clause (f) of section 2(2) of the Act, the Council has power to specify any other service that can be rendered by a member in practice. Accordingly, the Council of the Institute has specified that a Company Secretary in practice can also act as "ISO Lead Auditor" and can also form Non-Government Organization (NGO).

However, CBEC's circulars show that accounting and auditing and cost accounting and cost auditing services amongst others rendered by a PCS were also liable to tax. In Notification No. 59/98 ST dated 16.10.1998 (later rescinded by Notification No. 2/2006-ST dated 1.3.2005) these services, along with some other services, were to be under the purview of service tax.

A change was made in the law as originally enacted on 1.8.2002. From 1.8.2002 to 23.2.2006, by addition of an Explanation to Notification dated 16.10.1998 (*supra*), PCSs (along with PCAs & PCWAs) which provided that if their practices fall under any other categories of services such as management consultancy service, manpower recruitment service etc. they shall be liable to pay service tax under that category.

From 1.3.2006 to 12.7.2006: During this period, all types of services rendered by PCS, PCAs & PCWAs were subjected to tax.

From 13.7.2006: The position regarding taxation continued to be the same, namely, all services were liable to tax, with the change that representation services provided by a Practising Chartered Accountant have been exempted from service tax. The services can be provided in any manner through communications or through third parties, through even sub-contracts. However, totally disconnected services unconnected with the word 'practice' such as working as a part time lecturer in colleges and universities and doing other academic work like contributing articles to seminars, newspapers, journals etc. on payment of honorarium does not attract liability to service tax as PCS.

WHO PAYS SERVICE TAX

In relation to practising company secretary's service the service

*Now the Foreign Exchange Management Act. (FEMA)



provider is liable to pay service tax. However, in terms of rule 2(1)(d)(iv) of the Service Tax Rules, 1994, in respect of any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service shall be liable to pay service tax.

SOME OTHER ASPECTS

(a) Liability of non-members providing secretaryship services.

This aspect is covered in the earlier discussion. An individual who is a member of one institute say ICAI can provide services in other field, say the field of cost accountancy or secretarial work, though he is not a member of ICWAI (now ICAI) or ICSI. In this context, it is necessary to keep in mind Regulation 168 of the Company Secretaries Regulations, 1982 which deals with prohibition on practicing Company Secretaries to engage in any other business or occupation.

(b) Valuation of services for service tax levy

Section 67 of the Act read with Rule 3 of the Service-tax (Determination of Value) Rules, 2006 provides how valuation of services is to be done for tax. The position in this regard could be summarized thus:

S.No.	Situations	Value of taxable service
(i)	In a case where the provision of service is for a consideration in money	The value of taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
(ii)	In a case where the provision of service is for a consideration not wholly or partly consisting of money	The value of taxable service shall be the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration
(iii)	In a case where the value cannot be determined in accordance with para (ii) above	The service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

(b) In this context, provisions of sub-sections (2) & (3) of section 67 of the Act have also to be kept in view for determination of 'gross value' for levy of tax.

(b)(ii) Any expenditure or costs incurred by the service provider purely as an agent of the recipient of service, shall be included in the value of taxable service [Rule 5(2) of Service

Tax (Determination of Value) Rules, 2006].

TAXATION OF SERVICES UNDER THE NEW DISPENSATION FROM 1.7.2012

Under the comprehensive scheme of taxation from 1.7.2012, the services of PCS are taxable. However, it needs to be examined, if any, facets of this service are included in the negative list under section 66D of the Act or have been specifically exempted by the Government's notification.

Negative List

Section 66D specifies 17 services which are not taxable. To this extent 'classification of services' has become necessary even under the 'comprehensive' scheme of taxation. None of the clauses (a) to (q) of this section provides for exemption of such services

Exemption under Mega Notification No. 25/2012-ST dated 20.6.2012

There are 39 services mentioned in this 'mega notification'. None of these relate to services as Company Secretary. However, serial No. 6 of this notification exempts the services provided by Advocate or person represented on and as Arbitral Tribunal or Arbitral Tribunal. The coverage of this exemption extends to :

- (1) Services provided by Arbitral Tribunal to person other than business entity or business entity with turnover of upto Rs. 10 lakhs in the preceding financial year is exempt.
- (2) Legal services provided by individual advocate or partnership form of advocates to specified person is exempt.
- (3) Services by person represented on and as Arbitral Tribunal is exempt.
- (4) Service tax is payable by recipient of service.

The services of a Company Secretary are not covered under this exemption even though the definition of 'legal services' given in the notification is that such service shall mean any service provided in relation to advice, consultancy or assistance in any branch of law in any manner and includes representational services before any court, tribunal or authority. This means that the benefit of exemption provided to PCS/PCA/PCWA by notification No. 25/2006 ST dated 13.7.2006 (para 5.3 supra) for representing a client before statutory authorities on the conditions mentioned shall cease. There is no mention of such services even in the CBEC's Guidance Notes.

SUMMING UP

The foregoing account regarding taxability of PCS under the new regime of taxation on comprehensive basis introduced by the Finance Act 2012 shows that no benefits or exemptions have been given to PCS in the Negative List or by Mega Notification. They would be by and large continue to be taxed on the same basis as they were prior to 01.07.2012.

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Principles of Responsible Investments and Environmental, Social and Governance Issues: The Emerging Horizon of Sustainability-based Decision-making in Finance

➤ Since Rio 1992 environmental and other factors have become more and more strategically important in business decisions including corporate finance in view of the fact that nothing is sustainable if it fails to pass through environmental, social and governance test. This article captures the emerging horizon of sustainability based decision making process in finance.

INTRODUCTION

The test of financial investment has necessarily remained an exclusive financial matter alone for obvious reasons. The decisions have all along been taken justifiably on the basis of the hard calculations of incremental gains or losses involved. Non-financial issues were hardly taken care of since they were rightly taken to be not of relevance. The question was rightly there: why the non-financial issues? This remained predominantly the financial decision making's paradigm since inception and enjoyed the theoretical underpinnings from economists like Milton Friedman until recently (Friedman, 1970). It was largely argued that the issues that had zero impact on a financial decision simply were not worth considering. Certainly there was good substance in such arguments. But the point remains as to how far it is true anymore that those so-called non-financial issues have no impact at all on the financial matters. Some of the recent developments have evidently indicated otherwise. Now the validity of this traditional view is on challenge in view of the fact that these non-financial issues do also matter

financially and at times even more than the traditionally categorized financial matters (Oyevind, 2009). In fact, it becomes difficult in present days to find a factor that is truly non-financial in character and not worth considering. Corporations across the globe are gradually finding that there are matters much beyond the age-old definition of financial issues that have sustainable impact on the business and economic decisions. In fact, there has been a transition and a paradigm shift to accommodate those non-financial issues into the core business strategies. The environmental, social and governance (ESG) factors can hardly be ignored by the business any more. They instead constitute the building blocks for a sustainable business strategy. McKinsey Global Survey Results (McKinsey & Co, 2010) have also shown that more than 50% of the 1946 business executives under survey considered the ESG issues 'very' or 'extremely' important in a wide range of areas, including new product development, reputation building, and overall corporate strategy. It is worth noting here that the survey excluded the energy firms that were naturally prone to the ESG issues. Therefore, it is well indicated that there is a tradeoff between considering these issues and



financial performance of business. Since the Earth Summit in 1992 till Rio+20 in 2012 it has indeed been a very important journey for our globe. A global effort followed the 1992 Summit to translate the vision of sustainability into practice. The efforts included all stakeholders: governments, trade and industry – both private and public sectors, and civil society. Although a lot of things are yet to be done, one great thing that happened in the process of this sustainability movement is that the level of awareness and concern for environmental issues has increased so much so that it is now a force to reckon with in the market and nobody can really afford to ignore it. The role of social media in the past two decades has also accelerated to the cause. There is a recognition now that investors taking account of ESG issues are operating a form of positive screening and helping to provide modern solutions to modern problems such as the loss of biodiversity, scarcity of resources and the like (Cherneva, 2012). This development in the public view has qualitatively changed the corporate image and market perception forever in recent times. The business and industry has to honor it. Thus, choosing a project is increasingly dependent on these issues, more a firm honors this, more it becomes easy and convincing for it to find investors.

There are other sides of the story too. These issues invariably have the potential elements of risks a firm is likely to face in the long run. Hence managing the risks effectively to a great extent would be synonymous to handling these issues properly. When a firm does anything that does not get the social approval, it might create a negative attention in the media. It is not just uncomfortable for a firm to be in the adverse spotlight, it is bad for the business since the downgraded reputation would risk its expected cash flows in the days to come and thereby would have a cascading effect on its cost structure. It might not be instantly apparent, but as the day passes, the long term equity gets fractured. Thus, the mainstream firms incorporating the issues into their strategies are perceived to be preparing themselves for the future risks, while those that are providing solutions to challenges such as climate change are taken to be putting themselves in a position to profit from the future changes (Cherneva, 2012). On the other hand, these create a lot of opportunities too. The firms can exert their efforts to strategize to capture the new possibilities with a whole range of newer products and services.

With this back drop we may say that ESG issues too are financially relevant in the changed and ever-changing context. However the point remains: how much?

DEFINING SUSTAINABILITY AKA ESG ISSUES

There is naturally a huge degree of disagreement on what we really mean by ESG issues. The expression is too generic in character. It is practically too difficult to confine the definition into

a single framework. The location, time and situation would define it in a particular case. There is in fact no particular guide to do that. In this article we shall broadly accept the scope and context of ESG as defined by Colonial First State Global Asset Management (CFSGAM) from Australia. CFSGAM is a leading fund manager with extensive global investment management expertise. It is a division of the Commonwealth Bank of Australia group which is one of the nine banks across the world rated AA by S&P (Standard & Poor's, 2010). CFSGAM definition is chosen here since the firm incorporates a consideration of ESG issues into its global investment process (McCluskey, 2012).

Environmental

Environmental considerations include the immediate environment, in which companies operate, as well as the wider community and region. A broad consideration of environmental issues is taken, such as the track record of how companies have dealt with past environmental issues, how companies have acted in environmentally sensitive areas and public leadership on environmental issues.

Social

The concept is referred to as a social license to operate and is considered to be an increasingly important part of the ESG factors for the shareholders in large organizations and direct owners of large property and infrastructure assets. Social





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considerations cover the human aspect of a business's operations, including employees, suppliers, customers, the local community or wider society, It is important that companies are supported by the people they affect.

Governance

The scope of governance, in relation to ESG considerations, covers the impact that management, processes and behaviors have on the long-term interests of the business, its investors and the community in which it operates. It complements the required standards of governance as mandated by legislation. It is to be noted here that although ESG risks and opportunities exist across most classes of assets, there cannot be blanket solution for all sorts of enterprises and business propositions. Different classes of assets have different risk spectrum and the risks thus are perceived differently.

PRINCIPLES OF RESPONSIBLE INVESTMENT

ESG issues have now attained the status of mainstream investment and business issues which are substantiated by the emergence of the United Nations (UN) backed investors' initiative of Principles of Responsible Investment (PRI) in recent times. The PRI's are an investors' initiative in partnership with UN Environment Programme Finance Initiative (UNEP FI) and with UN Global Compact (UNGC). The process was convened by the UN Secretary- General. It is a six-point commitment under the signature of the large investment corporates with a vow to adopt and implement the declared principles. So far 1084 institutions (UNPRI, 2012) have lent their signature to this document and the number is on the increase. These institutional investors have a commitment to act for long term interest of their beneficiaries. Their commitments are as follows (UNPRI, 2005):

Principle #1

We will incorporate ESG issues into investment analysis and decision-making processes.

Possible actions

- Address ESG issues in investment policy statements.
- Support development of ESG-related tools, metrics, and analysis.
- Assess the capabilities of internal investment managers to incorporate ESG issues.
- Assess the capabilities of external investment managers to incorporate ESG issues.
- Ask investment service providers (such as financial analysts, consultants, brokers, research firms, or rating companies) to integrate ESG factors into evolving research and analysis.
- Encourage academic and other research on this theme.
- Advocate ESG training for investment professionals.

Principle #2

We will be active owners and incorporate ESG issues into our ownership policies and practices.



The scope of governance, in relation to ESG considerations, covers the impact that management, processes and behaviors have on the long-term interests of the business, its investors and the community in which it operates. It complements the required standards of governance as mandated by legislation.

Possible actions

- Develop and disclose an active ownership policy consistent with the Principles.
- Exercise voting rights or monitor compliance with voting policy (if outsourced).
- Develop an engagement capability (either directly or through outsourcing).
- Participate in the development of policy, regulation, and standard setting (such as promoting and protecting shareholder rights).
- File shareholder resolutions consistent with long-term ESG considerations.
- Engage with companies on ESG issues.
- Participate in collaborative engagement initiatives.
- Ask investment managers to undertake and report on ESG-related engagement.

Principle #3

We will seek appropriate disclosure on ESG issues by the entities in which we invest.

Possible actions

- Ask for standardized reporting on ESG issues (using tools such as the Global Reporting Initiative).
- Ask for ESG issues to be integrated within annual financial reports.
- Ask for information from companies regarding adoption of/adherence to relevant norms, standards, codes of conduct or international initiatives (such as the UN Global Compact).
- Support shareholder initiatives and resolutions promoting ESG disclosure.

Principle #4

We will promote acceptance and implementation of the Principles within the investment industry.

Possible actions

- Include Principles-related requirements in requests for proposals (RFPs).



- Align investment mandates, monitoring procedures, performance indicators and incentive structures accordingly (for example, ensure investment management processes reflect long-term time horizons when appropriate).
- Communicate ESG expectations to investment service providers.
- Revisit relationships with service providers that fail to meet ESG expectations.
- Support the development of tools for benchmarking ESG integration.
- Support regulatory or policy developments that enable implementation of the Principles.

Principle #5

We will work together to enhance our effectiveness in implementing the Principles.

Possible actions

- Support/participate in networks and information platforms to share tools, pool resources, and make use of investor reporting as a source of learning.
- Collectively address relevant emerging issues.
- Develop or support appropriate collaborative initiatives.

Principle #6

We will each report on our activities and progress towards implementing the Principles.

Possible actions

- Disclose how ESG issues are integrated within investment practices.
- Disclose active ownership activities (voting, engagement, and/or policy dialogue).
- Disclose what is required from service providers in relation to the Principles.
- Communicate with beneficiaries about ESG issues and the Principles.
- Report on progress and/or achievements relating to the Principles using a 'Comply or Explain'¹ approach
- Seek to determine the impact of the Principles.
- Make use of reporting to raise awareness among a broader group of stakeholders.

As it appears, the ramifications of these PRIs are very expansive and pervasive in character. They also are directed towards building a durable and sustainable impact on the nature of investments across the globe. Henceforth the nature of world investments would be more and more ESG focused. This is naturally expected to change the entire global business and economic scenario. Adhering to these Principles would definitely percolate down to the level of retail investors too. The process can be genuinely expected to give a big push to realizing the goal of sustainable economic development as a whole. Applying these principles would better align investors with broader

objectives of society. In essence, this is a great recognition to the fact that ESG issues can affect performance of investment portfolios. The highest capital accumulation is perhaps in the hands of these professional investors who do have a great fiduciary relationship with their clients. This fact itself is enough to understand the real strength of such a declaration.

There have also been attempts to provide a clear roadmap that can be termed 'ten commandments' for the investment market actors to kick-start the next phase in ESG integration (IFC, 2009). The prescription is also targeted to act as a preventive to the further occurrence of a situation like 2007-08 global financial crises. In fact, this set of recommendations is the outcome of the 'Who Cares Wins Initiative' (WCWI) taken in 2004 with the aim of shifting the focus from a simple, one-way chain, with requests issued by upstream clients to downstream providers to a dynamic system oriented view of the interactions (IFC, 2009). The recommendations are as follows:

1. For all investment actors in the market:

To mobilize top management for unblocking the stalled situations between different actors and agree on how to share the costs of further market-building efforts.

2. For regulators and governments:

To ensure greater transparency on ESG performance and integration, it is advocated that industry's integration efforts be actively helped out by framing and formulating policies and regulations so as to ensure a price for the public goods and thereby internalize external environmental and social costs.

3. For asset owners:

To make ESG inclusion a specific criterion in new asset management mandates. It is advised to make a commitment for evaluating ESG capabilities systematically when formulating mandates and selecting managers.

4. For investment consultants:

To develop and communicate a house view on the integration of ESG issues by being explicit about how that position is reflected in the services provided (e.g. investment strategy, asset-liability management / asset allocation and manager selection).

5. For asset managers (senior management):

To lead ESG integration by communicating clear goals and providing appropriate incentives for employees and service providers (e.g. sell-side research).

6. For asset managers:

To pro-actively develop and distribute investment strategies and services that focus on ESG as a tool for improving risk-adjusted return. While designing the integration, it is advised to avoid simple screening approaches.



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7. For asset owners, asset managers and research providers:

To enter a dialogue with companies to explain how ESG issues drive investment decision-making and to request improved reporting on ESG performance.

8. To asset owners, asset managers and research providers:

To improve the quality and coverage of country-specific ESG research in emerging markets by including ESG issues in regular company meetings and engagement activities. Considering collaboration with other investors in requiring minimum ESG disclosure standards from emerging markets legislators and exchanges is highly recommended.

9. For research providers:

To leverage the knowledge of analysts covering industries with a high degree of ESG integration, and expand the quality and scope of ESG inclusive research to include other sectors, regions (including emerging and frontier markets) and asset classes.

10. For rating agencies:

To improve and communicate efforts to integrate ESG issues into rating methodologies.

ESG ISSUES AND INDIAN BUSINESS

So far only two Indian firms have become signatories to the UN's PRI document (UNPRI, 2012). They are IDFC and Soloron Sustainability Services, categorized as an investment manager and professional service partners respectively. The SEBI board passed a resolution on Nov 24th, 2011, requiring the largest businesses to describe measures taken by companies covering the key principles of the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' framed by the Ministry of Corporate Affairs (MCA) circular. The national voluntary guidelines consist of 9 core principles (SEBI, 2011), namely:

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability.

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.

Principle 3: Businesses should promote the well-being of all employees.

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

Principle 5: Businesses should respect and promote human rights.

Principle 6: Business should respect, protect, and make efforts to restore the environment.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.

Principle 8: Businesses should support inclusive growth and equitable development.

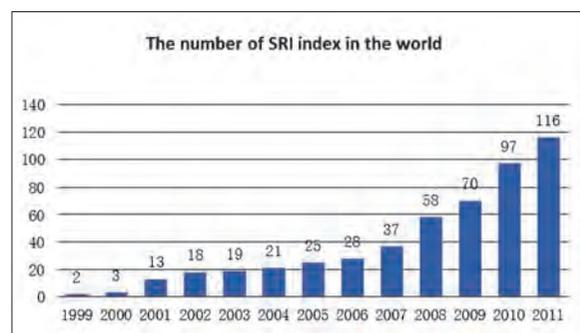
Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner.

All these almost echo Michael Porter's (2011) observations made in an HBR article that read thus:

"The solution lies in the principle of shared value, which involves creating economic value in a way that also creates value for society by addressing its needs and challenges. This will drive the next wave of innovation and productivity growth in the global economy. It will also reshape capitalism and its relationship to society" (Porter, et al, 2011).

S&P ESG INDIA INDICES AND BSE GREEN EX

Constructing market indices is an accepted mechanism to gauge the investors' mood. Corporations neither want nor can afford to go against the market mood. The performance of a market portfolio thus constructed is a very valid measure of the market response to a cause. Building indices on the basis of social responsibility performance of the firms is nowadays very common. Rather if we look at the global scenario we can see that the trend is getting stronger day by day. The socially responsible investment is to a great extent synonymous with sustainability. The chart below shows the growth on this count since its beginning in 1999 (Sun et al, 2011). However, Domini 400 Social Index of the USA that was launched in 1990 has been excluded from our list.

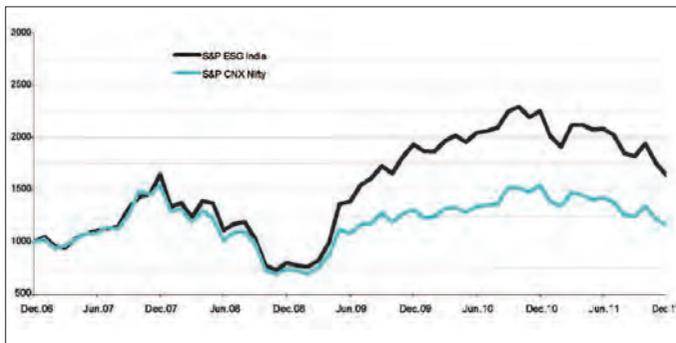


India is now on world's map of SRI indices. S&P ESG India Indices with fifty securities and BSE Greenex with twenty were launched in January, 2008 and February, 2012 respectively. While S&P indices were constructed out of 500 top Indian companies, Greenex were developed out of 100 companies listed under BSE 100 indices. S&P ESG India is based on the firms that are having greater component of ESG issues in their corporate disclosures and practices. The selection has been done on a score developed through quantification of the issues.



The fact that sustainability issues do have high potential to affect the process of stakeholders' value creation and hence make a strong argument in favour of their being considered by the investors going beyond the conventional framework of financial analysis is certainly not enough. What exactly are the issues and what are the true proxies for them continue to remain as a challenge.

BSE Greenex is mainly based on the Green House Gas (GHG) emission by firms. Both the indices have certainly given us the opportunity to invest in greener portfolio. However, for obvious reasons, Greenex with its very short life till date cannot be commented upon as to its performance. But S&P ESG India indices has made a journey a little more worth considering. It has been observed that since its inception ESG India Index has shown remarkable growth finally outsmarting the conventional market portfolios. The following graph shows the trend (S&P,2012):



The above graph vindicates the findings in the west that have strongly indicated, as mentioned earlier, that ESG issues do carry a price in the market. The gradually widening gap also indicates that the market in India too is also fast accommodating the superior value creating ability of these factors. It may not be out of context to refer to the McKinsey Report (2010) once again where it was observed that a hopping seventy-six percent of the business executives under survey opined that engaging in sustainability would contribute positively to shareholder value in the long run (McKinsey & Co, 2010). The Report therefore finally recommended that senior executives of the firms that would want to reap the benefits of incorporating the issues into the overall strategies must take an active role in the effort since it had been found that where sustainability finds a place on CEO's agenda were twice likely to integrate it into the firm's business practices.

We can now say with more confidence that there is a huge market for socially responsible investment (SRI) the world over and that too is expanding fast. In one estimate, a small country like Switzerland in Europe has an SRI market worth 23 billion euro which constitutes only 3.8% share in the overall assets under management (Gerster, 2011). It is to be noted here that Zurich University has taken up the program 'Finance and Society'

focusing on sustainability issues through its National Centre of Competence in Financial Research and thereby has created a lot of academic interest in the area since 2001. This is a very positive move and can be replicated in India too before it is late.

ESG METRICS

However, the fact that sustainability issues do have high potential to affect the process of stakeholders' value creation and hence make a strong argument in favour of their being considered by the investors going beyond the conventional framework of financial analysis is certainly not enough. What exactly are the issues and what are the true proxies for them continue to remain as a challenge. There can hardly be unanimity on the issue when it comes to decipher on the factors at the very micro level of analysis. This is due to many a reason. Differences in regions, sovereignties, legal framework, rules and regulations, policy perspectives, ownership structures, time-horizons, socio-cultural fabrics and the like are responsible for making the situation very complex. But, for all practical purposes, a clearer vision is necessary for the investors while making the decisions. Different indices accommodating the issues could be good indicators for the retail investors, while the institutional investors, that are huge in size and which carry the additional responsibilities of highly fiduciary character with enormous trust bestowed on them, need to do a direct and proactive analysis of the firms and the situation. Therefore, there is a need for developing metrics for the purpose. Since there cannot be a fixed set of metrics, a due-diligence-audit like approach is necessary. A few things should necessarily be inbuilt into the approach taken by the investors to gauge the risks and opportunities involved in the prospective investment decision:

- ✓ Sustainability or ESG analysis by itself is not a silver bullet that would automatically hit the target. It is a part of overall decision making framework of the investor;
- ✓ Sustainability is a very wide and complex issue. A materiality and relevance test is to precede before choosing the factors to consider;
- ✓ Consequently a cost-benefit should be kept in mind. Possible costs of such an analysis should not exceed the possible benefits to accrue;
- ✓ Sustainable investing should not be confused with the concept of ethical understanding. Ethical understanding is very often subjective in character with no connect with sustainability;
- ✓ Sustainable investing is a long-term proposition. So, a



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proper understanding by the analysts is a precondition. It should not suffer from short-termism;

- ✓ As to the data for the analysis, it has to be remembered that quite a good deal would come from unconventional and qualitative non-quantitative sources;
- ✓ Proper education of the analysts has to be ensured. A good deal of efforts is to be invested for training the personnel.

Regarding identification of the variables out of which a choice is to be made depending on the situation, G3 Guidelines of the Global Reporting Initiative as in vogue since 2006 could be of great help indeed (GRI, 2011). G3's sustainability performance indicators have been organized into three categories: Economic, Environmental and Social. The Social category is further broken down by sub-categories like Labour, Human Rights, Society and Product Responsibility. However, the list is, for obvious reasons, more prescriptive in nature. The 3-step guidance (UNEP FI, 2010) on how to translate these factors can be found very relevant in this context too.

Step 1

Draw clear links between ESG factors, sustainability, financial performance and strategy.

Step 2

Standardize the disclosure of quantitative data.

Step 3

Formalize a communication process for qualitative ESG data. This set of steps once again vindicates the position that adequate caution should be taken to start the initiative by a business enterprise for sustainability analysis with a financial purpose.

CONCLUDING REMARKS

The intent of this article is to give a general but objective view of the growing connects between corporate response to the sustainability issues and a comprehensive outline of the state of the on-going efforts to leverage on it. As it is evident, sustainability factors are now well linked to the markets all over the globe. They are no longer worth being ignored by the corporates. There are cases where it has been established that market attaches a premium to this. In some literature the risk involved has been termed as the ESG alpha and ESG beta, alpha referring to the unique risk a firm would bear and the beta as the risk coming from the market (Dunn, 2009). It has also been argued that the efficacy of alpha seeking strategies may be impacted by the evolution of the ESG beta following exactly what happens in the market process. More and more research is going on in the area and likely to come with more specific and astounding results that could even altogether change our perspective of business analysis. In fact, sustainability profile of a corporate is now the best proxy for the quality of its management. There is very little option left out for the

corporations and the investors as well to go otherwise.

From the angle of sustainability movement also, this is of very high importance. Business and investments being at the core of our economic activities work as strong change agents in the social process too. For a safer earth, for this little planet to survive, what is needed is to channelize all the efforts toward the cause of sustainability. None of the ESG issues can be handled effectively despite its nobility and relevance with an amateurish or philanthropic approach. Every effort has to be connected to our economic process. Market is always impacted by the majority opinion. What we need is a genuine level of concern for the fact that sustainability is not a noble cause only. It can also add wealth to us.

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Twitter and The Indian Law

➤ Millions of people interact through the internet. There are bound to be occasions when individuals and others interacting through internet may violate the laws of the land inadvertently or deliberately. This article explains the Indian law with respect to internet transactions.

INTRODUCTION

The Social Media has revolutionized the way individuals communicate in today's day and age. Social networking sites like Facebook and Twitter have grown immensely in the past 5 years in India. According to the latest statistics Facebook's user base in India increased from 8 million users in 2010 to 50 million users in 2012 (as of July 2012). On the other hand Twitter the other social networking site that has pioneered in micro blogging has a user base of 13 million users in India. With such a large population interacting in the internet sphere, there are bound to be occasions where individuals as well as social media companies deliberately or inadvertently violate the laws of the land.

Social Networking websites have recently come under the radar of government authorities in India, on whether they violate any provisions of various Indian laws when content is uploaded onto their respective websites. In the past few months, there have been a number of cases filed by various individuals against social networking sites on matters related to unwarranted content on the Internet. Law enforcement agencies are trying their level best to regulate the internet from a new perspective. Many legal principles such as defamation, data protection/privacy are evolving in the new internet age. This article will focus on some of the important legal issues that are in the limelight *vis a vis* social media.

Recently the Government of India and Twitter were locked in a severe battle over a few accounts that the Government felt

misrepresented the Prime Minister and his office. Apart from misrepresenting the Prime Minister's office, certain incendiary and false information on the Assam riots were uploaded by individuals on the Twitter site.

There have been debates across television and newspapers on what is not acceptable by law in social networking sites. This article discusses the legal risks that apply or potentially apply to users of Twitter as well as Twitter if it fails to remove objectionable content from its servers.

SECTION 79: INFORMATION TECHNOLOGY ACT

We must note at the beginning that a provision under the Information Technology Act, Section 79, provides for an exemption to an "Intermediary", which is defined under section 2 (w): "any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes....". The Indian Information Technology Act, 2000 [Amended in 2008] under Section 79 exempts an Intermediary from liability in certain circumstances. The pre-requisites have been listed below¹ :

1. Intermediary must not be held liable for third party content, information or data hosted by it if:
 - The function of intermediary is limited to providing access to a communication system

¹ Section 79, Information Technology Act 2000 [Amended 2008]



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Twitter as well as other social networking websites, merely provide a platform for individuals to connect with one another. Therefore a question arises, would defamation laws that have been applied to defamatory content on non-social networking sites such as newspapers and TV channels also apply in the case of social network sites like Twitter?

- The intermediary did not initiate the transmission
 - Select the receiver of the transmission
 - Select or modify the information contained in the transmission
 - The intermediary observed due diligence while discharging his duties under this Act
2. Intermediary didn't conspire, abet, aide or induce the commission of the unlawful act.
 3. Intermediary has never had the knowledge of or has been sent a notice to remove the objectionable material nor has it failed to remove it on request.

It is also necessary to note that once an objectionable content is brought to the notice of the intermediary, the intermediary should act within thirty six hours to remove the content from its server in order to avoid penalty under the IT Act and other laws of the land.

1. Defamation

In India, the defamation law protects the reputation of a person. According to Section 499 of the Indian Penal Code "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person." The words "intended to be read," mean anything that has been put in writing either in the electronic form or print form. If an individual defames another person, then Section 499 would get attracted and the individual would be punished under section 500 of the Indian Penal Code, which prescribes a prison sentence of two years or fine or both.

Defamation is generally caused through newspapers, television and Internet websites, where the alleged defamatory content is reviewed internally by the respective editorial teams before being published. Usually there is a time gap between the defamatory content being written and being uploaded on to the Internet or published in newspapers or broadcast through television.

The concept of Defamation over the Internet is not new. In the case of *Gutnick v. Dow Jones*², the publisher Dow Jones was taken to court in Australia because one of the articles that appeared on the Internet version of an American weekly

newspaper. The article was considered defamatory in Australia and the court held that

"Existing principles of defamation law are that legal proceedings should be undertaken in the place where the communication is received, not where the communication is sent from. This applies equally to internet communications, despite the new nature of the technology."..... "In this case, involving information published on the Internet in the United States and read in the State of Victoria, Australia, the suitable jurisdiction for a court action is Victoria."

Dow Jones was held liable because it was the publisher of the article. Would the same rule apply for Twitter or other social networking sites in countries such as India. Now let us take the example of a social networking site for example Twitter. In the case of Twitter, an individual who has an account on Twitter with over 10,000 followers, writes content that is defamatory pertaining to a celebrity. Such content is being uploaded live without being reviewed by any individual who works in Twitter. Twitter as well as other social networking websites, merely provide a platform for individuals to connect with one another. Therefore a question arises, would defamation laws that have been applied to defamatory content on non-social networking sites such as newspapers and TV channels also apply in the case of social network sites like Twitter?

According to the latest news reports³, each day an average of 400 million messages or "tweets" get uploaded on to the Twitter website. Since it is humanly impossible for twitter or any other social networking site to review content, it would not be in any position to remove content on its own.

In the case of Twitter, the company executives of Twitter would be held responsible along with the Individual who has tweeted the defamatory content, if Twitter fails to remove the content in the thirty-six hour period once it is brought to the notice of Twitter.⁴

2. Impersonation

The IT Act protects individuals from Impersonation. According to section 66D of the Act, whoever by means of any communication device or computer cheats by impersonating someone else, shall be punished with imprisonment up to three years and shall be

³ Dan Farber, "Twitter hits 400 million tweets per day, mostly mobile", June 6, 2012 available at: <http://news.cnet.com/8301-1023_3-57448388-93/twitter-hits-400-million-tweets-per-day-mostly-mobile/>

⁴ Rule 4(4), Information Technology (Intermediaries Guidelines) Rules, 2011, Information Technology Act 2000 [Amended 2008]

² *Dow Jones & Company Inc. v Gutnick, Joseph* [2002] HCA 56



liable to pay a fine to the tune of Rs. One Lac [100,000]. If Twitter as an Intermediary does not remove the impersonating user's details and the content that he/she has posted on to the Twitter website according to the guidelines prescribed in the IT Act, then Twitter would be held criminally responsible for the act and would be included along with the individual who has committed the impersonating act, to have committed the offence of Impersonation. In which case, Twitter will not be able to take the defence of Section 79 of the IT Act.

3. Threatening messages/Offensive Communication

Tweets/messages on Twitter, which are of a threatening or intimidating nature, can also cause grievous harm and injury to the person towards whom the intimidating messages are intended to. In such cases, section 66A of the IT Act will get attracted and may lead to imprisonment of three years with fine for the individual who has committed the offence of sending threatening messages to other individuals. If Twitter as an Intermediary does not remove the content according to the guidelines prescribed in the IT Act, then Twitter would be held criminally responsible for the act and would be included along with the individual who has committed the offence of sending offensive threatening messages. In that case, Twitter will not be able to take the defence of Section 79 of the IT Act.

4. Confidential Information/Data Protection

In India, there is no legislation on data protection and data privacy. But under section 66C of the IT Act, there is some relief provided to companies and individuals whose personal data and privacy have been violated. Tweets/ messages revealing personal details of others without their consent could amount to an offence under Section 66C. Twitter as a company might be brought in as a defendant in a legal case, if it fails to remove such confidential information of the individual from its servers.

5. Trademark Rights

In order to alert users to the relevant conversations taking place

on Twitter, Hash tags with the '#' symbol are used. Trademark rights of large and small companies are at risk if individuals/companies not related to a particular brand create a Twitter account with the symbol '#' along with the brand name, which would lead to trademark infringement. In this case, Section 29 "Infringement of Registered Trademarks" of the Trademarks Act 1999 would get attracted. It is a well-known principle under trademark law that protects trademark owners against use of their trademarks without their permission in a way that might create confusion. Where a trademark is well known and has established a certain brand name in the market, the protection will extend to any thing that is associated with the trademark, which includes Twitter accounts. Use of hash tags by individuals in these circumstances could result in damage claims by the trademark holders.

6. Copyright Infringement: Copying of Text

The Indian Copyright Act gets attracted if an individual reproduces a written content of a copyrighted work without permission from the creator/author as a form of a tweet. Section 51 - Copyright Infringement will be attracted unless the individual who is the author of the tweet is able to justify that this amounted to Fair Dealing under section 52 of the Act raising any of the defences mentioned in the section.

7. Communal Hatred [Hatred against a Community]

Any individual who through the medium of Twitter writes content as form of a tweet/messages or several tweets/messages, inciting communal hatred and violence will be held accountable under section 153 A of the Indian Penal Code, which punishes any individual or a group of individuals who incite communal hatred between two religious communities by words spoken as well as written. The punishment stipulated under this section is three years imprisonment with a fine. Twitter on its part should make sure to remove such content from its servers when it is brought to its notice because only then it can take the defence of Section 79 of the IT Act. If it fails to remove the content within



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Twitter has created a revolution in the social networking sphere. It is one of the most successful micro blogging sites with over 150 million registered users. With a large amount of registered users comes immense responsibility to regulate content. Twitter as well as individual users should make sure that they are abiding by the laws of the land.



thirty-six hours stipulated under the IT Act Guidelines, it will lose the protection as offered under section 79. In such a situation Twitter may be held responsible as a contributing party and its executives may be charged under Section 153 A of the IPC.

8. Pornography/Obscenity

Pornographic content as well as any other obscene content is prohibited in India. Therefore any individual who publishes pornographic/obscene content *via* Twitter will be punished with an imprisonment sentence of a minimum of five years along with a fine of Rs One Lac. Twitter should also take note of such content being uploaded onto its social networking platform and should remove the same within the stipulated time limit in order to avoid prosecution from law enforcement agencies.

Section 67 restricts publishing of information, which is obscene in electronic form. It prohibits any material, which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it.

After the 2008 Amendments to the Information Technology Act, Section[s] 67A and 67B were subsequently added so as to specifically prohibit publishing or transmitting of material containing sexually explicit act [depicting children and otherwise], etc. in electronic form.

9. Advertising

Advertising via social media has grown immensely during the past couple of years. Internet advertising via Facebook, Twitter has given many companies a new medium i.e. the social networking medium to show case their products and services. According to the Advertising Standards Council of India, a self-regulatory voluntary organization of the advertising industry, there are certain ads [mentioned below] that are prohibited, which are in violation of the Indian Law. Any Advertisement that:

- Derides any race, caste, colour, creed and nationality

- Is against any provision of the constitution of India
- Tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way
- Presents criminality as desirable
- Exploits the national emblem, or any part of the constitution or the person or personality of the national leader or a state dignitary
- Projects a derogatory image of women
- That portrays women in a manner that emphasizes passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society
- Exploits social evils like dowry, child marriage
- Promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants; Provided that a product that uses a Brand name or Logo which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants in a proper manner.

Any individual or a company involved in advertising on Twitter must take care of the points mentioned above in order not to avoid the law. Any violation may result in prosecution.

CONCLUSION

Twitter has created a revolution in the social networking sphere. It is one of the most successful micro blogging sites with over 150 million registered users. With a large amount of registered users comes immense responsibility to regulate content. Twitter as well as individual users should make sure that they are abiding by the laws of the land. Many a times, certain objectionable content is taken for granted but in reality such content could result in large-scale social unrest within the country. Laws such as the Information Technology Act have been enacted in order to maintain law and order within the internet environment because without any IT law, the internet would be left unregulated and will lead to social unrests, cyber terrorism etc. which if not stopped at the correct moment, would lead to undermining the very existence of the state.

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ETFs: A New Investment Vehicle in Indian Market

➤ Exchange traded funds is comparatively a new concept in the field of finance and it is in its infancy in India. An exchange traded fund comprising of a mix of stock and mutual fund is an investment fund traded on stock exchanges much like stocks. Various important aspects relating to ETFs have been succinctly explained here.

An exchange-traded fund is an investment fund traded on stock exchanges, much like stocks. An ETF holds assets such as stocks, commodities, or bonds and trades at approximately the same price as the net asset value of its underlying assets over the course of the trading day. As the name suggests, ETFs are a mix of a stock and a MF in the sense that like 'mutual funds' they comprise a set of specified stocks e.g. an index like Nifty/Sensex or a commodity e.g. gold; and like equity shares they are 'traded' on the stock exchange on real-time basis.

Only authorized participants (typically large institutional investors) actually buy or sell shares of an ETF directly from or to the fund manager, and then only in creating the units, large blocks of tens of thousands of ETF shares, are usually exchanged in-kind with baskets of the underlying securities. Authorized participants may wish to invest in the ETF shares for the long-term, but usually act as market makers on the open market, using their ability to exchange units with their underlying securities to provide liquidity of the ETF shares and help ensure that their intraday market price approximates to the net asset value of the underlying assets. Other investors, such as individuals using a retail broker, trade ETF shares on this secondary market.

An ETF combines the valuation feature of a mutual fund or unit investment trust, which can be bought or sold at the end of each trading day for its net asset value, with the tradability feature of a closed-end fund, which trades throughout the trading day at prices that may be more or less than its net asset value. Closed-end funds are not considered to be "ETFs", even though they are funds and are traded on an exchange.

In ETFs, since the trading is largely done over stock exchange, there is minimal interaction between investors and the fund house. ETFs can be categorised into close-ended ETFs or open-ended ETFs. ETFs are either actively or passively managed. Actively managed ETFs try to outperform the benchmark index, whereas passively-managed ETFs attempt to replicate the performance of a designated benchmark index.

Difference between ETF and Conventional Mutual Funds

- Mutual funds are traded through fund house where as in an ETF, transactions are done through a broker as buying and selling is done on the stock exchange
- When the market starts, investors can easily buy or sell ETFs like equity shares at prices which are deemed real-time. However, investors can buy MF at net asset value (determined by closing prices)
- In conventional mutual funds units can be bought and



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Commodity ETFs invest in commodities such as precious metals and futures. In India, only gold ETFs are available. Gold ETFs are open-ended mutual fund schemes that will invest the money collected from investors in standard gold bullion (.995 purity). The investor's holding will be denoted in units, which will be listed on a stock exchange.

redeemed only at the relevant NAV, which is declared only once at the end of the day. ETFs can be bought and sold at any time during market hours like a stock. As a result, ETF investors have the benefit of real time pricing and they can take advantage of intra-day volatility

- ETFs are fundamentally index-specific and thus the portfolio is largely the same. On the other hand, portfolio of a traditional mutual fund will keep changing on a daily basis. Hence, it is possible to know the ETF portfolio in advance and the portfolio of MF can be known only during the disclosures at the end of the month
- Annual expenses charged to investors in an ETF are considerably less than the vast majority of mutual funds. Most of the mutual funds have an entry or exit load varying between 2.00% and 2.25%. ETFs do not have any such loads. Instead ETF investors have to pay a brokerage to the broker while transacting which in most cases is not more than 0.5%
- ETFs allow the investors to pay their share of costs whereas MFs deduct costs from the net asset value
- The striking advantage in ETF is it can stay fully invested as it need not hold a large cash balance to meet deliverance pressures like the MF
- Stock exchange is the place where trading of ETF takes place and for that, an account of dematerialization (Demat Account) is a basic prerequisite. This is not the case with MFs that are essentially traded with AMC (Asset Management Company)
- ETFs safeguard the interests of long-term investors. This is because ETFs are traded on exchange and fund managers do have to keep cash in hand in order to meet redemption pressures.

TYPES OF EXCHANGE TRADED FUNDS (ETF) Commodity ETFs

Commodity ETFs invest in commodities such as precious metals and futures. In India, only gold ETFs are available. Gold ETFs are open-ended mutual fund schemes that will invest the money collected from investors in standard gold bullion (.995 purity). The investor's holding will be denoted in units, which will be listed on a stock exchange. These are passively managed funds and are designed to provide returns that would closely track the returns from physical gold in the spot market. An investor can buy and redeem the units either directly from the mutual fund, subject to certain stipulations, or from the stock exchange. Gold ETFs enables the investors to take active part in the gold bullion market



while there is no requirement of taking physical delivery of gold and thus giving the investor right to buy/sell through the trading of the security on the stock exchange. Gold ETF would be a passive investment when the gold prices rises up then the ETF value appreciates and when gold price reduces, the ETF loses its value.

Advantages of Investing in Gold ETFs

- Potentially cheaper to have price exposure to gold price as compared to other available avenues
- Quick and convenient dealing through demat account
- No storage and security issue for investors
- Transparent pricing
- No wealth tax on gold ETFs
- Can be traded on stock exchange like buying / selling a stock
- Ideal for retail investor as minimum lot size to trade is one unit on secondary market
- NAV of a unit will track price of approximately ½ or 1 gram of gold
- No risk of holding physical stock.

Bond ETFs

Bond exchange trade funds (ETFs) are very well represented in the world of investing. There are two reasons to consider investing in a bond exchange traded fund. The first is to provide a relatively steady stream of income. The other reason is to decrease overall portfolio volatility because bonds and stocks often don't move in concert with each other. In the case of Bond ETFs, there is currently only one such ETF available in India, i.e. Liquid Bees.

Index ETFs

Index ETFs are actually index funds that hold and keep certain



securities and attempt to duplicate the performance of a stock market index. An index funds main objective is to track the performance of an index by holding in its portfolio either a sample of the securities in the index or the contents of the index. In addition to diversified emerging markets fund, which generally make a significant allocation to Indian equities, there are a number of ETFs that invest exclusively in India's stock market.

Leveraged and Inverse ETFs

These ETFs enable the investors to gain or lose 2-3 times the direction of a particular type of index. These funds reset on a daily basis so they are useful only to seasoned traders who understand their risks rather than long-term buy-and-hold investors.

Futures-Based Commodity ETFs

These ETFs have the primary aim to track commodities by investing in baskets of futures or swaps. These may get investors near to a "pure play" on commodities swap prices; they are prevented by problems such as contango from fully performing at all times.

Exchange Traded Notes (ETNs)

It is notetrack baskets of debt, secured by the provider, rather than a basket of stocks. An ETN can also be sold short, trade like a single stocks and offer special exposure to currencies or commodities.

Role of ETFs

There is no denying that ETFs are by far less popular than the traditional mutual funds to which a greater number of investors flock. This may presumably be due to the lack of awareness of the existence of ETF or the more likely reason i.e. the improper understanding of ETF by an average investor.

ETFs generally track indices. For example, the Nifty or the

Bankex are tracked with ETFs. As a result, the return is narrowly confined to the rise in the index figure. The steadily growing population of retail investors in India, who want to quickly build wealth, is much more interested in the non-index shares, where the earning potential is greater. This is the prime cause for ETFs failing to catch the investor's eye.

However, there are some positive aspects of ETFs. At times when market is over-valued, it will be nearly impossible to beat the index figures. Then index-based conventional mutual funds and ETF will decidedly be a more attractive bet than actively-managed funds. It is also important to remember that gold ETFs and real estate ETFs are unique with no like product in the traditional MF sector.

Benefits of investing in ETFs

- Convenient to trade as it can be bought/sold on the stock exchange at any time of the day when the market is open (index funds can be bought only at NAV based on closing prices)
- The biggest advantage of these funds is that they offer diversification and flexibility at the same time
- ETF is a very transparent instrument, as everyone knows the underlying asset
- One can short sell an ETF or buy on margin or even purchase one unit, which is not possible with index-funds/conventional MFs
- ETFs are passively managed, have low distribution costs and minimal administrative charges. Hence, most ETFs have lower expense ratios than conventional MFs
- Not dependent on the fund manager
- Like an index fund, they are very transparent
- Exchange traded funds can be traded either in premium or in discount and they are based on the net asset value. Another feature of this fund is that one need not calculate the NAV on a daily basis
- ETF like an Index fund does not require active fund managed and is therefore cheaper as passively managed
- ETF funds are available in different forms and can be selected as per the requirements. These include ETF bond funds, ETF dividends, ETF hedge fund, ETF junk bonds, ETF mutual funds, ETF real estate stocks, ETF iShares, and many more forms
- Arbitrage opportunities between cash and futures market can be availed at low cost. Trading strategies can be applied with stop loss orders.

How are ETFs used?

ETFs could be used for the following purposes:

Asset allocation: For individuals it could be difficult to manage asset allocation given the cost involved. ETFs provide investors with exposure to broad segments of the equity markets. They enable investors to build customised investment portfolios in line with their risk taking ability and time horizon.



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» ETFs provide an option to the investor not only to diversify across several major asset classes, such as equity or fixed income, but also to diversify into investments that have a low correlation to the major asset classes. This includes areas such as commodities, emerging markets, small cap stocks, real estate and others.

Core Holding: An investor can consider using some ETFs as core portfolio holdings. A low-cost diversified portfolio can be easily constructed with the help of a few ETFs for covering the major equity asset classes and fixed-income market. The investor can customize a portfolio with the help of additional securities, mutual funds or other ETFs.

Ride the market rally: Many times, investors need time to make investment decisions, like buying a particular stock, but do not want to miss out on the opportunity in the stock markets. At such times they can park their funds in ETFs. Because ETFs are liquid, investors can participate in the market rally while deciding where to invest the funds for the longer-term, thus avoiding potential opportunity costs.

Diversification: ETFs provide an option to the investor not only to diversify across several major asset classes, such as equity or fixed income, but also to diversify into investments that have a low correlation to the major asset classes. This includes areas such as commodities, emerging markets, small cap stocks, real estate and others.

Hedging Risks: ETFs can be used as hedging vehicle because they can be borrowed and sold short. The smaller denominations in which ETFs trade relative to most derivative contracts provide a more accurate risk exposure match, particularly for small investment portfolios.

Tax-loss Harvesting: Tax-loss harvesting is a strategy in which capital losses are realized in a taxable account, and then redeploying sale proceeds among similar investments, leaving the investor's portfolio principally unchanged. The wash-sale rule prevents an investor from selling security at a loss and then immediately repurchasing it by not allowing the purchase of "substantially identical" securities within a period of 30 days of a sale. With the availability of a wide variety of ETFs, buying an ETF that is identical to the fund or stock being sold is very easy. The end result is a portfolio that strongly resembles the one before the capital losses were realized without invoking wash-

sale rule.

Completion Strategies: An investor may want to quickly gain exposure to specific sectors, asset classes or styles without having any expertise in these areas. As an example, an investor who has absolutely no expertise in emerging markets can buy an ETF depending on an emerging market index.

Portfolio Transitions: Many investors shift portfolio assets between different advisors, managers or funds. In this transition period, the assets might be allowed to sit idle. ETFs allow investors to keep their assets invested rather than having them idle / dormant.

Cash Management: ETFs can also be used to "equitize" cash, allowing investors to put their money in the stock market till the time a long-term investment decision is made. This way, investors can ensure that they do not miss out on price rises or forego income when their money is parked temporarily.

RISKS IN TRADING IN ETFs

- ETF is a new concept in India compared to other parts of the world
- ETFs are traded through brokers and hence every time brokerage has to be paid which becomes costly affair if regular trades are done. This can significantly reduce the profit of an active ETF trader
- An ETF might trade at a discount to the underlying shares. This means that although the shares might be doing very well on the bourses, yet the ETF might be traded at less than the market value of these stocks
- Active ETFs can create increase trading expenses and fees
- The intraday trading opportunities created by ETFs may not fit into a long-term investor's strategy. This is more of an advantage for short-term ETF traders. Hence, as an investor, it will be important to layout the investing goals before deciding how to include ETFs in the portfolio
- ETFs passively track other financial instruments, which can be liquid or volatile. Usually market indexes are less volatile





than specific sectors or industries. Similarly international ETFs which track indexes of countries/regions with strong fundamentals are less volatile

- Unlike open-ended mutual funds, ETFs cannot reinvest dividends. Dividends are paid out to owners of shares at the end of each quarter. This has a slightly adverse effect on performance and is called "dividend drag"
- Some ETFs are not as actively traded as others. It can be a sector-related issue or even a regional issue. When this situation occurs, it may be more effective to invest in managed fund where activity is higher
- The Past Performance of the fund house issuing the ETF should not be construed for the future performance of the fund. It might not provide a basis of comparison with other investments
- Although the liquidity of ETFs matches liquidity of tracking index, their own trading volume is also a factor worth noticing. With the introduction of new types of ETFs, there are quite a few not-so-liquid ETFs having large differences between ask and bid prices
- Most ETF firms invest capital gains to the market, which is often the right thing to do. ETFs which distribute capital gains to ETF holders are making the shareholders qualify for capital gains tax
- From a timing perspective, selling an EFT when the investor wants to may be difficult if the ETF is a thinly traded issue or if the market is experiencing high volatility. This is also true when selling stocks
- The sponsor of the mutual fund is not responsible or liable for any loss or shortfall resulting from the operation of the fund beyond the initial contribution made by it of an amount of Rs 1 Lakh towards setting up of the Mutual Fund
- The scheme's NAV will react to the Bullion Market movements. The investor could lose money over short periods due to fluctuation in the schemes NAV in response to factors such as economic and political developments,

changes in interest rates and perceived trends in Bullion market movements and over longer periods during market downturns

- Investors are not offered any guaranteed or assured returns.
- Dollar Cost Averaging (DCA) is a simple but effective way of building a big portfolio. But the costs involved in ETF trading makes DCA less-effective (unless trading through a discount broker)
- Mutual Funds and Securities investments are subject to market risks and there can be no assurance or guarantee that the objective of the scheme will be achieved
- As with any investment in securities, the NAV (Net Asset Value) of the units issued under the ETF can go up or down depending on the factors and forces affecting the Bullion Market, Capital Market and Money Market
- In the case of foreign ETFs, sometimes there may be a tax advantage by opting to invest in an international portfolio. Tax laws vary from country to country, so it may be beneficial for the tax return to find other foreign investments

CONCLUSION

Trading ETFs has become a popular investment strategy as it provides several benefits. Exchange Traded Funds, or ETFs, combine many of the best characteristics of stocks and mutual funds. ETFs have been gaining investor interest. Exchange traded funds can be used as a long-term investment tool, ideal for filling asset allocation gaps and replacing higher-fee mutual funds. Globally, ETFs are viewed as an efficient and transparent method of taking exposure to any asset class. It is also done on a fee based advisory model, while in India this is still at a nascent stage. As and when it gathers momentum, ETFs as a popular mode of investment will pick up in India as well. CS

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Basel III - Will it Ensure better Financial Stability for Banks?

➤ The Basel Committee on Banking Supervision has introduced new bank capital and liquidity standards known as Basel III. The proposed new regulations on the banking sector attempt to improve the financial stability. This article examines the new capital and liquidity regulatory requirements for the banks to comply with and implications involved in it.

BACKGROUND

After the Global Financial Crisis of 2007, economies all over the world started envisaging improving financial stability. Most of the market failures and turmoil during this financial crisis clearly highlighted the need for government and central banks to undertake regulatory reforms. The declining confidence in the banking sector and liquidity crunch adversely affected availability of trade finance. According to a Survey conducted by IMF and Bankers' Association for Trade and Finance (2009), the gap between demand for trade credit and supply provided by Financial Institutions increased substantially from 10-15 basis points over the London Inter-Bank Overnight Rate (LIBOR) to 300 points. As a result, governments came forward to intervene to restore the flow of trade credit so as to avoid such crisis.

The financial crisis highlighted several weaknesses in the Basel II framework:

- The Capital requirement ratio of 4% was not adequate to offset the huge losses that were incurred
- The responsibility for the assessment of counterparty risk was vested with the credit rating agencies which had possibility of conflict of interest
- The capital requirement is 'pro-cyclical'. Procyclicality means that banks are able to disproportionately expand lending as

a result of expansion in economic activity and contract when economic activity is contracting. During economic expansions lending is less risky while economic contractions lending tends to be more risky thereby requiring high level of capital

- Basel II incentivized the process of securitization when financial institutions restructured their asset-backed securities from off balance sheets and thus reduced the risk weighting, this enabled the banks to reduce their capital requirement thereby exposing to higher risks and leverage.

Basel I was adopted in 1988 which ensured stability to the international banking system. However Banking regulators in United States and other countries developed Basel II in 2004 (revised in 2008) as Basel I was not flexible enough to measuring risk exposures. After the 2007-2009 global financial crisis, the adverse effects of the financial crisis and increasing global recession prompted Basel Committee on Banking Supervision (BCBS) to develop standards to supplement and in certain aspects replace the existing standards of Basel II. Consequently in September 2010, the Committee adopted a consultative document on new rules for capital requirement known as 'Basel III' and finalized the core elements of Basel III framework.

BASEL III: FEATURES AND OBJECTIVES

The Basel III is the most recent international measure to



introduce a new capital adequacy norm for the Banks. Particularly, Basel III is an agreement on capital requirements among countries' central banks and bank supervisory authorities. The Capital requirements mandate the Banks to hold as a cover against losses and insolvency. The Basel Committee on Banking Supervision (BCBS) had collectively reached an agreement with a view to "strengthen global capital and liquidity norms with the goal of promoting a more resilient banking sector" which is referred to as Basel III.

"Basel III" is a comprehensive set of reform measures, developed by BCBS to strengthen the regulation, supervision and risk management of the banking sector. The objective of these measures is to:

- Improve the banking sector's ability to absorb shocks arising from financial and economic stress
- Improve risk management and governance
- Strengthen banks' transparency and disclosures.

These reforms basically target the following:

- Bank-level or micro-prudential, regulation which will help raise the resilience of individual banks in the period of stress
- Macro-prudential system wide risks that can build up across the banking sector.

These approaches to supervision are complementary as greater resilience at the individual bank level reduces the risk of market failure.

In order to achieve these objectives, the Basel III recommendations are classified into three parts as follows:

- (a) Capital reform which includes quality and quantity of capital, complete risk coverage, leverage ratio and introduction of capital conservation buffers and countercyclical capital buffer,
- (b) Liquidity reforms such as liquidity coverage ratio and net stable funding ratio,
- (c) Other factors relating to general reforms to the stability of the financial system.

Basel III: Capital Reforms

Capital Reform	Liquidity	Systematic Risks and other Reforms
Quality and level of capital	Liquidity coverage ratio	Systematically Important financial institutions (SIFIs)
Capital loss absorption	Net stable funding ratio	
Capital conservation buffer	Principles for Sound Liquidity Risk management and supervision	
Countercyclical buffer	Supervisory monitoring	

MAIN ELEMENTS OF BASEL III FRAMEWORK

Basel III is intended to apply to the following financial institutions:

- Holding companies for corporate groups that are engaged primarily or substantially in banking activities. Thus Basel III would be applied on a consolidated basis
- Globally Active banks and their subsidiaries
- Globally Active banks on an individual basis.

Basel III does not supersede the Basic "three pillar" approach (Pillar I - minimum capital requirements, including separate capital charge for credit risk, market risk and operational risk; Pillar II - supervisory review of banks allowing for adjustments of a bank's capital requirements above to the minimum; and Pillar III - disclosure of details regarding capital calculations) introduced by Basel II. Rather it just provides in addition to the existing framework more regulatory norms like capital components, leverage ratios and liquidity requirements as summarized below:

1. Components of Capital
2. Capital Ratios
3. Leverage Ratio
4. Liquidity Ratios

1. Components of Capital

The Total regulatory capital will include the following:

1. Tier 1 Capital (Going-concern capital)
 - (a) Common Equity Tier 1
 - (b) Additional Tier 1
2. Tier 2 Capital (Gone-concern capital)

The common equity Tier 1 will comprise of ordinary share capital and retained profits. The Non-common equity Tier 1 ("Additional Tier 1") will mainly consist of perpetual non-cumulative preference shares and other qualifying instruments. Tier 2 capital will no longer be segregated into lower Tier 2 (mainly term preference shares and subordinated debt) and upper Tier 2 (perpetual instruments and subordinated debt). All Tier 2 instruments will be required to be either convertible into common equity or written down in the event of bank becomes non-viable. Tier 3 capital will no more be the component of capital and hence abolished. There are some regulatory adjustments i.e. deductions from capital that would be applied to the common equity Tier 1 component of capital.

Basel III redefines regulatory capital in order to improve the quality, consistency and transparency of regulatory capital. The Basel Committee has provided that Tier 1 Capital must consist substantially common equity and retained earnings. Under the Basel III framework Tier 1 capital is adjusted to narrow it as close as possible to bank tangible common shares. Goodwill and preferred stocks would not be included in the new Tier 1 capital.



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Deductions from Capital

There will be certain deductions while calculating common equity Tier 1 capital. These deductions from common equity include goodwill and other intangible assets (excluding mortgage servicing rights), reciprocal cross-holding in other financial institutions, any shortage in provisions with respect to expected losses calculated under its own internal models, defined benefit pensions fund assets. Similarly there will be certain items that are required to be derecognized in relation to common equity including unrealized gains and losses recognized on bank's balance sheet because of a change in bank's credit risk, cash flow hedge reserves.

Certain assets are subject to partial deduction from Tier 1 common equity. These assets include significant investments in the common shares of unconsolidated financial institutions, mortgage servicing rights and certain deferred tax assets. Such assets may be included as Tier 1 common equity till each of these items is covered at 10 % of bank's common equity.

2. Capital Ratios

The core solvency ratios are to be remained at 8% of risk weighted assets (RWAs). The minimum common equity component will be 4.5 % and overall Tier 1 capital will be 6 %. Additionally, there will be a capital conservation buffer and countercyclical capital buffer.

Capital Conservation Buffer

Basel III has introduced extra buffer of 2.5 % of common equity over and above the minimum requirement for Tier 1 equity. It is intended to ensure that financial institutions have a cushion in the event of financial and economic stress. The minimum amount of the conservation buffer is 2.5% of the banks risk weighted

assets. Consequently if a financial institution's common equity which is in excess of minimum amount falls short of the buffer amount, the institution will be restricted to certain activities like distribution of dividends, share buy-back and bonus issues. These restrictions will maintain the capital conservation buffer. These institutions will be expected to maintain prudent earning retention policies in order to meet the capital conservation buffer under Basel III.

The capital conservation buffer above the minimum requirement at 2.5% can be met with common equity after the application of certain deductions. The very purpose of conservation buffer is to ensure that banks maintain a buffer of capital that can be used to absorb losses during period of financial and economic stress. Although Banks are allowed to withdraw from the buffer during the periods of crisis, the closer their regulatory capital ratios approach the minimum requirement, the greater the constraints on earning distributions. This framework would support the objective of sound supervision and bank governance.

Countercyclical Capital Buffer

Procyclicality means that banks are not expanding their lending in right proportion when economic activity is expanding and similarly banks are not contracting their lending in right proportion when economic activity is contracting. During the economic expansion, lending is less risky whereas during the economic contraction lending tends to be more risky. Basel III recommends a higher level of capital in the period of economic contraction and lesser level of capital in the economic expansion. Basel III recommends that Procyclicality also works against monetary policy. Monetary policy attempts to spread credit and expand lending to reverse a contraction or slow credit and contract lending under the different economic circumstances. In other words, Procyclicality has a destabilizing impact on the economy.

A country regulator may require buffer of any size in order to achieve the buffer's objective. The Basel Committee has suggested that the use of buffer is especially appropriate when the amount of credit in the economy is excessive as compared to its historical trends. Countries are independent in considering other factors while making buffer decisions and exercise their discretions in different ways.

Where a banking group has operations in more than one country, it is required to calculate its own countercyclical buffer based on a weighted average of the entire countercyclical capital buffer in each Basel III country where it has operations and subject to risk exposure. This aspect of countercyclicality is referred to as jurisdictional reciprocity under Basel III. The practical aspect of this factor would lead to create economic incentive for the banks to increase their risk exposures to countries with no or lesser buffer and to decrease their risk exposure to countries with relatively higher buffer. Further this would also add to the complexity involved in the calculation of buffer.



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3. Leverage Ratio

Leverage ratio is a "simple, transparent, non-risk based measure" introduced to reduce the amount of risk in the financial system and to backstop the risk-based capital requirement. This ratio restricts the absolute level of indebtedness of a bank for a given amount of capital. It acts as a safeguard against attempts to manage the risk based capital requirement and it also serves the purpose of mitigating discrepancies and inadequate risk attribution to assets. Basel III provides for a trial period a minimum leverage ratio requiring 3 % of Tier 1 capital measured against gross exposures without risk adjustment.

The numerator of the ratio of the Basel III requirement is Tier 1 capital. The denominator of the ratio, the "total exposure", is based on non-risk weighted assets and off-balance sheet exposures. The denominator is to be calculated as per the financial accounting principles that apply to the bank but with a consistent application of regulatory netting principles to gross assets. This is in order to prevent the netting rules of different accounting regimes which could result in the diverged calculation of total exposures.

It was envisaged during the period of financial crisis in 2008-09 that there was accumulation of excessive on and off balance sheet leverage in the banking system although the banks were able to meet their regulatory risk weighted assets capital requirements. But banks were forced to reduce their leverage compelled by market forces like economic increased downward pressure. In order to control such deleveraging impacts, the Basel Committee has introduced a leverage ratio that will achieve the following objectives:

- (a) Restrict the build up of leverage in the banking sector to avoid the destabilizing and deleveraging process which may affect the financial system;
- (b) Introduce the risk-based requirements with a simple non-risk based backstop measure.

Leverage ratio can be used as a non-risk sensitive backdrop measure to reduce the risk of build up of excessive leverage in the institution and in the financial system. The Leverage limit has been provided as 3 per cent of the bank's total assets (including both on and off balance sheet assets). Although the ratio is introduced to supplement the risk based measure of regulatory capital as a result it would consequently create pressure on banks to sell low margin assets that could decrease the prices on

these assets. The leverage ratio may result in reduced lending and would reinforce banks to stabilize their banking capital position. The ratio will be implemented on a gross and risk free basis without taking into consideration the risks attached to the assets.

4. Liquidity Ratio

Banks had to face liquidity difficulties during recessions despite meeting the regulatory risk-weighted assets capital requirements. Basel III introduced a new global liquidity standard aligning with the minimum capital requirement of the Basel capital accords. The 2008 turmoil in the financial market shifted the banks to severe stress requiring the central bank to take actions to support them. The Basel Committee developed two minimum standards for funding liquidity.

Short term Liquidity Coverage Ratio (LCR)

The LCR has been introduced to measure a bank's capacity to utilize funding for a thirty days period of acute market stress. Banks will be required to create a separate stock of highly liquid and unencumbered assets that are equal to its estimated "net cash outflows" for a thirty days period during a time of acute liquidity stress. The thirty days stressed period considers the negative forces arising out of credit rating downgrade of the bank, partial loss of unsecured wholesale funding, withdrawal of some retail deposits, and general market volatility.

High quality liquid assets: These high quality liquid assets being the numerator of LCR are generally unencumbered, easily and quickly convertible to cash with little or no loss of value even during stress period. These assets will be of two categories: Level 1 and Level 2. The level 1 assets will include cash, central bank reserves and certain securities issued by governments, central banks and some other international finance agencies. The level 2 assets will be other qualifying liquid assets. A 15 % margin will be applied to level 2 assets and after the margin adjustment the level 2 assets cannot be more than 40 % of the total liquid assets used to compute the LCR.

Net cash outflows: Basel III introduces a complex formulae for determining "net cash outflows" being the denominator of the LCR which involves the process of weighting of cash inflows and outflows to determine net cash outflows. This is to ensure that there will be enough high quality liquid assets to service at least 25% of gross cash outflows in addition to liquid assets sufficient to serve 100% of net cash outflows. Basel Committee also follows a conservative approach to the treatment of credit facilities. Banks will be required to assume 100% drawdown of committed credit and liquidity facilities granted to other banks for



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the purpose of calculating cash outflows.

This ratio consists of basically government securities and cash which would promote short term resilience to potential liquidity disruptions. LCR will ensure that banks will have sufficient high-quality liquid assets to face a stressed funding situation during crisis. The LCR will require banks to change their funding profile which will lead to more demand for longer-term funding. However in practical terms such funding may not be available from institutional Investors that normally seek to reduce their investments in the financial sector.

Net Stable Funding Ratio (NSFR)

The purpose of NSFR is to limit short-term liquidity mismatches and promote the use of longer term funding. Bank will be required to have stable funding sources in excess of the amount of the stable funding it would likely need over a one year period of extended market stress. This is a longer term structural ratio that covers a bank's entire balance sheet as well as some off-balance sheet commitment.

Available stable funding: These are the reliable sources of funds in one year period under conditions of extended stress. Stable funding sources include Tier 1 and Tier 2 capital, preferred stock with a maturity of more than one year, liabilities with maturing of more than one year and deposits and funding with maturities less than one year that can be expected to be used by the bank during period of stress. Basel III provides for stable funding sources with different weightings to be used in calculating the available amount of stable funding.

Required funding: It is the sum of various types of asset held and funded by the bank and off-balance sheet contingent exposures incurred and other activities of the bank that could expose it to

liquidity risk. In order to determine the required amount of stable funding, a bank's assets and activities are required to be weighted in accordance with various factors.

This ratio will address mismatches and provide incentives for banks to utilize stable resources to fund their funding operations. The net stable funding ratio has been introduced to encourage and incentivise banks to use stable sources to fund their activities to reduce the dependency on short-term wholesale funding. The NSFR will compare available funding sources with funding available from the assets on the Balance Sheets. In other words, it would require available stable funding to be more than required stable funding. The required and available funding amounts will be ascertained using weighing factors that would reflect the "stability" of the funding available and the duration of the asset. The weighing factors for assets will vary from zero per cent to 5 per cent for cash and government bonds, 65 per cent for mortgages, 85 per cent for retail loans and 100 per cent for other assets. In order to ascertain stable funding available for liabilities, the weighing factors vary from 100 per cent for Tier 1 capital to 90 percent for core retail deposits and 50 per cent for unsecured wholesale funding.

The new liquidity ratios compliance by the banks under Basel III implementation is not easy and hence the Basel Committee recommends that banks and their supervisors regularly evaluate each bank's contractual mismatch, concentration of funding, available unencumbered assets and ability to satisfy liquidity ratios in all relevant currencies.

RISK-WEIGHTING OF ASSETS

Presently the current approaches for evaluation of credit risk related to Bank's assets are standardized approach, foundation internal rating based approach and the advanced internal rating based approach. The standardized approach primarily considers focus on counterparty's credit rating to determine the credit risk of that counterparty. The other approaches find out the mechanism for calculating the three variables which are used in computing the credit risk component of capital requirement for financial institutions, namely probability of default (PD), loss given default (LGD) and exposure at default (EAD). In the standardized approach, PD and LGD are considered while weighing the risk as per the Basel II whereas prescribed credit conversion factors are used to compute the EAD. The foundation internal ratings based approach allows the bank to use internal rating models to compute PD while LGD and EAD inputs are provided by the bank's regulator. The advanced internal rating based approach allows a bank to compute all three variables using internal models even though the formulae used in the model must be agreed with the regulator.

The Basel Committee determined that mark-to-market losses caused by deterioration of creditworthiness, short of default, relating to counterparty were not accurately presented. Under the





Basel III norms, the following are the requirements:

- (i) the use of stressed inputs in evaluating the credit risk;
- (ii) more capital to be held in order to reflect mark-to-market losses i.e., the credit valuation adjustment risk that is associated with deterioration in a counterparty's credit quality;
- (iii) rigid standard for collateral management and securities financing transactions;
- (iv) applying a proposed risk weighting of 2% to the exposures to central counterparty.

RBI DRAFT GUIDELINES ON BASEL III CAPITAL REGULATIONS

The Reserve Bank of India released draft guidelines on 30 December, 2011 outlining the implementation of Basel III capital regulation in India. These guidelines are in line with Basel III - a Global Regulatory Framework for more resilient banks and banking systems issued by Basel Committee on Banking Supervision (BCBS). The main highlights of these guidelines are:

- (i) **Minimum Capital Requirements:** The Common Equity Tier 1 capital must be minimum 5.5 % of risk weighted assets. Tier 1 capital must be at least 7 % of RWAs and total capital must be at least 9 % of RWAs.
- (ii) **Capital Conservation Buffer:** The buffer should be in the form of Common Equity of 2.5 % of RWAs.
- (iii) **Enhancing Risk Coverage:** Banks will be required to compute an additional credit value adjustment risk capital charge for OTC derivatives.
- (iv) **Leverage Ratio:** The parallel run for the leverage ratio will be from January 1, 2013 to January 1, 2017 during which banks would be required to endeavor to operate at a minimum Tier 1 leverage ratio of 5 %.

BASEL III NORMS MAY AFFECT BANKS' CREDIT GROWTH

The implementation of Basel III norms will help to improve the capital base of the banking industry in India, however the credit growth of some lenders may be affected adversely. The rigid norms laid down by the Reserve Bank of India to implement Basel III standards will create the difference between Indian economy and other Asian economies. According to the Standard & Poors (S&P) the Indian Banks will implement the Basel III guidelines within the time frame despite the strict guidelines given by RBI as the central bank requires the banks to comply with these norms in a comparatively shorter time. The report also revealed that the public sector banks would be under more pressure than their private and foreign counterparts due to lower

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equity capital ratios.

BASEL III NORMS MAY AFFECT BANKS' RETURN ON EQUITY

According to a recent report by CRISIL, the banking industry will raise 2.7 lakh crores of Rupees in order to meet their capital adequacy ratio. The requirement of keeping a higher equity capital requirement to comply with Basel III norms will moderate return on equity. As per the industry estimates return on equity of banks is expected to squeeze by 150-180 basis points for every 100-120 increase in basis points arising out of increase in core equity capital.

The draft guidelines on Basel III released by RBI requires that the core equity capital in Tier 1 capital of banks should be increased to 5.5 per cent of risk weighted assets to improve the quality of capital. The core equity will comprise of paid-up equity capital, share premium, statutory reserves, capital reserves, balance in profit and loss account at the end of the previous financial year and any other disclosed free reserves.

According to experts and analysts' report the Indian banks have maintained the equity on an average of 15 percent return on equity in last few years. Raising additional capital will not be a challenge for the Indian banks however the major concern will be to maintain their return on equity. If the banks are not able to increase their profitability, it will affect their return on equity after the increase of additional capital. RBI has also proposed that banks in India must maintain a capital conservation buffer in the form of common equity at 2.5 per cent of their risk weighted assets in addition to minimum capital adequacy ratio of 9 per cent. CS

List of Important websites:

1. www.bis.org
2. www.rbi.org.in
3. www.basel-iii-agreement.com



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Law Relating to Dishonour of Cheques In India: An Analysis of Section 138 of The Negotiable Instruments Act

➤ More and more cases are being decided by courts on various aspects of cheque dishonour every day. In view of the serious consequences arising from cheque dishonour, corporate professionals and key executives ought to be thoroughly aware of the law relating to cheque dishonour. This article discusses the statute and the the case laws comprehensively.

The Negotiable Instruments Act, 1881 is an Act dealing with the law relating to promissory notes, bills of exchange and cheques. This Act has been amended several times commencing from 1885 till 2002.

Cheque is a carrier without luggage. It carries money of any quantity on a single small piece of paper. It has made money transactions very easy, convenient and economical as well as safe and secured *vis-a-vis* the legal tender. Negotiable instruments, particularly cheque has oiled the wheels of commerce and facilitated quick and prompt deals and transactions. With expanding commerce the growing demands for money could not be met by mere supply of legal tender and cheques took the function of money. It has facilitated trade and commerce tremendously.

Pursuant to the rise in commercial dealings also arose the practice of issuing cheques without any intention of honouring them. The need to depart from a narrow and pedantic approach in interpreting the law is noteworthy. If commerce is to flourish, cheques ought not to be allowed to bounce with impunity, and if they do, the drawer must be brought to quick criminal and civil justice. Recognising this imperative Parliament enacted the

new provisions to the Negotiable Instruments Act.

To ensure promptitude and remedy against defaulters and to ensure credibility of the holders of the negotiable instrument, a criminal remedy of penalty was inserted in Negotiable Instruments Act, 1881 in the form of Banking, Public Financial Institutes and Negotiable Instruments Laws (Amendment) Act, 1988 which were further modified by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. This Article endeavors to elucidate the penal provisions in the light of amendments and judicial interpretations.

SCOPE: Of the ten sections comprising the relevant Chapter, section 138 creates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker. Section 138 can be said to be falling either in the acts which are not criminal in real sense, but are acts which in public interest are prohibited or those where although the proceeding may be in criminal form, they are really only a summary mode of enforcing a civil right. Normally in criminal law existence of guilty intent (*mens rea*) is an essential ingredient of a crime. However the Legislature can always create an offence of absolute liability or strict liability where '*mens rea*' is not all necessary.



The Kerala High Court, in *K.S. Anio v. Union of India* held that "Knowledge or reasonable belief, that pre requisite could be statutorily dispensed with in appropriate cases by creating strict liability offences in the interest of the Nation."

Creation of the strict liability is an effective measure by encouraging greater vigilance to prevent usual callous or otherwise attitude of drawers of cheques in discharge of debts or otherwise. The words as appearing in clause (b) of section 138 cannot be construed even to imply failure without reasonable cause in view of the explicit language in which the provisions is couched, the principle of strict liability incorporated in the main enacting clause.

The Supreme Court in the case of *Electronics Trade & Technology Development Corpn.* struck a somewhat discordant note whilst going out of its way to observe that section 138 of the Negotiable Instruments Act is not attracted if the payee being put to notice not to deposit a cheque issued in his favour nonetheless presents such cheque for encashment and finds that it is dishonoured. It was really concerned with a situation where the drawer after issuing a cheque instructed the bank to stop payment and when the cheque was dishonoured contended that section 138 was not attracted because it was not a case of dishonour for insufficiency of funds. This contention was rejected by the Supreme Court rightly holding that the provisions of section 138 could not be whittled down by issuing a stop payment order to the drawer's bank after a cheque had been issued by the drawer in discharge of his liability" but it needlessly added that instructions to the payee not to deposit a cheque issued to him before he actually presented it would have the effect of avoiding the rigors of section 138. The Supreme Court also held that the said section raised a presumption of dishonesty if a person draws a cheque on a bank without supporting funds in the account at that time.

INGREDIENTS AND REQUIREMENTS OF THE PENAL PROVISIONS

Section 138 creates an offence for which the mental elements are not necessary. It is enough if a cheque is drawn by the accused on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharge in whole or in part of any debt or other liability due. Therefore, whenever the cheques are on account of insufficiency of funds or reasons referable to the drawer's liability to provide for funds, the provisions of section 138 of the Act would be attracted, provided the following conditions are satisfied:

- (1) *Existence of a Live account:* Existence of a "live account" at the time of issue of cheque is a condition precedent for attracting penal liability for the offence under this section.
- (2) *Issue of a cheque in discharge of a debt or liability :* The cheque issued unpaid by the bank must have been issued



in discharge of a debt or other liability wholly or in part. Where a cheque is issued not for the purposes of discharge of any debt or other liability, the maker of the cheque is not liable for prosecution under section 138 of the Act. A cheque given as a gift or for any other reasons and not for the satisfaction of any debt or other liability, partly or wholly even if it is returned unpaid will not meet penal consequences.

If the above conditions are fulfilled, irrespective of the mental conditions of the drawer he shall be deemed to have committed an offence, provided the other three requisites are fulfilled.

- a) **Presentation of the cheque within six months or within the period of its validity:** The cheque must have been presented to the bank within a period of six months from the date on which it is drawn or its period of validity, whichever is earlier. Thus if a cheque is valid for three months and is presented to the bank within a period of six months the provisions of this section shall not be attracted. However if the period of validity of the cheque is not specified or prescribed the cheque is presented within six months from the date the cause of action can arise. The six months are taken from the date the cheque was drawn.
- b) **Return of the cheque unpaid for reason of insufficiency of funds:** The cheque must be returned either because the money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the arrangement made to be paid from that account by an agreement with the bank. Even if the cheque is returned with the endorsement "account closed" section 138 is attracted.
- c) **Issue of the notice of dishonour demanding payment within thirty days of receipt of information as to dishonour of the cheque:** The payee or the holder in due



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course of the cheque has to give a notice in writing making a demand for payment of the said amount of money to the drawer of the cheque. Such notice must be given within 30 days of information from the bank regarding the return of cheque as unpaid.

- d) **Failure of the drawer to make the payment within fifteen days of the receipt of the payment:** After the receipt of the above notice the drawer of the cheque has to make payment of the said amount of money to the payee or to the holder in due course of the cheque within 15 days of the receipt of the notice. If the payment is not made after the receipt of the notice within stipulated time a cause of action for initiating criminal proceedings under this section will arise.

It is distinctly possible that each of these ingredients may arise in a different locality and therefore the court in each of these localities may assume jurisdiction to try the offence. This is the plain reading of section 177 of the Criminal Procedure Code. (*K.Bhaskaran v. Sankaran Vaidhyan Balan* 1999 Criminal Law Journal 4606).

PRESUMPTIONS

Under section 139, a court must presume that the holder of a cheque received it for the discharge, in whole or in part, of a legally enforceable debt or other liability. This presumption is rebuttable.

DEFENCES

Under section 140, a person being prosecuted for drawing a cheque which has bounced cannot defend himself by saying that he had no reason to believe when he issued the cheque that it may be dishonoured on presentment for the reasons stated in section 138.

OFFENCES BY COMPANIES

Under section 141, if the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, no person is liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of the offence. If any offence under the Negotiable Instruments Act is committed by a company and it is proved that the offence is committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, he is also be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

Under Section 141, a 'company' means any body corporate and includes a firm or other association of individuals; and a director, in relation to a firm, means a partner in the firm.

COGNIZANCE OF OFFENCES

Under section 142, courts take cognizance of offences punishable under Section 138 only upon a complaint made by the payee or, as the case may be, the holder in due course of the cheque. The complaint must be in writing and be made within one month of the date on which the cause of action i.e. after the person drew the cheque fails to pay the amount within 15 days of the receipt of notice of its dishonour. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class has the power to try any offence punishable under section 138.

SUMMONS

Under Section 144, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where the accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

The Court issuing the summons may declare that the summons has been duly served if it receives:

- an acknowledgment purporting to be signed by the accused or the witness or
- an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons.

TRIAL

Under section 143, a trial regarding the dishonour of a cheque is carried out in the manner of a summary trial and the Magistrate may pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. The Magistrate may, however, after hearing the parties, choose not to try a case in the manner of a summary trial and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the Code of Criminal Procedure.

The trial should, if practicable, be continued from day to day till its conclusion, unless the Court finds that it should be adjourned for reasons recorded in writing. It should ideally be concluded within six months from the date of the filing of the complaint.

Under section 145, the complainant may give his evidence on affidavit. The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

Under section 146, the bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured is



» Creation of the strict liability is an effective measure by encouraging greater vigilance to prevent usual callous or otherwise attitude of drawers of cheques in discharge of debts or otherwise. The words as appearing in clause (b) of section 138 cannot be construed even to imply failure without reasonable cause in view of the explicit language in which the provisions is couched, the principle of strict liability incorporated in the main enacting clause.

prima facie evidence that the cheque has been dishonoured although the fact of dishonour may be disproved.

COMPOUNDABLE OFFENCE

By an amendment introduced in 2002, to section 147, an offence related to the dishonour of a cheque -- and every other offence punishable under the Negotiable Instruments Act, 1881 -- can be privately settled.

Judicial Propositions

1. **Account Closed:** Account closed was held to be an offence under section 138 of the Negotiable Instruments Act and the accused cannot escape liability of the offence.
2. **Issuance of Post-dated cheque & Closing of Account:** Where the accused issued the post dated cheque and had also closed his account in the bank, he is liable to be prosecuted under section 138. (*S R Muralidhar v. Ashok G Y* vol I (2002) DC 100).
3. **Incomplete Signature:** Dishonour of cheque because of incomplete signature on cheque of drawer, did not attract section 138. In *Vinod Tanna v. Zaher Siddiqui* (2002) 7 SCC541 it was held that where the cheque was dishonoured only due to incomplete signature of drawer the same would not attract the provision of section 138.
4. **Cheque Issued by Partner:** Complaint under section 138 against firm and its partners with no allegation that the partner was in charge of and was responsible to the affairs of the firm was held not maintainable against the partner.
5. **Offences committed by a Company:** Where an offence is committed by a company, either the company or the person in charge of the company or both of them can be prosecuted. (*State of Madras v. C V Parekh* and Another (1970 (3) SCC 491).
6. **Discharge of Father's Debt:** Father of the accused and not the accused owed a debt to the complainant. Complainant obtained cheque from the accused by force. Cheque was not issued in discharge of father's debt. Accused cannot be prosecuted.
7. **Once notice is issued, cheque cannot be presented for collection:** It is settled that the payee is free to present the cheque repeatedly within its period of validity any number of times, but once notice has been issued, the drawee has to avail the cause of action arising thereupon and file the complaint within the stipulated period. (2002 (1) ALD (CrI)397) (AP)(1998 SCC(Crt) 1471 followed).
8. **Omission of Ch. No. in Notice:** The number on the cheque has no relevance in a proceeding under section 138. Section 5 and section 6 of the Act do not specify that the cheque or bill of exchange should bear a number. There is also nothing in section 138 to show that the number of the dishonoured cheque also should be mentioned in the statutory notice or in complaint (2004 Cr.LJ 712 AP).
9. **Issue of Second Notice:** Cheque issued by the respondent was dishonoured and when presented again was again dishonoured. The notice issued by the complainant at the time of first dishonour was not served on respondent/accused, but notice has been issued for second time. In *Sadanandan Bhadrnt v. Madhavan Sunil Kumar* AIR 1998 SC 3043 the Supreme Court ruled that a cheque can be presented any number of times during its validity period by the payee. However, on each presentation of the cheque and its dishonour, a fresh right accrues in his favour and not cause of action to file complaint.
10. **Accused refused to receive Notice:** Where accused refused to receive notice, even then complaint to be filed after expiry of 15 days from the date of receipt of notice. In case of refusal to receive notice it amounts to acceptance of notice and date of refusal to receive such notice shall be treated as the date of receipt of such notice. In such a case the period of 15 days to be computed from date of refusal (*Harcharan Singh v. Shivrani* AIR 1998 SC1284). The Supreme Court held that presumption of issuance of notice and receipt can be inferred in such cases.
11. **Evading Notice:** Where the accused evaded service of notice relating to dishonour, it will amount to constructive notice. (*Jagdishsingh v. Natthu Singh* AIR 1992 SC 1604).
12. **Civil Suit and Criminal Complaint:** Filing of civil suit and filing of criminal complaint are not alternative remedies and they are different type of rights. (1994 Criminal Law Journal 887). The mere pendency of a civil dispute will not oust the jurisdiction of a criminal court from taking cognizance of an offence on a complaint under section 138. (1998 CrI. LJ559-1198(2) ALD (CrI) 300 Guj.)
13. **Section 138 of N.I. Act & Section 420 of I.P.C.:** When the cheque was dishonoured for insufficiency of funds such person issuing a cheque is liable for offence of section 138 but not under section 420 of IPC. In *Tapan Kumar Ghosh and Ors. v. State of W.B. and Anr.*, the Supreme Court observed that, in the circumstances of the case in hand conclusion is inescapable that invoking the jurisdiction of



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Law Relating to Dishonour of Cheques In India: An Analysis of Section 138 of The Negotiable Instruments Act



There is nothing in law to prevent the criminal courts from taking cognizance of the offence merely because on the same facts, the person concerned might also be subjected to civil liability or because civil remedy is obtainable. Civil and criminal proceedings are coextensive and not exclusive. If the elements of the offence under section 138 of the N.I. Act are made out on the face of the complaint petition itself, enforcement of the liability through a civil court will not disentitle the aggrieved person from prosecuting the offender for the offence punishable under section 138 of the Act.

criminal court for allegedly having committed offences under section 406/ 420 of the IPC by the appellants is certainly an abuse of the process.

14. **Time Barred debt:** Where cheque itself was issued for a time-barred debt there cannot be conviction (1997 (2) Crimes 658). Where the loan was taken in 1985 and cheque was issued in 1990 and the loan was barred by limitation, drawer of cheque cannot be prosecuted. (1997) ALT (Cri) 509).
15. **Refer to drawer:** The bank endorsement 'refer to drawer' also may fall within the ambit of provisions of section 138. (1194 Cr. LJ 2874, Cr. LJ 3828, 1994 (1) Crimes 606, 1995 Cr. LJ 3098).
16. **Dismissal of complaint for default and restoration:** Where the complaint is dismissed for default in restoration application, the complainant must assign a valid reason as to what prevented him from coming to the court by the time when the case was called (1998 BC 63 (AP). For securing the ends of justice, the Magistrate is empowered to restore the complaint filed under section 138 of the Act. (*State of Maharashtra v. Sharadchandra Vinayak Dongre and Ors.* Equivalent citations : 1995 AIR 231, 1995 SCC (1) 42).
17. **Dismissal of complaint and appeal thereof:** Where a complaint is dismissed due to non-appearance of complainant resulting in acquittal of accused, revision is not maintainable and only appeal lies to High Court under section 378 of Cr. P.c (11 2003 CCr 387 HP).
18. **Dishonour of Cheques:** The Supreme Court in the case of *Kusum Ingots and Alloys Ltd. v. Pennr Patterson Securities Ltd. and Others* AIR 2000 SC 954 held that criminal prosecution for dishonour of cheques is neither a proceeding for recovery of money nor for enforcement of security. Prosecution against the directors of sick companies would not be suspended merely on the ground that proceedings against sick companies are suspended under section 22 of SICA.

cognizance of the offence merely because on the same facts, the person concerned might also be subjected to civil liability or because civil remedy is obtainable. Civil and criminal proceedings are coextensive and not exclusive. If the elements of the offence under section 138 of the N.I. Act are made out on the face of the complaint petition itself, enforcement of the liability through a civil court will not disentitle the aggrieved person from prosecuting the offender for the offence punishable under section 138 of the Act.

The penal provisions have helped to curtail the issue of cheque with a dishonest intention. However there being no provision for recovery of the amount covered under the dishonoured cheque, in a case where accused is convicted under section 138 and the accused has served the sentence but, unable to deposit amount of fine, the only option left with the complainant is to file civil suit. The provisions of the Act do not permit any other alternative method of realization of the amount due to the complainant on the cheque being dishonoured for the reasons of "insufficient fund" in the drawer's account. The proper course to be adopted by the complainant in such a situation should be by filing a suit before the competent civil court, for realization/recovery of the amount due to him for the reason of dishonored cheque which the complainant is at liberty to avail of if so advised in accordance with law.

However the practice in criminal courts belies the hopes of the law makers and by and large magistrates have failed to give expression to the legislative intent of securing speedy disposal to an action under section 138. If dishonour of cheques were swiftly dealt with Commerce certainly would bloom.

"If only the Court pounced each time a cheque bounced.....commerce would smile."

But an equally great beneficiary would be the institution of the judiciary. Public confidence in courts is perhaps at an all time low today and to revive it by a complete overhaul through legislative and executive measures is but a distant dream.

But this apparently insignificant change in the realm of commercial law has tremendous potential to bring about new ethos with unbounded gains to society and the courts must seize this chance to swiftly enforce the law and in the process resurrect and breathe new life into their own sagging and dismal image.

CS

QUESTION OF MAINTAINABILITY OF CRIMINAL CHARGE WITH A CIVIL LIABILITY

There is nothing in law to prevent the criminal courts from taking



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An analysis of Minorities Rights

Under section 397/398

- The protection of minorities' rights is also a fundamental and essential aspect of good corporate governance. It is necessary for the companies to realise the fact that the minorities also have a say in the decision making and can cause trouble if their rights are not duly protected.

INTRODUCTION

The rights of the minority shareholders are protected under the Companies Act, 1956 particularly under Chapter VI of Part VI which deals with 'Prevention of Oppression and Mismanagement'. Chapter VI contains Sections 397 to 409. In the case of *Foss v. Harbottle* a rule was laid down that the will of the majority prevails but one of the exceptions to it is Chapter VI. Though the heading contains the word 'prevention' the provisions are so drafted that they are both preventive and curative in nature. Unlike Section 210 of the English Companies Act which specifically states 'Minorities rights', Chapter VI of Part VI of the Companies Act, 1956 does not particularly use the term 'minorities' but the reading of the provisions would indicate that it is generally meant to protect the rights of minorities and at the same time does not restrict the majority shareholders from invoking the said provisions if any act of oppression or mismanagement is committed against them by the minorities. Though it is a mandatory pre-requisite condition to satisfy the qualifications prescribed by section 399(1) before invoking section 397/398, as rightly held by the Calcutta High Court in *Sindhri Iron Foundry (P.) Ltd.* (1964) 34 Comp. Cas. 510 (Cal.), section 399 prescribes only the minimum qualification and therefore this right is not confined to minority shareholders. Even a majority shareholder can complain an act of oppression and mismanagement against the minorities by invoking section 397/398. There have been instances where the

majority shareholders were oppressed by the minorities and reliefs were granted by the Court/CLB in order to safeguard their interests. Therefore in practice in all probabilities it is the minorities who are likely to be oppressed by the majorities than *vice-versa* since the majority would always be in power and whenever the minorities rights are infringed, not only the oppressed but any person who is a member of the company as per the definition under section 41 can apply under section 397 complaining act of oppression before the Company Law Board seeking appropriate reliefs subject to satisfying the requirements of section 399 and the object of section 397 is not to rake up the past but to redeem the future.

Courts have held that even a composite petition under section 397/398 can be filed since the facts would more or less be the same unless the relief sought for is contradicting with each other [*Sorab Dinshaji Dastur v. D.P.R. Cassad* (1963) 33 Comp. Cas. 306 (Bom.)]. One thing which is common for sections 397 and 398 is that apart from section 399, both the provisions deal with situations where the affairs of the company are being conducted or likely to be conducted in a manner prejudicial to the public interest. A conjoined reading of sections 397 and 398 indicates that the provisions can be invoked at best when the affairs of the company are being conducted in a manner prejudicial to public interest, oppressive to any member or members or prejudicial to the interest of the company. A plain reading of section 397 indicates that the Company Law Board



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An analysis of Minorities Rights Under section 397/398

can pass any order in order to bring to an end the matters complained of in the petition whereas under section 398 the order could be passed both for bringing to an end the matters complained of and/or even to prevent any act of mismanagement which is likely to be committed where there is an apprehension on the part of the members.

WHAT CONSTITUTES ACT OF 'OPPRESSION'?

The word 'Oppression' is not defined under the Companies Act, 1956 but courts have defined the term 'oppression' as harsh, burdensome, unjust and wrongful etc. The person complaining of oppression must exhibit that he has been constrained to submit to conduct which lacks in probity, conduct which is unfair to him and which causes serious prejudice to him in the exercise of his legal and proprietary rights as a shareholder of the company. Any member of a company can complain of oppression either on his own behalf or on behalf of other aggrieved members provided he satisfies the requirement of section 399 and the acts complained of in the petition must have a continuous effect until the date of filing the petition and the allegations must be supported by sufficient documentary evidence. In order to complain an act of oppression the petitioner must plead five facts (1) that the oppression complained of has affected him in the capacity or character as a member of the company; (2) there are continuous acts constituting oppression up to the date of the petition; (3) the events narrated form part of a continuous story (4) there exists just and equitable ground for winding up the company and (5) the conduct of the affairs of the company involves an element of lack of probity and unfair dealing to a member thereby causing prejudice in the exercise of his proprietary right as a shareholder of the company. A single or concluded act cannot be questioned unless it has a continuous effect and the Supreme Court in *Shanthi Prasad Jain v. Kalinga Tubes Ltd.* (1965) 35 Comp. Cas. 351 (SC) held that "In a petition under section 397 it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of section 397 and that it must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of the continuous story." Similarly any illegal or unlawful act would not automatically attract section 397/398 unless some serious prejudice is caused to the shareholders or the company or public interest. Though the Limitation Act is not applicable to Company Law Board since it is not a 'Court' and it is only a quasi-judicial authority the acts which are complained of must have taken place within 3 years prior to the filing of the petition. But for setting aside the transfer of assets under section 402(f) the event must have taken place within 3 months before the date of application under sections 397 and 398. The date of the execution of the sale deed or transfer must be

excluded in determining the period of three months. *Roshan Lal Agarwal v. Sheoram Bubna and Others* (1980) 50 Comp. Cas. 243 (Patna). The proceedings before the CLB are summary proceedings and the relief under section 397/398 being an equitable relief left to the discretion of the CLB the members who are exercising this right must approach the Company Law Board with clean hands in the sense they should not have directly or indirectly participated in any of the acts complained of and any act of acquiescence, laches or condonation of wrongful act on their part would disentitle them from seeking any relief under this provision.

In a petition under section 397 it is necessary to show that the affairs of the company are so conducted that there exists just and equitable grounds for winding up the company but such an order would cause serious prejudice to the interests of the petitioners. Hence the petitioners are only to convince the forum that there are just and equitable grounds for winding up the company and such an order of winding up if passed would result in a remedy worse than the disease. Prior to the constitution of Company Law Board in 1991 the powers under Section 397/398 were exercised by the High Court and since the High Court has the power to order winding up of a company this provision deals with a situation where an alternate relief is to be granted instead of an order of winding up though there exists just and equitable grounds for winding up.

Some instances of acts of oppression are:

- Conversion of a majority shareholder into a minority shareholder
- Sale of shares held by the company to a director(s) without receiving payment and showing the amount in its books as a loan to the directors
- Issue of further shares without offering it to the existing shareholders
- Shareholders' right to elect directors denied when their lawful demand for poll was rejected
- Denial of the right of inspection, notice of general meetings
- Removal of a director without following due procedures in a private company or a family company or a company in the nature of partnership
- Diversion of business opportunity and change of business by a director who was a majority shareholder of the company
- Sale of company's assets without complying with section 293(1)(a)

WHAT CONSTITUTES ACT OF MISMANAGEMENT?

A member can complain of act of mismanagement if either the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company or there is a material change in the



management due to change in the Board or the ownership of the company's shares and by reason of such change the affairs of the company are likely to be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company and seek appropriate remedy before the CLB by filing a petition under section 398 provided they also satisfy the requirements of section 399.

Section 398 contemplates two situations where the affairs are being conducted and it is likely to be conducted in a manner prejudicial to public interest or the interest of the company and therefore the CLB has the powers to grant reliefs which are both curative and preventive in nature.

The term 'mismanagement' differs from the term 'poor management' and hence not all acts would constitute mismanagement. For instance careless, unwise or inefficient management of the company does not amount to mismanagement unless the act is committed with a *mala fide* intention to cause loss to the company thereby affecting the shareholder's rights or interest in the company etc. Mere lack of confidence of the shareholders against the directors does not constitute mismanagement.

Some instances of mismanagement are:

- Holding meetings without sending notice to members
- Continuation in office after expiry of term and infighting among directors
- Failure to maintain records. Continuous losses suffered by the company
- Violation of statutory provisions, memorandum, articles by those who are incharge of management
- Sale of assets at low price and without compliance with the provisions of the Companies Act
- Misappropriation/siphoning/diversion of funds of the company
- Diversion of business opportunities to another company

WHO IS ENTITLED TO INVOKE SECTION 397/398?

The right to apply under section 397/398 is dealt with in section 399 and as per sub-section(1) of the said section (a) in case of a company having Share capital, not less than 100 members or not less than 1/10th of the total no. of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company alone can file an application under section 397/398 before the Company Law Board provided the applicant has paid all calls and no amount is due on the shares held by him and (b) in case of a company not having share capital, not less than one-fifth of the total no. of its members can file the application. Joint shareholders are treated as a single member.

➤ The term 'mismanagement' differs from the term 'poor management' and hence not all acts would constitute mismanagement. For instance careless, unwise or inefficient management of the company does not amount to mismanagement unless the act is committed with a *mala fide* intention to cause loss to the company thereby affecting the shareholder's rights or interest in the company etc. Mere lack of confidence of the shareholders against the directors does not constitute mismanagement.

A person only in the capacity as a 'member' of the company can invoke section 397/398 and hence directorial complaints are not generally entertained in a petition under section 397/398 but the exception to this rule is that in the case of family companies or companies in the guise of partnership wherein if the member or partner is removed from the management it would amount to an act of oppression. *Suresh Chandra Marwaha v. Lauls Private Ltd. and Others* (1978) 48 Comp Cas 110 (P & H).

The Andhra Pradesh High Court in two cases has dealt with the issue of determining whether a Company is in the nature of a partnership and the norms which are to be satisfied for such determination are (i) Shareholdings should be more or less equal (ii) the company must have been formed or continued on the basis of a personal relationship involving mutual confidence (iii) an agreement or understanding that all or some of the shareholders shall participate in the conduct of the business (iv) restriction on the transfer of shares so as to ensure the continuation of the element of mutual confidence between the shareholders. *R. Khemka v. Deccan Enterprises (P) Ltd.* (1998) 5 CLJ 258 (AP) and *C.N. Setty v. Hillock Hotels (P) Ltd. and Others* (2000) 1 Comp LJ 181 (AP).

The qualification as required under section 399 must be satisfied at the time of filing the petition and it was therefore held in *S. Varadarajan v. Venkateswara Solvent Extraction (P) Ltd. and others* (1994) 80 Comp. Cas. 693 (Mad.) that the requirement as to the share qualification was relevant and material only at the time of institution of the proceedings under section 397/398 and the fact that the petitioners ceased thereafter to be shareholders did not affect the maintainability of the petition.

In case of a member's shareholding falling below the statutory requirement before filing a petition under section 397/398 due to further issue of shares by the company which resulted in conversion of majority into minority the petition could still be



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entertained by the Company Law Board provided it has to first examine whether the said further issue was valid or not and a decision on other issues will be made based on the decision on the further issue which ultimately decides the maintainability of the petition. *Om Prakash Gupta and Others v. Hicks Thermometers (India) Limited and Another* (1999) 3 CLJ 135 CLB, New Delhi.

The question as to whether the legal heirs of a deceased member can file a petition under section 397/398 before their names are entered in the register of members was dealt by the Supreme Court in the case of *World Wide Agencies Pvt. Ltd. and another* (1990) 67 Comp. Cas 607 (SC) where the Court held that it would be wrong to insist that the names of the legal representatives or heirs of the deceased be first put on the register before they can move an application under sections 397 and 398. This would frustrate the very purpose or the necessity of the action. The legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition under sections 397 and 398. The Supreme Court has rightly held so though it has not touched upon the provisions of Section 109 and Regulation 26 of Table 'A' of the Companies Act, 1956 which empowers a legal representative of a deceased member to transfer the shares without first registering the shares in his name. Therefore, a legal representative of a deceased member can file a petition under section 397/398 even before his name is entered in the register of members.

HOW A CONSENT UNDER SECTION 399(3) SHOULD BE?

Any member or members who does/do not satisfy the requirements of section 399(1) regarding the qualification can file the petition after obtaining the consent in writing from any other member or members as contemplated under section 399(3) provided subsequent to obtaining the consent the member or members filing the application must compulsorily satisfy the qualifications prescribed by section 399(1). In such case the persons consenting need not be a party to the litigation and hence it is not necessary to array them as parties to the petition. The member who is filing the petition must annex the written consent alongwith the petition in order to convince the CLB that taking into account of the consent given by some of the member(s) the petitioner satisfies the requirement of section 399(1) and is therefore entitled to file the petition either under section 397 or 398.

Courts have held that the consent given under section 399(3) must not be a blanket consent in the sense that the consentors must be aware of the allegations which are levelled in the petition and the reliefs which are prayed in the petition filed before the CLB. Hence before giving the consent the member(s) must have applied their mind and must be aware of



the grounds of oppression and mismanagement and further reliefs claimed in the petition. *Kilpest (P) Ltd. v. Shekhar Mehra* (1997) 5 Comp LJ 303 (MP).

The Madras High Court has dealt with the issue of consent in *M.C. Duraiswami v. Sakthi Sugars Limited* (1995) 2 Comp LJ 553 (Mad) wherein it was held that 'a mere consent for filing an application under section 397 and section 398, or under both, without any particulars such as the nature of the allegations or complaints to be made in the petition and the nature of the relief sought to be claimed in the petition, cannot be the result of an application of the mind to the question and, therefore, such a consent cannot be a valid consent.'

The Supreme Court had an occasion to decide on the issue as to whether a Power of Attorney (PoA) is entitled to give a consent under section 399(3). The Supreme Court was of the view that the powers given under the Power of Attorney were wide enough to give consent under section 399(3) and further when the appellant has the power to file the petition on behalf of the shareholder there is no reason why the consent given by him cannot be taken for the purpose of complying with the requirement for filing the application under sections 397 and 398. *P. Punnaiah and Others v. Jeypore Sugar Co. Ltd. and Others* (1994) 81 Comp. Cas. 1 (SC).

POWERS OF CENTRAL GOVERNMENT UNDER CHAPTER VI OF PART VI

In addition to the powers conferred on the members to initiate action against acts of oppression and mismanagement, the Central Govt. is also vested with the power to apply under section 401 to the CLB for an Order under section 397/398. Further, the Central Govt. may appoint directors under section 408(1) or additional directors under section 408(2) on the Board of a company in order to safeguard the interests of the company or its shareholders or the public interest for a term not



exceeding 3 years on any one occasion based on an order passed by the CLB. Such director(s) appointed by the Central Govt. are not required to hold qualification shares or is liable to retire by rotation and the directors are liable to report to the Central Govt. from time to time with regard to the affairs of the company. The Central Govt. is also empowered to issue directions to a company in which the directors are so appointed with regard to its affairs and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company and the compliance of such directions would amount to compliance of the Act without requiring any further act to be done.

The Delhi High Court while following its judgment in an earlier case has held in *Sakthi Trading Co. P. Ltd. v. Uol & Another* (1985) 57 Comp Cas. 789 (Delhi) that 'The powers of the Central Government under sections 408 and 409 are preventive in nature. The powers are exercised in order to see that in future the affairs of the company are conducted in a manner which are not prejudicial to the interests of the company, its members or to the public interest. An order under section 408 may not be able to cure the illegal or prejudicial acts which may have already been performed by the company and its directors but it can try and prevent repetition of such acts in future, by the appointment of directors of the company.'

On the basis of an application made by a member(s) who do/does not satisfy the requirements of section 399(1) the Central Govt. is also empowered under section 399(4) to authorise him to apply under section 397/398 if it forms an opinion to do so on just and equitable grounds and the Central Govt. while authorising may also impose a condition that such member(s) must provide a reasonable amount as security towards costs if any imposed by the CLB to be paid to any person(s) who are parties to the petition filed under section 397/398.

The Delhi High Court in another case [*South India Viscose Ltd. & Another v. Union of India & Others* (1982) 52 Comp cas 247 (Delhi)] has held that since the exercise of the power under Section 408 has grave consequences and must inevitably have a serious effect on the reputation and credibility of the management of the company, the power must be exercised sparingly and only when the requisite conditions of the section are fully complied with, and, if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made, and the Government cannot be the final arbiter of the conditions in which the power can be exercised.

POWERS OF COMPANY LAW BOARD

The powers of the CLB are very wide in nature especially under Chapter VI of Part VI wherein apart from the general powers

conferred on the CLB under section 10E(4C), the CLB is also vested with specific powers under sections 402 and 403 to deal with all situations. In so far as section 403 is concerned it relates to interim orders which can be passed by the CLB during the pendency of a petition under section 397/398. On an application filed by a party to the proceeding the CLB can make any interim order for the purpose of regulating the conduct of the affairs of the company and such orders for instance could be for appointment of receiver, Chartered Accountant to value the shares of the company, an Advocate Commissioner to verify the records of the company, to grant an interim injunction restraining the company from holding any meetings or may be subject to certain conditions etc. but the sole purpose of passing any interim order should be for regulating the conduct of the affairs of the company on just and equitable grounds. Similarly where a remedy is available to a member elsewhere under the Act then the CLB will refuse to entertain petition under section 397/398; for eg. Failure to hold AGM, EGM etc. the shareholders' rights are protected by section 166/167/169. Further the CLB cannot at the same time sit over the commercial judgments of the company such as whether to invest in residential properties or commercial properties though the decision of the company is prejudicial in the financial sense but not necessarily prejudicial to the interest of the shareholders. The CLB by exercising its inherent powers can order for sending any document for forensic science verification in case if the signature is disputed by any party in the said document. Generally as per section 151 of CPC the inherent powers are exercised in order to meet the ends of justice or to prevent any abuse of process of the court.

In so far as the final orders are concerned the CLB exercises its powers under section 402 and the most common order passed by the CLB is directing the Petitioners/minority shareholders to sell their shares either to the company or to the majority shareholders and by virtue of such order if a company purchases the shares of its members and thereby a reduction of its share capital takes place, the procedure under sections 100 to 104 is not required to be followed. *Cosmosteels (P) Ltd. v. Jairamdas* (1978) 48 Comp. Cas. 312 (SC).

The CLB when constituted had the power to review its own order under Regulation 27 of the CLB Regulations 1991 but later the said regulation was omitted by CLB (Amendment) Regulations, 1992 vide a notification GSR 492(E) dt. 14.05.1992 which indicates that the CLB does not have the power to review its own order but the CLB relying on the judgement of the Supreme Court in *United India Insurance Co. Ltd. v. Rajendra Singh* [2000] 100 Comp. Cas. 705 (SC) has held that the Company Law Board has the powers to review its own order in case the finding and the relief granted are based on fabricated or forged documents [*Smt. Pushpa Katoch v. Manu Maharani Hotels Ltd. and Others* (2003) 117 Comp. Cas. 315 (CLB)]. Against any decision or order passed by the CLB



Article

An analysis of Minorities Rights Under section 397/398

both interim and final on any question of law or even mixed question of law and facts appeal would lie under section 10F of the Companies Act, 1956 before the High Court concerned within whose jurisdiction the registered office of the company is situated.

JURISDICTION OF CIVIL COURTS

Section 9 of C.P.C. states 'The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implied barred'. In so far as the Companies Act, 1956 is concerned though there is no express bar restraining the civil courts from entertaining company matters, the Supreme Court while dealing with section 155 (presently section 111/111A) in *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. & Others* (1998) 7 SCC 105(SC) held that 'there is nothing under the Companies Act expressly barring the jurisdiction of the civil court, but the jurisdiction of the "court" as defined under the Act exercising its powers under various sections where it has been invested with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred.' There is no reference to CLB since the powers were earlier exercised by the High Court under section 155 prior to substitution of Section 111/111A w.e.f. 31.05.1991. Still the same principle will equally hold good for the CLB or NCLT (after formation) though it is not a court since it is a specialised tribunal constituted for dealing with company matters arising under the Companies Act, 1956. Therefore the *ratio decidendi* of the aforesaid judgment of the Supreme Court will also apply to section 397/398 as the CLB is vested with wide powers to deal with the complaints relating to acts of oppression and mismanagement and despite there being no express bar under the Companies Act, 1956, by drawing inference it is implied that the CLB would have the exclusive jurisdiction in so far as section 397/398 is concerned and the jurisdiction of the Civil Court would be impliedly barred by virtue of section 9 of C.P.C.

For this one can rely upon various judgements rendered by the Courts on the issue pertaining to 'Exclusion of jurisdiction of Civil Courts' like the one in *State of Kerala v. N. Ramaswami Iyer & Sons* AIR 1966 SC 1738 wherein the SC has held that "the jurisdiction of the Civil Court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the legislature sets up a special tribunal to determine questions relating to rights and liabilities which are the creation of a statute, the jurisdiction of the civil court would be deemed excluded by implication'.

In *Ram Swarup v. Shikar Chand* AIR 1966 SC 893 the Supreme Court laid down two tests to determine whether the jurisdiction of the Civil Courts are excluded. The tests are (1) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating the intention and (2) does the said statute provide for an adequate and satisfactory

alternative remedy to a party that may be aggrieved by the relevant order under its material provision.

AGREEMENT FOR REFERRING DISPUTES TO ARBITRATION

The recent trend in resolving disputes between the parties is by referring the matter for arbitration where there is an arbitration clause in the agreement or where there is a specific arbitration agreement between them. In case of existence of an agreement between the shareholders and if any dispute or difference arises out of any of the matters covered in the arbitration agreement the question arises as to whether the parties to the agreement can refer the matter for arbitration even if it relates to acts of oppression and mismanagement. Further what would be the position of the CLB if one party files a petition under section 397/398 before it and the other party insists on referring the matter for arbitration on the ground of existence of an arbitration agreement between them.

In general in order to refer the disputes for arbitration the criteria are (1) whether there is an arbitration agreement among the parties (2) whether all parties before the judicial authority are the parties to the arbitration agreement (3) whether the disputes which are the subject matter before the judicial authority fall within the scope of the arbitration agreement (4) whether any of the party had applied under section 8 of the Arbitration Act before submitting the first statement on the substance of the dispute (5) whether the reliefs sought in the case before the judicial authority are those that can be adjudicated and granted in an arbitration. Recently the Supreme Court has held that a mortgage suit is all about enforcement of the mortgage *vis-à-vis* mortgagor and mortgagee. Even if some of the issues or questions in a mortgage suit were arbitrable or could be decided by a private forum, the issues in a mortgage suit could not be divided. The suit being one for enforcement of a mortgage by sale, it should be tried by the court and not by an arbitral tribunal. The Supreme Court therefore upheld the decision of the Bombay High Court in dismissing the application filed under section 8 of the Arbitration Act. [*Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Others* (2012) 173 Comp. Cas. 184 (SC)].

Similarly before invoking the arbitration clause for referring the shareholders disputes relating to oppression and mismanagement for arbitration there are certain conditions which must be complied with. The parties to the agreement and the parties to the litigation before the CLB must be one and the same. Further the company must be a party to the arbitration agreement. The matters covered under the arbitration agreement must be in relation to matters which are agitated before the CLB in order to be referred for arbitration. If one party approaches the CLB despite there being an arbitration agreement, the other party before making its defence or filing



Before invoking the arbitration clause for referring the shareholders disputes relating to oppression and mismanagement for arbitration there are certain conditions which must be complied with. The parties to the agreement and the parties to the litigation before the CLB must be one and the same. Further the company must be a party to the arbitration agreement. The matters covered under the arbitration agreement must be in relation to matters which are agitated before the CLB in order to be referred for arbitration.

the first statement on the substance of the dispute in the petition must file an application under section 8 of the Arbitration and Conciliation Act, 1996 before the CLB for referring the matter to the arbitrator in view of the arbitration agreement between the parties. The CLB being a quasi-judicial authority, section 8 of the Arbitration and Conciliation Act, 1996 is applicable to it and as per the said section 'A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration'. Hence as per section 8 the CLB is competent to refer the parties for arbitration provided the aforesaid conditions are satisfied.

As discussed earlier, an appeal against any order or decision of the CLB would lie under section 10F of the Companies Act, 1956, one exception being that against an order passed by the CLB under section 8 of the Arbitration and Conciliation Act, 1996 an appeal would not lie under section 10F of the Companies Act, 1956 but would lie as per the Arbitration and Conciliation Act, 1996.

The Punjab and Haryana High Court has held in the case of *Smt. Sudershan Chopra and Others v. Vijay Kumar Chopra and Others* (2003) 117 Comp Cas 660 (P&H) that 'although when the petition was filed by the respondents before the Company Law Board, the Company Law Board was exercising jurisdiction under the provisions of sections 397 and 398 of the Companies Act, 1956, the Company Law Board while deciding the application under section 8 of the 1996 Act acted in its capacity as "judicial authority" under section 8 of the Arbitration Act, 1996, and the order appealed against determined rights flowing out of the provisions of the 1996 Act and not the provisions of the Companies Act, 1956. Since the Company Law Board did not adjudicate the dispute between the parties under sections 397 and 398 of the Companies Act, 1956, which was really the

subject matter of the petition, the appeal under section 10F of the Companies Act, 1956, was not maintainable."

APPLICABILITY OF SCHEDULE XI

According to section 406 of the Companies Act, 1956 the provisions of sections 539 to 544 as set out in Schedule XI are applicable to section 397/398 proceedings. The provisions of sections 539 to 544 and Schedule XI are more or less the same but the only difference being the stage at which these provisions are applicable to the companies and their officers. Sections 539 to 544 under Chapter V of Part VII of the Companies Act, 1956 are applicable to a company under liquidation whereas Schedule XI is applicable to cases where an application is filed Under section 397/398.

The provisions of sections 397/398 and Schedule XI are interlinked with each other and Schedule XI is not applicable independently without proceedings under section 397/398. During the course of the proceedings under section 397/398 if it is established that the company's affairs are being conducted with a fraudulent intent then under Schedule XI the officers concerned are also punishable with imprisonment and the term of imprisonment would vary depending upon the offence committed and the maximum period of imprisonment prescribed is 7 years in case of falsification of any books of the Company. Misfeasance proceedings under Schedule XI are therefore parallel to the proceedings under section 397/398 where there is a *prima facie* view that the respondent is guilty of acts of misfeasance.

CONCLUSION

Minority shareholders cannot be ignored merely on the presumption that the minorities do not play a vital role in decision making unless it requires a unanimous consent at the general meeting. Similarly rights of minorities need adequate protection since they have contributed to the capital of the company and every company must act with reasonableness in protecting the minorities by giving importance to their rights and expectations irrespective of their shareholding in the company. The fact that the CLB is flooded with petitions under section 397/398 *prima facie* indicates that the minorities rights are infringed in many companies and while making a comparison between the period prior to the year 2000 and later it is an admitted fact that there has been a tremendous increase in the filing of petitions under section 397/398 and the reason could be awareness among the shareholders and adequate relief is being provided by the Company Law Board within a reasonable time in safeguarding the interest of the minorities. Even the Companies Bill, 2012 contains similar provisions relating to oppression and mismanagement in Schedule XVI where we could notice the clubbing of the present sections 397 and 398 into one and the National Company Law Tribunal is being conferred with some additional powers.

CS



Corporate Laws

LW.21.03.2013

IN RE: SAHARA INDIA REAL ESTATE CORPORATION LTD [SAT]

WTM/PS/32/SEC/FEB/2013

Prashant Saran, Whole Time Member
[Decided on 13/02/2013]

SEBI Act,1992 - Section 10 - unauthorised collection of OFCDs etc- Supreme Court directed refund of entire moneys such collected - default in complying with the directions of the supreme court - whether punitive actions to be taken against the company and promoters - Held, Yes.

Brief facts

Sahara India Real Estate Corporation Ltd (SIRECL) had issued Optional Fully Convertible Debentures [hereinafter called "the OFCDs"] to the tune of Rs. 19,400 crores approximately as on 13.04.2011 (as mentioned in SIRECL's affidavit dated 4.01.2012 filed before the Supreme Court). As various illegalities were committed in the issuance of the OFCDs, the Securities and Exchange Board of India [hereinafter "SEBI [WTM]"] initiated proceedings against SIRECL and upon conclusion of the same, the SEBI [WTM] found that SHICL and SIRECL contravened, *inter alia*, the provisions of the Companies Act, 1956 and SEBI Act, 1992 apart from the Regulations framed and Guidelines issued under the latter Act and by its order dated 23.06.2011 directed SIRECL to refund the money collected under the Red Herring Prospectus (RHP) to all such investors who had subscribed to their OFCDs, with interest.

Shri Ashok Roy Choudhary, Shri Ravi Shankar Dubey and Ms. Vandana Bhargava are the directors of SIRECL and Shri Subrata Roy Sahara is the promoter and holds 70% shares in SIRECL as well as SHICL. These directors and Shri Subrata Roy Sahara were also made jointly and severally liable to refund the said money collected, through the RHP, from the investors.

The said order was confirmed by Securities Appellate Tribunal

[hereinafter referred to as "SAT"] in appeal on 18.10.2011. The appeals filed by the SIRECL and SHICL were dismissed by the Supreme Court, by its order dated 31.08.2012, recording a categorical finding that there was no illegality in the proceeding initiated by SEBI as well as in the aforesaid order passed by SEBI [WTM] and as upheld by SAT. However, the Supreme Court modified the directions given by SEBI [WTM] and endorsed by SAT.

SIRECL and SHICL also did not comply with the directions issued by the Supreme Court in its order dated 31.08.2012 for making the deposit on or before 30.11.2012. Just before this date they filed Appeal No. 221 of 2012 before SAT and that Appeal was dismissed on 29.11.2012. Against this order, SIRECL and SHICL filed an Appeal being CA No. 8643 of 2012 before the Supreme Court of India.

The said Appeal was disposed by the Court on 05.12.2012 with directions. On a combined reading of the two orders of the Supreme Court, it is clear that the amounts that were to be refunded to the investors should have been deposited as per the following directions in the order dated 05.12.2012 passed by this Court:-

- i. A sum of Rs. 5120 crores by way of a demand drafts [which were produced in court] were to be handed over immediately to SEBI
- ii. The first instalment of Rs. 10,000 crores to be deposited within 1st week of January, 2013; and
- iii. Remaining balance, along with interest to be deposited within 1st week of February, 2013.

SIRECL & SIRCL has failed to comply with the directions of the Supreme Court.

Issue: Whether SEBI should attach and sale of properties and freezing of bank accounts, etc of the companies as well as their promoters?

Decision & Reason:

In view of the above, all the assets of SIRECL viz. investments in Group Companies, group entities, Special Purpose Vehicles and partnership firms belonging to Sahara Group and the investments are liable to be attached. Therefore, in accordance with the directions of the Supreme Court in order dated 31.08.2012 and 05.12.2012, I hereby pass the following orders of attachment and directions:

A. Order of attachment:

- (i) Attachment of the development rights, in the land owned by Aamby Valley Limited (part of the Sahara Group of Companies) admeasuring about 707 acres (having FSI of about 80.84 lakh sq. fts) comprising various identified parcels of land in village Pomgaon District Mulshi, Pune, Maharashtra and purchased for a consideration of Rs. 3459 crores. The details of the lands, location and area are set out in Annexure 1 and the same shall form part of this order. This Annexure 1 is a photocopy of Annexure B-1 that was



filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. This photocopy is to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.

- (ii) Attachment of the development rights, in identified parcels of land admeasuring about 186 acres at prime locations in Delhi near Gurgaon, Haryana including (small part of land in Delhi) in village Chaouma which parcels of land are *inter-alia* owned and developments right held therein by Sahara group entities or in which development rights are held by various Sahara group entities, and purchased for a consideration of Rs.1436 crores. The details of the lands, location and area are set out in Annexure 2 and the same shall form part of this order. This Annexure 2 is a photocopy of Annexure B-2 that was filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. This photocopy is to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.
- (iii) Attachment of "33% stake" in Versova Project comprising of 106 acres of identified parcel of land at prime location bearing survey no. 161 (pt), CTS No. 1/A/167 (pt) at village Phadi, Goregaon (West) at Versova (adjacent to Lokhandwala), Mumbai, owned by Sahara India Commercial Corporation Limited, purchased for a consideration of Rs. 1848 crores.
- (iv) Attachment of 90% to 95% stake in 64 special purpose vehicles (partnership firms) of Sahara group having 64 projects in 64 cities/towns throughout India on identified land parcels admeasuring in aggregate 4378 acres *inter-alia* owned and development rights held therein by Sahara group entities or in which developments rights are held by various Sahara group entities and purchased for a consideration of Rs. 1105 crores. The details of the lands, location and area are set out in Annexure 3 and the same shall form part of this order. This Annexure 3 is a photocopy of Annexure B-3 that was filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. This photocopy is to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.
- (v) Attachment of "40 % stake" in 4 city homes project/towns on identified land parcels in aggregate admeasuring 318 acres *inter-alia* owned and development rights are held therein by Sahara Group entities or in which development rights are held by various Sahara group entities and attachment of "50% stake" in 15 City Home Projects in fifteen cities/towns on identified land parcels in aggregate admeasuring 1751 acres *inter alia* owned and development rights held therein by Sahara Group entities or in which development rights are held by various Sahara Group entities, which are purchased for a consideration of Rs. 180 crores. The details of the lands, location and area are set out in Annexure 4 and Annexure 5. respectively and the same shall form part of this order. These Annexure 4 and Annexure 5 are photocopies of Annexure B-5 and Annexure B-6, respectively, that was

filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. These photocopies are to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.

- (vi) Attachment of "30% stake" in project at Village - Ujariyaon and Jiyamau Tehsil and District - Lucknow on identified land parcels comprising of 170 acres of land in respect whereof license to develop residential and commercial buildings (other than on green belt area admeasuring about 40 acres) has been granted by Nagar Nigam, in favour of Sahara India Commercial Corporation Ltd. and purchased for a consideration of Rs. 1000 crores. The details of the lands, location and area are set out in Annexure 6 and the same shall form part of this order. This Annexure 6 is a photocopy of Annexure B-7 that was filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. This photocopy is to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.
- (vii) Attachment of "100% stake" by way of holding of equity shares of 60 entities having parcels of land admeasuring 515 acres at 16 locations at various cities/towns in India and purchased for a consideration of Rs. 532 Crores. The details of the lands, location and area are set out in Annexure 7 and the same shall form part of this order. This Annexure 7 is a photocopy of Annexure B-8 that was filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. This photocopy is to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.
- (viii) Attachment of "100% stake" in two entities holding development rights in the identified parcels of land admeasuring about 196 acres and 56 acres of land at Vasai and Malegaon, Maharashtra, respectively, and purchased for a consideration of Rs. 62 crore. The details of the lands, location and area are set out in Annexure 8 and the same shall form part of this order. This Annexure 8 is a photocopy of Annexure B-9 that was filed by SIRECL with the affidavit dated 4.01.2012 before the Supreme Court. This photocopy is to ensure that there is no variation in the survey nos. or other details with regard to the parcels of land.
- (ix) Attachment of 22,05,64,045 equity shares (about 40.40%) of Rs. 10 each of Aamby Valley Limited, unlisted public company purchased in consideration of Rs. 5207 crores.
- (x) Attachment of units of mutual funds valued at Rs. 23 crores as on 30.11.2011 and mentioned in S. No. 10 of Table 'A' enumerated in para 11 above.
- (xi) Attachment of all bank/demat accounts and investments of Sahara India Real Estate Corporation Limited in all the branches of all the banks. Consequently, all banks are directed to transfer the entire amount to SEBI-SAHARA REFUND Account No. 012210110003740 held with Bank of India, BKC Branch, Mumbai.(IFSC Code No. BKID000122).
- (xii) Attachment of all other immoveable properties owned and/



or held by Sahara India Real Estate Corporation Ltd. with immediate effect and further directing it not to alienate, dispose or in any manner encumber the same. Sahara India Real Estate Corporation Ltd. is also directed to furnish full details of all such properties to SEBI within 21 days from the date of this order;

(xiii) Attachment of all the movable properties owned and/or held by Sahara India Real Estate Corporation Ltd. and restraining it from alienating, disposing or encumbering same.

B. Directions:

- (i) Sahara India Real Estate Corporation Limited is directed to furnish details of investments, if any, other than those enumerated above, within 21 days from the date of this order.
- (ii) Sahara India Real Estate Corporation Ltd. is restrained, with immediate effect, from operating its accounts with all the branches of all the banks and withdrawing any investment made therein.
- (iii) Sahara India Real Estate Corporation Limited is restrained from operating any demat account or redeeming any of the mutual fund units owned and/or held by it.
- (iv) Sahara India Real Estate Corporation Ltd. is directed to furnish the details pertaining to nature of development rights, names of special purpose vehicles and what constitutes "stake" and the details of companies, firms etc., as enumerated in the affidavit and the annexures filed before the Supreme Court on 04.01.2012, within 21 days from the date of this order.
- (v) Sahara India Real Estate Corporation Ltd. is directed not to dispose of the units of mutual funds valued of Rs. 23 crores as on 30.11.2011(as mentioned in Sl. No. 10 of Table 'A' enumerated in paragraph 10 above).
- (vi) Sahara India Real Estate Corporation Ltd. is directed to recover its investments in partnership firms belonging to the Sahara Group to the extent of Rs. 125 crores mentioned in S. No. 11 of Table 'A', in para 10 above, as well as loans and advances of Rs. 204 crores as on 30.11.2011, as mentioned in S. No. 12 of Table 'A' in para 10 above and deposit the proceeds thereof with SEBI.
- (vii) Sahara India Real Estate Corporation Ltd. is directed to immediately deposit cash and bank balances and fixed deposits in its name with SEBI of Rs. 1655 crores as mentioned in Sl. No. 13 of Table 'A' as enumerated in para 10 above.
- (viii) Sahara India Real Estate Corporation Ltd. is directed not to transfer any shares held by it in any company, to any person.
- (ix) Sahara India Real Estate Corporation Limited is directed to deposit with SEBI, share certificates representing the purchase of 22, 05,64,045 shares of Aamby Valley Limited a consideration of Rs. 5207 crore.

Necessary orders for sale shall be passed in due course after getting full particulars about various assets which stand attached above.

Attachment and Directions with regard to Shri Subrata Roy Sahara, Ms Vanadana Bhargava, Shri Ravi Shanker Dubey and Shri Ashok Roy Choudhary:

- i. In its order dated 23.06.2011, SEBI had *inter alia* noted that Shri Subrata Roy Sahara, apart from being the founder of Sahara India Group is admittedly a major shareholder, holding about 70% of the capital in both SIRECL and SHICL and that he can be reasonably regarded as a person in accordance with whose directions or instructions, the Board of Directors of the two companies were accustomed to act and therefore would fall within the ambit of "officer in default". Furthermore, with 70% ownership or holding in the two companies, he is definitely in a position of control and has the power to direct the management policy and appoint the majority of directors in the Board. Therefore, Shri Subrata Roy Sahara was also made liable along with the other directors of these companies viz. Ms Vandana Bhargava, Shri Ravi Shanker Dubey and Shri Ashok Roy Choudhary.
- ii. Consequently, para 28.1 (1)of the above order of SEBI(WTM) also made Shri Subrata Roy Sahara, Ms Vandana Bhargava, Shri Ravi Shanker Dubey and Shri Ashok Roy Choudhary jointly and severally liable to refund the monies collected through the RHP's issued in March 2008 and October 2008 together with interest at 15% per annum.
- iii. The appeals filed by the above named individuals along with the two companies before the SAT were dismissed on 18.10.2011 and all the appellants were directed to refund the amounts collected from the investors on the terms as set out by the SEBI (WTM) in his order dated 23.06.2011 within 6 weeks from 18.10.2011.
- iv. All the appeals filed by the above individuals and the two companies before the Supreme Court were dismissed on 31.08.2012 and the orders passed by SEBI (WTM) dated 23.6.2011 and SAT dated 18.10.2011 were, on facts as well as on law, affirmed and accordingly upheld. Consequently, Shri Subrata Roy Sahara, Ms Vandana Bhargava, Shri Ravi Shanker Dubey and Shri Ashok Roy Choudhary are jointly and severally liable to refund the amounts collected through the RHPs with interest at 15% per annum as directed by SEBI (WTM) and affirmed by the orders of SAT and the judgment and order of the Supreme Court.
- v. Therefore, I direct the freezing of all the bank accounts/demat accounts of Shri Subrata Roy Sahara, Ms Vandana Bhargava, Shri Ravi Shanker Dubey and Shri Ashok Roy Choudhary with immediate effect.
- vi. I further direct the attachment of all movable and immovable properties standing in the names of Shri Subrata Roy Sahara, Ms Vandana Bhargava, Shri Ravi Shanker Dubey and Shri Ashok Roy Choudhary with immediate effect. These individuals are directed to furnish details of all movable and immovable properties standing in their names within 21 days from the date of this order.



LW.22.03.2013

VICTOR FERNANDES & ANR v. NATIONAL STOCK EXCHANGE OF INDIA LIMITED & 22 ORS [SAT]

Appeal No. 219 of 2012

P. K. Malhotra, Presiding Officer
[Decided on 08/02/2013]

Securities Contracts (Regulation) Act, 1956 - Section 23L - Listing permission for rights issue allowed - appellants participated in the rights issue - Later sought for non granting of listing permission - NSE rejected their plea - whether NSE is right in rejecting the plea for non grant for listing permission - Held, Yes.

Brief facts

The appellants are investors and shareholders of Network 18 Media and Investments Limited (R4). They are aggrieved by the decision of the NSE (R.1), in granting listing and trading approval of the equity shares issued by R4 pursuant to its rights issue. The grievance of the appellants is that they had made multiple representations to various entities entrusted with the responsibility of protecting interest of shareholders and investors, including SEBI (R9) complaining about violation of various rules and regulations by R4 relating to the said rights issue. However, the concerned entities have failed to take action necessary to protect the interest of investors.

Decision: Appeal dismissed.

Reason

I have considered the rival submissions and perused the documents available on record. Sub-section (1) of Section 23L of the Securities Contract (Regulation) Act, 1956 (the Act) *inter alia* provides that any person aggrieved by the order or decision of the recognized stock exchange may prefer an appeal before the Securities Appellate Tribunal. The case of the appellants is that they are aggrieved by the decision of NSE to grant listing and trading approval to the equity shares issued by respondent no. 4 under the rights issue. Surprisingly, the appellants have not made any prayer for setting aside or cancellation of the permission granted by NSE for listing of the said rights issue. How can the appellants be said to be aggrieved when the appellants have participated and have been benefited from the said rights issue and no prayer is made for setting aside or cancellation of the said rights issue. Respondents have rightly relied upon the decision of the Apex Court in the case of *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmad & Ors.* [AIR (1976) SC 578], which lays down the test to determine whether the person is aggrieved or not. This has been followed by this

Tribunal in a large number of orders including in the case of *Bharatbhai Baldev Shah & Ors v. SEBI & Ors.* (Appeal no. 142 of 2008 decided on October 6, 2009).

The appellants have failed to show how the listing permission granted by NSE by the impugned circular has affected their legal rights or caused legal wrong or injury to the appellants. The appellants' grievance does not flow from the impugned circular of NSE. I also noticed that it is not a case where the various representations addressed by the appellants to the SEBI or to the intermediaries with regard to said issue were not considered. It is a matter of record that said representations were examined and appropriate response given to the appellants. In case the appellants were not satisfied with the response/reply received by them to their representations, it may have been a cause of grievance and the appellants could have availed appropriate remedy against those responses. In the garb of challenging the circular dated October 15, 2012 of NSE granting listing permission of rights issue of respondent no. 4, the appellants are in effect challenging decision of some of the respondents on its various representations which were duly considered and response sent to the appellants. The appellants are now seeking multiple reliefs against various respondents which are in the nature of a direction not covered within the scope of Section 23L of the Act.

I am, therefore, of the considered view that the appeal filed under Section 23L of the Act against the circular dated October 15, 2012 of NSE is not maintainable.

LW.23.03.2013

SSS LOHA MARKETING PRIVATE LIMITED v. FINANCIAL SERVICES INDIA PRIVATE LIMITED [CAL]

CP No. 591 of 2011

Sanjib Banerjee, J.
[Decided on 05/02/2013]

Companies Act, 1956 - Section 434(1) - Statutory demand notice not served on the registered office - No case made out for just and equitable grounds either - whether the petition is maintainable - Held, No.

Brief facts

It is the admitted position that the present petition is founded on a notice dated May 28, 2010 addressed to the company and three of its directors and captioned as a notice under Section 138(b) of the Negotiable Instruments Act. The notice, issued by advocate representing the petitioner, did not refer to the Companies Act but demanded payment of a principal sum in excess of Rs.4 crore together with interest thereon within 15 days of the receipt of the notice and warned of legal action being



initiated in default of the payment being made as demanded. The notice was issued to the erstwhile registered office of the company at 12A Netaji Subhas Road, Kolkata. In the cause title relating to this petition, the petitioner has indicated the registered office of the company to be at 18/1 Maharshi Debendra Road, Kolkata 700 007.

Decision: Petition permanently stayed.

Reason

The company takes a preliminary objection that no presumption arises in this case of the company is inability to pay its debts since no notice was issued by the petitioning creditor at the registered office of the company and, on the basis of the petition, it would be evident that the two other limbs of Section 434(1) of the Companies Act, 1956 are not attracted.

The petitioner says that it would be evident from the several letters, copies whereof have been disclosed in the pleadings, that notwithstanding the registered office of the company having apparently been shifted from Netaji Subhas Road to Maharshi Debendra Road in February, 2009, the letter-head of the company in letters issued as late as in November, 2009 showed that its registered office was at Netaji Subhas Road and the one at Maharshi Debendra Road was only as administrative office.

The petitioner suggests that merely because a notice has not been issued by a petitioning creditor to the registered office of the company would not disentitle the creditor from seeking winding up of the company by relying on the legal fiction in Section 434(1)(a) of the Act. According to the petitioner, as long as there is a valid claim and the company is notified in writing thereof and the company fails to discharge the debt without there being any reasonable cause for not so doing, the company court is empowered to infer the company's inability to pay its debts by virtue of clause (a) of Section 434(1) of the Act.

In the judgment of the Division Bench reported at AIR 1954 Cal 499 (*Bukhtiarpur Bihar Light Railway Co. Ltd v. Union of India*), it has been unequivocally recognised that it is imperative that all conditions of a deeming provision are complied with if the legal fiction there under is sought to be established. The statutory notice in such case was issued by the creditor to an office of the company other than its registered office. Despite the company not urging such ground, it was the court which found that the legal fiction would not be available to the creditor.

The judgment in *Bukhtiarpur Bihar Light Railway Co. Ltd* instructs that the court must be strict in assessing whether all the conditions laid down in Section 163(1)(i) of the Indian Companies Act, 1913 (Section 434(1)(a) of the Companies Act, 1956 carries the same provision in the successor statute) have all been complied with before the inference of the inability of the company to pay its debts based on the legal fiction therein is drawn. The judgment is the specific recognition, in the context of the identical provision in the predecessor statute as Section 434(1)(a) of the current Act, of the general principle that a deeming provision must be strictly construed and all conditions therein must have

been adhered to before the legal fiction there under can be seen to operate.

In the light of the law as enunciated in *Bukhtiarpur Bihar Light Railway Co. Ltd*, it is not open to the company Judge of this court to accept that the inference of a company's inability to pay its debts may still be made by court under Section 434(1)(a) of the Act even if the notice provided for there under is not addressed to the registered office of the company. The petitioner admits that clause (b) of Section 434(1) has no manner of application in the present case; and, that the petitioner has not brought adequate material to prove the company's inability to pay its debts under clause (c) thereof.

The petitioner says that in view of the company's conduct and what the petitioner perceives to be a thoroughly dishonest defence, it would be just and equitable to wind up the company. While it may be inappropriate to rule out the application of the just and equitable clause even to a creditor's winding up petition, there is not enough material that has been placed before court in such regard. The petitioner's claim is on account of a bill discounting facility accorded to the company under which the company obtained material from a third party seller and the petitioner made immediate payment to the seller against the company's promise to repay the petitioner with interest at a future date. The company's case is that the money covered by the dishonoured cheques has been paid to the seller and the petitioner should look to the seller to realise the dues. Though there is substantial basis to the petitioner's assertion that the company's alleged payment to the seller may not discharge the company of its obligation to pay the petitioner, the facts are not such as would prompt the company court to admit the petition on the ground that it is just and equitable to wind up the company despite the presumption as to the company's inability to pay its debts not having been established by the petitioner.

CP No. 591 of 2011 fails and it is permanently stayed on the ground that the company's inability to pay its debts has not been made out and the facts as pleaded do not warrant consideration of the petition for winding up on the just and equitable ground.

LW.24.03.2013

SANJAY GAMBHIR & ORS v. D. D. INDUSTRIES LIMITED & ORS [DEL]

Company Appeal (Sb) No. 100 of 2012

S. Muralidhar, J.

[Decided on 05/02/2013]

Companies Act, 1956 - Sections 10(F), 169 and 186 - majority shareholders directly approach the CLB to call an EGM - the CLB orders the holding of EGM under the supervision of an observer - whether tenable under the Act - yes.



Brief facts

Two groups A and B consisting of different family members control DD industries Ltd (DDIL) a closely held company. Group A held 33% while Group B held 67% of the share control. Minority Group A was majority in the BoD and Mr. Karan Gambhir of Group A was the managing director of DDIL.

Disputes arose between the groups over calling of EGM and cross suits were filed by both the groups in the High Court alleging various allegations and counter allegations against each other. The A group also filed Company Petition No. 92 (ND) of 2010 in the CLB under Sections 397 and 398 of the Act against the B group. On 26th September 2010, the CLB passed an interim order to the effect that the resolutions passed at the Annual General Meeting (AGM) dated 28th September 2010 shall be subject to the final outcome of the petition.

Respondent Nos. 3 and 4 of Group B filed an application being C.A. No. 417 of 2012 dated 9th August 2012 in the CLB seeking the holding of an EGM of the shareholders of DDIL in the presence of an observer. Before the CLB, it was contended that Mr. Karan Gambhir misused the digital signature and filed Form 32 with the ROC showing that directors belonging to Group B had vacated their office and thereafter, Mr. Karan Gambhir appointed an additional director (A3) by filing Form 32. It was contended that the additional directors appointed by Mr. Karan Gambhir had no right to carry on their functions against the wish of the majority and that the affairs of DDIL were being run prejudicial to the interests of the majority. Therefore, they sought to hold an EGM.

Dealing with the above contentions, it was observed by the CLB in the impugned order that the BOD meant "the board running at the wish of majority of the shareholders" and that it was pointless for the majority to have sent any notice to the BOD controlled by the A group under Section 169 of the Act. In such instance, the only hope that the shareholders had was to approach the CLB. As regards Section 186 of the Act, the CLB observed that a holistic approach had to be adopted. In order to restore corporate democracy, an EGM had to be called. The CLB further observed that its jurisdiction under Sections 397 and 398 of the Act was independent of the jurisdiction exercised by this Court in the civil suits. The B group was, therefore, not precluded from seeking reliefs as prayed for. It was observed that since Mr. Karan Gambhir would continue as MD no prejudice would be caused to the A group.

Accordingly, by the impugned order dated 22nd November 2012 the CLB allowed the said application and directed DDIL to call an EGM for holding election to the BOD within 15 days. An observer was also appointed to be present at the time of holding the EGM. Group A appealed against the above order stating that provisions of sections 169 and 186 of the Act were not followed.

Decision: Appeal dismissed

Reason

The Court proposes first to consider the appeal filed against the

impugned order dated 22nd November 2012 of the CLB. At the outset it must be noted that the scope of interference by the Court in an appeal under Section 10 F of the Act is limited to examining substantial questions of law that arise from the order of the CLB. The question of law that arises for consideration in the present appeal is whether the impugned order of the CLB overlooks the mandatory requirement of law under Sections 169 and 186 of the Act as urged by the Appellants?

As far as the power of the CLB to grant interim relief under Section 403 is concerned, it is power incidental to the power to order substantial reliefs as set out in Section 402. The width of the power is indicated by the words "any interim order which it thinks fit" and "such terms and conditions as appear to it to be just and equitable." The power is not limited by other provisions of the statute. Section 402 in fact begins with the words "Without prejudice to the generality of the powers of the Tribunal ". There is nothing to indicate that while exercising the powers under Sections 402 or 403 of the Act the CLB has to necessarily account for the mandatory requirements of other provisions like Sections 169 or 186 of the Act. The language in fact appears to indicate to the contrary. It permits the CLB to pass orders as long as it is in the interests of the proper conduct of the affairs of the company and it is "just and equitable" to pass such order. Whether in fact the order is justified will of course depend on the facts of each case.

It is not possible to accept the submission of the learned counsel for the Appellants that the requirement of a group of shareholders desiring the convening of an EGM having to first make a requisition to the BOD is mandatory and in circumstance can be dispensed with, even by the CLB while making an order under Section 403 of the Act. That interpretation would in fact be contrary to the legislative intent behind Sections 402 and 403 of the Act and dilute the power of the CLB to pass orders which it thinks to be just and equitable in the facts of a case, particularly when an impasse has been created by one group of shareholders making it pointless for the other group to even make such requisition. In *Bengal and Assam Investors Limited v. J.K. Eastern Industries Private Limited*, AIR 1956 Calcutta 658 it was acknowledged by the Calcutta High Court that when a Court directs a meeting to be held under Section 186 of the Act "it must necessarily modify or supplement the Articles or the Act." In similar circumstances, the Bombay High Court while interpreting Section 171 of the Act, held in *Shailesh Harilal Shah v. Matushree Textiles Ltd.* (1995) 82 Comp Cas 5 (Bom) that the requirement of 21 days advance notice for holding an AGM was not mandatory notwithstanding the use of the word "shall" in that provision. As regards Section 186 of the Act, the Supreme Court in *R. Rangachari v. S. Suppiah*, AIR 1976 SC 73 has explained that before ordering the convening of a meeting the CLB must be satisfied that it is not practicable to (a) call for, (b) hold and (c) conduct such meeting. Therefore it will have to be examined in the facts of each case, whether the three requirements were cumulatively met to justify an order by the CLB.

There is thus no difficulty in reconciling the provisions of Section



403 with Sections 186 and 169 of the Act. The facts and circumstances of each case will determine the extent to which it is practicable to hold meetings of a company. Where the unilateral acts of a MD representing a minority group of shareholders result in their capturing the BOD, a situation of a minority oppressing the majority can be said to exist. It would be futile for the majority shareholders to expect a meeting to be convened on their making a request to the BOD under Section 169 of the Act. These factors would weigh with the CLB while exercising its powers under Section 403 of the Act while considering the request to convene an EGM.

Turning to the case on hand, the requirement under Section 186 of the Act that it must be impracticable to call, hold and conduct a meeting of a company, other than an AGM, can be said to be fulfilled in the above facts and circumstances. As rightly observed by the CLB, it was pointless for the B group to send a notice under Section 169 of the Act to the BOD comprised entirely of directors of the A group for convening an EGM. In all probability that request could have been rejected. In the face of the unilateral acts of Mr. Karan Gambhir, the B group was not acting unreasonably in anticipating rejection of their request by the BOD constituted only by the directors of the A group. The CLB in the impugned order has rightly distinguished the decisions relied upon by the Appellants, which were pressed into service in these proceedings as well.

As far as the question of the CLB building in safeguards into its decision is concerned, the minutes of the meeting of the EGM held under the supervision of the Observer shows Mr. Karan Gambhir continues as MD of DDIL. Thus the interests of the A group who continue as minority shareholders of DDIL and who are represented by Mr. Karan Gambhir on the BOD are accounted for.

Consequently, this Court is satisfied that no ground has been made out for interference with the impugned order dated 22nd November 2012 of the CLB.

LW.25.03.2013

CBZ CHEMICALS LTD V. KEE PHARMA LTD [DEL]

Co. Pet. No. 66 of 2013

S. Muralidhar, J.
[Decided on 11/02/2013]

Companies Act, 1956 - Sections 10(F),169 and 186 - majority shareholders directly approach the CLB to call an EGM - the CLB orders the holding of EGM under the supervision of an observer - whether tenable under the Act - Held, yes.

Brief facts

The Petitioner entered into an agreement with the Respondent

for the sale of design for the process of manufacturing a drug, 'Atorvastatin' for a total consideration of USD 550,000 to be paid by the Respondent to the Petitioner. The Respondent paid a sum of USD 200,000 and certain disputes arose between them and the balance amount was not paid. The Petitioner sent the statutory demand notice to the Respondent, who refuted the allegations made in the notice and refused to make the alleged payment. Petitioner filed the winding up petition on the grounds that in reply to its legal notice, the Respondent admitted its liability but raised frivolous and irrelevant issues with *malafide* intention, in a bid to deflect the attention from the main provisions and the essence of the agreement.

Decision: Petition dismissed.

Reason

It is reiterated for the Petitioner that with there being a clear admission of liability by the Respondent in the reply to the legal notice, the further attempt by the Respondent to deny liability is nothing but a sham defence. It is pointed out that as per the balance sheet of the Respondent, its net current assets stood at Rs. 1,59,00,000/- only. Even if the Respondent was to liquidate all its current assets and discharge its current liabilities it would be unable to generate sufficient amount to pay off the debt owing to the Petitioner. Consequently, it is submitted that the Respondent is unable to pay its debts and should be deemed to be commercially insolvent.

This Court is, however, not persuaded to accept the above submission. In its reply dated 19th June 2012 to the notice dated 26th May 2012 the Respondent has denied any liability whatsoever. It is, *inter alia*, stated in the reply sent by the Respondent through its counsel that "In the facts and circumstances, please advise your client that my client is not liable to pay any sum of US\$ 350,000 or any other amount under the Agreement dated 18.05.2008 as alleged. In fact the said sum of US\$ 350,000 has not even become due or payable, for the reasons stated above. Even in spite of this, if your client initiates any winding up proceedings or any civil suit or any other proceedings, as threatened in your notice, my clients take all required steps to protect themselves against your client's illegal actions besides making your client shall be made responsible and liable for all consequences arising therefrom." The Petitioner has been asked to withdraw the notice and directed to extend the technical support to the Respondent pursuant to the agreement for the sale of design for the process.

In *Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami* 1965 (35) Comp Cas 456, the Supreme Court ruled that a winding up petition "is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the Court."

In *Madhusudan Gordhandas v. Madhu Woollen Industries Pvt.*



Ltd. (1971) 3 SCC 632 it was held that "the principles which the Court acts are first that the defence of the company is in good faith and one of substance, secondly, the defence is likely to succeed in point of law and thirdly, the company adduces prima facie proof of the facts on which the defence depends."

In *Pradeshya Industrial & Investment Corporation of U.P. v. North India Petrochemicals Ltd.* (1994) 3 SCC 348 the prayer for winding up was refused on a finding that "the defence raised is a substantial one and not mere moonshine" observing that "the admission of the winding up petition is fraught with serious consequence as far as the Appellant is concerned", the Supreme Court disapproved of reasoning of the High Court that the winding up petition had to be admitted as there were "arguable issues". It was reiterated that "the machinery for winding up will not be allowed to be utilized merely as a means for realising debts due from a company."

In the present case, the Court is not persuaded to hold that the requirements of Sections 433 and 434 read with Section 439 are satisfied. The response of the Respondent to the legal notice issued by the Petitioner raises disputed questions of fact, which will require examination of evidence in other appropriate proceedings. It is not possible to conclude that the defence of the Respondent is a mere "moonshine" and not bonafide.

Consequently, leaving it open to the Petitioner to avail of any other remedies that may be available to it in law, the petition is dismissed.

LW.26.03.2013

BASANTI COTTON MILLS (1998) PVT LTD & ANR V. NIRENDRANATH KAR & ANR [CAL]

A.P.O. No. 383 of 2012

Ashim Kumar Banerjee & Shukla Kabir Sinha, JJ.
[Decided on 17/10/2012]

Companies Act, 1956 - section 560 - striking of name and restoration thereafter - defunct company - striking off the register- Dispute as to paid up capital - company's name struck off under simplified exit scheme as its paid up capital was Rs.7000/- based on the application of one group - rival group, which did not prove its locus, claimed paid up capital to be more than one lac- whether the striking off is justified - Held, yes.

Brief facts

Section 560 of the Companies Act, 1956 is involved in this case. The company whose name was struck off by the above process was Basanti Cotton Mills (1998) Pvt. Ltd. The name of this company had been struck off the register by an order of the Registrar of Companies, West Bengal, on 27th January 2006 on

an application submitted by Mr. Gopal Navinhai Dave, Mr. Nikhil Vasantlal Merchant and Mr. Paresch Vasantlal Merchant claiming to be the directors and shareholders of the company and that the paid up capital of the company is less than Rs.1 lac (under simplified exit scheme).

The applicant, through Mr.Narendranath Kar, had challenged that decision in 2010 claiming that he is in control of the company and that the paid up capital of the company is more than Rs.1 lac. The Central Government filed an affidavit in that application to the effect that the procedure under Section 560 of the Act had not been followed by them. The Single Judge allowed the application and restored the name of the company [see LW.90.10.2012] that became the subject matter of the present appeal.

Decision: Appeal allowed.

Reason

On a combined reading of the decisions cited two issues would emerge:

- i) Could the application under Section 560 be termed as "appeal"? If so, would an intra-court appeal to the Division Bench be maintainable?
- ii) Would the order of the learned Single Judge impugned herein be termed as "judgment" within the meaning of Clause 15 of the Letters Patent being available for judicial scrutiny by the Division Bench in an intra-court appeal?

To decide the first issue we would seek help from similar provisions under Section 460 and 10F of the said Act of 1956. The first one would provide for an appeal from the order of the Official Liquidator whereas the later one would extend power to the learned Company Judge to hear appeal from any order passed by the Company Law Board. If we closely examine the said two provisions and the rules framed there under we would find the word "appeal" was very much present that was however absent in Section 560 and the rules prevalent therefor.

Registrar, if satisfied reasonably that a company was not functioning, would write to the Company asking to show cause why their name would not be struck off. Three eventualities would follow; either the Company would not reply or the Company would say, they are carrying on business or they are not. In the first and third eventuality the Registrar would be competent to strike out the name. However, in case of second eventuality the Registrar would have no power to examine the veracity of such assertion, at least Section 560 does not extend so. Hence, in case of any grievance the learned Company Judge would only examine whether the Registrar rightly applied his mind within the four corners of the said provisions meaning thereby -

- i) Has he given notice as contemplated?
- ii) Has he waited for the statutory period to get a reply?
- iii) In case he receives a reply would the reply suggest striking off as contemplated in the said provision? or,
- iv) Has the Registrar ignored the company's assertion that they were carrying on business?



The Company Court would also not be in a position to examine as to the veracity of the assertion, if any, made by the Company. In short, the power of the Company Court is to examine the administrative action of the Registrar so envisaged under Section 560. If the Court acts within the four corners of the said provisions and does not step out the Court's action would not be available for appeal as no finality would arrive. Hence, ordinarily no appeal would lie from an order of the company Court under Section 560 because such exercise of power in that event would not be a "judgment" within the meaning of Clause 15.

Would all the orders under Section 560 be not available for appeal? The answer would ordinarily be 'No'. There could be a peculiar situation like the present one that would make the order appealable.

The invocation of the power of the learned Company Judge is stipulated under Sub-Section 6 that would enable a company or any member or a creditor feeling aggrieved by the company's name being struck off, to approach the learned Judge. Hence, the learned Judge would have to be satisfied that pre-requisites were fulfilled meaning thereby the applicant must be either a company or a shareholder or creditor, any person not falling under any of the three categories would not be entitled to invoke this provision. Hence, the learned Company Judge, to receive an application under Sub-Section 6, must satisfy himself that the petitioner had locus to approach. In case any error was committed on that score that order would definitely be available for appeal as it would reach finality with regard to the locus of the petitioner. In other words, once the learned Judge would entertain the application on merit the status of the petitioner would get established that would be a finality on that score as no one would hence be entitled to question his status.

In the present case, the status of the Respondent No.1 was very much in dispute. Learned Judge possibly overlooked that aspect. The learned Judge by judgment and order dated March 22, 2011 relegated the issue to the Registrar. The Division Bench set aside by observing, the learned Judge would have to decide the issue. Hence, learned Judge could not ignore such issue. Hence, on that score the appeal would be maintainable as it would be a "judgment" within the meaning of Clause 15 that would be available for intra-court appeal.

We thus hold the present appeal is maintainable. In a case of the like nature when there was dispute with regard to the status of the petitioner it would be safe for the Court to rely upon the admitted records being the records maintained by the Registrar. From the records produced by ROC appearing at pages 39 to 77 of the paper book (Volume-II), we would find, as on the date of the striking off not a single document would show the nexus of the Respondent No.1 with the company. He came in picture in October 2008 through filing of DIN. Documents filed after 2008 would also show, he was Director since 1998 as claimed by him. Such dispute would have to be resolved in an appropriate forum. Section 560 would not give power to the Court to adjudicate as to such dispute.

The court would be relying upon the admitted records that would

clearly show, Respondent No.1 did not feature in the records. His belated plea would also keep him at bay. His prayer for restoration would wait for a decision in his favour on his status by a competent civil court or any other appropriate forum. The learned Judge should not have restored the name of the company at the instance of someone whose identity is yet to be established. We are not sure, who is correct or who is wrong that is to be established at the appropriate forum. So long he cannot establish his status he would not be entitled to invoke the provision of Section 560.

The Registrar would admit, the procedural lapses occurred while striking off the name. It is for the Registrar to correct their mistake. Our judgment would not preclude so. We cannot issue any direction at the instance of someone whose locus is yet to be established. The appeal succeeds and is allowed. The judgment and order of the learned Single Judge impugned herein is set aside.

CS



LW.27.03.2013

UNIWORTH TEXTILES LTD V. COMMISSIONER OF CENTRAL EXCISE, RAIPUR [SC]

Civil Appeal No. 6060 of 2003

D.K. Jain & Madan B. Lokur, JJ.

[Decided on 22/01/2013]

Customs Act, 1962 - Section 28 - wilfull evasion of duty - Import of furnace oil under exemption notification for the use of another unit - duty not paid on the advice of the Development Commissioner - Revenue imposed duty and penalty by invoking the extended period of limitation proviso - whether tenable - Held, No.

Brief facts

The Appellant, Uniworth Textiles Ltd (UTL), is an EOU engaged in the manufacture of all wool and poly-wool worsted grey fabrics and was granted the status of EOU by way of a LOP. It also obtained license for private bonded warehouse for storing



inputs, raw materials, etc. either imported duty-free by availing concessions available for 100% EOU or procured locally without payment of duty for use in manufacture of all wool, poly-wool and other fabrics. Another sister company Uniworth Ltd (UL) which is also an EOU engaged in the generation of power from a captive power plant, obtained another LOP which permitted usage of electricity generated by the captive power plant by both the concerns i.e. UTL and UL.

UTL purchased electricity from UL under an agreement which continued till 1999. Prior to January-February, 2000, UL procured furnace oil required for running the captive power plant and availed duty exemption under Notification No. 53/97-Cus. In Jan-Feb 2000, UL exhausted the limit of letter of credit and made an alternative arrangement of procuring duty free furnace oil and therefore informed UTL that it would be compelled to stop the supply of electricity. Consequently as a temporary measure UTL procured furnace oil from Coastal Wartsila Petroleum Ltd claiming duty exemption under Notification No.53/97 and supplied the same to UL for generation of electricity which it continued to receive as before.

As UTL was procuring furnace oil for captive power plant of another unit it wrote to the Development Commissioner seeking clarification that whether duty on the supply and receipt of furnace oil and electricity respectively was required to be paid. The Development Commissioner referring to a circular said it need not pay duty.

However, the Revenue issued a show cause notice on UTL alleging wilful attempt to evade the payment of duty and initiated proceedings under the extended period of limitation proviso of section 28 and imposed duty and penalty. On appeal Tribunal also concluded that UTL did not bring on record any material in support of their contention that the Department was aware of the fact that the Appellants did not have captive power plant. In view of this the demand cannot be held to be hit by the time limit. Hence the appellant is before the Supreme Court under appeal.

Decision: Appeal allowed.

Reason

We have heard both sides. Section 28 of the Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default. The former is canvassed in the main body of Section 28 of the Act and is met with a limitation period of six months, whereas the latter, finds abode in the proviso to the section and faces a limitation period of five years. For the operation of the proviso, the intention to deliberately default is a mandatory prerequisite.

The proviso to Section 28(1) can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts. So far as "misstatement or suppression of facts" is concerned, they are qualified by the word "willful". The word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an

intention on the part of the Assessee to evade the duty.

In the present case, from the evidence adduced by the Appellant, one will draw an inference of *bona fide* conduct in favour of the Appellant. The Appellant laboured under the very doubt which forms the basis of the issue before us and hence, decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the Appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the Appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did the Appellant decide to claim exemption. Even if one were to accept the argument that the Development Commissioner was perhaps not the most suitable repository of the answers to the queries that the Appellant laboured under, it does not take away from the *bona fide* conduct of the Appellant. It still reflects the fact that the Appellant made efforts in pursuit of adherence to the law rather than its breach.

Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of *bona fide* conduct, by observing that "the Appellants had not brought anything on record" to prove their claim of *bona fide* conduct, on the Appellant. It is a cardinal postulate of law that the burden of proving any form of *mala fide* lies on the shoulders of the one alleging it. This Court observed in *Union of India v. Ashok Kumar & Ors* (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."

Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the *fides* of the conduct of the Assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet.

Hence, on account of the fact that the burden of proof of proving *mala fide* conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the Appellant, we hold that the extended period of limitation under the said provision could not be invoked against the Appellant.

In view of the afore-going discussion, the appeal is allowed and the decisions of the authorities below are set aside, leaving the parties to bear their own costs.

LW.28.03.2013

DR. REDDY'S LABORATORIES LTD v. THE



COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX [CESTAT]

CE Appeal No. 1480/2011 (Arising out of Order-in-Appeal No. 81/2010 (H-IV) CE dated 24.08.2010)

P.G. Chacko, Member (Judicial)
[Decided on 08/02/2013]

Rule 14 of CENVAT Credit Rules, 2004 - Interpretation of the word "or" used in between the words "taken" and "utilised"- whether it is disjoint - Held, Yes.

Brief facts

The appellant had taken certain input credit which was reversed before the show cause notice was issued. The show cause notice was issued with respect to the imposition of interest on the credit so erroneously taken. The appellant contended that the word "or" used in between the words "taken" and "utilised" in Rule 14 of the CENVAT Credit Rules 2004(CRR) has to be read as "and" and therefore since it had not utilised the credit taken no interest is payable by it. This argument was based on the judgment dated 05.04.2011 rendered by the Karnataka High Court in CEA No. 96/2010 *Commissioner, LTU Bangalore v. Bill Forge Pvt. Ltd.* The same argument was taken before the Tribunal also by the appellant.

Decision: Appeal dismissed.

Reason

It appears from the grounds of this appeal coupled with the written submissions of the appellant that the entire challenge is based on two facts which are that the CENVAT credits in question were never utilized and that they were reversed before the issuance of the show-cause notice. The case of the appellant is that Rule 14 of the CCR 2004 as interpreted by the Karnataka High Court in *Bill Forge case (supra)* is against the Revenue. The appellant has laid stress on the fact that, in the case of *Bill Forge* the Karnataka High Court has distinguished the apex court's decision in *UOI v. Ind-Swift Laboratories Ltd.* [2011 (265) E.L.T. 3 (S.C)].

Per *contra*, the argument of the Revenue is that the apex court's ruling is squarely applicable to the instant case and is not distinguishable. It is submitted that the apex court, in its plenary jurisdiction, construed the provisions of Rule 14 of the CCR 2004 and ruled that the word "or" appearing between the words "taken" and "utilized" in the text of the rule could not be read as "and". On this basis, the Supreme Court set aside a judgment of the Punjab & Haryana High Court wherein the High Court had read down the provisions so as to hold that no liability to pay interest arose in a case where an amount of CENVAT credit taken but not utilized was reversed later on. The ruling of the Apex Court is binding on all courts and authorities in the country.

The interpretation given to Rule 14 by the High Court in the case of *Bill Forge Pvt. Ltd* is contrary to the apex court's ruling. The High Court reached a conclusion regardless of the basic provisions of Rule 3 of the CENVAT Credit Rules 2004. It is submitted that Rule 3 enabled a manufacturer of excisable products or a provider of output service to take CENVAT credit on inputs, input services and capital goods upon receipt thereof in his factory/premises. The present appellant has also done the same thing. It is argued that, while the taking of the credit is provided for under sub-rule 1 of Rule 3, its utilization is provided for under sub-rule 4. Under the latter sub-rule, CENVAT credit is utilized for payment of service tax, specified duties of excise etc. In this manner, the learned Superintendent (AR) has endeavoured to juxtapose utilization with taking of credit. Her argument is that these basic provisions were overlooked when it was held by the High Court that actually, the credit is taken at the time of the removal of the excisable products. According to the learned Superintendent (AR), the decision of the High Court regardless of the provisions of Rule 3 of the CCR 2004 is not a good precedent to be followed. Obviously, the concept of *per incuriam* is being invoked against the High Court's decision.

After considering the above arguments, I have found great force therein. The doctrine of *per incuriam* is applicable against a judgment rendered in ignorance of any statutory provisions. It is applicable even in a case where the court which passed the judgment was aware of the statute but the precise terms of the statute were not present to its mind. The above commentary on *per incuriam* also indicates that even a lower court can treat a precedent as *per incuriam*. I have to analyse the operative part of the judgment in *Bill Forge* case against this backdrop. In the said case, after taking cognizance of the apex court's ruling that the question of reading the word and in the place of or would not arise, the High Court proceeded to consider the implications of taking and utilization of credit.

At this stage, there is only one ruling that is applicable to the instant case and the same is the one handed down by the Apex Court after interpreting the provisions of Rule 14. The ruling is to the effect that the word or appearing between the words taken and utilized cannot be read as "and". The effect of this ruling is unambiguously clear. Where an amount of inadmissible CENVAT credit was taken by a manufacturer of excisable products or a provider of output service but later on reversed, he has to pay interest under Rule 14 for the period from the date of taking of credit to the date of its reversal, whether or not the credit was utilized. This is the clear result of the interpretation given by the Apex Court to the provisions of Rule 14. It is binding on this Tribunal under Article 141 of the Constitution of India.

In the result, it has to be held that the short question (whether the appellant is liable to pay interest under Rule 14 of the CCR 2004 on the amounts of CENVAT credit in question) has to be settled in favour of the Revenue in view of the Supreme Court's ruling in *Ind-Swift Laboratories case (supra)*. It is ordered accordingly.



LW.29.03.2013

COMMISSIONER OF CENTRAL EXCISE v. STATE BANK OF INDIA; STATE BANK OF INDIA V. COMMISSIONER OF CENTRAL EXCISE [CESTAT]

ST/603 & 692 of 2011 arising out of OIA No. RKA/261-62/SRT-I/2011 dated 25.08.2011.

M.V. Ravindaran, Member (Judicial)
[Decided on 05/02/2013]

Finance Act, 1994 - Sections 76 and 78 - Discharge of service tax liability before the issue of show cause notice - whether penalty under section 78 and 76 is leviable - Held, No

Brief facts

State Bank of India is providing taxable services falling under the category of Banking and Other Financial Services and registered with the department. On the basis of the intelligence gathered by the officers of Director General. Central Excise Intelligence, it was revealed that State Bank of India provided taxable services in relation to operation of accounts of the Employees Provident Fund Organization (EPFO) and Employees State Insurance Corporation (ESIC) classifiable under Banking and other financial services. However, State Bank of India did not make any payment of service tax leviable on the said services. On the basis of further investigations and on scrutiny of records, it was alleged that State Bank of India had evaded payment of service tax on the Banking and Other Financial Services provided by them for the period from 10.9.2004 to 31.3.2007. Therefore, appellant was served with show cause notice on 19.10.2009 proposing to recover *inter-alia* (a) Rs. 9,80,215/- being service tax not paid and (b) the interest payable under Section 75 of the Finance Act, 1994 on the above amount of service tax. After due process, the adjudicating authority passed an order confirming the demand of service tax of Rs. 8,81,090/- and interest thereof. He also imposed penalty of equal amount under Section 78 of the Finance Act, 1994. However, he has not imposed any penalty under Section 76 and 77 of the Finance Act, 1994.

Decision: Assessee's appeal allowed; Revenue's appeal rejected.

Reason

On careful consideration of the submissions made by both sides, I find that the issue involved in this case is regarding service tax to be discharged on the amounts of commission received by the appellant from the Govt. of India. It is seen from the record that the appellant is claiming that they have discharged the entire

service tax liability and in respect of which they have produced a certificate issued by the Chief Manager, Main Branch, Surat, which indicate discharge of service tax liability from September 2004 to July 2005. It is the claim of the Chartered Accountant that these amounts include the service tax liability which has been arrived at by the lower authorities as short payment.

Since the assessee, State Bank of India has discharged the service tax liability before the issuance of show cause notice and there being a claim that the records are lost in flood in the year 2005, I have to hold that the certificate produced by the learned advocate to be correct as on date. I find that there is no reason for visiting the appellant with penalty that has been imposed by the lower authorities. In the case of appellant, the appeal is for setting aside the penalty imposed under Section 78 of the Finance Act, 1994.

Since I have already held that the appellant has discharged the service tax liability, as per the certificate produced by the Chartered Accountant, the service tax liability having been discharged, and held that the appellant is not required to be visited with the penalty under Section 78, under the same analogy, I find that the appellant is not to be visited with any penalty under Section 76 of the Finance Act, 1994 as has been pleaded by the Revenue in their appeal.

Accordingly, the assessee's appeal for setting aside the penalties imposed by the lower authorities is allowed and Revenue's appeal for imposing penalty under Section 76 of the Finance Act, 1994 is rejected. CS



LW.30.03.2013

SUNDER SINGH V. P.O. INDUSTRIAL TRIBUNAL-I & ANR [DEL]

W. P. (C) No.5454/1998

Vipin Sanghi, J.
[Decided on 08/02/2013]

Industrial Disputes Act, 1947 - Sections 25F,G & H - constant



rollover employment of badly worker - dismissal from services - whether retrenchment - Held, yes.

Brief facts

The admitted facts are that the petitioner was appointed by an office order dated 06.08.1987 initially for a period of six months or until appointment of a regular employee as Beldar in the dog destruction gang. The appointment was purely temporary and liable to be terminated without any notice. By another office order dated 19.02.1988, the petitioner's appointment was extended by another six months from 04.02.1988. Once again, the appointment was made on purely temporary basis and liable for termination without notice.

The services of the petitioner were similarly extended for a period of six months from 04.08.1988; and for two periods of three months each from 04.11.1988 and 31.01.1989. The services were terminated with effect from 01.02.1989. The petitioner claimed that he had served for over 240 days in the year preceding to his termination and raised an industrial dispute claiming breach of sections 25F, G&H of the Industrial Disputes Act, 1947 (the Act) read with Rule 76 and 77 of the Industrial Disputes (Central) Rules, 1957.

The defence of the respondent management was premised on section 2 (oo) (bb) of the Act. It was contended that the appointment of the petitioner was a fixed term appointment and, therefore, his termination was not covered by the expression retrenchment. Consequently, section 25F and other provisions, relied upon by the petitioner, did not operate in his case. This submission of the respondent was accepted by the Industrial Tribunal, and the reference was answered against the petitioner. The petitioner has assailed the award before the High Court.

Decision: Appeal allowed

Reason

Learned counsel for the petitioner has referred to the cross examination of the witness of the respondent management MW-1 in which he admits that the petitioner was working against a regular post of Beldar as a daily wager. He submits that the work performed by the petitioner was of perennial nature against a regular post. He further submits that it was also admitted by MW-1 that no retrenchment compensation was given to the petitioner.

The submission of learned counsel for the petitioner is that the *modus operandi* adopted by the respondent of issuing fixed term appointment letters successively, and continuously, stretching over a period of 1 year tantamounts to unfair labour practice in terms of section 2 (ra) read with Item 10 in 5th Schedule to the Act. The said item defines unfair labour practice, *inter alia*, to mean "to employ workman as *badlis*, casuals or temporaries and to continue them as such for years,

with the object of depriving them of the status and privileges of permanent workers". He submits that section 2 (oo)(bb) has been interpreted by the Division Bench of the Punjab and Haryana High Court in a detailed and considered decision in *Bhikku Ram v. Presiding Officer*, Industrial Tribunal cum Labour Court, (1996) III LLJ 1126 P&H in the light of section 2 (ra) and item 10 of the 5th Schedule. He submits that the said judgment squarely applies in the facts of this case, as the respondents did not make recruitment against the regular vacant posts, and continued to appoint the petitioner on casual basis for successive periods only to evade the provisions of the Act and other beneficial legislation framed by the Parliament for protection of the rights and interests of the workman.

Having considered the facts and circumstances of the case, and the decisions cited, I am of the view that the impugned award cannot be sustained and the issuance of fixed term appointment letters successively to the petitioner was not *bonafide* and was, in fact, an endeavour to evade the provisions of the Act and other beneficial legislations framed for protection of workman.

From the facts of the case, it is evident that the respondent adopted the *modus operandi* to appoint the petitioner for fixed terms successively and continuously only to evade the rights that the petitioner would get vested with, if he were to be regularly appointed. Admittedly, there were regular vacant posts of *beldar* lying vacant. Yet the respondent did not make regular appointments. The nature of work was also perennial. The conduct of the respondent in making successive fixed term appointment has to be judged in the light of section 2(ra) read with Item 10 of the 5th Schedule to the Act. There is absolutely no explanation furnished by the respondents for making fixed term appointment and for continuing the same successively and continuously. Consequently, the impugned award cannot be sustained and is set aside and it is held that the services of the petitioner were illegally terminated in breach in section 25F of the Act.

The next question that arises for consideration is as to what relief the petitioner would be entitled in the factual background of the case. The petitioner had served on casual basis for a period of 1 year. His services were terminated way back on 01.02.1989. Since then, more than 24 years have lapsed. I am, therefore, not inclined to direct reinstatement of the petitioner with back wages in view of the decision of the Supreme Court in *Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr*, AIR 2009 SC 3004.

The petitioner, admittedly, was not holding a post as he was not a regular or permanent appointee. Considering the fact that the petitioner was working as a class IV worker i.e. *Beldar*, in my view, the ends of justice would be met if the petitioner is granted compensation of Rs.2 lacs.

CS

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From the Government



Corporate Laws

01 Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode for the Financial year commencing on or after 01.04.2011.

[Issued by the Ministry of Corporate Affairs vide General Circular No 05/2013 dated 12.02.2013.]

In continuation of the Ministry's General Circular Nos: 16/2012 dated 06.07.2012, 34/2012 dated 25.10.2012, 39/2012 dated 12.12.2012 and 01/2013 on the subject cited above, it is stated that the time limit to file the financial statements in the XBRL mode without any additional fee/penalty has been extended up to 28th February 2013 or within 30 days from the due date of AGM of the company, whichever is later.

All other terms and conditions of the General Circular No. 16/2012 dated 06.07.2012 will remain the same.

Sanjay Kumar Gupta
Deputy Director

02 Relaxation of additional fees and extension of last date in filing of various forms with the Ministry of Corporate Affairs-reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No 03/2013 dated 08.02.2013.]

I am directed to inform you that the Ministry of Corporate Affairs has decided to extend the last date of filing and to relax the additional fees applicable on forms as per the provisions of Companies Act read with rules made there-under, which have been ought to be filed post transition of MCA 21 w.e.f. 17.01.2013, but could not be filed due to technical issues in MCA-21 system.

2. It is hereby clarified that the following relaxation shall be

considered by the Regional Director/Registrar of Companies on case to case basis while allowing for relaxation of fees or extension of last date with regard to forms to be filed by the stakeholders wherein :

- (i) Last date of filing for Forms where the due date is falling on or after 17th January, 2013 is without charging additional fee.
- (ii) All the documents which have been expired on or after 17th January due to non-submission/re-submission PUCL may be restored back.
- (iii) All the cases related to filing of court orders/competent authority where the due date/date of filing was falling on or after 17th January is extended without payment of additional fees.
- (iv) Name availability expired due to non-submission of incorporation documents will be made available for filing of the same.
- (v) In case of charge documents the due date will be extended by Regional Director on case to case basis where the due date of filing was falling on or after 17/01/2013 and could not be filed.
- (vi) The due date in above cases is hereby extended till 28/02/2013.

3. The Regional Director/Registrar of Companies will examine the request on case to case basis upon receipt of request from the stakeholders for allowing the relaxation without levying the additional fee.
4. The process of extending date will be as under:-
 - a. Company/professional will make request by email/post with RD/ROC alongwith the supporting documents if, any;
 - b. RDI ROC will raise ticket on service desk immediately after examining the application;
 - c. The team of operator will resolve the ticket as per the request of RD/ROC. A system generated mail will be sent to RDI ROC and user will be informed accordingly;
 - d. User should file the documents within the time given in the email.
5. The Regional Director/ Registrar of Companies is authorized to allow such extension of time for filing [ottn] alongwith necessary document. The RDI ROC will raise ticket in the service desk for allowing such extension of time for filing forms.
6. The stakeholders who are able to file the documents on or after 17/01/2013 till the date of this circular are not eligible for any fees relaxation or extension of last dates. Further they are not entitled for any refund.

Sanjay Kumar Gupta
Deputy Director



03 Gold Exchange Traded Fund Scheme (Gold ETFs) Investment in Gold Deposit Scheme (GDS) of Banks

[Issued by the Securities and Exchange Board of India vide CIR/IMD/DF/04/2013 dated 15.02.2013.]

1. SEBI (Mutual Funds) Regulations, 1996, (MF Regulations) permits Gold Exchange Traded Fund scheme (Gold ETFs) to invest primarily in:
 - a) Gold
 - b) Gold related instruments – Regulation 2(mc) of MF Regulations stipulates that gold related instruments are such instruments having gold as underlying, as are specified by SEBI from time to time.
Please also refer to SEBI circular no. SEBI/IMD/CIR No.4/58422/2006 dated January 24, 2006, issued in this regard.
2. It has now been decided to designate Gold Deposit Scheme (GDS) of banks as one such gold related instrument. Investment in GDS of banks by Gold ETFs of mutual funds will be subject to following conditions:
 - a. The total Investment in GDS will not exceed 20% of total asset under management of such schemes.
 - b. Before investing in GDS of banks, mutual funds shall put in place a written policy with regard to investment in GDS with due approval from the Board of the Asset Management Company and the Trustees. The policy should have provision to make it necessary for the mutual funds to obtain prior approval of their trustees for each investment proposal in GDS of any Bank. The policy shall be reviewed by mutual funds, at least once a year.
 - c. Gold certificates issued by Banks in respect of investments made by Gold ETFs in GDS shall be held by the mutual funds only in dematerialized form.
3. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market

Parag Basu
General Manager

04 Introduction of Periodic Call Auction for Illiquid Scrips and Extension of Pre-open Session to all Scrips

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/6/2013 dated 14.02.2013.]

1. SEBI vide circular no CIR/MRD/DP/21/2010 dated July 15, 2010 introduced Call Auction in Pre-open session on pilot basis at NSE and BSE for scrips forming part of Nifty and Sensex. Vide circular CIR/MRD/DP/ 01/2012 dated January 20, 2012, the framework of call auction was extended to IPO scrips and re-listed scrips. The issue of extending call auction mechanism in pre-open session to all scrips was deliberated in Secondary Market Advisory Committee (SMAC). SMAC also made recommendation on introduction of trading through periodic call auction mechanism for illiquid scrips in the equity market. Accordingly, it has been decided to implement following:
 - 1.1. Introduce trading through periodic call auction for illiquid scrips in equity market
 - 1.2. Extend the pre-open session to all other scrips in the equity market
2. Periodic Call Auction for Illiquid scrips
 - 2.1. Trading in illiquid scrips in the equity market shall be conducted only through periodic call auction sessions.
 - 2.2. Criteria for illiquidity – For the purpose of this circular, a scrip, whether trading in normal market or trade for trade settlement, shall be classified as illiquid on a stock exchange if all the following conditions are met:
 - 2.2.1. The average daily trading volume of a scrip in a quarter is less than 10000;
 - 2.2.2. The average daily number of trades is less than 50 in a quarter;
 - 2.2.3. The scrip is classified as illiquid at all exchanges where it is traded.
 - 2.3. Entry into periodic call auction mechanism – Stock exchanges shall identify illiquid scrips at the beginning of every quarter and move such scrips to periodic call auction mechanism.
 - 2.4. Exit from periodic call auction mechanism – Stock exchanges shall move scrips from periodic call auction mechanism to normal trading session if the following criteria are met:
 - 2.4.1. The scrip has remained in periodic call auction for at least two quarters
 - 2.4.2. It is not classified as illiquid as per para 2.2



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- 2.5. Notice to market – For entry and exit of scrips in the call auction mechanism, a notice of two trading days shall be given to the market.
- 2.6. Number of auction sessions – Periodic call auction sessions of one hour each shall be conducted throughout the trading hours with the first session starting at 9:30am.
- 2.7. Session duration - The call auction session duration shall be one hour, of which 45 minutes shall be allowed for order entry, order modification and order cancellation, 8 minutes shall be for order matching and trade confirmation and remaining 7 minutes shall be a buffer period for closing the current session and facilitating the transition to next session. The session shall close randomly during last one minute of order entry between the 44th & 45th minute. Such random closure shall be system driven.
- 2.8. Un-matched orders- All un-matched orders remaining at the end of a call auction session shall be purged.
- 2.9. Price band – A maximum price band of 20% shall be applicable on the scrips through the day. Exchanges may reduce the price bands uniformly based on surveillance related concerns.
- 2.10. If the Market wide Index Circuit Breaker gets triggered at any time during the periodic call auction session, the session shall be cancelled and all orders shall be purged. The periodic call auction session shall be resumed at the nearest half hour after the normal market resumes.
- 2.11. Penalty for certain trades - In the event where maximum of buy price entered by a client (on PAN basis) is equal to or higher than the minimum sell price entered by that client and if the same results into trades, a penalty shall be imposed on such trades. The penalty shall be calculated and charged by the exchange and collected from trading members on a daily basis. Trading members may recover such penalty from clients. The penalty so collected shall be deposited to Investor Protection Fund. Penalty for each such instance per session will be higher of the following:
 - a. 0.50% of the trade value for sale and 0.50% of trade value for the buy, resulting in 1% penalty for the client on PAN basis.
OR
 - b. 2500 /- for the buy trade and 2500 /- for the sell trade, resulting in penalty of 5000/- for the client on PAN Basis.
- 2.12. All other conditions for trading in periodic call auction sessions shall be as per the circulars CIR/MRD/DP/21/2010 dated July 15, 2010, CIR/MRD/DP/27/2010 dated August 27, 2010 and

CIR/MRD/DP/32/2010 September 17, 2010.

3. Pre-Open Call Auction Session
 - 3.1. In partial modification of SEBI circular no CIR/MRD/DP/21/2010 dated July 15, 2010, pre-open call auction session shall be applicable to all exchanges with active trading and for all scrips that are not classified as illiquid as per para 2.2 above.
 - 3.2. Price bands in pre-open session shall be as applicable in the normal market.
 - 3.3. All orders shall be checked for margin sufficiency at order level for inclusion in pre-open session.
 - 3.4. All other conditions for pre-open call auction session shall be as per circulars CIR/MRD/DP/21/2010 dated July 15, 2010, CIR/MRD/DP/27/2010 dated August 27, 2010 and CIR/MRD/DP/32/2010 September 17, 2010.
4. The provisions of this circular shall be effective from April 01, 2013.
5. Stock Exchanges are directed to:
 - 5.1. take necessary steps and put in place necessary systems for implementation of this circular;
 - 5.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision;
 - 5.3. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website.
6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager

05 Liquidity Enhancement Schemes for Illiquid Securities in Equity Cash market

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/05/2013 dated 08.02.2013.]

1. SEBI vide its circular CIR/DNPD/5/2011 dated June 02, 2011, permitted liquidity enhancement schemes (LES) in Equity Derivatives Segment and specified broad guidelines for the same.
2. Pursuant to the introduction of LES scheme in derivatives segment to enhance liquidity in illiquid derivative



- products, there was demand that similar scheme may also be introduced for the Equity Cash market. It has therefore been decided to permit stock exchanges to introduce LES to enhance liquidity of illiquid securities in their Equity Cash market.
3. LES may be introduced in any of the following securities:
 - (a) Securities having a mean impact cost greater than or equal to 2% for an order size of Rs.1 lakh, where mean impact cost of the security on the stock exchange is calculated over the past 60 trading days.
 - (b) Securities introduced for trading in the “permitted to trade” category.
 4. LES may be continued till such time as the security achieves mean impact cost of less than 2% for an order size of Rs.1 lakh on the stock exchange during the last 60 trading days.
 5. Discontinuation of LES for any security shall be done after advance notice of 15 days.
 6. Stock exchanges may re-introduce LES on a security if the criterion as mentioned in para 3(a) is satisfied.
 7. In case any stock exchange introduces LES on securities eligible under para 3(a) above, other stock exchanges may also introduce LES in the same securities even if those are not eligible on their stock exchange under 3(a). Such LES of other stock exchanges shall not be continued beyond the period of LES at the initiating stock exchange.
 8. The stock exchange shall ensure that the LES, including any modification therein or its discontinuation,
 - (a) has the prior approval of its Board and its implementation and outcome is monitored by the Board at quarterly intervals;
 - (b) prescribes and monitors the obligations of liquidity enhancers (liquidity provider, market maker, maker-taker or by whatever name called);
 - (c) disburses the incentives linked to performance;
 - (d) is objective, transparent, non-discretionary and non-discriminatory;
 - (e) does not compromise market integrity or risk management;
 - (f) complies with all the relevant laws; and
 - (g) is disclosed to the market atleast 15 days in advance and its outcome (incentives granted and volume achieved – liquidity enhancer wise and security wise) is disseminated monthly within a week of the close of the month.
 9. The incentives under LES shall be transparent and measurable. These may take either of the two forms:
 - (a) Discount in fees, adjustment in fees in other segments or cash payment;
 - (b) Shares, including options and warrants, of the stock exchange.
 10. If a stock exchange chooses the form specified in Para ‘9a’ above, the incentives under all LES (both Equity Cash and Derivative Segment), during a financial year, shall not exceed 25% of the net profits or 25% of the free reserves of the Stock Exchange, whichever is higher, as per the audited financial statements of the preceding financial year. If, however, a stock exchange chooses the form specified in Para ‘9b’ above, the shares, including the shares that may accrue on exercise of warrants or options, given as incentives under all LES (both Equity Cash and Derivative Segment), during a financial year, shall not exceed 25% of the issued and outstanding shares of the Stock Exchange as on the last day of the preceding financial year. Further, the Exchange shall ensure that it is compliant with the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 at all times.
 11. From a market integrity perspective, the stock exchange shall ensure the following, in respect of LES for both Equity Cash market and Derivative Segment:
 - (a) The Exchange must have systems and defined procedures in place to monitor collusion between trading members indulging in trades solely for seeking incentives and prevent payment of incentives in such cases.
 - (b) In addition to (a) above, incentives in the form of cash payments, warrants, discount in fees, etc may not be provided for the trades where the counterparty is self, i.e., same Unique Client Code (UCC) is on both sides of the transaction.
 - (c) Any violations of clauses in this para shall be viewed most seriously.
 - (d) In this regard, SEBI circular CIR/DNPD/5/2011 dated June 02, 2011 stands modified to the extent as mentioned in para 10 and 11.
 12. The Stock Exchange shall submit half-yearly reports on the working of its LES for review of SEBI.
 13. This circular shall not be applicable to securities listed on SME Platform or SME Exchange. Further, the conditions specified in SEBI circular SMDRP/Policy/CIR-04/2000 dated January 20, 2000 shall not be applicable for the LES introduced pursuant to this circular.
 14. Stock Exchanges are directed to:
 - a) take necessary steps to put in place systems for implementation of the circular, including necessary



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- amendments to the relevant byelaws, rules and regulations;
 - b) bring the provisions of this circular to the notice of the stock brokers and also disseminate the same on its website;
 - c) communicate to SEBI the status of implementation of the provisions of this circular.
15. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager

06 Increase in FII debt limit for Government and Corporate Debt category

[Issued by the Securities and Exchange Board of India vide CIR/IMD/FIIC/3/2013 dated 08.02.2013.]

1. The Reserve Bank of India vide circular RBI/2012-13/391, dated January 24, 2013, had enhanced the limit for investment by FIIs in the Government Debt Long Term category by US\$ 5 billion to US\$ 15 billion and the Corporate non-infrastructure debt category by US\$ 5 billion.
2. In terms of the aforesaid RBI circular, the changes are summarized below:
 - a) In the Government Debt Long Term category, the provision regarding 3 years residual maturity at the time of first purchase shall no longer be applicable. However, within this category, FIIs shall not be allowed to invest in short term paper like treasury bills.
 - b) In terms of the aforesaid circular, the limit of US\$ 5 billion in the Corporate Non-Infrastructure Debt category shall not be available for investment in Certificate of Deposits (CD) and Commercial Papers (CP). Investments in Certificate of Deposits are not permitted within the limit of US\$ 20 billion.
 - c) The US \$ 1 billion limit for QFIs shall continue to be over and above the revised limit of US\$ 25 billion available for FII investment in Corporate non-infrastructure debt category.
 - d) For the US\$ 12 billion sub-category for investment in Corporate Long Term Infra bonds the following changes have been made :
 - i. The restriction of 1 year lock-in period has been removed

- ii. The 5 year initial maturity restriction has been removed.
At the time of first purchase by FIIs, the residual maturity shall be 15 months.
 - e) For the sub-category of US\$ 10 billion reserved for FII investments in Infrastructure Debt Funds (IDFs), the restriction of 1 year lock-in has been removed. The requirement of residual maturity of 15 months at the time of first purchase remains unchanged.
 - f) Vide circular CIR/IMD/FII&C/18/2012 dated July 20, 2012, SEBI had permitted QFIs to invest in those debt mutual fund schemes that hold at least 25 percent of their assets (either in debt or equity or both) in the infrastructure sector under the US\$ 3 billion investment limit for debt mutual fund schemes. These schemes were required to invest in infrastructure debt having a minimum residual maturity of 5 years. This restriction of 5 years residual maturity has been removed while the restriction of 3 years initial maturity has been introduced.
3. All the above changes in lock-in , initial maturity and residual maturity requirements shall apply for investments by FIIs and Sub-Accounts in debt securities to be made after the date of this circular.
4. The table summarizing the revised positions for FII/ Sub-Account investments in Government securities and Corporate Debt securities is as follows:

S. No.	Type of Instrument	Cap (US\$ bn)	Initial Maturity	Residual Maturity	Restrictions		Comments
					Lock in	Investor Class	
1	Government Debt- Old	10	NA	NA	Nil	FII	
2	Government Debt - Long Term	15	NA	NA	Nil	FII	Investments in short term paper like treasury bills not permitted
3	Corporate Debt Old	21	Nil	Nil	Nil	US\$ 20 bn for FII	Not available for investments in Certificate of Deposits
						US\$ 1 bn for QFIs	
4	Corporate Debt Long Term	5	Nil	Nil	Nil	FII	Not available for investment in Certificate of Deposits (CD) and Commercial Papers (CP)
5	Corporate Debt Long Term Infra	25					
Sub-Category							
5.a	Corporate debt long term infra	12	Nil	15 months	Nil	FII	
5.b	QFI in mutual fund debt scheme which invest in infrastructure debt	3	3 years	NA	Nil	QFIs	
5.c	Investment in IDF	10	Nil	15 months	Nil	FII	
	Total	76					

Abbreviations used : NA = Not Applicable ; bn = Billion



5. Allocation of Debt Limits

- a. The incremental limit in Government Debt Long Term category i.e US \$ 5 billion (equivalent to approximately Rs.26,925 cr – converted at the RBI reference rate of US \$ 1 = Rs. 53.8515 as on January 24, 2013) shall be auctioned along with the unutilized debt limits in that category as on January 31, 2013 (Rs.7034 cr), during the next auction scheduled to be held on February 20, 2013. Therefore, the total unutilized limit of Rs.33,959 cr in the Government Debt Long Term category will be auctioned on February 20, 2013.
 - b. The incremental Corporate non-infrastructure limit of US \$ 5 billion (equivalent to approximately Rs.26,925 cr – converted at the RBI reference rate of US \$ 1 = Rs. 53.8515 as on January 24, 2013) shall be auctioned as a separate category during the next auction scheduled to be held on February 20, 2013.
6. The aforesaid auction shall be conducted through electronic bidding process, in terms of SEBI circular CIR/IMD/FIIC/12/2012 dated April 27, 2012.
 7. The time period for utilization of the Government debt limits (for both old and long term limits) allocated through bidding process shall be 30 days while the time period for utilization of the corporate debt limits allocated through the bidding process shall be 60 days in terms of the SEBI circular CIR/IMD/FIIC/22/2012 dated November 07, 2012.
 8. The re-investment period, i.e. 5 working days for Government Debt and 15 working days for Corporate Debt shall remain the same as per the SEBI Circular CIR/IMD/FIIC/18/2010 dated November 26, 2010.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under SEBI Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

A copy of this circular is available at the web page “F.I.I.” on our website www.sebi.gov.in. The custodians are requested to bring the contents of this circular to the notice of their FII clients.

S Madhusudhanan
Deputy General Manager

07 Time Period for initial offering and allotment of units of Mutual Fund Scheme eligible under Rajiv Gandhi Equity Savings Scheme, 2012 (RGESS)

[Issued by the Securities and Exchange Board of India vide CIR/ IMD/ DF/02/2013 dated 06.02.2013.]

1. As per Regulation 34 of SEBI (Mutual Funds) Regulations, 1996, initial offering period of any Mutual Fund scheme (other than ELSS scheme) shall not be more than fifteen days. Further, as per Regulations 35 and 36 of SEBI (Mutual Funds) Regulations, 1996, the Mutual Fund / AMC shall allocate the units, pay the refundable amount, if any, to the concerned applicants and also issue statement of accounts to the applicants whose applications has been accepted, within a period of five working days from the date of closure of initial subscription.
2. With respect to Mutual Fund scheme eligible under RGESS, which is a tax-saving scheme notified by the Government of India on November 23, 2012, it has been decided that –
 - a. The maximum period for which initial offering of Mutual Fund scheme eligible under RGESS shall be open for subscription, is extended from the existing stipulation of fifteen days to thirty days.
 - b. Further, for Mutual Fund scheme eligible under RGESS, the period within which Mutual Fund/ AMC should allocate the units, refund money and issue statements of accounts, is extended from the existing requirement of five working days from the closure of the initial subscription to fifteen days from the closure of the initial subscription.
3. This circular shall come into force with immediate effect.
4. The provisions of SEBI (Mutual Fund) Regulations, 1996 regarding maximum initial offer period, allotment of units, refunds of money and issuance of statement of accounts for Mutual Fund scheme eligible under RGESS would be suitably amended in due course.
5. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to



From the Government

regulate the securities market.

Parag Basu
General Manager

08 Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/5/2013 dated 04.02.2013.]

1. Vide Circular No. SEBI/CFD/SCRR/01/2009/03/09, dated September 03, 2009 (“Circular”) certain requirements were prescribed for seeking exemption under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (“SCRR, 1957”) from strict enforcement of clause (b) to sub-rule (2) of rule 19 by listed companies.
 2. The existing Clause 24(f) of the Listing Agreement mandates that a listed company shall file any scheme/petition, proposed to be filed before any Court or Tribunal under sections 391, 394 and 101 of the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal.
 3. In terms of the above mentioned Circular, pursuant to a scheme of reconstruction or amalgamation being sanctioned by the Hon’ble High Court under sections 391-394 or 101 of the Companies Act, 1956 (“Scheme”), the listed companies desirous of getting their equity shares listed after merger/de-merger/amalgamation etc. were required to seek an exemption from Securities and Exchange Board of India (“SEBI”) from the requirements of Rule 19(2)(b) of SCRR, 1957. In terms of Rule 19(7) of SCRR, 1957, SEBI has been granting exemption to such listed companies from time to time, on a case to case basis.
 4. However, in the recent past, SEBI has received applications, seeking exemption, from certain entities containing, *inter alia*, (a) inadequate disclosures, (b) convoluted schemes of arrangement, (c) exaggerated valuations, etc. SEBI is of the view that granting listing permission or exemption from the requirements of Rule 19(2)(b) of SCRR, 1957 based on such applications may not be in the interest of minority shareholders. At the same time, if listing permission or such an exemption is delayed or denied, it would add to the uncertainty and would deprive shareholders of an exit opportunity.
5. In order to avoid such situations, the existing requirements are being revised. The salient features of the revised requirements, include the following:
 - I. **Requirements before the Scheme is submitted for sanction by the Hon’ble High Court**
 - A. **Obligations of Listed Companies**
The obligations of a listed company, *inter alia*, include:
 - 5.1. Listed companies desirous of undertaking a Scheme of Arrangement under Chapter V of the Companies Act, 1956, (Amalgamation/ Merger/ Reconstruction/ Reduction Of Capital, etc.) shall file the Draft Scheme with the stock exchanges in terms of Clause 24(f) of the Listing Agreement. Listed companies shall also submit the documents mentioned in Para 2 of Part A of Annexure I to this Circular to the stock exchanges along with the Draft Scheme.
 - 5.2. Such listed companies shall place before its Audit Committee the Valuation Report obtained from an Independent Chartered Accountant. The Audit Committee shall furnish a report recommending the Draft Scheme, taking into consideration, *inter alia*, the aforementioned valuation report.
 - 5.3. Listed companies shall choose one of the stock exchanges having nation-wide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI.
 - 5.4. Listed companies shall be required to:-
 - (a) include the Observation Letter of the stock exchanges, referred to in Clause 5.8 below, in the notice sent to the shareholders seeking approval of the Scheme; and
 - (b) bring the same to the notice of the Hon’ble High Court at the time of seeking approval of the Scheme.
 - B. **Obligations of The Stock Exchanges**
 - 5.5. The designated stock exchange, upon receipt of the Draft Scheme and the documents referred to in Clause 5.1 above, shall forward the same to SEBI within 3 working days.
 - 5.6. The stock exchanges shall process the Draft Scheme (including seeking clarifications from company and/or Opinion from Independent Chartered Accountant.) and forward their “Objection/No-Objection” letter on the Draft Scheme to SEBI.
 - 5.7. The stock exchanges shall forward their “Objection/No-Objection” letter on the Draft Scheme to SEBI within 30 days from the date of application or within 7 days of date of receipt of satisfactory



reply on clarifications from the company and/or opinion from independent chartered accountant, if any sought by stock exchanges, as applicable.

- 5.8. The stock exchanges, upon receipt of comments from SEBI, as referred to in Clause 5.10 below, shall issue Observation Letter to the listed company after suitably incorporating the comments received from SEBI. Stock exchanges shall provide 'Observation Letter' to listed company within 7 days of receipt of comments from SEBI on the Draft Scheme.

C. Processing of the Draft Scheme by SEBI

- 5.9. Upon receipt of "Objection/No-Objection" letter from the stock exchanges, SEBI shall provide its comments on the Draft Scheme to the stock exchanges. While processing the Draft Scheme, SEBI may seek clarifications from any person relevant in this regard including the listed company or the stock exchanges and may also seek an opinion from an Independent Chartered Accountant.
- 5.10. SEBI shall endeavour to provide its comments on the Draft Scheme to the stock exchanges within 30 days from the later of the following:
- date of receipt of satisfactory reply on clarifications, if any sought from the company by SEBI; or
 - date of receipt of opinion from Independent Chartered Accountant, if sought by SEBI; or
 - date of receipt of "Objection/No-Objection" letter from the stock exchanges.

D. Disclosure on the Website

- 5.11. Immediately upon filing of the Draft Scheme with the stock exchanges under Clause 5.1 above, the listed company shall disclose the Draft Scheme and all the documents mentioned in Clause 5.1 above on its website. It shall also disclose the Observation Letter of the stock exchanges on its website within 24 hours of receiving the same.
- 5.12. The stock exchanges where the specified securities are listed / proposed to be listed shall also disclose on their websites the Draft Scheme and documents listed at Clause 5.1 above immediately on receipt. It shall also disclose the Observation Letter on its website immediately upon issuance.

E. Redressal of Complaints:

- 5.13. All complaints/comments received by SEBI on the Draft Scheme shall be forwarded to the designated stock exchange, for necessary action and resolution by the listed company. Listed company shall submit to stock exchanges a 'Complaints Report' which

shall contain the details of complaints/comments received by it on the Draft Scheme from various sources (complaints/comments written directly to the company or forwarded to it by the stock exchanges) prior to obtaining Observation Letter from stock exchanges on Draft Scheme.

- 5.14. Listed companies shall also include the 'Complaints Report' in the notice sent to the shareholders while seeking approval of the Scheme. The 'Complaints Report' shall be forwarded by the stock exchanges to SEBI before SEBI communicates its comments on the Draft Scheme to the stock exchanges.
- 5.15. 'Complaints Report' as mentioned above, shall be submitted by listed companies to the stock exchanges within 7 days of expiry of 21 days from the date of filing of Draft Scheme with stock exchanges and hosting the Draft Scheme along with documents listed at Clause 5.1 above on the websites of stock exchanges and the listed company. The stock exchanges shall thereafter submit the 'Complaints Report' to SEBI. Such Report shall be submitted as per the format specified at Annexure II to this Circular.

F. Approval of Shareholders to Scheme Through Postal Ballot And e- Voting:

- 5.16. Listed companies shall ensure that the Scheme submitted with the Hon'ble High Court for sanction, provides for obtaining shareholders' approval through special resolution passed through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. The Scheme shall also provide that the special resolution shall be acted upon only if the votes cast by public shareholders in favor of the proposal amount to at least two times the number of votes cast by public shareholders against it.

II. Requirements after the Scheme is Sanctioned by the Hon'ble High Court (hereinafter referred to as "Approved Scheme")

- 5.17. Upon sanction of the Scheme by the Hon'ble High Court, the listed company shall submit the documents mentioned in Para 2 of Part B of Annexure I to this Circular, to the stock exchanges.
- 5.18. The designated stock exchange shall forward its recommendations to SEBI on the documents submitted by the listed company as referred to in Clause 5.17 above.
- 5.19. SEBI shall endeavour to offer its comments/approval, wherever applicable, to the designated stock exchange in 30 days.



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6. **Validity of Observation Letter:** The validity of the 'Observation Letter' of stock exchanges shall be six months from the date of issuance, within which the Scheme shall be submitted to the Hon'ble High Court.
7. **Applicability:** The revised requirements shall be applicable to listed companies which, on the date of this Circular, have not submitted the Scheme with the Hon'ble High Court. It is clarified that the revised requirements shall also be applicable in cases wherein the companies have submitted the Draft Scheme with the stock exchanges under Clause 24(f) of Listing Agreement and such schemes have not yet been submitted with the Hon'ble High Court for approval. Therefore, the companies that have submitted the Draft Scheme with the stock exchanges and have already received approval thereon but have not yet submitted to the Hon'ble High Court, shall be required to resubmit the same in accordance with the requirements of this Circular.
8. For consideration of applications involving Schemes of Arrangement, Warrants along with NCDs, and Issuance of Equity shares with Differential Rights, the detailed requirements to be complied with are mentioned in Annexure I to this Circular.
9. **Repeal and Saving:** Pursuant to issuance of this Circular, SEBI Circular No. SEBI/CFD/SCRR/01/2009/03/09 dated September 03, 2009 stands rescinded. Notwithstanding such rescission, anything done or any action taken or pending in respect of the said Circular shall continue to be dealt under SEBI Circular No. SEBI/CFD/SCRR/01/2009/03/09 except as expressly provided under Clause 7 of this Circular.
10. The stock exchanges are advised to take into account the requirements of this Circular and to bring the same to the notice of the companies listed on their exchange.
11. This Circular is issued in exercise of the powers conferred under Section 11 and Section 11A of the SEBI Act, 1992 read with Rule 19(7) of SCRR, 1957.
12. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Sunil Kadam
General Manager

Annexure I	Part A	Requirements for Listed Companies While Submitting Draft Scheme of Arrangement
		Requirements for Stock Exchanges/Listed companies while Submitting Scheme
	Part B	Sanctioned by the Hon'ble High Court

		Application by a Listed Issuer for Listing of
	Part C	Equity Shares with Differential Rights as to Dividend, Voting or Otherwise
	Part D	Application by a Listed Issuer for Listing of Warrants Offered Along With Non Convertible Debentures (NCDs)
	Part E	Miscellaneous
Annexure II		Format for Complaints Report

ANNEXURE I

PART A

Requirements for Listed Companies While Submitting Draft Scheme of Arrangement

1. A listed issuer may submit the Draft Scheme under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, thereby seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof, for listing of its equity shares on a recognized stock exchange without making an initial public offer, if it satisfies the following conditions:
 - a. The equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant to a scheme of reconstruction or amalgamation (Scheme) sanctioned by a High Court under section 391-394 of the Companies Act, 1956;
 - b. At least twenty five per cent of the post-scheme paid up share capital of the transferee entity shall comprise of shares allotted to the public shareholders in the transferor entity;
 - c. The transferee entity will not issue/ reissue any shares, not covered under the Draft Scheme;
 - d. As on date of application, there are no outstanding warrants/ instruments/ agreements which give right to any person to take the equity shares in the transferee entity at any future date. If there are such instruments stipulated in the Draft Scheme, the percentage referred to in Para (b) above shall be computed after giving effect to the consequent increase of capital on account of compulsory conversions outstanding as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised; and
 - e. The shares of the transferee entity issued in lieu of the locked-in shares of the transferor entity will be subject to lock-in for the remaining period.
2. The listed company shall submit the following documents to the Stock Exchanges:
 - a. Draft Scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc.;
 - b. Valuation Report from Independent Chartered



- Accountant;
 - c. Report from the Audit Committee recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report as stated in Para (b) above. The Valuation Report mentioned in Para (b) above is required to be placed before the Audit Committee of the listed company;
 - d. Fairness opinion by merchant banker;
 - e. Pre and post amalgamation shareholding pattern of unlisted company;
 - f. Audited financials of last 3 years (financials not being more than 6 months old) of unlisted company;
 - g. Compliance with Clause 49 of Listing Agreement; and
 - h. Complaints Report as per Annexure II of this Circular.
3. Draft Scheme along with various documents submitted (as stipulated in Para 2 above), shall be displayed from the date of filing of Draft Scheme with the stock exchanges on the websites of:
- a. the listed company; and
 - b. the stock exchanges where the specified securities are proposed to be listed.
- b. Result of voting by shareholders for approving the Scheme;
 - c. Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme vis-à-vis the Draft Scheme
 - d. Status of compliance with the Observation Letter/s of the stock exchanges
 - e. The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable; and
 - f. Complaints Report as per Annexure II of this Circular.
3. In case of a hiving off of a division of a listed entity (say, "entity A") and its merger with a newly formed or existing unlisted issuer (say, "entity B") there will not be any additional lock-in, if the paid-up share capital of the unlisted issuer 'B' is only to the extent of requirement for incorporation purposes
4. In case of merger where the paid-up share capital of the unlisted issuer seeking listing (say, "entity B") is more than the requirement for incorporation, the promoters' shares shall be locked-in to the extent twenty per cent. of the post merger paid-up capital of the unlisted issuer, for a period of three years from the date of listing of the shares of the unlisted issuer. The balance of the entire pre-merger capital of the unlisted issuer shall also be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.

PART B

Requirements for Stock Exchanges/Listed companies while Submitting Scheme Sanctioned by the Hon'ble High Court

1. Stock exchanges shall ensure that , an unlisted issuer may make an application to the Board under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, pursuant to Part A of this Circular if it satisfies the following conditions:
- a. Observation Letter has been issued by the stock exchanges to the Draft Scheme;
 - b. The listing of the equity shares of the transferee entity is in terms of the Scheme sanctioned by the Hon'ble High Court or its order whereby the Scheme has been sanctioned;
 - c. The equity shares sought to be listed have been allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity); and
 - d. The share certificates have been dispatched to the allottees pursuant to the Scheme or their names have been entered as beneficial owner in the records of the depositories.
2. Upon sanction of the Scheme by the Hon'ble High Court, the listed company shall submit to the stock exchanges:
- a. Copy of the High Court approved Scheme;
- 5. The transferee entity shall confirm that it has taken steps for listing of its equity shares, within thirty days of the receipt of the order of the Hon'ble High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the transferor entity are/were listed.
 - 6. The formalities for commencing of trading shall be completed within forty five days of the order of the Hon'ble High Court. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving following details:
 - a. Name and address of its registered office;
 - b. Details of change of name and/or object clause;
 - c. Capital structure - pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value);
 - d. Shareholding pattern giving details of its promoter



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- group shareholding, group companies;
- e. Names of its ten largest shareholders - number and percentage of shares held by each of them, their interest, if any;
- f. Details of its promoters - educational qualifications, experience, address;
- g. Business and its management;
- h. Reason for the amalgamation;
- i. Financial statements for the previous three years prior to the date of listing;
- j. Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing);
- k. Details of its other group companies including their capital structure and financial statements;
- l. Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies;
- m. Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years;
- n. Any material development after the date of the balance sheet; and
- o. Such other information as may be specified by the Board from time to time.

PART C

Application by a Listed Issuer for Listing of Equity Shares with Differential Rights as to Dividend, Voting or Otherwise

1. A listed issuer desirous of listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, may make an application to the Board under sub-rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof if it satisfies the following conditions:
 - a. such equity shares are issued to all the existing shareholders as on record date by way of rights or bonus issue;
 - b. the issuer is in compliance with the conditions of minimum public shareholding requirement stipulated in the equity listing agreement, with reference to the equity shares already listed and the equity shares with differential rights proposed to be listed; and
 - c. the issuer undertakes to disclose the shareholding pattern of the equity shares with differential rights separately in terms of the equity listing agreement.

PART D

Application by a Listed Issuer for Listing of Warrants Offered Along With Non Convertible Debentures (NCDs)

1. A listed issuer, desirous of listing of its warrants without making an initial public offer of warrants, may make an application to the Board under sub-Rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 if it satisfies the following conditions:
 - a. warrants are issued as combined offering of NCDs and warrants through qualified institutions placement under Chapter VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "the ICDR Regulations");
 - b. the issuer is in compliance with all the provisions of Chapter VIII of the ICDR Regulations ; and
 - c. NCDs and warrants shall be traded in the minimum trade lot of one lakh rupees.

PART E

Miscellaneous

1. An application to the Board under Part B, Part C or Part D shall be made through the designated stock exchange of the listed company and the designated stock exchange shall forward the application along with its recommendations, giving reasons in writing to the Board.
2. The Board may, while granting relaxation, if any, under sub-rule (7) of rule 19 of SCRR, stipulate any other conditions as may be deemed necessary in the interest of investors and securities market, under the facts and circumstances of the specific case.

ANNEXURE II

Format for Complaints Report Part A

Sr. No.	Particulars	Number
1.	Number of complaints received directly	
2.	Number of complaints forwarded by Stock exchanges	
3.	Total Number of complaints/comments received (1+2)	
4.	Number of complaints resolved	
5.	Number of complaints pending	

Part B

Sr. No.	Name of complainant	Date of Complaint	Status (Resolved/pending)
1.			
2.			
3.			



Guidelines on Fair Practices Code for NBFCs

- A. (i) Applications for loans and their processing**
- (a) All communications to the borrower shall be in the vernacular language or a language as understood by the borrower.
 - (b) Loan application forms should include necessary information which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other NBFCs can be made and informed decision can be taken by the borrower. The loan application form may indicate the documents required to be submitted with the application form.
 - (c) The NBFCs should devise a system of giving acknowledgement for receipt of all loan applications. Preferably, the time frame within which loan applications will be disposed of should also be indicated in the acknowledgement.

(ii) Loan appraisal and terms/conditions

The NBFCs should convey in writing to the borrower in the vernacular language as understood by the borrower by means of sanction letter or otherwise, the amount of loan sanctioned along with the terms and conditions including annualised rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record. **As complaints received against NBFCs generally pertain to charging of high interest / penal interest, NBFCs shall mention the penal interest charged for late repayment in bold in the loan agreement.**

It is understood that in a few cases, borrowers at the time of sanction of loans are not fully aware of the terms and conditions of the loans including rate of interest, either because the NBFC does not provide details of the same or the borrower has no time to look into detailed agreement.

Not furnishing a copy of the loan agreement or enclosures quoted in the loan agreement is an unfair practice and this could lead to disputes between the NBFC and the borrower with regard to the terms and conditions on which the loan is granted.

NBFCs are, therefore, advised to furnish a copy of the loan agreement preferably in the vernacular language as understood by the borrower along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans.

(iii) Disbursement of loans including changes in terms and conditions

- (a) The NBFCs should give notice to the borrower in the vernacular language as understood by the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that



Banking Laws

09 Guidelines on Fair Practices Code for NBFCs – Grievance Redressal Mechanism - Nodal Officer

[Issued by the Reserve Bank of India vide RBI / 2012-13/416
DNBS.CC.PD.No. 320/03.10.01/2012-13 dated 18.02.2013.]

The Reserve Bank vide its circular dated March 26, 2012, issued revised guidelines on Fair Practices Code (FPC) for all NBFCs to be adopted by them while doing lending business. The guidelines were reviewed in view of the creation of a new category of NBFCs viz; NBFC-MFIs and also rapid growth in NBFCs' lending against gold jewellery.

2. Para 2 A (v) of the guidelines require that the Board of Directors of NBFCs should lay down the appropriate grievance redressal mechanism within the organization to resolve disputes between the company and its customers and the mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level.
3. **At the operational level, all NBFCs are required to display prominently, for the benefit of their customers, at their branches / places where business is transacted, the details of the grievance redressal officer belonging to their company as also that of the local office of RBI as detailed at paragraph (A) (vi) of annexe.**
4. The revised guidelines are issued under Section 45 L of the Reserve Bank of India Act, 1934 (Act 2 of 1934). The NBFCs may note to make suitable amendments in their existing FPC. The FPC so modified should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular and should be published and disseminated on the web-site of the company, if any, for the information of the public.

C.R.Samyuktha
Chief General Manager



From the Government

changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.

(b) Decision to recall / accelerate payment or performance under the agreement should be in consonance with the loan agreement.

(c) NBFCs should release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled/paid.

(iv) **General**

(a) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of the loan agreement (unless new information, not earlier disclosed by the borrower, has come to the notice of the lender).

(b) In case of receipt of request from the borrower for transfer of borrowal account, the consent or otherwise i.e. objection of the NBFC, if any, should be conveyed within 21 days from the date of receipt of request. Such transfer shall be as per transparent contractual terms in consonance with law.

(c) In the matter of recovery of loans, the NBFCs should not resort to undue harassment viz. persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans etc. **(As complaints from customers also include rude behavior from the staff of the companies. NBFCs shall ensure that the staff are adequately trained to deal with the customers in an appropriate manner.)**

(v) The Board of Directors of NBFCs should also lay down the appropriate grievance redressal mechanism within the organization to resolve disputes arising in this regard. Such a mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level. The Board of Directors should also provide for periodical review of the compliance of the Fair Practices Code and the functioning of the grievances redressal mechanism at various levels of management. A consolidated report of such reviews may be submitted to the Board at regular intervals, as may be prescribed by it.

(vi) **At the operational level, all NBFCs have to display the following information prominently, for the benefit of their customers, at their branches / places where business is transacted:**

- **the name and contact details (Telephone / Mobile nos. as also email address) of the Grievance Redressal Officer who can be approached by the public for resolution of complaints against the Company.**

- **If the complaint / dispute is not redressed within a period of one month, the customer may appeal to the Officer-in-Charge of the Regional Office of DNBS of RBI (complete contact details), under whose jurisdiction the registered office of the NBFC falls.**

In short, the public notice should serve the purpose of highlighting to the customers, the grievance redressal mechanism followed by the company, together with details of the grievance redressal officer and of the Regional Office of the RBI.

(vii) Fair Practices Code (which should preferably in the vernacular language as understood by the borrower) based on the guidelines outlined hereinabove should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular. NBFCs will have the freedom of drafting the Fair Practices Code, enhancing the scope of the guidelines but in no way sacrificing the spirit underlying the above guidelines. The same should be put up on their web-site, if any, for the information of various stakeholders.

(viii) Complaints about excessive interest charged by NBFCs (issued vide CC No. 95 dated May 24, 2007)

The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFCs. Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. Boards of NBFCs are, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges. In this regard the guidelines indicated in the Fair Practices Code about transparency in respect of terms and conditions of the loans are to be kept in view.

(ix) Regulation of excessive interest charged by NBFCs (Notification No. DNBS. 204 / CGM (ASR)-2009 dated January 2, 2009)

(a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as, cost of funds, margin and risk premium, etc and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.

(b) The rates of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in the relevant newspapers. The information published in the website or otherwise published should be updated whenever there is a change in the rates of interest.

(c) The rate of interest should be annualised rates so that the



borrower is aware of the exact rates that would be charged to the account.

- (x) Clarification regarding repossession of vehicles financed by NBFCs (issued vide CC No. 139 dated April 24, 2009)

NBFCs must have a built in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable. To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security; (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property. A copy of such terms and conditions must be made available to the borrowers in terms of circular wherein it was stated that NBFCs may invariably furnish a copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans, which may form a key component of such contracts/loan agreements.

B. NBFC-MFIs:

In addition to the general principles as above, NBFC-MFIs shall adopt the following fair practices that are specific to their lending business and regulatory framework.

i. General:

- a. The FPC in vernacular language shall be displayed by an NBFC-MFI in its office and branch premises,
- b. A statement shall be made in vernacular language and displayed by NBFC-MFIs in their premises and in loan cards articulating their commitment to transparency and fair lending practices,
- c. Field staff shall be trained to make necessary enquiries with regard to existing debt of the borrowers,
- d. Training if any, offered to the borrowers shall be free of cost. Field staff shall be trained to offer such training and also make the borrowers fully aware of the procedure and systems related to loan / other products,
- e. The effective rate of interest charged and the grievance redressal system set up by the NBFC-MFI should be prominently displayed in all its offices and in the literature issued by it (in vernacular language) and on its website,
- f. A declaration that the MFI will be accountable for preventing inappropriate staff behavior and timely grievance redressal shall be made in the loan agreement and also in the FPC displayed in its office/branch premises,
- g. The KYC Guidelines of RBI shall be complied with. Due diligence shall be carried out to ensure the repayment capacity of the borrowers,
- h. As specified in the NBFC-MFIs (Reserve Bank) Directions, 2011, all sanctioning and disbursement of loans should be done only at a central location and more than one individual should be involved in this function. In

addition, there should be close supervision of the disbursement function,

- i. Adequate steps may be taken to ensure that the procedure for application of loan is not cumbersome and loan disbursements are done as per pre-determined time structure.

ii. Disclosures in loan agreement / loan card

- a. All NBFC-MFIs shall have a Board approved, standard form of loan agreement. The loan agreement shall preferably be in vernacular language.
- b. In the loan agreement the following shall be disclosed.
 - i. All the terms and conditions of the loan,
 - ii. that the pricing of the loan involves only three components viz; the interest charge, the processing charge and the insurance premium (which includes the administrative charges in respect thereof),
 - iii. that there will be no penalty charged on delayed payment,
 - iv. that no Security Deposit / Margin is being collected from the borrower,
 - v. that the borrower cannot be a member of more than one SHG / JLG,
 - vi. the moratorium between the grant of the loan and the due date of the repayment of the first instalment(as guided by the NBFC-MFIs(Reserve Bank) Directions, 2011),
 - vii. an assurance that the privacy of borrower data will be respected.
- c. The loan card should reflect the following details as specified in the Non-Banking Financial Company - Micro Finance Institutions (Reserve Bank) Directions, 2011.
 - (i) the effective rate of interest charged
 - (ii) all other terms and conditions attached to the loan
 - (iii) information which adequately identifies the borrower and
 - (iv) acknowledgements by the NBFC-MFI of all repayments including instalments received and the final discharge.
 - (v) The loan card should prominently mention the grievance redressal system set up by the MFI and also the name and contact number of the nodal officer
 - (vi) Non-credit products issued shall be with full consent of the borrowers and fee structure shall be communicated in the loan card itself.
 - (vii) All entries in the Loan Card should be in the vernacular language.

iii. Non-Coercive Methods of Recovery

As specified in the NBFC-MFIs (Reserve Bank) Directions, 2011, recovery should normally be made only at a central designated place. Field staff shall be allowed to make recovery at the place of residence or work of the borrower only if borrower fails to appear at central designated place on 2 or more successive occasions.

NBFC-MFIs shall ensure that a Board approved policy is in place with regard to Code of Conduct by field staff and systems for their recruitment, training and supervision. The Code should lay down minimum qualifications necessary for the field staff and shall have necessary training tools



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identified for them to deal with the customers. Training to field staff shall include programs to inculcate appropriate behavior towards borrowers without adopting any abusive or coercive debt collection / recovery practices. Compensation methods for staff should have more emphasis on areas of service and borrower satisfaction than merely the number of loans mobilized and the rate of recovery. Penalties may also be imposed on cases of non-compliance of field staff with the Code of conduct. Generally only employees and not out sourced recovery agents be used for recovery in sensitive areas.

iv. Internal control system:

As the primary responsibility for compliance with the Directions rest with the NBFC-MFIs, they shall make necessary organizational arrangements to assign responsibility for compliance to designated individuals within the company and establish systems of internal control including audit and periodic inspection to ensure the same.

C. Lending against collateral of gold jewellery:

While lending to individuals against gold jewellery, NBFCs shall adopt the following in addition to the general guidelines as above.

i. They shall put in place Board approved policy for lending against gold that should inter alia, cover the following:

- a. Adequate steps to ensure that the KYC guidelines stipulated by RBI are complied with and to ensure that adequate due diligence is carried out on the customer before extending any loan,
- b. Proper assaying procedure for the jewellery received,
- c. Internal systems to satisfy ownership of the gold jewellery,
- d. The policy shall also cover putting in place adequate systems for storing the jewellery in safe custody, reviewing the systems on an on-going basis, training the concerned staff and periodic inspection by internal auditors to ensure that the procedures are strictly adhered to. As a policy, loans against the collateral of gold should not be extended by branches that do not have appropriate facility for storage of the jewellery,
- e. The jewellery accepted as collateral should be appropriately insured,
- f. The Board approved policy with regard to auction of jewellery in case of non-repayment shall be transparent and adequate prior notice to the borrower should be given before the auction date. It should also lay down the auction procedure that would be followed. There should be no conflict of interest and the auction process must ensure that there is arm's length relationship in all transactions during the auction including with group companies and related entities,
- g. The auction should be announced to the public by issue of advertisements in at least 2 newspapers, one in vernacular language and another in national daily newspaper.
- h. As a policy the NBFCs themselves shall not participate in the auctions held,

- i. Gold pledged will be auctioned only through auctioneers approved by the Board.
 - j. The policy shall also cover systems and procedures to be put in place for dealing with fraud including separation of duties of mobilization, execution and approval.
- ii. **The loan agreement shall also disclose details regarding auction procedure.**

10 Permission to standalone PDs for membership in SEBI approved Stock Exchanges for trading in corporate bonds

[Issued by the Reserve Bank of India vide RBI/2012-13/412 IDMD.PCD.No.2310 /14.03.05/2012-13 dated 06.02.2013.]

With a view to further developing the debt market in India, it has been decided to permit standalone PDs to become members of SEBI approved stock exchanges for the purpose of undertaking proprietary transactions in corporate bonds. While doing so, standalone PDs should comply with all the regulatory norms laid down by SEBI and all the eligibility criteria/rules of stock exchanges.

K.K. Vohra
Chief General Manager

11 Memorandum of Instructions for Opening and Maintenance of Rupee / Foreign Currency Vostro Accounts of Non-resident Exchange Houses

[Issued by the Reserve Bank of India vide RBI/2012-13/394 A. P. (DIR Series) Circular No.81 dated 24.01.2013.]

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to Part (B) of Annex-I to the A.P. (DIR Series) Circular No. 28 [A. P. (FL/RL Series) Circular No. 02] dated February 6, 2008 on the captioned subject, as amended from time to time.

2. Items No. 7 and 8 under Part (B) **Permitted Transactions** of Annex-I to the above mentioned circular have been modified and the said modified items may be read as under:
 7. Payments to medical institutions and hospitals in India, for medical treatment of NRIs / their dependents and nationals of Gulf Countries, Hong Kong, Singapore and Malaysia.



8. Payments to hotels by nationals of Gulf Countries, Hong Kong, Singapore and Malaysia / NRIs for their stay.
3. All other instructions issued vide A.P. (DIR Series) Circular No. 28 [A. P. (FL/RL Series) Circular No. 02] dated February 6, 2008, as amended from time to time will remain unchanged.
4. AD Category - I banks may bring the contents of this circular to the notice of their constituents concerned.
5. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager

12 Foreign investment in India by SEBI registered FIIs in Government securities and corporate debt

[Issued by the Reserve Bank of India vide RBI/2012-13/391 A. P. (DIR Series) Circular No.80 dated 24.01.2013.]

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which SEBI registered Foreign Institutional Investors (FIIs) may purchase, on repatriation basis Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time. The present limit for FII investments in Government securities is USD 20 billion and for corporate debt is USD 45 billion including sub-limit of USD 25 billion for the bonds of the infrastructure sector.

2. Attention of AD Category-I banks is also invited to A.P.(DIR Series) Circular No.135 dated June 25, 2012 in terms of which FIIs and long terms investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks to be registered with SEBI may invest in Government securities having residual maturity of three years at the time of first purchase upto USD 10 billion within the overall limit of USD 20 billion for FII

investment in Government securities subject to terms and conditions, *ibid.* In respect of infrastructure debt, the condition of lock-in period for the limit of USD 22 billion including USD 10 billion for non resident investment in Infrastructure Debt Funds (IDFs) having lock-in period of 3 years (which is within the overall limit of USD 25 billion for investment in NCDs / bonds in the infrastructure sector) was uniformly reduced to one year.

3. On a review it has now been decided to implement the following changes:

(A) Government Securities

- (a) The sub-limit of USD 10 billion for investment by FIIs and the long term investors in dated Government securities stands enhanced by USD 5 billion, i.e., from USD 10 billion to USD 15 billion. Accordingly, the total limit for investment in Government Securities stands enhanced from USD 20 billion to USD 25 billion.
- (b) The condition of three year residual maturity of the Government securities at the time of first purchase for the above sub-limit shall no longer be applicable. Thus, residual maturity condition shall not be applicable for the entire sub-limit of USD 15 billion but such investments will not be allowed in short term paper like Treasury Bills, as hitherto.
- (c) A summary of revised position for Government Securities is given below:

Instrument	Limit	Investor	Conditions	Remarks
Government securities	USD 10 billion	FIIs	No conditions	-
Government dated securities	USD 15 billion	FIIs and SWF, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks	Investments in short term paper like Treasury Bills not permitted	No residual maturity requirement

(B) Corporate Debt

- (d) The limit for FII investment in corporate debt in other than infrastructure sector stands enhanced by USD 5 billion, i.e., from USD 20 billion to USD 25 billion. However, the enhanced limit of USD 5 billion shall not be available for investment in Certificate of Deposits (CD) and Commercial Papers (CP). Accordingly, the total corporate debt limit stands enhanced from USD 45 billion to USD 50 billion with sub-limit of USD 25 billion each for infrastructure and other than infrastructure sector bonds. In addition, as hitherto, Qualified Foreign Investors (QFIs) shall continue to be eligible to invest in corporate debt securities (without any lock-in or residual maturity clause) and Mutual Fund debt schemes subject to a total overall



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ceiling of USD 1 billion in terms of A.P.(DIR Series) Circular No.7 dated July 16, 2012. This limit of USD 1 billion shall continue to be over and above the revised limit of USD 50 billion for investment in corporate debt.

- (e) The revised limit of USD 25 billion for corporate bonds for other than infrastructure sector shall be available for investment by FIIs and the long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks registered with SEBI.
- (f) As a measure of further relaxation, it has also been decided to dispense with the condition of one year lock-in period for the limit of USD 22 billion (comprising the limits of infrastructure bonds of USD 12 billion and USD 10 billion for non –resident investment in IDFs) within the overall limit of USD 25 billion for foreign investment in infrastructure corporate bond. The residual maturity period (at the time of first purchase) requirement for entire limit of USD 22 billion for foreign investment in infrastructure sector has been uniformly kept at 15 months. The 5 years residual maturity requirement for investments by QFIs within the USD 3 billion limit has been modified to 3 years original maturity.

4. A summary of revised position for corporate debt limits is given below:

Instrument	Limit	Investor	Conditions	Remarks
(A) Non-Infrastructure Sector				
(i) Listed NCDs/ bonds, CPs	USD 20 billion	FIIs	Investment in CDs not permitted.	No lock-in period requirement; No residual maturity restriction; No original maturity restriction.
(ii) Listed NCDs/ bonds	USD 5 billion	FIIs, SWFs, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks	Investment in CPs and CDs not permitted	No lock-in period requirement; No residual maturity restriction; No original maturity restriction.
(iii) Security Receipts, Perpetual debt instruments,	Within the total limit of USD 25 billion for	FIIs		No lock-in period, No residual

units of domestic mutual funds; "to be listed corporate bonds"	non-infrastructure sector			maturity requirements; No original maturity restriction.
(B) Non-Infrastructure limit for Qualified Foreign Investors (QFIs)				
Listed NCDs, listed bonds, listed units of mutual funds debt schemes, "to be listed corporate bonds"	USD 1 billion	QFIs	-	No lock-period and no residual maturity requirements; No original maturity restriction.
(C) Infrastructure Sector				
Listed NCDs/ bonds, NCDs/ bonds of NBFC-IFC and unlisted NCDs/ bond in infrastructure sector	USD 12 billion (within the total limit of USD 25 billion)	FIIs	Indian companies in infrastructure sector – infrastructure as defined in the ECB guidelines and Non Banking Financial Companies (NBFCs) defined as IFCs	No lock-in period requirement; Residual maturity at the time of first purchase fifteen months; No original maturity restriction.
Corporate debt – non- convertible debentures/ bonds, non-convertible debentures/ bonds of NBFCs- IFC, Units of Domestic Mutual fund Debt schemes	USD 3 billion (within the total limit of USD 25 billion)	QFIs	NBFCs defined as IFCs - MF schemes that hold at least 25% of debt or equity or both in mutual funds in infra	No lock in period requirement. Original maturity of 3 years;
IDF – Rupee bonds/units registered as NBFC or Mutual Funds	USD 10 billion (within the total limit of USD 25 billion) [investment by NRI not	FIIs, NRIs, SWFs, Multilateral Agencies, Pension/ Insurance/ Endow Funds, HNIs registered	Infrastructure as defined in the ECB guidelines IDFs set up as NBFCs may invest in debt securities of PPP	No lock-in period requirement ; Residual maturity at the time of first purchase fifteen months;



	subject to this limit]	with SEBI, sub-account of FII or IDF	infra projects and should have completed one year of commercial operations; IDFs set up as Mutual Funds would invest 90% in debt securities of infra Instrument companies/ SPV	No original maturity restriction
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5. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
6. Reserve Bank of India has since amended the relevant Regulations and notified vide Notification No.FEMA.255/2013-RB dated January 19, 2013.
7. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager

13 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013

[Issued by the Reserve Bank of India vide Notification No. FEMA. 255/2013-RB dated 19.01.2013.]

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) namely:-

1. Short Title & Commencement

- (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Second

Amendment) Regulations, 2013.

- (ii) They shall come into force from the date of publication in Official Gazette

2. Amendment of Schedule 5

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No.FEMA 20/2000-RB dated 3rd May 2000), in Schedule 5,

- (a) In paragraph 1, in clauses (g) and (h) the words "and lock-in period" shall be omitted.
- (b) In paragraph 1, in clause (i), the words "lock-in period and" and "provided that the FIIs may trade such bonds / units amongst the eligible non-resident investors for Infrastructure Debt Funds within the lock-in period" shall be omitted.
- (c) In paragraph 1B, in clause (i), the words "lock-in period and" and "provided that aforementioned investors may trade such bonds / units amongst the eligible non-resident investors for Infrastructure Debt Funds within the lock-in period" shall be omitted.
- (d) In paragraph 1B, in clause (ii) for the words "dated Government securities subject to the terms and conditions as stipulated by the SEBI and Reserve Bank from time to time." the words "dated Government Securities, subject to the terms and conditions and the limits as stipulated by the Reserve Bank and SEBI from time to time." shall be substituted.
- (e) In paragraph 1B, after clause (ii) a new clause (iii) shall be added, namely:
“(iii) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds and Pension Funds registered with SEBI as eligible non-resident investors in Infrastructure Debt Funds may purchase Rupee denominated corporate bonds on repatriation basis within the limits as stipulated by the Reserve Bank and SEBI from time to time. In addition, Foreign Central Banks may purchase rupee denominated corporate bonds on repatriation basis within the limits from the date of this Notification.” SEBI and all the eligibility criteria/rules of stock exchanges.

Dr. Sujatha Elizabeth Prasad
Chief General Manager-In-Charge

14 Reporting under Foreign Exchange Management Act, 1999 (FEMA)

[Issued by the Reserve Bank of India vide RBI/2012-13/383 A.P. (DIR Series) Circular No. 76 dated 17.01.2013.]

In terms of Section 11 (2) of FEMA, 1999, the Reserve Bank may, for the purpose of ensuring the compliance with the



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provisions of the Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorized person to furnish such information, in such manner, as it deems fit. Accordingly, RBI has entrusted to the Authorised Dealers (ADs) the responsibility of complying with the prescribed rules/ regulations for the foreign exchange transactions and reporting the same as per the directions issued from time to time.

2. During the compounding process, on a number of occasions, it has been brought to our notice by the applicants that the contraventions of the provisions of FEMA by corporates and individuals are due to the acts of omission and commission of the Authorised Dealers and some of the applicants have also produced documentary evidence in support of their claim. Such contraventions being dealt with by the Reserve Bank mainly relate to:
 - i. Draw down of External Commercial Borrowing (ECB) without obtaining Loan Registration Number (LRN) [Regulations 3 and 6 of FEMA 3/2000];
 - ii. Allowing draw down of ECB under the automatic route from unrecognised lender, to ineligible borrower, for non-permitted end uses, etc. [Regulations 3 and 6 of FEMA 3/2000];
 - iii. Non-filing of form ODI for obtaining UIN before making the second remittance to overseas WOS/JV for Overseas Direct Investment (ODI) [Regulation 6(2)(vi) of FEMA 120/2004];
 - iv. Non-submission of Annual Performance Reports (APRs) / copies of Share Certificates to the AD (and non-reporting thereof by the AD to Reserve Bank) in respect of overseas investments [Regulation 15 of FEMA 120/2004];
 - v. Delay in submission of the Advance Reporting Format in respect of Foreign Direct Investment (FDI) to the concerned Regional Office of the Reserve Bank [paragraph 9 (1) (A) of Schedule I to FEMA 20/2000];
 - vi. Delay in filing of details after issue of eligible instruments under FDI within 30 days in form FC-GPR to the concerned Regional Office of the Reserve Bank [paragraph 9 (1) (B) of Schedule I to FEMA 20/2000];
 - vii. Delay in filing of details pertaining to transfer of shares for FDI transactions in form FC-TRS by resident individual/companies [Regulation 10 (A) (b) of FEMA 20/2000]; etc.
3. From the data on compounding cases received by Reserve Bank, it is observed that more than 70% of the total cases pertain to FDI within which about 72% relate to delay in advance reporting/ submission of FCGPR. In the case of ECB, 24% of the cases received relate to drawdown without obtaining LRN. Similarly, 66% of the

ODI cases relate to non-reporting of overseas investments online. Authorised Dealers have an important role to play in avoidance of such contraventions and accordingly, the dealing officials in the banks need to be sensitised and trained to discharge this function efficiently.

4. All the transactions involving Foreign Direct Investment (FDI), External Commercial Borrowing (ECB) and Outward Foreign Direct Investment (ODI) are important components of our Balance of Payments statistics which are being compiled and published on a quarterly basis. Any delay in reporting affects the integrity of data and consequently the quality of policy decisions relating to capital flows into and out of the country. Authorised Dealers are, therefore, advised to take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with and reporting of foreign exchange transactions so that contraventions of provisions of FEMA, 1999 attributable to the Authorised Dealers do not occur.
5. In this connection, it is reiterated that in terms of Section 11(3) of FEMA, 1999, the Reserve Bank may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank.
6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

Dr. Sujatha Elizabeth Prasad
Chief General Manager-In-Charge

15 Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI scheme allowed under the Government route

[Issued by the Reserve Bank of India vide RBI/2012-13/375 A. P. (DIR Series) Circular No.74 dated 10.01.2013.]

Attention of Authorised Dealers Category – I (AD Category - I) banks is invited to Para 3 of A.P. (DIR Series) Circular No. 74 dated June 30, 2011 read with A.P. (DIR Series) Circular No. 55 dated December 9, 2011, allowing thereby issue of equity shares/ preference shares under the Government route by conversion of import of capital goods, etc., subject to terms and conditions stated therein.

2. On review of the policy, it has now been decided to amend certain conditions in the aforesaid para. The amended conditions are given in the Annex.



3. All the other conditions contained in the A.P. (DIR Series) Circulars No. 74 dated June 30, 2011 and No. 55 dated December 9, 2011, shall remain unchanged.
4. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
5. Necessary amendments to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) have been notified vide Notification No. FEMA.229/2012-RB dated April 23, 2012 and Notification No. FEMA.242/2012-RB dated October 19, 2012
6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager

Annex

[A. P. (DIR Series) Circular No. dated January , 2013]

c.f. A.P.(DIR Series) Circular No. 74 dated June 30, 2011	Earlier Condition	Revised condition
Para 3(l)	Import of capital goods/ machineries/equipments (including second-hand machineries),	Import of capital goods/ machineries/equipments (excluding second-hand machineries),
Para 3(l)(b)	There is an independent valuation of the capital goods/machineries/ equipments (including second-hand machineries) by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents/certificates issued by the customs authorities towards assessment of the fairvalue of such imports;	There is an independent valuation of the capital goods / machineries / equipments (excluding second-hand machineries) by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents /certificates issued by the customs authorities towards assessment of the fairvalue of such imports;

16 External Commercial Borrowings (ECB) Policy – Non-Banking Financial Company – Infrastructure Finance Companies (NBFC-IFCs)

[Issued by the Reserve Bank of India vide RBI/2012-13/367 A.P. (DIR Series) Circular No. 69 dated 07.01.2013.]

Attention of Authorized Dealer Category-I banks is invited to A. P. (DIR Series) Circular No. 51 dated May 11, 2010 relating to External Commercial Borrowings (ECBs) policy on NBFC-IFCs.

2. As per the extant guidelines, Non-Banking Finance Companies (NBFCs) categorized as Infrastructure Finance Companies (IFCs) by the Reserve Bank and complying with the norms prescribed in the DNBS Circular DNBS.PD.CC.No.168/03.02.089/2009-10 dated February 12, 2010 are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds under the automatic route. ECBs by IFCs above 50 per cent of their owned funds are being considered under the approval route. The permitted end-use should be for on-lending to the infrastructure sector, as defined under the extant ECB policy. IFCs should also hedge their currency risk in full.
3. On a review, it has been decided to enhance the ECB limit for NBFC-IFCs under the **automatic route** from 50 % of their owned funds to 75 % of their owned funds, including the outstanding ECBs. NBFC-IFCs desirous of availing ECBs beyond 75 % of their owned funds would require the approval of the Reserve Bank and will, therefore, be considered under the **approval route**.
4. It has also been decided to reduce the hedging requirement for currency risk from 100 per cent of their exposure to 75 per cent of their exposure.
5. Designated Authorized Dealer banks should ensure compliance with the extant norms while certifying the ECB application both under the automatic and approval routes. Designated AD Category – I banks shall continue to certify the leverage ratio (i.e. outside liabilities/owned funds) of NBFC-IFCs desirous of availing ECBs under the approval route while forwarding such proposals to the Reserve Bank of India as per A.P. (DIR Series) Circular No.70 dated January 25, 2012.
6. The amended ECB policy will come into force with immediate effect and is subject to review based on the experience gained in this regard.
7. All other aspects of ECB policy, such as, eligible borrower, recognised lender, end-use, average maturity period, all-in-cost, maximum permissible limit under the automatic route, prepayment, refinancing of existing ECB



From the Government

and reporting arrangements remain unchanged.

8. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
9. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Dr. Sujatha E. Prasad

Chief General Manager - in - Charge

17 Foreign Exchange Management (Deposit) (Amendment) Regulations, 2013

[Issued by the Reserve Bank of India vide Notification No. FEMA. 253 /2013-RB dated 02.01.2013.]

In exercise of the powers conferred by clause (f) of sub-section (3) of section 6 and sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Deposit) Regulations, 2000 (Notification No.FEMA.5/2000-RB dated May 3, 2000) namely :-

1. Short title and commencement:-

- (i) These regulations may be called the Foreign Exchange Management (Deposit) (Amendment) Regulations, 2013.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of the Regulations:-

In the Foreign Exchange Management (Deposit) Regulations, 2000 (Notification No.FEMA.5/2000-RB dated May 3, 2000) in Schedule-3,

- (a) in paragraph 1, in sub-para (c)
 - (i) the word "Bangladesh" shall be omitted in Notes A;
 - (ii) the following Notes, namely (C) and (D) shall be inserted after Note B.

"(C) Opening of accounts by individual/s of Bangladesh nationality may be allowed by authorised dealer or authorised bank, subject to satisfying itself that the individual/s hold a valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/ Foreigner Regional Registration Office (FRRO) concerned;

(D) Opening of accounts by entities of Bangladesh ownership requires approval of

Reserve Bank."

- (b) In Paragraph 10, after sub-para (ii) the following sub-para shall be inserted

"(iii) The accounts opened by an authorised dealer or an authorised bank in respect of individual/s of Bangladesh nationality shall be reported by the authorised dealer/ authorised bank branch to its Head Office and the Head Office of such authorised dealer/ authorised bank shall forward a quarterly report containing details of Name of the Individual(s), Passport Number, Issuing Country/State, Name of the FRO/ FRRO, Date of issue of Residential Permit and validity thereof, to the Ministry of Home Affairs (Foreigners Division) on Quarterly basis".

Explanation: 'Quarterly basis' means, quarter as at end of March/June/September and December of every year."

Rudra Narayan Kar

Chief General Manager

18 Export of Goods and Services – Simplification and Revision of Softex Procedure at SEZs

[Issued by the Reserve Bank of India vide RBI/2012-13/359 A.P. (DIR Series) Circular No. 66 dated 01.01.2013.]

Attention of the Authorised Dealer Banks is invited to Regulation 6 of the Notification No. FEMA 23/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, as amended by the Notification No.FEMA.36/2001-RB dated February 27, 2001, in terms of which designated officials of the Ministry of Information Technology/ Ministry of Commerce and Industry(as the case may be), Government of India at the Software Technology Parks of India (STPIs) or at Free Trade Zones (FTZs) or Export Processing Zones (EPZs) or Special Economic Zones (SEZs), had been authorized to certify exports declared through SOFTEX Forms.

2. A revised Softex procedure was first introduced at the 5 designated centres of STPIs from April 1, 2012 vide A.P. (DIR Series) Circular No.80 dated February 15, 2012 and subsequently extended to all STPIs in India vide A.P. (DIR Series) Circular No.47 dated October 23, 2012.
3. It has now been decided to implement the revised Softex procedure at all SEZs/EPZs/100%EOU/DTA also with immediate effect.



4. As per the revised procedure, a software exporter either under STPIs or SEZs/EPZs/100%EOU/DTA, whose annual turnover is at least Rs.1000 crore or who files at least 600 SOFTEX forms annually on all India basis, will be eligible to submit statements in revised excel format sheets as per enclosed Annexures A & B . All other terms and conditions mentioned in the A.P. (DIR Series) Circular No.80 dated February 15, 2012 applicable to exporters of software situated in STPIs would remain unchanged.

5. Authorised Dealers may bring the contents of this circular to the notice of their constituents concerned.

6. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rashmi Fauzdar
Chief General Manager

ANNEXURE – A

Format of Softex Forms submitted in bulk										
Summary Sheet										
Section –A										
Name and address of Exporter						Period from & to :				
Letter of Permission (LOP) No.(STP/EHTP/SEZ/EPZ/100% EOU/DTA Unit)						Date of LOP issued :				
Name of Authorised Datacom Service Provider						IEC Code :				
Name and Address of Authorised Dealer/Bank						Authorised Dealer Code :				
Section - B										
List of Invoices for offshore export value through datacom/link										
Period of Invoices raised from to										
Sr. No.	Softex No.	Name of the Client	Address of the Client	Country	Currency	Invoice Number	Invoice Date (DD/MM/YY)	Internal project code/ Contract Agreement No. & Date	Type of S/W Exported (RBI Distinct Code) Ex 906 to 911 then specify	Offshore Export Value in Foreign Currency (Invoice Amt)

Section – C Declaration by Exporter

I/We hereby declare that I/we am/are the seller of the software in respect of which this declaration is made and that the particulars given above are true and that the value to be received from the buyer represents the export value contracted and declared above. I/We also declare that the software has been developed and exported by using authorized and legitimate datacom links.

I/We undertake that I/We will deliver to the bank named above the foreign exchange representing the full value of the software exported as above on or before (i.e. within six months from the date of invoice/ date of last invoice raised during a month), in the manner specified in the Regulations made under the Foreign Exchange Management Act, 1999

Place :
Date :
Name :
Designation :

Stamp

Signature of the Exporter

Space for use of the Competent Authority in STPI/EPZ/SEZ

*1. Certified that the software described above was actually transmitted and the export value declared by the exporter has been found to be in order and accepted by us.

*2. Certified on the basis of above declaration by the SEZ unit that the software described above and the export value declared by the exporter has been found to be in order and accepted by us.

Place :
Date :
Name :
Designation :

Stamp

Signature of the Designated
Official of STPI/EPZ/SEZ

* Strike out which is not applicable



From the Government

ANNEXURE – B

Format of Softex Forms submitted in bulk for royalty receipt															
Summary Sheet															
Section –A															
Name and address of Exporter										Period from & to :					
Letter of Permission (LOP) No.(STP/EHTP/SEZ/EPZ/100% EOU/DTA Unit)										Date of LOP issued :					
Name of Authorised Datacom Service Provider										IEC Code :					
Name and Address of Authorised Dealer/Bank										Authorised Dealer Code :					
Section - B															
List of Invoices for offshore export value through datacom/link															
Details of invoices for Royalty on software Packages/products exported during the period raised from.....to.....															
Sr. No.	Softex No.	Name of the Client	Address of the Client	Country	Currency	Invoice Number	Invoice Date (DD/MM/YYYY)	Unique Internal project code/ Contract Agree-ment/ PO Date	Offshore Export value in Invoice currency	Type of Software Exported	Details of Software Packages/ Products exported			Mode of realisa-tion of Royalty value	Calcula-tion of Royalty amount
											GR/SDF/PP / SOFTEX Form No. on which exports were declared	Date of Export	Royalty agreement details % and amount of royalty		

Section – C

Declaration by Exporter

I/We hereby declare that I/we am/are the seller of the software in respect of which this declaration is made and that the particulars given above are true and that the value to be received from the buyer represents the export value contracted and declared above. I/We also declare that the software has been developed and exported by using authorized and legitimate datacom links.

I/ We undertake that I/We will deliver to the bank named above the foreign exchange representing the full value of the software exported as above on or before _____ (i.e. within six months from the date of invoice/ date of last invoice raised during a month), in the manner specified in the Regulations made under the Foreign Exchange Management Act, 1999

Place :
Date :
Name :
Designation :

Stamp

Signature of the Exporter

Space for use of the Competent Authority in STPI/EPZ/SEZ

*1. Certified that the software described above was actually transmitted and the export value declared by the exporter has been found to be in order and accepted by us.

*2. Certified on the basis of above declaration by the SEZ unit that the software described above and the export value declared by the exporter has been found to be in order and accepted by us.

Place :
Date :
Name :
Designation :

Stamp

Signature of the Designated
Official of STPI/EPZ/SEZ

* Strike out which is not applicable



News From the Institute



Institute News

Members Admitted

Sl. No.	Name	Membership No.	Region
FELLOWS*			
1	Sh. Kishor Haresh Talreja	FCS - 7064	WIRC
2	Sh. K Guruswamy	FCS - 7065	SIRC
3	Sh. Mahesh Singhi	FCS - 7066	WIRC
4	Sh. Shrenik Uday Nagaonkar	FCS - 7067	WIRC
5	Sh. Pawan Garg	FCS - 7068	NIRC
6	Sh. Rajat Sharma	FCS - 7069	NIRC
7	Sh. R Dhanasekaran	FCS - 7070	SIRC
8	Sh. Raj Kumar Jha	FCS - 7071	SIRC
9	Sh. Gurmukh Singh	FCS - 7072	NIRC
10	Sh. Gulshan Kumar Bhatia	FCS - 7073	NIRC
11	Mrs. Priya Venkatramani	FCS - 7074	SIRC
12	Sh. Chhotulal Rawa Bhagwat	FCS - 7075	WIRC
13	Sh. T R Ravichandran	FCS - 7076	SIRC
14	Sh. Ashutosh Kumar Singh	FCS - 7077	NIRC
15	Sh. Suraj Gopilal Padhiyar	FCS - 7078	WIRC
16	Ms. Mamta Parashar	FCS - 7079	NIRC
17	Sh Krishna Prasad R S	FCS - 7080	SIRC
18	Sh. Rakesh Kumar	FCS - 7081	WIRC
19	Sh. Krishna Kumar Sharma	FCS - 7082	NIRC
20	Sh. Subrata Panda	FCS - 7083	NIRC
ASSOCIATES*			
1	Mr. Vishal Garg	ACS - 31762	WIRC
2	Ms. Neha Kheria	ACS - 31763	EIRC
3	Ms. Namrata Modi	ACS - 31764	EIRC
4	Ms. Abhijit Nagee	ACS - 31765	EIRC
5	Ms. Rasmita Mohanty	ACS - 31766	EIRC
6	Ms. Anamika Choubey	ACS - 31767	NIRC
7	Ms. Mahima Suri	ACS - 31768	NIRC
8	Mr. Yogesh Kumar	ACS - 31769	NIRC
9	Ms. Saloni Jain	ACS - 31770	NIRC
10	Ms. Shweta Verma	ACS - 31771	NIRC
11	Ms. Shipra Singh	ACS - 31772	NIRC
12	Ms. Neha Pawar	ACS - 31773	NIRC
13	Mr. Sumit Jain	ACS - 31774	NIRC
14	Ms. Kumari Astha	ACS - 31775	NIRC

* Admitted on 21st January, 31st January, 2013 and 11th February, 2013

Press Conference



On 1.2.2013 CS S. N. Ananthasubramanian, the newly elected President of the Council of the ICSI addressed a Press Conference held at ICSI, New Delhi and deliberated in detail about New Syllabus of CS Course, Initiatives of ICSI, Student Education Fund Trust, Career Awareness Initiatives, Certificate Course on Valuation, Corporate Compliance Executive Certificate, Campus Placement etc. He also highlighted The Companies Bill - 2012, Corporate Governance Rating Model, Role of Company Secretaries as Key Managerial Personnel / Chief Governance Officer and Future Plans of the Institute.

Nearly twenty mediapersons attended the Press Conference which was covered in several editions of leading newspapers with photographs. The major newspapers that provided coverage to the Institute included: Financial Express, Pioneer, Hindu Business Line, Free Press Journal, Rashtriya Sahara, DainikJagaran, Millenium Post, Business Bhaskar, Raj Express, Mahamedha, State Times, Mail Today, India Today, The Week, DainikNavajyothi etc., including several educational and Business websites. The interview was also aired on Fever 104 FM.

BRAND BUILDING

ICSI PUBLICITY CAMPAIGN - PRASAR BHARATI:

TV / FM Channe	Date (s)	Timings
All India Radio- National [189 Stations Across India covering remote & rural areas across India]	1st February, 2013 to 31st March, 2013. (59 Days)	One Spot aired daily before morning News (between 7:55 AM- 8:00 AM)
Doordarshan National Network [Number one Channel in terms of absolute viewership. It covers 92% of the population reaching out to interiors / rural / semi urban/ metros.]	21st February, 2013 to 07th March 2013 (15 Days)	DD- National : Two Spots will be aired daily before 8:00 PM News & in the Mid-break of the 8:00 PM News (8:00PM -8:15PM) on DD- Nationa DD- News: 15 Spots daily during Prime time and 15 Spots during Non-Prime time on DD-News. Co-Sponsorships of Afternoon / Morning News Bulletin.

ICSI ADVERTISEMENTS IN DELHI METRO TRAINS

With a view to create awareness, Posters on CS Course/Student advertisements are being displayed on Panel sets of 10 Bombardier Trains of Delhi Metro running between Line III/IV (Dwarka - Noida/Vaishali), the busiest routes of Delhi Metro with over 12 lakhs commuters per day. The posters are on display from 18.2.2013 for a month long activity.



15	Mr. Piyush Goyal	ACS - 31776	NIRC	73	Mr. Rakesh Bisht	ACS - 31834	NIRC
16	Mr. Manoj Kumar Rath	ACS - 31777	EIRC	74	Ms. Kanchan Kukreja	ACS - 31835	NIRC
17	Mr. Venkatanarayana B S	ACS - 31778	SIRC	75	Ms. Tanu Verma	ACS - 31836	NIRC
18	Ms. Ruby Shrivastava	ACS - 31779	EIRC	76	Mrs. Soniya Tyagi	ACS - 31837	NIRC
19	Mr. Manish Sachdeva	ACS - 31780	NIRC	77	Mr. Shardul Vasant Joshi	ACS - 31838	WIRC
20	Mr. Karan Gulati	ACS - 31781	NIRC	78	Ms. P Lakshmi	ACS - 31839	SIRC
21	Mr. Ashish Kapil	ACS - 31782	NIRC	79	Mr. Nigamananda Das	ACS - 31840	EIRC
22	Ms. Rakhi Rani	ACS - 31783	NIRC	80	Mr. Nikhil R Chandarana	ACS - 31841	WIRC
23	Mr. Shobhit Rastogi	ACS - 31784	NIRC	81	Ms. Dhruvi Maheshkumar Trivedi	ACS - 31842	WIRC
24	Ms. Swati Malik	ACS - 31785	NIRC	82	Mr. Sunil Kumar Shah	ACS - 31843	EIRC
25	Mr. Kinnar Prakash Chhaya	ACS - 31786	WIRC	83	Mr. Anil Maheshwari	ACS - 31844	NIRC
26	Ms. Sonali Varshney	ACS - 31787	NIRC	84	Ms. Kriti Chawla	ACS - 31845	NIRC
27	Ms. Rashmi Sethi	ACS - 31788	NIRC	85	Mr. Nitin Agrawal	ACS - 31846	WIRC
28	Ms. Yojana Ratnakar Pednekar	ACS - 31789	WIRC	86	Ms. Mamta Dhiman	ACS - 31847	NIRC
29	Ms. Asawari Ratnakar Takalkar	ACS - 31790	WIRC	87	Ms. Anju Sharma	ACS - 31848	NIRC
30	Mr. Manish Kumar Agrahari	ACS - 31791	NIRC	88	Mr. Yogesh Malhan	ACS - 31849	NIRC
31	Mr. Jinesh Kanakrai Vora	ACS - 31792	WIRC	89	Mr. Anuj Kalia	ACS - 31850	NIRC
32	Mr. Nikhil Shyam Sunder Jangid	ACS - 31793	WIRC	90	Ms. Ankita Deora	ACS - 31851	EIRC
33	Ms. Gayatri Vijay Phatak	ACS - 31794	WIRC	91	Mr. Vijay Shyamsundar Maniyar	ACS - 31852	WIRC
34	Mr. Manan Anil Shah	ACS - 31795	WIRC	92	Ms. Jayashree Mishra	ACS - 31853	EIRC
35	Ms. Preeti Rani	ACS - 31796	NIRC	93	Mr. Prasant Kumar Sahoo	ACS - 31854	EIRC
36	Mr. Nishant Srivastava	ACS - 31797	NIRC	94	Ms. Sneha Gupta	ACS - 31855	EIRC
37	Ms. Garima Agarwala	ACS - 31798	NIRC	95	Ms. Swati Agarwal	ACS - 31856	EIRC
38	Ms. Nitasha Ghai	ACS - 31799	NIRC	96	Ms. Archana Saboo	ACS - 31857	EIRC
39	Mr. Yatin Wahi	ACS - 31800	NIRC	97	Ms. Harmanjot	ACS - 31858	NIRC
40	Mr. Prakash Verma	ACS - 31801	NIRC	98	Mr. Anurag Vashishtha	ACS - 31859	NIRC
41	Ms. Varsha Dangayach	ACS - 31802	NIRC	99	Ms. Juhi Rathi	ACS - 31860	NIRC
42	Ms. Divya Jain	ACS - 31803	NIRC	100	Mr. Vivek Malhotra	ACS - 31861	NIRC
43	Ms. Ritika Gupta	ACS - 31804	NIRC	101	Ms. Sonam Jain	ACS - 31862	NIRC
44	Mr. Varun Bothra	ACS - 31805	NIRC	102	Mr. Shobit Nehra	ACS - 31863	NIRC
45	Mr. Nitin Juneja	ACS - 31806	NIRC	103	Mr. Johny Panchal	ACS - 31864	NIRC
46	Ms. Iti Goyal	ACS - 31807	NIRC	104	Mrs. Avneet Kaur	ACS - 31865	NIRC
47	Ms. Nidhi Khandelwal	ACS - 31808	NIRC	105	Ms. Divya Kaushik	ACS - 31866	NIRC
48	Mr. Deelip Uttamchand Karira	ACS - 31809	WIRC	106	Ms. Swati Arora	ACS - 31867	NIRC
49	Mr. Mohammed Siddik P M	ACS - 31810	SIRC	107	Mr. Nitin Kumar	ACS - 31868	NIRC
50	Ms. Nidhi Bipin Damani	ACS - 31811	WIRC	108	Ms. Bharti Chadda	ACS - 31869	NIRC
51	Mr. Sachin Tukaram Dudam	ACS - 31812	WIRC	109	Mr. Anupam Batra	ACS - 31870	NIRC
52	Ms. Sayali Subhash Patkar	ACS - 31813	WIRC	110	Ms. Bhavna Jangid	ACS - 31871	NIRC
53	Ms. Mohini Dnyaneshwar Kharpude	ACS - 31814	WIRC	111	Mr. Rahul Sharma	ACS - 31872	NIRC
54	Ms. Isha Sanjiv Patel	ACS - 31815	WIRC	112	Mr. Gopalakrishnan R	ACS - 31873	SIRC
55	Mr. Jayesh Chandrakant Awati	ACS - 31816	WIRC	113	Ms. Sreedeepta S	ACS - 31874	SIRC
56	Ms. Swati Shridhar Rasal	ACS - 31817	WIRC	114	Ms. S Varshinee	ACS - 31875	SIRC
57	Ms. Bhairavi Yashwant Katkar	ACS - 31818	WIRC	115	Mr. Vivek Aditya V	ACS - 31876	SIRC
58	Ms. Shiwani Dayal	ACS - 31819	WIRC	116	Mr. Surya Prakash M	ACS - 31877	SIRC
59	Mr. Gautambhai Kalubhai Virhadiya	ACS - 31820	WIRC	117	Ms. Natasha Suresh	ACS - 31878	SIRC
60	Ms. Shelly Goyan	ACS - 31821	WIRC	118	Mr. Rakesh Rajan	ACS - 31879	SIRC
61	Mr. Muhammed Sahal K	ACS - 31822	SIRC	119	Mr. Manjunath S	ACS - 31880	SIRC
62	Mr. S Ganesh Babu	ACS - 31823	SIRC	120	Ms. Monalisa Patni	ACS - 31881	WIRC
63	Ms. P M Vaishnavi	ACS - 31824	SIRC	121	Ms. Anshul M Anand	ACS - 31882	WIRC
64	Mr. P Vimal Kumar	ACS - 31825	SIRC	122	Ms. Niharika Pinakin Kamalia	ACS - 31883	EIRC
65	Ms. Pramita Ray	ACS - 31826	SIRC	123	Ms. Vidhi Dinesh Arora	ACS - 31884	WIRC
66	Mr. Arun Kannamangalam Kamalolbhavan	ACS - 31827	SIRC	124	Mr. Rajesh Pawankumar Kabra	ACS - 31885	WIRC
67	Ms. B Thulasi	ACS - 31828	WIRC	125	Ms. Gayatri Satish Bhide	ACS - 31886	WIRC
68	Mr. Rajesh Kumar	ACS - 31829	SIRC	126	Ms. Akshada Anil Patankar	ACS - 31887	WIRC
69	Mr. Purnendu Pathak	ACS - 31830	NIRC	127	Mr. Sharatkumar Kutty Shetty	ACS - 31888	WIRC
70	Mr. Saket Dubey	ACS - 31831	EIRC	128	Ms. Suchita Arvind Shah	ACS - 31889	WIRC
71	Mr. Rohit Goel	ACS - 31832	EIRC	129	Mr. Shivakumar P Shankaran	ACS - 31890	WIRC
72	Mr. Ankur Sharma	ACS - 31833	EIRC	130	Ms. Vibhuti Misra	ACS - 31891	NIRC
				131	Mr. Rohit Kumar Tyagi	ACS - 31892	NIRC



8.	Mr. Surya Prakash Gupta	ACS - 28242	NIRC
9.	Sh. V Srinivasan	ACS - 4829	EIRC
10.	Sh. Pradeep Kumar R Jain	ACS - 9789	WIRC
11.	Sh. Deepak Tyagi	ACS - 19444	NIRC
12.	Sh. Bharat Kumar Nadhani	ACS - 11753	NIRC
13.	Sh. Balanagu Krishna Prasad	ACS - 14809	SIRC
14.	Ms. Suruchi Kolhatkar	ACS - 28178	WIRC
15.	Sh. Jitendra Jiwanlal Sawjiani	ACS - 2734	WIRC
16.	Sh. Pradip Kumar Ghosh	ACS - 9429	SIRC
17.	Sh. Turab Mohsin Arsiwalla	ACS - 2845	WIRC
18.	Sh. Shankar Kuppusswamy	ACS - 6560	SIRC
19.	Mrs. Simul Rohan Shah	ACS - 29255	WIRC
20.	Sh. Manish Kumar Agarwal	ACS - 21181	WIRC
21.	Ms. Akanksha Rustagi	ACS - 27567	NIRC
22.	Ms. Silveria Teresiilda D'souza	ACS - 16847	WIRC
23.	Mr. Awadhesh Kumar Pandey	ACS - 28452	EIRC
24.	Sh. Anil Kumar Duggal	ACS - 6518	WIRC
25.	Sh. S M Saurastri	ACS - 9212	WIRC
26.	Ms. Divya Kandoi	ACS - 26920	EIRC
27.	Sh. A V Venkatakrishnan	ACS - 5282	NIRC
28.	Sh. Vivek Bhargava	ACS - 6032	NIRC
29.	Sh. Saurav Shukla	ACS - 17913	SIRC
30.	Ms. Megha Kapoor	ACS - 29202	EIRC
31.	Ms. Monika Mittal	ACS - 29774	NIRC
32.	Sh. B Venkatesh	ACS - 7490	WIRC
33.	Sh. Bipin Maneklal Shah	FCS - 407	WIRC
34.	Mrs. Manasi Sarang Gudhate	ACS - 24662	WIRC
35.	Ms. Kanika Mahna	ACS - 25940	NIRC
36.	Mr. Rajendra Kumar Jain	ACS - 29804	WIRC
37.	Sh. Ranjeet Kumar Agrawal	ACS - 25157	EIRC
38.	Mr. V Anantha Subramanian	ACS - 29770	SIRC
39.	Sh Pankaj Tewari	ACS - 15106	NIRC
40.	Sh. Sunil Kumar Taparua	ACS - 13127	SIRC
41.	Sh. Surender Kumar Sharma	ACS - 13435	WIRC
42.	Ms. Deepshikha Sharma	ACS - 27046	SIRC
43.	Sh. Mahender Pal Arora	FCS - 1725	NIRC
44.	Sh. P K Sen Gupta	FCS - 1394	NIRC
45.	Ms. Vaishali Danekar	ACS - 21370	WIRC
46.	Sh. L Meenakshisundaram	ACS - 3714	NIRC
47.	Ms. Kanika Gupta	ACS - 29219	NIRC
48.	Sh Ankur Garg	ACS - 20421	NIRC
49.	Sh. Pramod Kumar Sanghai	ACS - 7055	EIRC
50.	Ms. Rashmi Agarwal	ACS - 25053	EIRC
51.	Sh. K K Rathi	ACS - 6385	WIRC
52.	Mr. Uttam Singh Negi	ACS - 28109	NIRC
53.	Sh. A Pandey	FCS - 1281	NIRC
54.	Ms. Shivani Sharma	ACS - 20966	SIRC
55.	Sh. Prashant Gupta	ACS - 12432	NIRC
56.	Ms. Tripti Agrawal	ACS - 29216	NIRC
57.	Sh. K Govindarajan	ACS-10551	SIRC
58.	Mr. Rajendra Kumar Jain	ACS - 29804	WIRC
59.	Ms Anuja Atul Kumar Shah	ACS - 20510	WIRC
60.	Ms. Prathima Yeddula	ACS - 20771	SIRC
61.	Ms. Shivani Shrivastav	ACS - 16601	WIRC
62.	Sh. Amit Kishore Singh	ACS - 18038	NIRC
63.	Sh. B. Chandra Sekhara Reddy	ACS - 14609	WIRC
64.	Ms. Ravi Sankar Bhuvana	ACS - 11228	SIRC

Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
ISSUED*				
1	Sh. Varun Kalra	ACS - 24482	11593	NIRC
2	Sh. Sumeet Gusain	ACS - 27525	11594	NIRC
3	Ms. Rajni Kalia	ACS - 30998	11595	NIRC
4	Mr. Arvindkumar Rajendra Sinha Yadav	ACS - 31663	11596	WIRC
5	Ms. Sapna Gupta	ACS - 26262	11597	NIRC
6	Sh. Kumar Bhavesh Kishore	ACS - 22843	11598	NIRC
7	Sh. Nitin Goyal	ACS - 29669	11599	NIRC
8	Ms. Nikita Singh	ACS - 29199	11600	NIRC
9	Sh. Manoj Kumar Mimani	ACS - 17083	11601	WIRC
10	Sh. Chandramauli Kumar Mishra	ACS - 17023	11602	WIRC
11	Ms. Anuradha Mishra	ACS - 31595	11603	NIRC
12	Mr. Azeem Tariq Khan	ACS - 30706	11604	WIRC
13	Ms. Nayana Bhavin Thakkar	ACS - 31380	11605	WIRC
14	Mr. Mehul Yogesh Shah	ACS - 31043	11606	SIRC
15	Mr. Mohd Shakeel Kayamkhani	ACS - 27495	11607	NIRC
16	Ms. Bhavani Pvd	ACS - 25307	11608	SIRC
17	Ms. Neha Jain	ACS - 31484	11609	NIRC
18	Ms. Parul	ACS - 30717	11610	NIRC
19	Ms. Lakshmi Adduri	ACS - 31458	11611	SIRC
20	Sh Vipul Kumar Singh	ACS - 20478	11612	WIRC
21	Sh. Nitin Misra	ACS - 24286	11613	NIRC
22	Ms. S. Maheswari	ACS - 15644	11614	SIRC
23	Ms. Reema Anil Tayshete	ACS - 30217	11615	WIRC
24	Mr. Gunjan Kumar Singh	ACS - 31642	11616	NIRC
25	Mr. Prakash C	ACS - 31538	11617	SIRC
26	Ms. Anubhuti Arora	ACS - 31545	11618	NIRC
27	Mr. Manish Kumar Verma	ACS - 31547	11619	NIRC
28	Mr. Vignesh S S	ACS - 31114	11620	SIRC
29	Ms. Shilpa Bhatt	ACS - 30586	11621	NIRC
30	Ms. Geeta Balkrishna Shinde	ACS - 31438	11622	WIRC
31	Mr. Mandar Subhash Palav	ACS - 27695	11623	WIRC
32	Ms. Divya Jain	ACS - 24638	11624	NIRC
33	Sh. Miten G Chawda	FCS - 6949	11625	WIRC
34	Ms. Vithi Sharma	ACS - 26689	11626	NIRC
35	Ms. Swati Khandelwal	ACS - 31686	11627	EIRC
36	Ms. Deepa Achamma John	ACS - 31719	11628	SIRC
37	Mr. Narasimha Pai P	ACS - 31740	11629	SIRC
38	Ms. Kanika Sharma	ACS - 30953	11630	NIRC
39	Ms. Nivedita Gautam	ACS - 30537	11631	NIRC
40	Mr. Pradeep Rawat	ACS - 31467	11632	NIRC
41	Mr. Anuj Kumar Solanki	ACS - 31746	11633	NIRC
42	Mr. Vineet Gupta	ACS - 31753	11634	NIRC
43	Ms. Sheetal Saurabh Joshi	ACS - 17436	11635	WIRC
44	Ms Sumitra E	ACS - 20198	11636	SIRC

* Issued During the Month of January, 2013



News From the Institute

45 Ms. Pooja Jitendra Thakkar	ACS - 27939	11637	WIRC	5 Sh. Deepak Kumar Agarwal	ACS - 14370	3970	EIRC
46 Ms. Alpa Nayan Shah	ACS - 31222	11638	SIRC	6 Mrs. Priya Ranjeet Joshi	ACS - 24553	9189	WIRC
47 Mr. Rajesh Deepak Palande	ACS - 30939	11639	WIRC	7 Sh. Syed Shahabuddin	ACS - 4121	11383	SIRC
48 Ms. Krishna Panda	ACS - 31573	11640	EIRC	8 Ms. Pratibha Bafna	ACS - 29743	10865	EIRC
49 Ms. Vidhya S	ACS - 27549	11641	SIRC	9 Ms. Garima Dwivedi	ACS - 30532	11534	EIRC
50 Mr. Abhijith C	ACS - 28305	11642	SIRC	10 Ms. Kamakshi Krishnan	ACS - 25552	11543	SIRC
51 Ms. Deeksha Garg	ACS - 30582	11643	NIRC	11 Mr. Hardik Dashrath Chauhan	ACS - 28615	10406	WIRC
52 Sh. Krish Narayanan	ACS - 25271	11644	SIRC	12 Ms. Sarla Baghel	ACS - 28995	10629	NIRC
53 Ms. Sakshi Batra	ACS - 31703	11645	NIRC	13 Ms. Swati Singhal	ACS - 29487	10881	NIRC
54 Mr. Kunjabihari Yadav	ACS - 31626	11646	NIRC	14 Ms. Neha Bajoria	ACS - 29267	10578	NIRC
55 Ms. Harshada Nandkumar Eklahare	ACS - 28708	11647	WIRC	15 Mrs. Gunjan Pankaj Sandhu	ACS - 26347	9502	SIRC
56 Mr. Mayur Sanghi	ACS - 31712	11648	NIRC	16 Sh. Manish Shukla	FCS - 6704	10893	NIRC
57 Mr. S Vikas Reddy	ACS - 31739	11649	SIRC	17 Ms. Mini Bansal	ACS - 26776	11231	NIRC
58 Mr. Kishan Singh Nathawat	ACS - 31349	11650	NIRC	18 Sh. B Prabakar	ACS - 13914	11229	SIRC
59 Sh. T R Ravichandran	FCS - 7076	11651	SIRC	19 Ms. Nilakshi Choudhury	ACS - 21762	8422	NIRC
60 Mrs. Bhawana Satender Kashyap	ACS - 22896	11652	NIRC	20 Ms. Anagha Paranjape	ACS - 29684	11326	SIRC
61 Mr. Sumit Raj	ACS - 27292	11653	NIRC	21 Ms. Manisha Agarwal	ACS - 29621	10994	EIRC
62 Ms. Tanvi Gupta	ACS - 25657	11654	NIRC	22 Sh. B T Kulkarni	ACS - 2818	5412	WIRC
63 Mr. P Vimal Kumar	ACS - 31825	11655	SIRC	23 Ms. Manisha Singhania	ACS - 28461	11147	NIRC
64 Ms. Seema Dua	ACS - 30170	11656	NIRC	24 Sh. Ritesh Heda	ACS - 24371	11451	NIRC
65 Mr. Arun Kannamangalam Kamalolbhavan	ACS - 31827	11657	SIRC	25 Sh. Rishi Kumar Sharma	ACS - 23225	11288	NIRC
66 Mr. Bhavesh Suresh Mewada	ACS - 31736	11658	WIRC	26 Mr. Pradeep Rawat	ACS - 31467	11632	NIRC
67 Ms. Trupti Indravadan Shah	ACS - 31509	11659	WIRC	27 Sh. Baij Nath Mali	FCS - 1505	2966	NIRC
68 Ms. Saudamini Dandekar	ACS - 12756	11660	WIRC	28 Sh. Ashvin Chimanlal Desai	FCS - 1894	7309	WIRC
69 Sh. N Kannan	ACS - 8516	11661	SIRC	29 Ms. Nilakshi Sharma	ACS - 29597	11876	EIRC
70 Ms. Neha Gupta	ACS - 30317	11662	NIRC	30 Ms. Neelam Maheshwari	ACS - 13456	9050	NIRC
71 Ms. Gopika Chatrabhuj Negandhi	ACS - 30358	11663	WIRC	31 Ms. Sapna Gupta	ACS - 26262	11597	NIRC
72 Sh. Sanjay Vijay Sawant	FCS - 4649	11664	WIRC	32 Sh. Janga Krishnamurthy	FCS - 1218	8664	SIRC
73 Mrs. Anjali Bindal	ACS - 18618	11665	NIRC	33 Ms. Suchi Aggarwal	ACS - 29712	10743	NIRC
74 Ms. Nishtha Handa	ACS - 29404	11666	NIRC				
75 Ms. Dhanya Jose	ACS - 26483	11667	SIRC				
76 Ms. D Lakshmi	ACS - 31073	11668	SIRC				
77 Mr. Jay Prakash	ACS - 31696	11669	NIRC				
78 Ms. Baipaneni Alekhya	ACS - 31340	11670	SIRC				
79 Mr. Prakash Verma	ACS - 31801	11671	NIRC				
80 Ms. Vandana Kaushik	ACS - 31054	11672	NIRC				
81 Mr. Nitin G Hotchandani	ACS - 31254	11673	NIRC				
82 Ms. Iti Goyal	ACS - 31807	11674	NIRC				
83 Ms. Rasmita Mohanty	ACS - 31766	11675	EIRC				
84 Ms. Eesha Bhardwaj	ACS - 30564	11676	NIRC				
85 Mr. Deelip Uttamchand Karira	ACS - 31809	11677	WIRC				
86 Sh. Piyushkumar Parmar	ACS - 25675	11678	WIRC				
87 Mr. Muhammed Sahal K	ACS - 31822	11679	SIRC				
88 Ms. Neelam Garg	ACS - 30913	11680	NIRC				
89 Ms. Japna Choudhary	ACS - 28259	11681	NIRC				

CANCELLED*

1 Ms. Nikita Gupta	ACS - 31075	11493	NIRC
2 Ms. Vanita Ganapathi Madival	ACS - 24318	10090	SIRC
3 Sh. Sivaramakrishnan Vasudevan	ACS - 7803	10889	SIRC
4 Ms. Roshan Abdul Sattar Kazi	ACS - 26490	10816	WIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
ADMITTED**			
1	Mr. V. R. Vinod	6478	SOUTH
2	Ms. Rumki Manna	6479	EAST
3	Mr. Viswanathan V.	6480	SOUTH
4	Mr. Bharath Bhushan Bothra	6481	WEST
5	Mr. Ankit Daga	6482	NORTH
6	Mr. Gopal Kumar Bansal	6483	EAST
7	Mr. Tushar Ashok Virkar	6484	WEST
8	Mr. Ashish Gopinadhan Pillai	6485	WEST
9	Mr. Kanan Bansal	6486	NORTH
10	Mr. Prashant Aggarwal	6487	NORTH
11	Mr. Darshil R. Thakkar	6488	WEST
12	Ms. Nikita Agarwal	6489	EAST
13	Mr. Karanveer Jindal	6490	NORTH
14	Ms. Mansi Dixit	6491	NORTH
15	Mr. Amit Kumar	6492	EAST
16	Ms. A. Anupama	6493	NORTH
17	Ms. Meera Shrivastav	6494	EAST
18	Mr. N. Srivatsan	6495	SOUTH

* Cancelled During the Month of January, 2013

* Admitted During the Month of January, 2013



COMPANY SECRETARIES BENEVOLENT FUND

Donations received in the Fund during the period 01-09-2012 to 28-02-2013

Sl No.	Name of the Donor	Membership No.	Amount (Rs.)
1.	CS Ranjeet Kumar Pandey	FCS-5922	21,000
2.	CS Sanjay Kumar	FCS-6865	21,000
3.	CS Dhanraj	ACS 10788	11,000
4.	CS H S Grover	FCS-1711	11,000
5.	CS Manish Gupta	FCS- 5123	11,000
6.	Mrs. Meenakshi Gupta	(ICSI)	5,100
7.	CS R P Tulsian	FCS-2953	5,100
8.	CS Sutanu Sinha	FCS-3976	5,100
9.	170th MSOP Batch	NIRC	5,100
10.	Shri Arun Balakrishnan	Govt. Nominee	5,000
11.	CS Ashwani Rustogi	FCS- 3438	5,000
12.	CS D P Gupta	FCS-2411	5,000
13.	CS K Sriram	ACS-23619	5,000
14.	CS Rajiv Bajaj	FCS-3662	5,000
15.	CS S C Khaneja	FCS-1333	5,000
16.	CS V P Gupta	FCS- 1580	5,000
17.	CS Arun Kumar Varshney	ACS-5789	2,500
18.	CS Dhananjay Shukla	FCS-5886	2,100
19.	CS Sanjeeva Narayan	ACS-7304	2,000

Donations received for the family of Late Ravi Gour, ACS-29682

Sl No.	Name of the Donor	Membership No.	Amount (Rs.)
1.	CS Salil Banerjee	FCS-2288	10,000
2.	CS Balai Lal Chatterjee	FCS-293	5,000
3.	CS M K Kakra	ACS-6262	2,500
4.	CS Vipin Kumar Bhatia	FCS-4193	2,500
5.	CS B S Goyal	FCS-4204	2,100
6.	CS Swamy Tarunraj Bharti	ACS-17843	1,100
7.	CS Anjan Kumar Roy	FCS-5684	500
8.	CS Dhiraj Balasaheb Dhamane	ACS-21172	500
9.	CS Pankaj Dhanuka	ACS-9187	500

Donations received for the family of Late Brijesh Nandini Raghav, ACS-19178

Sl No.	Name of the Donor	Membership No.	Amount (Rs.)
1.	CS Balai Lal Chatterjee	FCS-293	5,000
2.	CS M K Kakra	ACS-6262	2,500
3.	CS Anjan Kumar Roy	FCS-5684	500
4.	CS Dhiraj Balasaheb Dhamane	ACS-21172	500
5.	CS Pankaj Dhanuka	ACS-9187	500

Donations received for the family of Late Dinesh Tomar, ACS-10300

Sl No.	Name of the Donor	Membership No.	Amount (Rs.)
1.	CS Nagendra Reddy Reddem	ACS-20525	5,000
2.	CS Mohit S Nigam	ACS-18523	1,000

ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2012-13

The names of members who could not remit their annual membership fee for the year 2012-13 by the last extended **date i.e. 31st August, 2012** stand removed from the Register of Members w.e.f. **1st September, 2012**. They may pay the fee and get their names restored by making an application in Form `BB` with the entrance fee (Associate members Rs. 1500/- & Fellow members Rs. 1000/- respectively) alongwith restoration fee of Rs. 250/- . Form-BB is available on the web-site of the Institute and also published else where in this issue.

The Certificate of Practice of the members who could not remit their annual Certificate of Practice fee for the year 2012-13 by the specified date i.e. on or before **30th September, 2012** stand cancelled w.e.f. **1st October, 2012**. They may restore their Certificate of Practice by making an application in Form `D` with the restoration fee of Rs. 250/- . Form-D is available on the web-site of the Institute and also published else where in this issue.

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

- | | |
|--|----------------------|
| 1] Annual Associate Membership fee | Rs. 1125/- |
| 2] Annual Fellow Membership fee | Rs. 1500/- |
| 3] Annual Certificate of Practice fee | Rs. 1000/-(*) |

* *The certificate of practice fee must be accompanied by a declaration in form 'D' duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu and also published elsewhere in this issue.*

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

- On-Line (through payment Gateway of the Institute's web portal (www.icsi.in)).
- Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- Cash/ local cheque drawn in favour of `The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.
- Demand draft / Pay order drawn in favour of `The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

For queries, if any,

the members may please contact the Membership Section on telephone Nos.011-45341047 or Mobile No.9868128682 / through e-mail ids: annualfee@icsi.edu, member@icsi.edu

APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION*
OF CERTIFICATE OF PRACTICE
See Reg. 10, 13 & 14

To
 The Secretary to the Council of
 The Institute of Company Secretaries of India
 'ICSI HOUSE', 22, Institutional Area,
 Lodi Road, New Delhi - 110 003

Sir,

I furnish below my particulars

- (i) Membership Number FCS/ACS:
- (ii) Name in full:
 (in block letters) Surname Name
- (iii) Date of Birth:
- (iv) Professional Address:
- (v) Phone Nos. (Resi.) (Off.)
- (vi) Mobile No Email id
- (vii) Additions to or change in qualifications, if any:

1. Submitted for (tick whichever is applicable):

- (a) Issue (b) Renewal (c) Restoration
2. (a) Particulars of Certificate of Practice issued / surrendered/Cancelled earlier

Sl. No	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

3. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.
- ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
- iii. I hereby undertake that, I shall adhere to the mandatory ceiling of not more than eighty companies in aggregate in a calendar year in terms of the **Guidelines for Issuing Compliance Certificate and Signing of Annual Return** issued by the Institute on 27th November, 2007.
- iv. I state that I have issued / did not issue advertisements during the year 20 - in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.
- v. I state that I issued Corporate Governance compliance certificates under Clause 49 of the listing agreement during the year 20 -*
- vi. I state that I have / have not undertaken Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20 - *
- vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/Firm of Practising Company Secretaries** issued by the Institute. *
4. I send herewith Bank draft drawn on Bank Branch bearing No for Rs towards annual certificate of practice fee for the year ending 31st March
5. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Encl.

Date:

* Applicable in case of renewal or restoration of Certificate of Practice

APPLICATION FOR RESTORATION OF MEMBERSHIP

To,
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI' House, 22, Institutional Area
Lodi Road, New Delhi-110003

Sir,

I hereby apply for restoration of my name in the Register as an Associate/Fellow Member of the Institute of Company Secretaries Of India in accordance with the provisions contained in the Company Secretaries Act, 1980 and Regulations made thereunder and declare that I am eligible for the membership of the Institute and am not subject to any disabilities stated in the act or the Regulations of the Institute. The required particulars are furnished below:

1. Name in full :
(In Block Letters) Surname M. Name F. Name

2. Address

(i) Professional

Designation

Name of Company

Address

.....

Pin Code:

Telephone No. Fax

E -mail

(ii) Residential

.....

.....

Pin Code:

Contd.

Telephone No. Fax

3. Date of admission as Associate / :
Fellow Member of the Institute

4. Membership Number

5. I hereby undertake that if re-admitted as an Associate/Fellow Member of the Institute, I will be bounded by the Company Secretaries Act, 1980 and the Regulations made thereunder, asamended from time to time

6. I also undertake that such instances will not recur and I will make the payment of annual fee in future within the stipulated time (i.e. on or before 30th June of each year)

7. I send herewith a sum of Rs..... being the arrears of Annual Membership fee of Rs. for the years to and restoration fee of Rs.250/- alongwith entrance fee (Rs. 1500/- for Associates & Rs. 1000/- for fellows)

8. I solemnly declare that what I have stated above is true and correct.

Place:

Yours faithfully

Date:

Signature



Company Secretaries Benevolent Fund

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



Sl. No.	LM No.	Name	Mem No.	City
EIRC				
1	9968	SH. SHARAD KUMAR JHUNJHUNWALA	ACS - 25733	RANCHI
2	9975	MS. ROHINI	ACS - 29726	BOKARO
NIRC				
3	9960	MS. DEEPIKA GAUR	ACS - 31234	NEW DELHI
4	9961	MS. RAJNI AGARWAL	ACS - 11671	DELHI
5	9962	SH. SATYA PRAKASH	ACS - 21685	NEW DELHI
6	9963	MS. SEEMA MATHUR	ACS - 10248	NEW DELHI
7	9964	SH. MUKESH SINGH VERMA	FCS - 6936	LUDHIANA
8	9966	SH. MURLEE MANOHAR JAIN	ACS - 18524	NEW DELHI
9	9967	MR. PURNENDU PATHAK	ACS - 31830	NEW DELHI
10	9969	MS. NEHA GUPTA	ACS - 30152	NEW DELHI
11	9970	SH. A GOPINATHAN	ACS - 9528	NEW DELHI
12	9971	SH. AJAY PRATAP	ACS - 18807	NEW DELHI
13	9972	MR. SUMIT JAIN	ACS - 31774	LUDHIANA
14	9977	SH. MAYANK JAIN	ACS - 26620	NEW DELHI
SIRC				
15	9956	MS. VELIDHI VARA MOUNIKA	ACS - 31658	HYDERABAD
16	9974	MR. SREEDHAR KOWTHALAM JOIS	ACS - 31898	BANGALORE
17	9979	MS. RAJANI P	ACS - 30933	HYDERABAD
WIRC				
18	9957	MR. HITESH PRAVIN GUNDIGARA	ACS - 28246	MUMBAI
19	9958	MS. D MEENA KUMARI	ACS - 28193	BHILAI
20	9959	SH. KUNAL THAKUR	ACS - 26288	DHAR DISTT
21	9965	SH. YATIN SAROJKUMAR KAMAT	ACS - 20686	MUMBAI
22	9973	SH. PARAG ARUN INAMDAR	ACS - 18167	PUNE
23	9976	DR RAM JASS YADAV	ACS - 12530	AHMEDABAD
24	9978	SH. PRASHANT PRABHAKAR PANGE	ACS - 25719	PUNE

* During the Period 22nd January 2013 to 20th February 2013.



List of Companies Registered for Imparting Training During the Month of January 2013

Region	Training Period	Stipend (Rs.)	Company Name	Address	Training Duration	Stipend	Notes
Eastern	15 Months & 3 Months	6000/-	SSK Exports Ltd.	37, Shakespeare Sarani 1st Floor, Kolkata 700017 India info@sskexports.com	Practical Training		Suitable
	15 Months	Suitable	GNB Motors Private Ltd.	19, R.N. Mukherjee Road Main Building, 1st Floor Kolkata-700001 gNBCamac@gnbmotors.com	Training		Suitable
	15 Months & 3 Months	Suitable	Finshore Management Services Ltd.	Sikkim Commerce House, 5th Floor Room No. 505, 4/1 Middleton Street Kolkata-700071	Practical Training		Suitable
	3 Months	Suitable	Shree Hari Agro Industries Ltd.	45A Addya Sradhya Ghat Road, 3rd Floor Room No. 1 Kolkata West Bengal-700007	Practical Training		Suitable
	15 Months	6000/-	Nilachal Iron & Power Ltd.	5, Bentinck Street, Kolkata 700001 West Bengal jbalaji@vsnl.net	Training		Suitable
	15 Days	-	Vedika Credit Capital Ltd.	406, Shrilok Complex 4th Floor, H.B Road Ranchi-834001 Jharkhand vikramjain_vedika@hotmail.com	Training		Suitable
	15 Months	Suitable	National Handicapped Finance and Development Corporation	Red Cross Bhawan, Sector-12 Faridabad 121007 Haryana rkcs96@hotmail.com	Training		Suitable
	15 Months		Gulf Petrochem (India) Private Ltd.	Resham House, Farm No-9/1 Amaltas Avenue Westend Green Farm Society Shamlaka, New Delhi-110037	Training		Suitable
	15 Months		Beekman Helix India Consulting Private Ltd.	310, A Block, 3rd Floor Iris Tech Park, Sohna Road Sector-48, Gurgaon-122018 Haryana(India)	Training		Suitable
	15 Months		Innovative Infradevelopers Private Ltd.	301, JMD Pacific Square, Sector-15, Part-II Gurgaon-12200, Haryana(India) info@iidl.in	Training		Suitable
	15 Months		International Mega Food Park Ltd.	H.No.-3, Sector-5, Chandigarh-160009	Training		Suitable
	15 Months		Amelco Kabel Private Ltd.	C-24, Phase II, Noida-201305 Uttar Pradesh	Training		Suitable
3 Months		Sakata Seed India (P) Ltd.	Plot No. 325, Sector-7, IMT Manesar- 122050 Haryana(India) admin@sakata.co.in	Practical Training		Suitable	
15 Months		Ventura Airconnect Pvt. Ltd.	2nd Floor, Anand Motors Building 21 21, Vidhan Sabha Marg Lucknow-226001 Uttar Pradesh(India) call@venturaairconnect.co.in	Training		Suitable	
15 Months		Indian Oil Corporation Ltd.	Indian Oil Bhawan 1, Sri Aurobindo Marg Yusuf Sarai New Delhi-110016	Training		Suitable	
15 Months & 3 Months		Kasliwal Tubes Ltd.	741, Achariyon Ka Rasta, Kishanpole Bazar, Jaipur(Rajasthan) mehtastudy@ymail.com	Practical Training		Suitable	
3 Months		Citifinancial Consumer Finance India Ltd.	3, LSC, Pushp Vihar, New Delhi-110062	Practical Training		Suitable	
15 Months		Bhandari Builders Pvt. Ltd.	809, Bhandari House 91, Nehru Place New Delhi-110019	Training		Suitable	



News From the Institute

Louis Dreyfus Commodities India Pvt. Ltd. 8th Floor, Tower A Building No. 5 Cyber City, Dlf Phase-III Gurgaon-122002 (Haryana)	15 Months & 3 Months Practical Training	Suitable	Bharat Serums and Vaccines Ltd. 17th Floor, Hoechst House Nariman Point, Mumbai- 400021 corporate@bharatserums.com	15 Months & 3 Months Practical Training	7000/-
Allgrow Finance & Investment Pvt. Ltd. 202, 1st Floor Okhla Industrial Estate, Phase-III, New Delhi-110020	15 Months & 3 Months	Suitable	Krushna Cotex Pvt. Ltd. 4-A Vikas Centre, 104, S.V. Road, Santacruz (W) Mumbai-400054	15 Months Training	10000/-
M3M India Ltd. Paras Twin Towers Tower B, 6th Floor Golf Course Road Sector-54, Gurgaon-122002 info@m3mindia.com	15 Months Training	Suitable	Sampada Sahakari Bank Ltd. D.I.C Building, Near Kasba Ganpati Temple, 717, Budhwar Peth, Pune-411002	06 Months Training	Suitable
Kevin Power Solutions Ltd. NS-15, LGF, Miyanwali Nagar, NS Road, Paschim Vihar, Peeragarhi, Metro Station, New Delhi 110087 anuraggoel_ca@yahoo.co.in	15 Months Training	Suitable	Jaybharat Textiles and Real Estate Ltd. 11/12, S.B. Marg, Lower Parel (W) Mumbai-400013 jaybharatcs@gmail.com	15 Months Training	Suitable
Southern Boston Financial Advisory Group Pvt. Ltd. 54, 3rd Floor, 13th Main 17th Cross Sector 6, Behind BDA Shopping Complex, HSR Layout, Bangalore 560102	15 Months Training	Suitable	Radhakrishna Foodland Pvt. Ltd. Radhakrishna House, Majiwade Village Road, Majiwade, Thane West- 400601 hemant.kothari@rkfoodland.com	15 Months & 3 Months Practical Training	Suitable
Rangsons Electronics Pvt. Ltd. Plot No: 347 D1 & D2, KIADB Electronic City Hebbal Industrial Area Mysore-570016 info@rangsons.com	15 Months Training	Suitable	Polylink Polymers (India) Limited 506, Saffron Building Near Center Point, Ambawadi Ahmedabad-380006 polylink@polylinkpolymers.com	15 Months Training	Suitable
Western Welspun Maxsteel Ltd. Welspun House, 7th Floor Kamala City Senapati Bapat Marg Lower Parel (West) Mumbai- 400013	15 Months Training	10000/-	A.W. Faber Castell India Pvt. Ltd. 801, Kamala Executive Park Near Vazir Glass, Off M.V Road J. B. Nagar, Andheri (E) Mumbai-450059	15 Months Training	Suitable
Sulabh Engineers And Services Limited B-32, APMC Market-1 Phase II, Sector 19, Vashi Navi Mumbai- 400705 sulabheng22@gmail.com	15 Months Training	Suitable	Citicorp Finance (India) Ltd. Citigroup Centre, 5th Floor, Bandra Kurla Complex Bandra (E), Mumbai-400051	15 Months & 3 Months Practical Training	Suitable
TMF Services India Pvt. Ltd. #1302, 13th Floor, Tower 3 Indiabulls Finance Centre Senapati Bapat Marg Elphinstone Road (West) Mumbai- 400013	15 Months Training	Suitable	Hinduja Realty Ventures Ltd. Hinduja House, 171 Dr. Annie Basant Road, Worli Mumbai 400018	15 Months Training	Suitable
			Ghatge Patil Industries Ltd. Uchagaon, Kolhapur 416005, India corporate@gpi.co.in	15 Months Training	Suitable



List of Practising Members Registered for the Purpose of Imparting Training During the Month of January, 2013



CS S. JAYARAMAN Company Secretary in Practice 16/29, C 236 A 'Rasmi VI Main Road Nanganallur Chennai -600 061	PCSA - 3265	CS GAUTAM GOYAL Company Secretary in Practice 535/536, Naya Bazar Lohri Gate, Delhi -110 006	PCSA - 3274
CS SHASHI SHEKHAR Company Secretary in Practice 309, 3rd Floor, Himiliya Place 65, Vijay Block, Laxmi Nagar New Delhi -110 092	PCSA - 3266	CS ANSHU AGARWAL Company Secretary in Practice 146-147, Prem Nagar Colony Opp., Thana Gandhi Park G.T.Road, Aligarh- 202 001	PCSA - 3275
CS PRINCE MATHEW Company Secretary in Practice Apt. No. 2A, RDS Retreat Kacherippady Ernakulam - 682018	PCSA - 3267	CS SURESH KUMAR JAIN Company Secretary in Practice 56, Pocket , House No.-34 Sector -3, Rohini Delhi -110 085	PCSA - 3276
CS NISHANT NAYAN Company Secretary in Practice B-21, Ground Floor, Fateh Nagar New Delhi -110 018	PCSA - 3268	CS YOGESH SINGHVI Company Secretary in Practice Flat No -14, Prakriti-B Sector -V, Srishiti Residential Complex Mira Road (E), Mumbai -401 107	PCSA - 3277
CS NITIN GROVER Company Secretary in Practice 240, Street No. -4, Madan Puri Gurgaon -122 001	PCSA - 3269	CS LATIKA CHAWLA Company Secretary in Practice WA-43, Gali Gurudwara Wali Shakarpur, Delhi -110 092	PCSA - 3278
CS PREMAL MAHESHKUMAR SHAH Company Secretary in Practice 104, Opera Flats New Vikas Gruh Road, Paldi Ahmedabad -380 007	PCSA - 3270	CS GEETA SERWANI Company Secretary in Practice A Block, P-4, Indraprasth Tower Nr Himalayal Mall, Drive In Road Ahmedabad-380054	PCSA - 3279
CS KANWAL GOYAL Company Secretary in Practice J-1, Kailash Colony, 2nd Floor New Delhi - 110 048	PCSA - 3271	CS ISHAN ANAND Company Secretary in Practice A-42, Iind Floor, Ring Road Rajouri Garden New Delhi - 110027	PCSA - 3280
CS KAPIL BANSAL Company Secretary in Practice 11-A, East Krishna Nagar Street No.-4, Delhi -110 051	PCSA - 3272	CS N SRINIVASAN Company Secretary in Practice 16, Karunanidhi Colony Round Road Dindigul - 624005	PCSA - 3281
CS RAJESH SHARMA Company Secretary in Practice Flat No.-18, Plot-32 Shama Apartment Sector -10, Dwarka New Delhi - 110 075	PCSA - 3273	CS VINEET GUPTA Company Secretary in Practice Office No.302, IIIrd Floor Building No.14, Veer Savarkar, Vikas Marg Delhi-110 092	PCSA - 3282
		CS AYESHA JAIN Company Secretary in Practice E-15/8,First Floor Near ICICI Bank Prince Tower, Sanjay Place Agra- 110 007	PCSA - 3283
		CS RAMESH BHATIA Company Secretary in Practice Sco 154-155, Sector 17-C , 1st Floor Deepak Towers Chandigarh -160 017	PCSA - 3284



News From the Institute & Regions

CS MANISH JAIN

Company Secretary in Practice
Flat No.6, 5 A/B, Wing ,
Ess Bee Gee Jay Chsl,
Sai Baba Nagar
Borivali (W)
Mumbai - 400 092

PCSA - 3285

CS ARUNA ASHUTOSH

Company Secretary in Practice
A/103, Gurukrupa Society, Above
Abhudaya Bank, N.C,Kelkar Marg
Opp Plaza Cinema, Dadar
Mumbai-400 027

PCSA - 3286

CS ANUJ KUMAR SOLANKI

Company Secretary in Practice
C-67, DDA Flats,
Phase 1, Katwaria Sarai
New Delhi-110 016

PCSA - 3287

CS A S KESHAVA MURTHY

Company Secretary In Practice
1113/6, "Sreranga", "A" Block,
21st Main Shankar Nagar,
Bangalore-560 092

PCSA - 3288

CS SONIYA TOLANI

Company Secretary in Practice
131, Sindhu Nagar
Nahari Ka Naka
Near Power House
Jaipur-302 016

PCSA - 3289

CS VISHAL SONI

Company Secretary in Practice
Sunaro Ka Bas
Near 3 Pillars,
Corner House, Jodhpur.

PCSA - 3290

CS RINKI BANSAL

Company Secretary in Practice
G-22, House No. 191, Sector 7
Rohini, Delhi-110 085

PCSA - 3291

CS GAURAV GARG

Company Secretary in Practice
F-10/A-38, 1st Floor, Lane No. 2
I. P. Extension, New Delhi-110 092

PCSA - 3292

CS SRUTI DAGA

Company Secretary in Practice
16A, Shakespeare Sarani
New B. K. Market
5th Floor, Kolkata-700 007

PCSA - 3293

CS KAMALJEET SINGH KALRA

Company Secretary in Practice
119/196, Om Nagar, Gumti No. 5
Kanpur (Up)- 208 005

PCSA - 3294

CS DEEPAK JAIN

Company Secretary in Practice
311, 3rd Floor, Pooja Complex
Veer Savarkar Block, Shakarpur
New Delhi-110 092

PCSA - 3295

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Sd/-

M. S. Sahoo

Signature of the
Publisher

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News From the Regions

» Eastern India Regional Council

BHUBANESWAR CHAPTER

Republic Day Celebration

On 26. 01. 2012 Bhubaneswar Chapter of EIRC of the ICSI joined the nation in celebrating the Republic Day at its premises wherein Office bearers of the Managing Committee of the Chapter, Members of the Institute, Students, Faculties of oral coaching classes & others were present. CS A. Acharya, Chapter Chairman unfurled the tricolor and also among others addressed on the occasion. This was followed by rendition of National Anthem by all.

Study Circle Meeting on Revised SS-4

On 26. 02.2013, the Chapter organized a study circle meeting on Limited Revision of Secretarial Standard on Registers and Records (SS-4) at its premises. The meeting was attended by about 30 members and 15 students of the Chapter. The study circle meeting was well managed by CS A. Acharya, Chapter Chairman and CS B.K. Sahu, Dy. Company Secretary, Nalco, Bhubaneswar. After the study circle meeting the following suggestions given in italics were made: In column 2- Amended Definitions in SS-4, for the definition "Articles", it may be considered to add at the end-"including amendment thereof duly registered." In column 3 -Rational, "Act" is deemed to include "guidelines" in addition to Rules and Regulations".

Seminar on Service Tax and proposed amendment in the new Companies Bill

On 30.01.2013, the Chapter organized a seminar on Service Tax and Proposed Amendment in the New Companies Bill at its premises. While CA D.N. Panda, Member, Income Tax, CST, Customs Tribunal, New Delhi nicely addressed the audience about the Service Tax, CS Sanjay Kumar Gupta, Practising Company Secretary, Kolkata addressed on New Companies Bill. The programme was well attended by more than 100 delegates/participants.

Naxatra live TV Phone-in-Programme

On 10.02.2013, Naxatra TV, Bhubaneswar organized a live phone-in programme about the Career as a Company Secretary. CS Arabinda Acharya, Chapter Chairman was the panelist who explained during the 1 hour programme about the CS course contents, future prospects of Company Secretary - both in

employment and in practice. He also explained about the course fees, syllabus, examinations, oral coaching and library facilities, various professional development programmes of the Institute. CS A. Acharya also spoke about the Head Office, its Regional Offices, Chapters and the examination centres spread across the Country. He replied the queries of the callers and nicely replied their queries. The live phone-in programme was supported by Prof. (Dr.) Sushant Mishra, Koustuv Business School, Bhubaneswar.

Celebration of Basanta Panchami

On 15.02.2013, the Chapter celebrated 'Basant Panchami', Puja of Devi Saraswati at its premises amidst the presence of the students, members, faculties of the Chapter. On this auspicious day, the Chapter Office was well decorated. A large number of students and members of the Chapter visited the Chapter office and offered puspunjali to Devi Saraswati. Prasad was distributed to the students, members, faculties and other invited guests and Devi Saraswati was immersed in river Kuakhai on 17.02.2013.

NORTH EASTERN CHAPTER (Guwahati)

Seminar on Companies Bill, 2012

On 18.1.2013 the North Eastern Chapter (Guwahati) organized a seminar on Companies Bill, 2012 Some Important Provisions and Rewriting Future.

In the First Technical Session Debasish Mitra, Chartered Accountant, explained the topic with power point presentation. He explained the Companies Bill 2012 in detail, the advantages and limitations of the Companies Bill, 2012 and also apprised about some important provisions contained in the Bill. The queries raised by the participants were replied by the speaker.

In the Second Technical Session Sanjay Kedia, Renowned Personality Consultant & Trainer from Guwahati addressed on "Rewriting Future". He explained the topic with the help of power point presentation. He also motivated the students present for success in life. The queries raised were replied by the speaker satisfactorily.

» Northern India Regional Council

Campus Placement for Members and Students

On 5.1.2013 the Regional Council organized Campus Placement for Members and Students.

Vaishali Study Group Meeting on the Companies Bill 2012

On 12.1.2013 at the Vaishali Study Group Meeting on the



News From the Institute & Regions

Companies Bill 2012 CS Arun Gupta was the speaker.

Get-together and Dinner

On 19.1.2013 at the Get-together and Dinner CS S.N. Ananthasubramanian, CS Nesar Ahmad & CS B Narasimhan were the speakers.

West Zone Study Group Meeting on Opportunities for CS under the Companies Bill, 2012

On 20.1.2013 at the West Zone Study Group Meeting on Opportunities for CS under Companies Bill, 2012 CS Ranjeet Pandey was the speaker.

Meeting of Company Secretaries in Practice on Opportunities for PCS under the Companies Bill, 2012

On 21.1.2013 at the Meeting of Company Secretaries in Practice on Opportunities for PCS under the Companies Bill, 2012 CS Ranjeet Pandey was the speaker.

Study Circle Meeting on Financial Markets in India - Vision 2020

On 24.1.2013 at the Study Circle Meeting on Financial Markets in India - Vision 2020 CS Vivek Dwivedi and Rishi Mehra of Corporate Partners were the speakers.

South Delhi Study Group Meeting on CS Role in International Joint Venture

On 24.1.2013 at the South Delhi Study Group Meeting on the above topic CS Sunil K. Jain was the speaker.

East Zone Study Group Meeting on the New Companies Bill, 2012

On 25.1.2013 at the East Zone Study Group Meeting on the New Companies Bill, 2012 CS Ranjeet Pandey was the speaker.

Republic Day Celebration

On 26.1.2013 at the Republic Day Celebration CS S.N. Ananthasubramanian, CS Harish K. Vaid & CS Nesar Ahmad were the speakers.

North Zone Study Group Meeting on New Concepts and Opportunities for Company Secretaries under the Companies Bill, 2012

On 27.1.2013 at the North Zone Study Group Meeting on New Concepts and Opportunities for Company Secretaries under the Companies Bill, 2012 CS Vishal Lochan Aggarwal was the speaker.

Career Awareness Programmes

The Regional Council organised five Career Awareness Programmes during the month of January, 2013 in various schools & colleges located in Delhi and surrounding areas. CS J K Bareja & Himanshu Sharma addressed in these programmes. The students were apprised about the mode of registration in the CS course, syllabus, structure of the course and also the avenues available after completion of the Company Secretary ship Course both in employment and in practice.

Inauguration of 171st Management Skills Orientation Programme (MSOP)

On 3.1.2013 at the Inauguration of 171st MSOP CS Nesar Ahmad, then President, the ICSI was the speaker. On 19.1.2013 at the Valedictory session of the MSOP CS M.S. Sahoo, Secretary, ICSI was the speaker.

CHANDIGARH CHAPTER

Investor Awareness Programme on Challenges and Opportunities - Innovation of Capital Market

On 29.11.2012 the Chandigarh Chapter of NIRC of The ICSI organized an Investor Awareness Programme on Challenges and Opportunities - Innovation of Capital Market at Chandigarh. S Mukesh Sharma, the then Chairman of the Chapter while introducing the topic informed that these Investor Awareness Programmes being initiated by Ministry of Corporate Affairs are for the benefit of Investors and the public at large so that they can know about various investment opportunities and risk in the stock market.

The Chief Guest, Nipane Vilas Gajanan, Assistant Registrar of Companies, Punjab Chandigarh in his address highlighted the initiatives of the Ministry of Corporate Affairs for organizing such programmes. During his address he highlighted that a person who has some surplus hard earned money will always intend to earn some return thereon by investing the funds in some liquid securities. By doing so the said Investor undertakes the risk. The quantum of risk varies with volume of investment he or she makes. The Investor is primarily protected to the extent he/she is competent to understand the financial statement. Anything thereafter requires to be protected by the statute and Regulatory/Statutory Authorities. Of course it may not be possible for all the Investors to understand the statute, but the Government of India, Ministry of Corporate Affairs undertook this mission of social responsibility to educate all the investors all over the country. Accordingly, the protective measures undertaken by the Government have been adequately explained both by way of print and electronic media besides delegating the appropriate powers to the respective machineries including ROC Offices. The ROC office promptly acts upon any investor's complaint, directs the Companies settle the complaint and resolves the same to the



satisfaction of the Investors but the ROC office alone may not be of great help to the investors unless professionals also involve themselves.

Dr.A.K. Vashist, Chairman, University Business School (UBS), Panjab University, Chandigarh the Key Speaker highlighted the importance of personal investments to various avenues of investments, the pros and cons. He spoke on the role of SEBI, equity market, mutual funds, debentures, bonds etc. He also said that the general public before investing should keep themselves aware of the investment choices.

Dr. Manoj Sharma, Senior Professor, University Business School(UBS), Panjab University, Chandigarh the other Key Speaker highlighted the investment objectives, avenues of investment in the equities and debt market. He also spoke about mutual funds, how the stock exchanges work, how to invest in the market, depository participants, how to determine the financial position of the company etc. The programme was attended by a large number of investors including professionals. CS G.S.Sarin, Chapter Secretary coordinated the programme.

Foundation Day and Seminar on Companies Bill, 2012 and Investor Awareness Programme on Wealth Maximization through Stock Markets

On 31.1.2013 the Chapter organized its Foundation Day and a seminar on Companies Bill, 2012 an Investor Awareness Programme on Wealth Maximization through Stock Markets.

Chief Guest C Sanjay Tandon, President, BJP, Chandigarh, inaugurated the Foundation Day of the Chapter and also the Seminar. Sanjay Tandon in his address appreciated the efforts made by Chandigarh Chapter to make awareness of the Companies Bill, 2012 to the Professionals. He also said that the Bill will bring about new changes in the profession of Company Secretaries and others.

Key speaker CA Sumit Mahajan, Associate Director, Walker, Chandio & Co. with power point presentation addressed on Companies Bill, 2012. He covered the new concepts introduced in the Bill and also replied the queries raised by the participants. Rinkoo Vashish, Senior Manager, Master Trust Ltd. The other key speaker in her address highlighted why is investing important? She also highlighted the selection criteria before making investments and said that besides making investments in the capital market, the investor may also think making investments in the mutual funds which offers wide range of schemes to suit different needs of investors. She also highlighted dos and don'ts for investing in Mutual Fund Schemes. She said that before making any investment one should look into the Companies performance and their future plans for rights issues, dividend etc. She then replied the queries raised by the participants.

Guest of Honour (Dr.) CS Bhushan Kumar Sharma, Principal, GGSDS College, Chandigarh, in his address while supplementing the views of the Key speakers assured that certain more facilities shall be provided to the Chandigarh Chapter, which

is already having its office in the college premises.

CS K.V.Singhal, Managing Committee Member of the Chapter co-ordinated the programme. The Seminar and the Investor Awareness Programme were attended by more than 150 professionals and Investors.

Talk on Companies Bill, 2012

On 24.1.2013 the Chapter organised a talk on Companies Bill 2012. Key speaker CS Ranjeet Pandey, former Chairman NIRC highlighting the new amendments said that Government of India has decided to reduce the number of sections and the schedules in the new Bill. He also highlighted that incorporation of one man company concept is being introduced. This new Bill also open new opportunities for the professionals including company secretaries. The queries raised by the members were replied by the speaker. Chief Guest Azad Singh, Zonal Head, Indian Bank said that the new Companies Bill shall be good for industries/professionals. New opportunities shall be available for the professionals including company secretaries in practice. The other members Vishawjeet Gupta, Chapter Secretary coordinated the talk. More than 50 professionals attended the talk.

GHAZIABAD CHAPTER

One day Seminar on the Companies Bill, 2012

On 17.2.2013 the Ghaziabad Chapter of NIRC of the ICSI organized a One-day Seminar/Professional Development Programme on the Companies Bill 2012. Nesar Ahmad, Immediate Past President, the ICSI graced the occasion as the Chief Guest. He enumerated the importance of ethics in the Professional growth of the members. He emphasized on the impact and benefits of the Companies Bill 2012. There was lively interaction by the 120 members and students present.

The Technical Session on the Companies Bill, 2012 was dealt with by the speaker Harish Kumar, FCS and an associate of Amarchand & Mangaldas, India's leading corporate advisory law firm. He gave an overview of the provisions in the Bill including the objectives and the classification and registration of companies. He said that the Companies Bill, for the first time introduced the concept of One person Company (OPC), one more form of business organization. The Bill has 470 clauses and 7 schedules as against 658 sections and 15 schedules in the existing Companies Act, 1956. The entire Bill has been divided into 29 chapters. He said that the term ID (Independent Director) as having been defined for the first time in the Companies law. He also threw light on the provision relating to accounts of companies, audit and auditors. He also discussed the need for Corporate Social Responsibility which has been made mandatory. The members and students actively interacted with the speakers. The Professional Development Programme concluded after Valedictory Session and presentation of certificates to all the participants by Chairman Deepa Singhal and Vice Chairman Gulshan Thapar.



News From the Institute & Regions

GURGAON CHAPTER **ICSI-ICRA Full Day Seminar on Capital Markets, Credit Market and Corporate Governance**

On 21.12.2013 Gurgaon Chapter of NIRC of the ICSI in association with ICRA organized a full day seminar on Capital Markets, Credit Market and Corporate Governance at Gurgaon. The main purpose of the seminar was to make the members aware about the importance of credit rating and corporate governance. CS Punit Handa in his welcome address said that the seminar aims to make aware various stake holders of the Indian capital market and to provide them an opportunity to share views on corporate governance, credit ratings etc. He thanked ICRA for providing such opportunity to Gurgaon Chapter.

CS Dhananjay Shukla, NIRC Member while introducing the theme of the seminar said that the purpose of the seminar was to equip the members of the Institute with all possible avenues of corporate governance.

CS Ranjeet Pandey, Past Chairman NIRC said that the topic was very relevant not only for practising members but also members in employment.

CS Santosh Sharma, Chapter Secretary introduced the speakers from ICRA and moderated the First Technical Session wherein Javed Habib from ICRA spoke on the basic aspect of credit rating process, elaborating that an entire team work is required to analyze a particular company for credit rating. It requires standard and specific information of the business environment in which the company operates.

Amit Nain from ICRA informed the members about other details required for credit rating process like annual reports, cash flow pattern, board composition, etc.

Rohit Gupta from ICRA informed about the deeper details of the credit rating process and said the fee taken by rating agencies are independent of ratings assigned and are predetermined in most of the cases. Also the team which undertakes rating process is also kept aloof from the dealing companies for which the ratings are being done. He also clarified IPO grading and said IPO grading is different from an investment recommendation. Investment recommendations are expressed as 'buy', 'hold' or 'sell' and are based on a security specific comparison of its assessed 'fundamentals factors' (business prospects, financial position, etc.) and 'market factors' (liquidity, demand supply etc.) to its price. On the other hand, IPO grading is a relative comparison of the assessed fundamentals of the graded issue to other listed equity securities in India. On SEBI guidelines in this regard he said that every unlisted company obtaining grading for IPO shall disclose all the grades obtained, along with the rationale discretion furnished by the credit rating agency (ies) for each of the grades obtained, in the prospectus, abridged prospectus, issue advertisements and at all other places where the issuer company is advertising for the IPO.

In the Second Technical Session on corporate governance CS

Parvesh K Kheterpal, Vice Chairman Gurgaon Chapter spoke about the requirement of Corporate Governance for big corporate houses as well as SMEs in India and emphasized the role of Company Secretary for implementation of better Corporate Governance in the organization.

Ketan Mukhija from Vaish Associates while deliberating on the subject stated that the way a company is organized and managed to ensure that all financial stakeholders (shareholders and creditors) receive their fair share of a company's earnings and assets. He further informed that The Cadbury Committee was set up in May 1991 with a view to overcome the huge problems of scams and failures occurring in the corporate sector worldwide in the late 1980s and the early 1990s. On developments in Indian front he said that the initiatives taken by the Government in 1991, aimed at economic liberalization and globalization of the domestic economy, enable it to suitably respond to the developments taking place the world over. On account of the interest generated by Cadbury Committee Report, the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted Committees to recommend initiatives in Corporate Governance. Confederation of Indian Industry (CII) took a special initiative on Corporate Governance, the first institutional initiative in Indian Industry. He also discussed in detail the elements of good corporate governance. MCA initiative in this regard include Corporate Governance Voluntary Guidelines, 2009 on December 21, 2009 to provide Corporate India a framework to govern themselves voluntarily as per the highest standards of ethical and responsible conduct of business. There was a question - answer session at the end of the session.

Valedictory Function of 10th MSOP

Gurgaon Chapter organized the valedictory function of 10th MSOP. On this occasion CS M G Jindal, Vice Chairman NIRC was the Chief Guest. CS Shyam Agrawal, Secretary NIRC was the Guest of Honor on the occasion. Certificates to all the participants were distributed. Best participant award went to Parmod Kumar Chaubey and Nitasha Tanwar. The award for the best project report was given for Working Capital Management to the group comprising Ashtha, Neha and Madhuri. Best presenter group award was given for Goods & Services Tax to Harvinder, Nitasha and Parul. Satyajit was adjudged as the best male presenter and Princi the best female presenter.

Felicitation Function

On 21.1.2013 Gurgaon Chapter organized a function to felicitate outgoing chairman CS Punit Handa. On this occasion contribution of the outgoing Chairman for the Chapter was acknowledged.

Study Circle Meeting on Critical Issues & Appearances before Quasi-judicial Bodies

On 01.2.2013 the Chapter organized a study circle meeting on



Critical Issues & Appearances before Quasi-judicial Bodies. CS Saurabh Kalia, Partner Sastra Legal, New Delhi was the Guest Speaker who in his address explained the importance and role of the various quasi-judicial bodies. He also highlighted the importance of the various tribunals in the day-to-day working of a CS in employment as well of a PCS. Various Quasi-judicial Bodies which have high importance in the working of a CS were highlighted like Company Law Board (CLB), its functioning, jurisdiction and certain critical issues were highlighted. Similarly Board for Industrial & Financial Reconstruction (BIFR), Competition Commission of India (CCI), TDSAT, Securities Appellate Tribunal (SAT) and several other quasi-judicial bodies were highlighted. The speaker highlighted the scope & opportunities which are available in such Bodies for CS professionals. He also mentioned certain critical aspects which a CS professional should keep in mind in such quasi-judicial Bodies. The members present also deliberated and discussed various intricacies of such Bodies, their jurisdiction, working and scope of work. At the end a brief discussion also took place among the members.

Special Talk on Competition Law - Issues in Media & Technology Sector

On 11.2.2013, the Chapter organized a Special Talk on the above topic. The talk was delivered by CS Ashish Chandra, Head - Legal (Media & Technology), Reliance Industries Limited who elaborated on conflicts between the laws on intellectual property rights and competition law. He laid significance of IPR laws and competition law to augment the interest of creative and intellectual industry while safeguarding the interest of the public at large including consumers. He further dwelled upon role of competition regulator and the respective industry regulators and how competition act ensures harmony between multiple regulators. He insisted that lawyers and CS should carefully analyze the best proposition for their clients i.e. whether to seek remedies under respective IPR statutes especially under fair use principles or under statutory/compulsory licensing or under competition law i.e. anticompetitive agreement or abuse or dominance. He further shared his views on certain principles which could be considered to determine relevant market (i.e. relevant product/relevant geographic market) for Media, Broadcasting, Internet, Technology and Sports industry. He also shared his opinion on what could be the future issues in the media and technology sector that will be debated within competition law and IPR law circles. He ended his presentation with his personal opinion and suggestions for business and legal professionals in ensuring proper compliance and mitigation of risks under competition law and emphasized that CS can play a crucial role in competition law advocacy while discharging their function as full time company secretary of a company. CS should carefully read and analyze the draft agenda of board/committee meetings and should flag off competition law concerns and advise the management on compliances and risk

mitigation early in the process.

In the end a brief discussion took place among the members. CS

» Southern India Regional Council

Investor Awareness Programmes

The ICSI - SIRC organized Investor Awareness Programmes at the following educational institutions. These Investor Awareness Programmes were sponsored by the Ministry of Corporate Affairs, Government of India.

On 11.1.2013 the investor awareness programme was held at DB Jain College, Thoraiakkam, Chennai. S Mahadevan Retired Chief Manager Andhra Bank, Chennai [Member, Tamilnadu Investors Association] was the speaker; on 12.1.2013 the programme was held at RV Government Arts College, Chengalpattu. S Venkatesan, Treasurer, Tamilnadu Investors Association was the speaker; on 22.01.2013 at Kanchi Shri Krishna College of Arts & Science, Kilambi, Kanchipuram. S Mahadevan Retired Chief Manager Andhra Bank, Chennai [Member, Tamilnadu Investors Association] was the speaker; on 24.01.2013 at Saveetha School of Management, Saveetha University, Velappanchavady, Chennai. A R Vasudevan, Regional Manager, Central Depository Services India Limited, Chennai was the speaker.

Career Awareness Programmes

On 18.1.2013 the ICSI - SIRC organized Career Awareness Programmes at Periyar Government Arts College, Cuddalore, Kandasamy Naidu College for Women, Cuddalore. Dr.V.Balaji, AEO, ICSI-SIRO spoke about the CS course at the above colleges. The students were explained in detail about the course. The short film on the CS course was also screened on the occasion. The students actively interacted with the official.

Republic Day Celebration

On 26.1.2013 the 64th Republic Day of our great nation was celebrated at ICSI- SIRC on a grand manner. CS Vijayakumar C, Director - Finance and Company Secretary, Cognizant Technology Solutions [CTS], Chennai hoisted the National Flag. CS Dwarakanath C, Chairman, ICSI-SIRC hoisted the ICSI flag. In his welcome address, CS Dwarakanath C recalled the sacrifices made by freedom fighters and emphasized that it is the duty of all citizens to work for the growth of our nation. CS Dr. B Ravi, Member, ICSI-SIRC, in his address stressed on the efforts that should be taken to see that every citizen enjoys the rights mentioned in the constitution. He also pointed out that the professionals have more responsibilities to play in the development of the nation.

CS Vijayakumar wished the members and students on the occasion and urged them to get into the profession at the earliest,



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as Corporate India requires more professionals. He indicated that the New Companies Bill, 2012 envisages a greater role and responsibilities for Company Secretaries. He requested the members to follow the professional ethics and integrity so as to add value to the CS profession. The professionals have a great role to play in the development of the nation by being the guardian of corporate governance in organizations, he added.

Inauguration of the 14th Management Skills Orientation Programme (MSOP)

On 30.1.2013 the 14th MSOP of the ICSI - SIRC was inaugurated by CS Henry Richard, Registrar of Companies, Tamilnadu, Chennai. Earlier, Sarah Arokiaswamy, Joint Director, ICSI-SIRC in her welcome address explained the programme guidelines and urged the participants to be interactive during the fifteen days programme.

CS Dwarakanath C, Chairman, ICSI-SIRC in his address emphasized for being updated with the latest happenings in the laws and industry which is foremost and important for the profession of CS. He observed that the Companies Bill, 2012 has made the CS profession more challenging and it is up to the young CS to establish them. He also advised the participants to be more interactive and attentive during the sessions.

In his inaugural address, the ROC stressed on to acquire a through knowledge in the matters relating to the profession. For this, he observed that constant updation on various laws and attending the professional development programmes is vital. He also suggested the participants to take up the Civil Services Examination and work in the Ministry under the Indian Company Law Service. The ROC, further stated that the professionals should be neutral while carrying out their professional assignments and follow the ethics which will go a long way in ensuing success.

CS Ramasubramaniam C, Treasurer, ICSI-SIRC advised the participants to come prepared with the topics of the next day, so that healthier interactions with the faculties can be made.

Study Circle Meeting on Class Action Suits under the Companies Bill 2012

On 30.1.2013 CS A M Sridharan, Company Secretary in Practice, Chennai while addressing at the Study Circle Meeting explained in detail the Class Action Suits. He observed that the class action suits are also known as representative action and that it is a civil action. He further clarified that a class action is brought by one or more people for themselves and other people, for the benefit of all persons so interested. While explaining about its features, the speaker explained that it reduces litigation costs, avoids repetition of same witnesses, documents and trial time. Sridharan opined that the class action suit ensures that all the interested persons receive relief and the early bird alone does not get the relief. The speaker made a comparison between Class action under the Companies Bill 2008 and 2012 and the procedures contemplated by the Bill, 2012. The members actively interacted with the speaker.

All Regional Councils Joint Seminar on CS - Precision and Performance at Tirupathi

On 18 and 19.1.2013 a Seminar on the theme CS - Precision and Performance was jointly organized by All the Regional Councils of the ICSI at Tirupathi. The seminar was inaugurated by R Govindarajan, IRS, Commissioner of Income Tax, Tirupathi who in his address opined that the themes deliberated at the conference are apt in the context of the existing economic scenario for the professionals. On 18.1.2013 the first technical session was handled by CS Sridhar R, Company Secretary, Cheyyar SEZ, who made an elaborate presentation on the SEZ. He explained that the SEZ are the engines for economic growth and helps in employment generation and up gradation of managerial and technical skills. While speaking on its features, Sridhar explained that these SEZ are governed by the Act of Parliament and rules framed there under and is deemed outside customs territory. The setting up of new SEZ requires approval from the Board of Approval, Ministry of Commerce and the recommendations from the respective State Government are also necessary, he added. Sridhar also deliberated on the minimum area requirements of starting SEZ, authorized operations and direct tax incentives available to the developer and co-developer under section 80-IAB of the Income Tax Act 1961 and the indirect tax benefits.

Dr. S.D. Israni, Advocate, Mumbai addressed on the Companies Bill, 2012 at the Second Technical Session. He made an elaborate presentation with special reference to Secretarial Audit, Key Managerial personnel and matters connected with Company Secretaries role and responsibilities.

The Third Technical Session was addressed by CS K Ramesh, Advocate, Chennai on FEMA updates. While speaking on the features of FEMA, he observed that the focus of law has changed from accounting and controlling in FERA to orderly development of forex market and facilitating external payments. Ramesh explained about the alignment of certain definitions such as person, person resident in India and it is similar to income tax law and the capital and current account transactions. He added that the rigor of penal provisions has been diluted and the quantum of penalty been reduced and the Central Government retain residuary power to suspend or relax the law. On 19.1.2013 the Fourth Technical Session of the Seminar was addressed by Sriraman Parthasarathy, Partner, Deloitte Haskins & Sells, Chennai on Accounting and Auditors Role and related matters in the Companies Bill 2012. He spoke on the books of accounts to be kept by the company [Clause 128], Financial Statements [Clause 129], reopening of books of accounts [Clause 130] and constitution and powers of National Financial Reporting Authority. Sriram also threw light on the statements to be laid before a company in general meeting. On the auditors' role he explained the delegates on auditor's appointment [Clause 139], removal and resignation of auditors



[clause 140], eligibility of auditor's appointment [clause 141] and matters to be stated in the auditor's report.

The Valedictory Session was addressed by L V Subramanyam, IAS, Executive Officer and Member Secretary [Ex Officio], Thirumala Tirupathi Devasthanam, Tirupathi. He lauded the efforts of ICSI-SIRC in organizing the seminar at Tirupathi. He observed the growing role and responsibilities of the professionals in the corporates and in practice. The guest of honour for the session was K Vidyasagar Reddy, Chairman and Managing Director, Andhra Pradesh State Power Distribution Corporation Limited, Tirupathi. Reddy suggested that the role of CS has been redefined in the Companies Bill, 2012 and more responsibilities has been vested on them. The seminar concluded with the summing up of the proceedings of the two days.

BANGALORE CHAPTER **Study Circle Meeting on Companies Bill, 2012 - A Bird's Eye View**

On 11.1.2013 the Bangalore Chapter of SIRC of the ICSI organised a Study Circle Meeting for Members on the above topic at its premises. CS S. Kailasam, Financial Controller & Company Secretary, Unisys India Pvt. Ltd., Bangalore was the speaker who in his presentation gave an overview of the Companies Bill 2012 - A comparative study with Companies Act, 1956 and highlighted the new concepts/new definition of terminologies like Concept of One Person Company; small companies; Conversion of already registered companies; Appointment of Key Managerial Personnel [Clause 203(1)]; secretarial standards; secretarial audit etc. He also dealt with the concepts like board, committee, governance; independent directors etc. The programme was well attended by 58 Members & Students.

On the same day another study circle meeting for Members on Service Tax implications in the Changed Era was held at the Chapter Premises. CS K. Chandra Sekhar, Company Secretary, Ace Designers Limited, Bangalore was the speaker who in his address stated that the Government has introduced a new system of levying service tax under the banner of negative list w.e.f. 1-7-2012. The concept of negative list has brought significant changes in terms of applicability and discharge of obligations. He emphasised that in the changed era, service tax is required to be charged on all services except on negative list of services and exempted services. He dealt with the word 'service' and emphasised that it is defined as 'any activity carried out for consideration'. Activity for Non-monitory consideration also attracts service tax. He further added to this, that notification 30/2012 has imposed another obligation on Corporates availing certain services from non-corporates called Reverse Charge Mechanism (RCM), which requires service recipient obligated to discharge the obligations of service provider. He also dealt with Service Rules 2005 and Import of Services Rules 2006 which has now become obsolete and new

rules called Place of Provision of Services (POP) Rules, 2012 which have been notified. The programme was well attended by 29 Members & Students.

Open house meeting on Proposed Modifications to the Existing Framework for Buy Back through Open Market Purchase

On 25.1.2013 the Bangalore Chapter of the ICSI organised at its premises an Open House Meeting on Proposed Modifications to the Existing Framework for Buy-back through Open Market Purchase. CS R. Vittal, Company Secretary, Bangalore and CS S. Prasad, Company Secretary, Communication Technologies Ltd., Bangalore were the speakers.

The speaker stated that "buy back of shares" has always invited more questions and compliance and apprised the members that SEBI is attempting to modify the existing rules to meet the challenges of refined market structure and further highlighted the proposed modification in buy back framework. The members expressed their opinions and suggestion on the proposed modification and insisted it to be submitted to SEBI for consideration. The programme was well attended by 22 Members & Students.

Career Awareness Programmes

The Chapter conducted the following Career Awareness Programmes during the month of January 2013. On 9.1.2013 the Career Awareness Programme was held at R.V. Institute of Management, Bangalore for First year MBA Students. 90 students attended the programme. On 17.1.2013 at R.V. Institute of Management, Bangalore for First year MBA Students. 120 students attended the programme. On 24.1.2013 at Seshadripuram First Grade College for all three years degree students. More than 500 students taken together participated in the Career Awareness Programmes. Noor Sumayya, AEO, Bangalore Chapter was the speaker who explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc., the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. She also highlighted the opportunities available to the profession and further enumerated the emerging areas of practice and the changing role of Company Secretary. She also focused on what would be the mindset and preparation required from a student who wanted to pursue the Company Secretaryship Course. Brochures explaining CS course were distributed to the students.

COCHIN CHAPTER **One Person Company Under the Companies Bill 2012**

On 11.2.2013 the ICSI Kochi Chapter conducted a Professional Development Programme on One Person Company under the



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Companies Bill 2012 at Ernakulam. The speaker of the session was CS. N. Balasubramanian, Director and Chief Consultant of M/s. Directus Consultants Pvt. Ltd, Ernakulam.

The programme was unique as it focused on all aspects of One Person Company. It was well attended by many members as well as students. The participants actively interacted with the speaker, clarified their queries and critically analysed all the clauses with respect to One Person Company and the possible impact of it. The session on the whole was a very informative, updated and lively.

COIMBATORE CHAPTER Full day Seminar on the Companies Bill 2012

The New Companies Bill had presented itself with lot of challenges and opportunity for the profession and Chapter felt that it's the responsibility of the Chapter to highlight and prompt a knowledge sharing session which would guide the members in understanding the future better. The Chapter, immediately after the Bill was passed in the Lok Sabha, organized a full day Seminar on Companies Bill splitting the Bill into four Technical sessions addressed by experts in particular area.

Dr. K.S. Ravichandran, Practicing Company Secretary, Coimbatore deliberated on Major Compliance Aspects & Governance Initiatives.

R. Vidyashankar from Ramani and Shankar, Corporate Advocates, Coimbatore deliberated on Judicial Aspects - NCLT- Expanded Jurisdiction; Unexplored Avenues.

K. Ravi, CFO & Company Secretary, Roots Industries India Limited deliberated on Board of Directors.

K. Badri Narayanan, Practicing Chartered Accountant deliberated on Accounts & Audit Aspects.

More than 142 members participated in the seminar where Members were awarded 4 PCH hours and students 8 PDP hours.

Investor Awareness Programme on Capital Markets

With the recent initiatives from the Ministry of Corporate Affairs on educating the Investors on means and complexities of Investment and associated risk with the same, the Chapter organized an Investor Awareness Programme on Capital Markets & Investors for the prospective investors present in and around Coimbatore. Eminent Industries personnel participated in the same and more than 86 Investors participated and benefitted from the same. The Investors had their doubts clarified from K. Annamalai, former President, Coimbatore Stock Exchange; K. Thangaraj, CEO, Aashirvaadh Financial Services, Coimbatore; K. Ganesh Babu, Founder Director, Aashirvaadh Financial Services, Coimbatore.

Career Awareness and Quiz Programme

On 20.1.2013 the Coimbatore Chapter of ICSI organized

Coimbatore Vizha Quiz programme in association with the CII, Coimbatore. The Chapter also conducted Career Awareness programme to more than 116 students on the same day at the same venue.

HYDERABAD CHAPTER Republic Day Celebrations

On 26.1.2013 the Chapter celebrated Country's 64th Republic Day at its premises. Dr. P. V. S. Jagan Mohan Rao, Former President was the Chief Guest and hoisted the National Flag and addressed the gathering. Council Members, Regional Council Member and Managing Committee Members also graced the occasion. A good number of students were also present on the occasion.

Annual Fellowship Meet

On 26.1.2013 the Chapter organized the Annual Fellowship Meet for its members which was attended by members and their families. CS S. Balachandra, FCS, organized various programmes including fun activities for members and their children, which were thoroughly enjoyed by all and the funds thus collected were donated to Abhaya Foundation. The meet was a huge success because of active participation of Members and their families in the games and cultural programmes performed and organised by the students. Vijay Chander, Tollywood Actor, Producer & Director was the Chief Guest. He also addressed the gathering and emphasized the importance of Company Secretary in the Corporate World.

MADURAI CHAPTER Press Meet

On 12.12.2012 the Chapter organized a Press meet with the then President Nesar Ahmad at Madurai. The President pointed out about the Massive increase in demand for the Company Secretaries, once the Companies Bill is passed in Parliament. He reiterated that the rules of the game are going to change, as the new Bill will focus on compliance laws in terms of filing tax returns, disclosures and auditing. Besides the offences by companies will attract penalty, and hence in that context, the role of Company Secretaries will become important soon, he further reiterated. He also spoke on ICSI, infrastructure, Vision and Mission, Vision 2020. He informed that the Institute is in the process of introducing two new PMQ Courses. He also informed that CSIA is represented by 70,000 governance professionals spread over 70 countries and stated that ICSI is a founder member of Corporate Secretaries International Association, which is a global body. The purpose of CSIA is to improve professional standards, the quality of governance practices and to ultimately improve organizational performance. CII Meet: Latter the then President presided over the Joint programme in association with CII, Madurai, held for the industry members, Company Secretaries besides students. He



spoke about the Industry and the resulting advantages for the economy as a whole. S.Kumararajan, the then Chapter Chairman also spoke about the Joint efforts with industry by the Profession of Company Secretaries for mutual benefit and growth.

Interaction Session: Thereafter Nesar Ahmad participated in an Interaction session held for the members and students - well attended by a gathering of 75 persons, including students. At the session the then President replied the queries raised by the members and students on matters relating to profession, and curriculum. The Institute is in transformation stage. Expectation of the trade and industries from the professionals is manifold today. To face the challenges to provide real-time value added services to the stakeholders the ICSI has embarked on major technology transformation to have real-time e-mode solutions, said Ahmad.

Joint Seminar

On 14.12.2012 the Chapter in association with Lady Doak College, Madurai organised a one day Joint Seminar on Emerging Trend in Corporate Sector. The Principal Dr. Mercy Pusphalatha presided over the function. S.Kumararajan, the then Chapter Chairman addressed on the topic. CS Rajiv Choubey, Company Secretary - Head Legal M/s.Sterlite Industries, Tuticorin also addressed on Corporate Governance and Corporate Social Responsibility. Omprakash, Corporate Advisor, dealt with Foreign Direct Investment, Dr. Mayil Murugan, Council Member, SIRC of the ICAI discussed the topic Limited Liability Partnership and T. Saraswathi, Practising Company Secretary gave a lecture on Amendments in Companies Law Bill, 2012.

One Day Seminar on Service Tax, Central Excise, Customs and TN VAT

On 22.12.2012 the Chapter organised a one day seminar on Service Tax, Central Excise and Customs and Tamilnadu VAT. The Chief Guest of the programme was B.Parathasarathy, Deputy General Manager and Zonal Manager, Indian Bank Madurai. The First Technical Session was on Service tax procedures. The speaker of the session was R.Srivatsan, Superintendent, Central Excise (LTU) Chennai. The Second Technical Session was on Central Excise and Customs Duties. The speaker of the session was J.Britto, Advocate, Madurai. The Third Technical session was on Tamilnadu Value added Tax. The speaker of the session WAS M.Krishnan, Former Deputy Commissioner, Commercial Tax, Government of Tamil Nadu. Around 77 delegates participated in the programme.

Investor Awareness Programmes

Madurai Chapter successfully organized three Investor Awareness Programmes during the month of January 2013. On 9.01.2013 the first programme was held at Lady Doak College, Madurai. The Programme was sponsored by the Ministry of Corporate Affairs. The Chief Guest was E.Selvaraj, Regional

Director, Ministry of Corporate Affairs, Chennai. In his address he emphasized the need and awareness for investments by the young ones especially the students in proper channels and a correct decision to be taken depending upon the requirements. The speaker of the programme Kumaravelu, Area Head - M/s, Karvy Broking Ltd, Madurai explained the avenues for the investments.

On 10.1.2013 the next programme was organized at Madurai Kamaraj University, Madurai. The Chief Guest was E.Selvaraj, Regional Director, Ministry of Corporate Affairs, Chennai who in his address advised the participants to be careful in taking decision for investments and also advised them to pursue company secretary ship course simultaneously with their course of study. This will further give them insight to the securities and markets apart from the usefulness for employment and practice. Kumaravelu, Area Head - M/s, Karvy Broking Ltd, Madurai spoke on opportunities in equity markets.

On 21.1.2013 one more Investor awareness Programme was organized by the Madurai Chapter at Thiagarajar School of Management, Madurai. Prof. Gautam Ghosh, Director TSM welcomed the gathering. The speaker of the programme was C.Murugesan, Vice-President and Zonal Manager, M/s. Religare Securities, Madurai.

Career Awareness Programmes

On 8.1.2013 the Chapter Organized a Career Awareness Programme at Madura College, Madurai. 1st year B.com, B.B.A B.Sc. students attended the programme.

On 10.1.2013 the Career Awareness programme was held at Madurai Kamaraj University, Commerce Department. Around 200 students participated in the programme. Again on 29.1.2013 the Chapter organized a Career Awareness programme at Saint Xavier's College, Tirunelveli. Around 300 students from B.Com (CS), B.B.A and B.Sc. participated. In all the programmes S.Kumararajan, Chapter Chairman gave a brief introduction of the CS Course, Course Structure, fees, employment opportunities and avenues for self-employment and T.Raja, Chapter office in charge distributed the course brochures to the participants.

SALEM CHAPTER

Investor Awareness Programmes

On 21.12.2012 the Salem Chapter of SIRC of the ICSI conducted an Investor Awareness Programme at Shri Sakthi Kailash Women's College on How to Build Investor Confidence. The programme was presided over by Dr. M. Manuneethi Cholan, Registrar of Companies, Coimbatore and was attended by nearly 400 commerce students belonging to under-graduation and post-graduation courses. In his address the ROC-Coimbatore dealt with the need for confidence in oneself



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and stated how one's confidence would boost decision making process when investing in a securities market. He also stressed that students' savings should be tapped appropriately and diligently to take care of them in future. S Kannan, Assistant General Manager and Company Secretary, Karur Vysya Bank, Karur informed the audience about the efforts undertaken by the Securities and Exchange Board of India, Ministry of Corporate Affairs, Registrar of Companies, etc., in creating awareness among the investors to be vigil before making investment decisions.

Again on 4.1.2013, the Chapter conducted an Investor Awareness Programme in K.S. Rangasamy College of Arts and Science. The programme was presided over by CS Marthi S S, Chairman of the SIRC of the ICSI and was attended by nearly 200 commerce students. He emphasized the need for creating awareness among investors in the capital market. Earlier, Kannan, Assistant General Manager and Company Secretary, Karur Vysya Bank, Karur and MSO Annamalai, Consultant in Stock Investment, Salem addressed the gathering on various measures to be undertaken by the Securities Exchange Board of India and various other authorities in protecting the investors in the capital market. CS Solaiyappan S, Chairman and CS Gnanasekaran S, Vice Chairman of the Salem Chapter of the ICSI also addressed emphasizing the issues faced by the Investors in the capital market.

Career Awareness Programme

On 22.12.2012 the Chapter conducted a Career Awareness Programme on Career Opportunities for ACS in Srinivasan College of Arts and Science, Perambalur. CS Solaiyappan S, Chapter Chairman addressed the students of the Department of Commerce. He emphasized the need for Company Secretaries in the light of the passage of the Companies Bill in the Lok Sabha. During the interactive session CS Solaiyappan clarified the students' doubts. Srinivasan A, Founder and Chairman of Dhanalakshmi Srinivasan Educational Institutions presided over the meeting.

Again on 4.1.2013 the Chapter conducted Investor Awareness Programme in K.S. Rangasamy College of Arts and Science. The programme was presided over by CS Marthi S S, Chairman of the SIRC of the ICSI and was attended by nearly 200 commerce students. The Chairman in his address emphasized the avenues and the opportunities available for the Company Secretaries by advising the students to pursue the Company Secretaryship Course. CS Solaiyappan S, Chairman and CS Gnanasekaran S, Vice Chairman of the Salem Chapter of the ICSI, addressed the students and explained them about the CS Course and the prospects of the profession.

Chapter's Day and Members Meet

On 4.1.2013 as a part of the Chapter's Day celebration, Members and Students Meet was conducted. The programme

was presided over by CS Marthi S S, Chairman of SIRC of the ICSI. The Chartered Accountants and the Cost Accountants of the Salem Branch of the ICAI and ICWAI also participated in large number. CA Sreeraman V, Chartered Accountant addressed the gathering on the need for integrity in the profession. Dr. Muthu Kumar N, Managing Director of Sisu Hospital India Limited, Salem emphasized that the students should keep themselves updated on various developments in the corporate scenarios. CS Santhanam, Chapter Secretary embossed the achievements of the Chapter for the past several years. CS Marthi S S, Chairman of SIRC of the ICSI, in his presidential address encouraged the students to set goals for future endeavours by sharing his personal experience and also explained the activities of the Institute. He also appreciated the achievements of the Chapter. The event also witnessed felicitation of meritorious students in June 2012 CS Examinations. Earlier, CS Solaiyappan S, Chapter Chairman in his welcome address explained the various student services being undertaken by the Chapter.

Western India Regional Council

25th Management Skills Orientation Programme (MSOP)

ICSI-WIRC organised its 25th Management Skills Orientation Programme from 1.2.2013 to 16.2.2013.

T.R.C. Nair, Former Executive Director, Binani Ltd was the Guest of Honour during the Inaugural function. He shared his rich experience with the participants and briefed them on the changing role of the profession. He said that apart from Secretarial knowledge a Company Secretary should also possess knowledge on Labour Laws, Tax Laws, etc. in addition to Computer skills and drafting skills.

Atul Mehta, Central Council Member, the ICSI; Ragini Chokshi, Vice Chairperson, WIRC and Prakash Pandya, Regional Council Member also graced the inaugural session by their presence. The 15 days MSOP was a good blend of Soft Skills & Technical Sessions. Various topics like Communication & Presentation Skills, Etiquettes, Emotional Intelligence, Stress Management, From Classroom to Boardroom, FEMA, IPO, Revised Schedule VI, Diligence Reports for Banks etc. were covered during the MSOP.

The Project presentations were held on 14.2.2013. The group comprising Sandhya Lakshmanan, Bhavna Awatramani, Ajitkumar Sharma, Darsha Sanghvi who made a presentation on an Overview of IPRs Laws in India was adjudged as the best project group and Madhavi Rajyagor was adjudged as the Best Presenter.



A visit was arranged to National Stock Exchange on 15.2.2013 where the participants got exposure to the Stock Market operations.

The Valedictory session of the MSOP was held on 16.2.2013. Pramod Shah, Past Chairman, WIRC and Prakash Pandya, were present and shared their experience with the participants & distributed the certificates.

Prasanjit Kumar Baul was adjudged as the Best Participant of the 25th MSOP.

AHMEADABAD CHAPTER

Study Circle Meetings

On 4.1.2013 the Ahmedabad Chapter of WIRC of the ICSI organized a Study Circle Meeting for the Members. The session was taken by CS Utpal Shah, Head - Gujarat Region, Central Depository Services (India) Ltd. (CDSL) on Rajiv Gandhi Equity Savings Scheme. The study circle was attended by 51 Members who were allotted 01 PCH.

Again on 18.1.2013 the Chapter organized a Study Circle on Company Secretary - Corporate Governance and Bhagwad Gita. Addressed by CS PVS Jagan Mohan Rao, Past President, the ICSI the study circle was attended by 50 Members who were allotted one PCH and Company Secretary students eligible for one hour of PDP.

Yet again on 2.2.2013 the Chapter organized a Study Circle Meeting on Guidance Note on Real Estate Accounting. Akash Loonia, Assistant Manager at KPMG Accounting Advisory Services discussed the topic and deliberated on audit standards and valuation of properties in different sectors. The study circle session was attended by 47 Company Secretaries who were allotted 01 PCH.

Republic Day Celebration

On 26.1.2013 the Chapter celebrated the Republic Day. The Chapter was decorated and National Flag and ICSI Flag were hoisted in presence of senior members and students of the Chapter.

CS Ashish Doshi, WIRC Member and CS Chetan B Patel, Chairman Ahmedabad Chapter, unfurled the National Flag & ICSI flag. Thereafter, there was rendition of National Anthem.

Visit to Hemchandracharya North Gujarat University, Patan

On 30.1.2013 CS Umesh H. Ved, Central Council member, The ICSI was invited to grace the inaugural ceremony of 'WISDOM 2013' a state level contest of Excellence in Management at Hemchandracharya North Gujarat University HNGU, Patan. The Chapter Chairman CS Chetan B Patel and DO Anu Varghese also accompanied ICSI Council Member for the event. CS Umesh Ved shared the knowledge and importance of Company Secretaries Course in the development of a Company Secretary profession. He also expressed his views on the future prospects of the profession.

Thereafter, a meeting was held with the Hon. Vice Chancellor of University Dr. Hemixa Rao, Dr. Ashwin Modi for considering the proposal of HNGU under PPPS/Accredited Center for imparting oral coaching classes to the registered students of the Institute. The concerned were briefed about the ICSI guidelines pertaining to imparting of CS Coaching to students and for conduct of Career Awareness Programme in future.

PUNE CHAPTER

Career Awareness Programmes

On 24.2013 the Pune Chapter organized five Career Awareness Programmes in H V Desai College, Pune to apprise the students on Career as a Company Secretary. CS Girish Paralikar was the faculty for the session. More than 250 students attended the Career Awareness Programmes. Brochures for the CS course were distributed amongst the students present on the occasion.

Seminar on the Companies Bill 2012

On 19.1.2013 the Chapter organized a seminar on the Companies Bill 2012 at Pune. CS DR K R Chandratre, Past President, the ICSI and CS Rajkumar Adukia graced the seminar with their informative and thoughtful presentations and interaction with the participants. About 175 members/students attended the programme. The Technical Sessions were extremely informative & were well appreciated by the gathering at large. Four (4) PCH were allocated to members who attended the programme and 8 PDP hours were allocated to the students attending the programme.

Sports Week 2013

From 20.1.2013 to 27.1.2013 the Chapter organized sports week in which various sports and recreation activities viz. Chess, Carom, Cricket, Table Tennis & Badminton and Painting Competition were conducted for CS members and students. The Sports Week received encouraging response from the members as well as the students.

THANE CHAPTER

Turnaround Management and Corporate Restructuring

On 5.1.2013 the Thane Chapter of WIRC of the ICSI organised a programme on Turnaround Management and Corporate Restructuring at Thane (W). ICSI-CCGRT was the Knowledge Partner for the programme. Participants were Company Secretaries, Chartered Accountants, other professionals and students of various professional courses. Around 80 people participated in the programme. S R Lohokare, Managing Director, National Peroxide Limited, Sharad Abhyankar, Partner, Khaitan & Co., Mumbai, R Balakrishnan, Company Secretary, Pune, Shashikala Rao, Practising Company Secretary, Mumbai were the Speakers for the programme.



ICSI - CCGRT

Programme on Companies Bill, 2012

Following the passing of the Companies Bill, 2012 by Lok Sabha on 18.12.2012, ICSI-CCGRT has been conducting a series of awareness programmes on the Companies Bill, 2012. The second programme of such series was held at its premises in CBD Belapur, Navi Mumbai on 17.1.2013. The speakers for the programme were Suresh Thakurdasai, Former Chairman, ICSI-WIRC, N L Bhatia, Practising Company Secretary, Mumbai, Dr. K S Ravichandran, Partner, KSR & Co. Company Secretaries, Coimbatore, Shashikala Rao, Practising Company Secretary, Mumbai and Jayesh Thakur, Associate Director, Pricewaterhouse Coopers Pvt. Ltd.

Suresh Thakurdasai commenced his introductory remarks by giving the background of the Companies Bill, 2012 and stated that the Companies Bill, 2012 instils a new light and unlimited hope in the minds of all. It is expected to be approved by the Rajya Sabha in the Budget Session. After bringing out the difference between the structures of the Companies Act, 1956 and the Companies Bill 2012, he discussed the key highlights of the 2012, Bill viz. increase in maximum number of members in a private company from 50 to 200, introduction of OPC, provisions relating to private placement and buyback, constitution of NFRA, mandatory consolidation of financial statements, investor protection measures, provisions relating to independent directors, rotation of auditors, managerial remuneration, KMPs, woman director, corporate social responsibility, entrenchment provisions, class action suits, serious fraud investigation office, restructuring and liquidation, registered valuers, special courts, adjudication of penalty, observance of secretarial standards with respect to Board meetings and general meetings specified by ICSI, sick companies, power of the Central Government to make rules, key definitions in the Bill etc.

N L Bhatia gave an overview of the provisions in the Bill relating to incorporation and one person companies (OPC). While discussing the mandatory contents of the MoA, he stated that the classification of object clause as main objects and other objects are no longer required. He then discussed the provisions relating to reservation of names and penalty imposed under the Bill for reserving names by furnishing false and incorrect information, which is non-compoundable. Regarding AoA, he said that Articles shall be in form specified in respective Tables and companies may provide for more restrictive provisions than contained in the Model Articles for eg: The Article could mandate that certain

provision in it can be altered only if agreed to by all members of the company in writing. He also pointed out that Certificate of Incorporation is no longer conclusive evidence of incorporation and that a company having share capital shall not commence any business or exercise any borrowings powers unless verification of its registered office is conducted. He thereafter explained the new provisions relating to the formation of companies with Charitable Objects and stated that more stringent regime is contemplated by the Central Government for companies with charitable objects to check misuse. Regarding OPCs, he said that it is an alternative for persons who typically operate using the risky concept of a proprietorship. The MoA of OPC should indicate the name of the person who shall, in the event of the subscribers' death, disability or otherwise becomes the member of the company. There are certain relaxations granted to OPC in respect of holding AGM, signing of financial statements and annual returns etc. but all other provisions of the Bill relating to maintenance of books of accounts and audit of accounts etc. will apply to OPC. He concluded by stating that when rules are framed by the Central Government after the passage of the Bill, more regulations could be expected on OPC.

Dr. K S Ravichandran conducted a detailed and awe-inspiring session on the provisions with respect to the Corporate Governance and Compliance. While discussing the provisions under the Bill in respect of governance viz. an empowered Audit Committee, Specific clause pertaining to duties of directors, Mode of appointment of Independent Directors and their tenure, Code of Conduct for Independent Directors, Rotation of Auditors and restriction on Auditor's for providing non-audit services, Enhancement of liability of Auditors, Disclosure and approval of Related Party Transactions, Mandatory Auditing Standards, Enabling Shareholders Associations/Group of Shareholders for taking class action suits and reimbursement of the expenses out of Investor Education and Protection Fund, Constitution of National Financial Reporting Authority, an independent body to take action against the Auditors in case of professional misconduct and Requirement to spend on CSR activities, he also clearly brought out the difference between the existing provisions and the proposed provisions under the Bill and the impact it is expected to make on the governance culture of the corporates. To support this, he quoted various case laws and shared his practical experiences on the same which were really useful to the participants. Regarding compliance, he pointed out that regulatory shift to 'comply' or 'explain' is contemplated which is a real challenge from compliance perspective. In conclusion, he also touched upon the provisions relating to managerial remuneration.

Shashikala Rao discussed in detail the provisions with respect to Mergers and Acquisitions under the New Bill. She pointed



out that provisions relating to M&As has been revamped under the Bill to provide flexibility; authority has been granted to Tribunal instead of High Courts and corporate debt restructuring and takeover offers has also been covered. Further, no buyback shall be sanctioned by Tribunal unless it is in accordance with clause 68. In case of mergers or amalgamations, persons holding not less than 10% shareholding or 5% outstanding debt as per latest audited financial statements can only object. Valuation is required to be done by registered valuers and approval of majority representing 3/4th in value, voting in person or by proxy or by postal ballot is necessary. Procedure under Clause 230 is to be strictly followed. It is to be noted that until completion of the scheme, a statement certified by a CA/CS/cost accountant in practice, indicating whether the scheme is being complied with in accordance with the order of the Tribunal or not, shall be filed every year with RoC. The above provisions shall also apply to M&As with a foreign company. However, prior approval of RBI is required. Consideration under the scheme may be in cash or in Depository Receipts or partly in cash and partly Depository Receipts. Further, Central Government may make rules in consultation with RBI. Towards the end, she discussed the provisions relating to the powers to acquire shares of dissenting shareholders from a Scheme or Contract approved by majority, purchase of minority shareholding and registered valuers. In conclusion, she threw light on the new provision which states that the liability in respect of offences committed under the Bill by officers in default of the transferor company prior to its merger, amalgamation or acquisition will continue after such merger, amalgamation or acquisition.

Jayesh Thakur threw light on the provisions with respect to Accounts of Companies, Audit and Auditors. He discussed the provisions relating to Financial Year, Books of account and other relevant papers and financial statements (including form, maintenance of the same in electronic mode, compliance with the accounting standards, signing by the Chairperson alone if authorised by Board; or Two directors out of which - one to be MD, and CEO if he is a director; and One director in case of OP; CFO and CS wherever appointed, except in case of OPC, Consolidated FS if a company has one or more subsidiaries, placing of Consolidated FS and subsidiary accounts on the website of the company, reopening of accounts, recasting of FS voluntary revision of FS or Board's report in respect of any of the preceding 3 financial years), constitution of National Financial Reporting Authority (NFRA) by the Central Government to monitor and enforce the Compliance with accounting standards and Auditing standards, internal audit etc. Regarding Audit & Auditors, he explained the powers and duties of the Auditors along with the ample restrictions imposed on the auditors by the Bill with special reference to the ICAI Guidelines. To summarise, restriction on the term

of appointment of the auditor, ratification of appointment by shareholders, rotation of auditors (individual and firm), compliance with Auditing Standards, restrictions on the services that can be provided by auditors, directly or indirectly, to the company, its holding and subsidiary company, joint and several liability, whether civil or criminal, of the firm for the acts of the partner or partners of the audit firm, as provided in this Bill or in any other law for the time being in force. He also discussed the penal actions and liabilities prescribed under the Bill applicable to auditors for non-compliance, violation, fraud etc. which is provided in clause 447 (non-compoundable).

The programme was very interactive and well appreciated by the participants. All the queries put forth by the participants were well addressed by the speakers.

International Trade Development and Investor Awareness - DOING Business in the US Series 1

ICSI-CCGRT in continuation with the programme series on International Trade Development and Investor Awareness organized a special Programme on 30.1.2013 on Doing business with US in CCGRT, Belapur, Navi Mumbai.

Key Note Speaker was Vijay Shah, Chief Operating Officer & Executive Director, Piramal Enterprises Ltd. Followed by Ms. Eva D'ambrosio, Economic Officer, American Consulate General, Dr. Mridul Saggar is currently heading the Division of Money & Credit at the Reserve Bank of India. Sudhir Shah, Advocate and VISA Specialist. The session was also graced by US CPA, Vaibhav Manek and Shishir Lagu, From KNAV. The seminar provided informative, useful and eye opening insight regarding Tax & Regulatory aspects for setting up business & operations in US.

International Trade Development and Investor Awareness - Doing Business in Indonesia Series 2

In the line with ICSI-CCGRT's programme series on International Trade Development and Investor Awareness a special Programme was organised on 8.2.2013 on Doing business with Indonesia in CCGRT Auditorium. The Speakers were: Consul Dicky Fabrian, Head of Chancery (HOC) & Consul (Economics) Consulate General of the Republic of Indonesia, Mumbai; David Leonard Hatumena Vice Consul (Consular & Socio-Cultural) Consulate General of the Republic of Indonesia, Rakesh Sinha, Deputy General Manager, Bank of India; Raju Ananthnarayan, Member. There was a good field of participation from more than 60 Professional Delegates.



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

CENTRE FOR
CORPORATE
GOVERNANCE,
RESEARCH &
TRAINING (CCGRT)

PCH-2

Program on

PDP-4

Loan Documentation, Recovery of Debts & SARFAESI Laws

Day, Date & Timing	Saturday, March 02, 2013	02.00 p.m. – 04.30 p.m. Followed by High Tea
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614	
Focus of coverage includes	<ul style="list-style-type: none"> ■ Loan Documentation ■ Recovery of Debts ■ SARFAESI Laws 	
Speakers include	Eminent speakers with practical exposure to the subject will address the participants including Shri M V Phadke , Chief General Manager, IDBI Bank Ltd.	
Participant Mix	Company Secretaries, Chartered Accountants, Cost Accountants, Bank Officials, other professionals and students of various professional courses, dealing with the subject.	
Fees (inclusive of Service Tax@12.36%)	₹ 450/- per participant for Members of ICSI ₹ 400/- per participant for Students ₹ 800/- per participant for Others to cover the cost of backgrounder, kit, lunch and other organisational expenses.	
Discount	<i>Early bird discount of ₹100/- per participant for registration and payment received upto Thursday, February 28, 2013.</i>	

ANNUAL MEMBERS OF ICSI-CCGRT CAN ATTEND THE PROGRAM FREE OF COST

MEMBERS ATTENDING THE PROGRAM ARE ENTITLED TO 2 PCH

Limited seats and hence prior registration is desirable.

Registration : The Fees maybe drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to
The Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Phone : 022-27577814, 4102 1515 e-mail: ccgrt@icsi.edu, ccgrt.icsi@gmail.com

FOLLOWED BY AWARENESS PROGRAM WITH FOCUS ON "UNION BUDGET"

Sponsored by BSE Investor Protection Fund

Saturday, March 02, 2013 from 05.00 p.m. – 07.30 p.m.

There are no fees for this program

PCH-2

PDP-3

Note: Members attending both the programs are entitled to 4 PCH while Students attending the programs are entitled to 7PDP



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RESEARCH &
TRAINING (CCGRT)

PCH-2

Series Three

PDP-4

International Trade Development and Investor Awareness

DOING BUSINESS IN THE CANADA

After the Success of Series 1 “Doing Business with US”
Series 2 “Doing Business with Indonesia”
We are happy to announce Series 3 “Doing Business with Canada”

Day, Date & Timing	Saturday, March 23, 2013	09.00 a.m. – 02.00 p.m. followed by lunch
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614	
Focus of Coverage	<ul style="list-style-type: none"> ■ Economic prospects for Trade and Investment ■ Education and employment opportunities abroad ■ Travel and Tourism 	
Speakers being approached include	Nicolas Lepage , Senior Trade Commissioner, Consulate General of Canada Preeti Prabhu , Trade Commissioner (Education), Consulate General of Canada And Prominent professionals from corporate.	
Participant Mix	Company Secretaries, Chartered Accountants and other professionals dealing with the subject.	
Fees (inclusive of Service Tax @12.36%)	Students ₹ 650/- per delegate Members ₹ 750 per participant Others ₹ 1500 per participant to cover the cost of program kit, high tea and other organizational expenses. Early bird discount of ₹ 100/- for registration with payment by Monday, March 18, 2013.	

Limited seats and hence prior registration is desirable.

Registration : The Fees may be paid by Cash at CCGRT or drawn by way of D.D / local cheque payable at Mumbai in favour of “**ICSI-CCGRT A/c**” and sent to **Shri Gopal Chalam**, Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614

Phone No.: 022-27577814, 4102 1515 **e-mail:** ccgrt@icsi.edu

**Prior registration desirable*

Series Four

International Trade Development and Investor Awareness
DOING BUSINESS IN NEW ZEALAND – on Friday, April 26, 2013
From 09.00 a.m. – 02.00 p.m.

Details can be obtained from pratima.jain@icsi.edu

ANNOUNCEMENT

Revised guideline for availing 45 days leave during 15 months training

The Council of the Institute at its 211th meeting has revised the guideline for grant of leave during the 15 months training to the students of Company Secretaryship Course by withdrawing 45 days or balance leave to trainees who have passed Final/Professional Programme examination.

The leave of 45 days during the training will be applicable only for Intermediate/Executive Programme passed students for preparation of Professional Programme examination.

The decision will be effective on the students commencing training on or after 1st March 2013.

Recognition to Members of ICSI under SEBI (Investment Advisers) Regulations, 2013

SEBI has issued SEBI (Investment Advisers) Regulations, 2013 on January 21, 2013, requiring yearly audit by Members of ICSI in respect of Compliance by Investment Advisers.

Regulation 19 (3) reads as under :

"An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India."

Text of SEBI (Investment Advisers) Regulations, 2013 was Published in February 2013 Issue of Chartered Secretary on page 195.



Two Days
Residential Seminar
On

**"Dynamics of CS Profession in
Changing Scenario"**

Tentative Topics:

- ▶ Companies Bill
- ▶ SEBI Takeover Code, Insider Trading and Latest Amendments In Securities Laws
- ▶ Strategic Planning for Merger and Restructuring
- ▶ Revival and Rehabilitation of Sick Industries (SICA)
- ▶ Valuations
- ▶ Vetting of Legal Deeds and Contracts
- ▶ Sustainability Reporting and CSR

- ◆ Registration on First Come first Served Basis.
- ◆ Student Registration will be subject to vacancy and to be put on waiting list.
- ◆ **Limited Seats available.**

DAY & DATE

Saturday & Sunday
23rd & 24th March, 2013

TIME

09.00 a.m. to 5:00 p.m.
(Registration start at 09.00 a.m.)

Members of ICSI (Residential- Triple Sharing) For registration upto 15-03-2013	3,371/-
Members of ICSI (Residential Double Sharing) For Registration upto 15-03-2013	4,495/-
Members of ICSI (Residential- Triple Sharing) For registration on or after 16-03-2013	3,652/-
Members of ICSI (Residential Double Sharing) For Registration on or after 16-03-2013	5,057/-
Non Member (Residential- Triple sharing)	5618/-
Members of ICSI (Non Residential) For registration upto 15-03-2013	2,248/-
Members of ICSI (Non Residential) For registration on or after 16-03-2013	2,529/-
Non Member (Non Residential)	4,495/-
Members' Spouse	3147/-
Child (above 12 years)	3147/-
Child (5 to 12 years) With mattress	2809/-
Child (5 to 12 years) without Mattress	1686/-
Children (upto 5 years) without Mattress	Free
Student of ICSI (to be put on Waiting List)	2809/-

Early Bird Advantage for registration of participants on or before 15-03-2013

The above rates are inclusive of Service tax @ 12.36% in all categories.

VENUE

Boulevard 9, Luxury Resort & Spa,
Pij Cross Roads, National Highway- 8,
Nadiad - 387002, Gujarat
Tel: +91 268 255 4444

CS Chetan Patel
Chairman
Ahmedabad Chapter

CS Rajesh Tarpara
Secretary
Ahmedabad Chapter

CS Rutul Shukla
Chairman, PDC Committee
Ahmedabad Chapter

The ICSI Ahmedabad Chapter

S-2, B-Tower, Chinubhai Towers, Opp: Handloom House, Ashram Road, Ahmedabad -380009
Phone - 079-26589343 Email: ahmedabad@icsi.edu; icsiabad@gmail.com

Highlights of the Union Budget for 2013-14*



The Union Budget for 2013-14 aims at 'higher growth leading to inclusive and sustainable development.' With this as mool mantra, the Finance Minister has sought to increase allocation to key areas and provide incentives for investments and savings while containing the fiscal deficit to 4.8% of GDP. Presenting the Union Budget in Parliament On 28 February 2013, the Finance Minister P.Chidambaram expressed the hope that the India would achieve high economic growth despite slowdown in the global economic growth. The Minister said that his government has been able to contain the fiscal deficit at 5.2% in 2012-13 by following the path of fiscal consolidation. But the current account deficit (CAD) is a greater worry, the Minister added. He, therefore, proposes to encourage foreign investment that is consistent with India's economic objectives. The other areas of concern addressed by his Government are inflation and government expenditure. He said: "Our efforts in the past few months have brought down headline WPI inflation to about 7.0 per cent and core inflation to about 4.2 percent. It is food inflation that is

worrying, and we shall take all possible steps to augment the supply side to meet the growing demand for food items," he said. The Minister further said that he had no choice but to rationalize government expenditure in view of huge fiscal deficit in 2012-13. "We also took some policy decisions that had been deferred for too long, corrected some prices, and undertook a review of certain tax policies."

Three Promises: To Women, Youth and the Poor

The Finance Minister has made promises to the women, the youth and the poor - the three faces that represent the majority of the people of India. Stating that the government pledges to do everything possible to empower the women and to keep them safe and secure, he said that a number of initiatives were underway and many more would be taken by the Government as well as non-government organizations. He announced the setting up of a fund - Nirbhaya Fund - with the Government contributing Rs. 1000 crore. The Minister also announced a Rs. 1,000 crore scheme for training youth to boost their employability and productivity. The National Skill Development Corporation will be asked to set the curriculum and standards for training different skills. Trained youth who pass a test at the end of training will get a monetary reward of Rs.10000 on an average.

For the benefit of the poor, the Minister assured that Direct Benefit Transfer (DBT) schemes will be rolled out throughout the country during the term of the UPA Government. "We are redoubling our efforts to ensure that the digitized beneficiary lists are available; that a bank account is opened for each beneficiary; and that the bank account is seeded with Aadhaar in due course," he said.

Rural Development, Agriculture and Food Security

The allocation for Rural Development Ministry has been raised by 46 percent to Rs 80,194 crore in 2013-14. Pradhan Mantri Gram Sadak Yojana (PMGSY)-II has been carved out to benefit States that have substantially fulfilled the objectives of PMGSY. This will benefit states such as Andhra Pradesh, Haryana, Karnataka, Maharashtra, Punjab and Rajasthan.

The Ministry of Agriculture gets a rise of 22 per cent over the revised estimates (RE) for 2012-13, at Rs 27,049 crore. Rs 500 crore is being allocated to start a programme on crop

* Based on PIB press Release

Highlights of the Union Budget (2013-14)

diversification. It will encourage farmers in the original green revolution states to choose alternative crops. A pilot programme on Nutri-Farms will be started for introducing new crop varieties that are rich in micro nutrients, such as iron-rich bajra. A sum of up to Rs 200 crore is to be provided to start the pilots.

The Budget seeks to support Farmer Producer Organizations (FPO), including Farmer Producer Companies (FPC) which have emerged as aggregators of farm produce and link farmers directly to markets.

The target of agricultural credit for 2012-13 (Rs. 5,75,000 crore) is likely to be exceeded, and a target of Rs 7,00,000 crore farm credit has been fixed for the next year.

The interest subvention scheme for short-term crop loans is proposed to be continued for loans by public sector banks, RRBs and Cooperative banks, and expanded to private scheduled commercial banks. Under the scheme, a farmer who repays the loan on time is able to get credit at 4 cent per year.

An amount of Rs.307 crore has been provided for setting up of the National Livestock Mission. This will attract investment and enhance livestock productivity. A sub-mission of this Mission seeks to increase the availability of feed and fodder.

Expressing the hope that the National Food Security Bill will be passed by Parliament as early as possible, the Finance Minister has set apart Rs. 10,000 crore towards the incremental cost that is likely under the Act.

Other Major Allocations

Education has been allocated Rs. 65,867 crore, an increase of 17 per cent over the revised estimates for 2012-13.

ICDS gets Rs. 17,700 crore representing an increase of 11.7 per cent. A multi-sectoral programme to tackle maternal and child malnutrition that was announced last year will be implemented in 100 districts during 2013-14. It will be further scaled up to cover 200 districts the year after.

The Ministry of Health and Family Welfare has been allocated Rs. 37,330 crore. Of this, the new National Health Mission that combines the rural mission and the proposed urban mission will get Rs. 21,239 crore - an increase of 24.3 percent over the RE.

The Backward Regions Grant Fund (BRGF) has been allocated Rs. 11,500 crore and will include a State component for Bihar, the Bundelkhand region, West Bengal, the KBK districts of Odisha and the 82 districts under the Integrated Action Plan.

Science and Technology related Departments have been allocated funds with substantial enhancements.

A National Institute of Sports Coaching is proposed to be set up at Patiala at a cost of Rs. 250 crore over a period of three years.

Drinking water and sanitation will receive Rs. 15,260 crore. An amount of Rs. 1,400 crore is being provided for setting up water purification plants to cover arsenic and fluoride effected rural habitations.

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM) will receive Rs. 14,873 crore as against RE of Rs. 7,383 crore in the current year. Out of this, a significant portion will be used to support the purchase of up to 10,000 buses, especially by hill States.

Defence gets an allocation of Rs. 2,03,672 crore and the assurance that constraints will not come in the way of providing any additional requirement for the security of the nation.

Stating that adequate funds must be provided for programmes that benefit women, children and minorities, as also the scheduled castes and scheduled tribes, the Finance Minister proposed to allocate Rs 41,561 crore to the scheduled caste sub-plan and Rs 24,598 crore to the tribal sub-plan. The programmes relating to women get Rs. 97,134 crore and child budget, Rs. 77,236 crore. The Ministry of Women and Child Development has been asked to design a scheme that will address women's concerns, and an additional sum of Rs. 2,000 crore has been provided to the Ministry to began work in this regard. Ministry of Minority affairs has been allocated Rs. 3,511 crore and the Department of Disability Affairs, Rs. 110 crore.

Investment and Infrastructure

The Finance Minister stated that the key to restart the growth engine was to attract more investment, and that the government will improve communication of its policies to remove any apprehension or distrust in the minds of investors.

A number of steps to mobilize investment have been announced in the Budget keeping in view that as per 12th Plan the private sector will share 47 percent of Rs 55,00,000 crore investment in infrastructure. Infrastructure Debt Funds (IDF) will be encouraged. India Infrastructure Finance Corporation (IIFCL) will offer credit enhancement to infrastructure companies that wish to access the bond market to tap long term funds. Some institutions will be allowed to issue tax - free bonds up a total sum of Rs 50,000 crore (as against Rs 25,000 crore in 2012-13). Assistance of the World Bank and Asian

Highlights of the Union Budget (2013-14)

Development Bank will be sought to build roads in the North Eastern States and connect them to Myanmar. The corpus of Rural Infrastructure Development Funds (RIDF) is proposed to be raised to Rs. 20,000 crore. A sum of Rs 5,000 crore will be made available to NABARD to finance construction of warehouses, godowns, silos and cold storage units designed to store agricultural produce.

The Minister stated that the newly set-up Cabinet Committee on Investment has held two meetings and taken decisions in respect of a number of oil and gas, power and coal projects. CCI will take up some more projects shortly, he said. The Minister also informed that a regulatory authority is being constituted for the road sector. Bottlenecks stalling road projects have been addressed and 3,000 km of road projects in Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and Uttar Pradesh will be awarded in the first six months of 2013-14.

The Budget introduces an investment allowance for new high value investment. A company investing Rs. 100 crore or more in plant and machinery during the period 1.4.2013 to 31.3.2015 will be entitled to deduct an investment allowance of 15 percent of the investment (in addition to depreciation).

Industrial Sector

Plans for seven new cities have been finalized for industrial corridors and work on two new smart industrial cities at Dholera (Gujarat) and Shendra Bidkin (Maharashtra) will start during 2013-14. A comprehensive plan is being prepared for the Chennai Bengaluru industrial corridor. Preparatory work has started for the next corridor - Bengaluru Mumbai industrial corridor.

Two new ports will be established in Sagar (West Bengal) and in Andhra Pradesh. In addition, a new outer harbour will be developed in the VOC port at Thoothukkudi (Tamil Nadu) through PPP at an estimated cost of Rs 7,500 crore.

A power transmission system will be constructed from Srinagar to Leh and for this Rs. 226 crore has been provided in 2013-14.

The oil and gas exploration policy will be reviewed to move from profit sharing to revenue sharing contracts. A policy to encourage exploration and production of shale gas will be announced. The natural gas pricing policy will be reviewed and uncertainties regarding pricing will be removed.

To provide greater support to Micro, Small and Medium Enterprises (MSMEs), the refinancing capability of SIDBI is proposed to be enhanced from Rs. 5,000 crore to Rs. 10,000 crore per year. SIDBI will also be provided a corpus of Rs 500 crore to set up a Credit Guarantee Fund for factoring.

Apparel Parks are proposed to be set up within the Integrated Textile Parks, to house apparel manufacturing units. A new scheme, Integrated Processing Developing Scheme, is being started to address to environmental concerns of the textile industry. Working capital and term loans to the handloom sector will be available at a concessional interest of 6 per cent. This will benefit 1.5 lakh weavers and 1,800 primary co-operative societies.

Savings

The Budget proposes three measures to promote household savings. One, the income limit for Rajiv Gandhi Equity Saving Scheme for first time investors is being raised from Rs. 10 lakh to Rs. 12 lakh. Two, persons taking loan for first home up to Rs 25 lakh will be entitled to an additional deduction of interest of up to Rs 1 lakh. Three, instruments such as Inflation Indexed Bonds will be introduced to protect savings from inflation.

Financial Sector

The Finance Minister has proposed to constitute a Standing Council of Experts in the Ministry of Finance to analyse the international competitiveness of the Indian financial sector. He announced that Rs. 14,000 crore worth of capital infusion will be made into public sector banks. It will be ensured that these banks meet the Basel III regulations.

India's first women's bank is proposed to be set up with Rs. 1,000 crore as initial capital.

The government has finalized a number of proposals relating to the insurance sector in consultation with IRDA. These include empowering insurance companies to open branches in Tier II cities and below without prior approval of IRDA, having an office of LIC and a public general-insurance company in all towns with the population of 10,000, and permitting banks to act as insurance broker.

The Rashtriya Swasthya Bima Yojana, which cover 34 million families below the poverty line, will now be extended to other categories such as rickshaw, auto-rickshaw and taxi-drivers, sanitation workers, rag pickers and mine workers.

The Finance Minister proposes to evolve a comprehensive social security package by converging various schemes for life-cum-disability cover, health cover, maternity assistance and pension benefits.

A number of proposals relating to capital market have been finalized in consultation with SEBI. These include simplification of procedure and uniforms norms for foreign portfolio investors, clarity relating to FDI investment, allowing FIIs to participate in new areas, etc.

Budget Estimates

The total expenditure in the Union Budget 2013-14 is pegged at Rs. 16,65,297 crore. Out of it Rs.5,55,322 crore (33%) is Plan expenditure. The non-Plan expenditure is estimated at Rs 11,09,975 crore.

The Plan expenditure in 2013-14 will be 29.4 per cent more than the revised estimates of the current year. All flagship programmes have been fully and adequately funded.

Juxtaposing economic welfare with the economic policy, the Minister said that the link between policy and welfare can be expressed in a few words: opportunities, education, skills, jobs and incomes. The Budget has before it one overarching goal - to create opportunities for the youth to acquire education and skills that will get them decent jobs or self-employment that will bring them adequate incomes that will enable them to live with their families in a safe and secure environment. The Budget sets a target of skilling 90 lakh people in 2013-14, for which funds will be released by the National Rural Livelihood Mission and National Urban Livelihood Mission.

Taxes

The General Budget reiterates that clarity in tax laws, a stable tax regime, a non-adversarial tax administration, a fair mechanism for dispute resolution and independent judiciary for greater assurance is underlying theme of tax proposals. It is proposed to set up the Tax Administration Reforms Commission.

As regards Direct Taxes, a relief of Rs. 2000 for the Tax Payers in the first bracket of Rs. 2 lakh to Rs. 5 lakh has been proposed. A surcharge of 10 percent on persons (other than companies) whose taxable income exceeds Rs.1 crore has been proposed. Surcharge is being increased from 5 to 10 percent on domestic companies whose taxable income exceed Rs. 10 crore. In case of foreign companies, surcharge will increase from 2 to 5 percent, if the taxable income exceeds Rs. 10 crore. Additional surcharges to be in force for only one year. The education cess will continue at 3 percent.

The Finance Minister announced the grant of investment allowance at the rate of 15 percent to manufacturing companies that invest more than Rs. 100 crore in plant and machinery during the period 1.4.2013 to 31.3.2015. Concessional rate of tax of 15 per cent on dividend received by the Indian companies from its foreign subsidiary is proposed to be continued for one more year. It is proposed that TDS at the rate of one percent on the value of the transfer of immovable property where the consideration exceeds Rs. 50 lakhs will be levied. However, agricultural land is to be exempted from TDS. Modified provisions of GAAR will come

into effect from 1.4.2016. It is also proposed to increase the rate of tax on payments by way of royalty and fees for technical services to non-residents from 10 percent to 25 percent. The Budget also proposes to introduce Commodities Transaction Tax (CTT) in a limited way. However, agricultural commodities will be exempted. A number of administrative measures such as extension of refund banker system to refund more than Rs. 50,000, technology based processing, extension of e-payment through more banks and expansion of in the scope of annual information returns by Income-tax Department.

As regards to Indirect Taxes, the Budget proposes no change in the normal rates of 12 percent for excise duty and service tax. Similarly, no change has been made in the peak rate of custom duty of 10 percent for non-agricultural products. Custom duty on free gold limit increased to Rs. 50,000 in case of male passenger and Rs. 1,00,000 in case of a female passenger subject to conditions. Duty on imported luxury goods such as high end motor vehicles, motor cycles, yachts and similar vessels increased. Custom duty on Set Top Boxes increased from 5 to 10 percent while on raw silk increased from 5 to 15 percent to boost domestic production. Custom duty on specified machinery for manufacture of leather and leather goods including footwear reduced from 7.5 to 5 percent. The Budget also proposes that period of concession available for specified part of electric and hybrid vehicles extended upto 31 March 2015.

Excise duty on SUVs has been increased from 27 to 30 percent. However, this will not apply to SUVs registered as taxies. Cigarettes will cost more as specific excise duty increased by about 18 percent. Similar increases are proposed on cigars, cheroots and cigarillos. Duty on mobile phones priced above Rs. 2000 has been raised to 6 percent from the current one percent.

The Budget proposes 'Voluntary Compliance Encouragement Scheme' where a defaulter may avail of the scheme on condition that he files a truthful declaration of Service Tax dues since 1.10.2007. It is a one-time scheme in which interest, penalty and other consequences will be waived.

The Budget proposes to mobilize Rs. 18,000 crores of which new proposals in indirect taxes will yield Rs. 4,700 crores and direct taxes of Rs. 13,300 crores.

In a major step to rationalize taxation on goods and services, the Budget has earmarked Rs. 9,000 crores towards the first installment of the balance of CST compensation. The Minister said that overwhelming majority States have agreed that there is a need for Constitutional amendment to pass GST law. It will be drafted by the State Finance Ministers and the GST Council, the Minister added.

Frequently Asked Questions on Membership

Q 1: Who can apply for Associate membership of the Institute?

Ans: A person who has passed the Intermediate Examination/ Executive Programme examination and Final Examination / Professional Programme examination of the Institute and has undergone prescribed training or exempted therefrom on the basis of experience is eligible to apply for Associate membership of the Institute provided he has attained the age of 21 years on the date of application as per the Matriculation / school leaving certificate. An application for Associate membership of the Institute is to be made in the approved Form-A (available on the web-site of the Institute).

Q 2: What is the total fee payable by a person who is eligible and willing to apply for Associate Membership of the Institute?

Ans: A person who is eligible to apply for Associate Membership is required to pay the following fees at the time of admission as an Associate member:-

1. Associate Membership entrance fee	Rs. 1500/-
2. Associate Membership annual fee	Rs. 1125/- *
3. Cost of neck-tie of the Institute/lady's Brooch	Rs.500/-/100/- (optional)
TOTAL	Rs.3125/- / 2725

(*) Candidates applying between October to March will pay half of the annual membership fee.

Q 3: What are the documents required to be attached alongwith the application for Associate Membership?

Ans:The application for Associate should be accompanied with the following:-

1. Two fitness certificates in the prescribed form from the members of the Institute having at least three years standing as a member of the Institute.
2. A crossed demand draft for the requisite amount of the fee payable at the time of applying for membership.
3. A passport size photograph be pasted on the specimen signature card.
4. Scanned image of photograph in jpeg format be sent separately at e-mail Ids memberaddress@icsi.edu/santosh.jha@icsi.edu .

Q 4: Is it necessary for a candidate to apply simultaneously for certificate of practice also if he is willing to practice as a Company Secretary while applying for his admission as an Associate member of the Institute?

Ans: The candidate, if he so wishes, may also apply for issue of certificate of practice and pay the requisite fee for issue of certificate of practice as well. His application for issue of certificate of practice would be considered only after his admission as an Associate member of the Institute.

Q 5: Is it mandatory on the part of a candidate who applies for Associate membership to also apply for life membership of the Company Secretaries Benevolent Fund?

Ans: It is optional but it is for the benefit of the candidate only to apply for life Membership of the Company Secretaries Benevolent Fund which is a security umbrella for the families of the members in the time of distress. The onetime payment of subscription of Rs.7,500/- for life membership of CSBF is exempted under Section 80G of the Income tax Act, 1961.

Q 6: When the annual membership fee becomes due and what is the last date for payment?

Ans:The annual membership fee becomes due on 1st of April, each year and is payable upto 30th June in the same year unless extended by the Council.

Q 7: Can a member pay the annual membership fee in advance?

Ans: Yes, for a maximum period of three years. The members who wish to pay the annual fee in advance may pay the same for a maximum period of three years in advance for which no interest will be paid to the member. The scheme of accepting the annual membership fee in advance from the members and the details of the scheme is available on the website of the Institute and is also published in the Chartered Secretary Journal from time to time.

Q 8: Can a member make the payment of his annual membership fee and certificate of practice fee online?

Ans: The member can remit the annual membership fee, certificate of practice fee online through the Institute's portal www.icsi.in.

Q 9: What is the amount of Annual membership fee payable by an Associate and Fellow member?

Ans: A member is entitled to retain his membership so long he pays the annual membership fee every year which becomes due on 1st April of each year. Presently the annual membership fee payable is as under:-

(a) Associate Annual Membership fee	Rs.1,125/-
(b) Fellow Annual Membership fee	Rs.1,500/-

Q 10: In case a member is not able to make his payment by the last extended date of payment, what are the payments he is required to make after the due date is over?

Ans: In case a member is not able to pay the annual membership fee by the last extended date for payment, his name stands removed from the Register of members after that date. The name of the member is restored on payment of annual membership fee for that year, entrance fee and a restoration fee of Rs. 250/- along with application in approved Form-BB for restoration of

membership.

Q 11: If a member has not paid the fees for years together and wishes to restore his membership, how will he go about?

Ans: The member whose membership fee has been outstanding may write to the Membership Section of the Institute at email IDs member@icsi.edu and annualfee@icsi.edu to get the details of amount of arrears of fee and other payments made by them for restoration of membership. The name of the member will be restored by the Institute on receipt of an application in Form-BB for restoration and payment of arrears of membership fee, along with entrance and restoration fee.

Q 12: Who can apply for licentiate of the Institute?

Ans: A student who has completed the Final or Professional Programme examination of the Institute may apply within six months from the date of declaration of results for enrolling himself as a licentiate in appropriate Form-ST8 (available on the website of the Institute) along with a subscription of Rs.1000/- along with certificates of Matriculation or School leaving and degree duly attested by any of the members of the Council / Regional Councils / Managing Committees of the Chapters or any officer of the Institute or Regional Offices / Chapter Offices.

Q 13: What are the benefits of becoming a licentiate?

Ans: A student who is enrolled as Licentiate can use the descriptive letter 'Licentiate ICSI' to indicate that he has qualified the Final or Professional Programme examination of the Institute. He will be provided with the Chartered Secretary Journal of the Institute free of cost.

The licentiate is permitted to borrow books from the library of the Institute, Regional Council or Chapter or participate in the activities of the Institute, its Regional Council or Chapter as the case may be, subject to such conditions as may be imposed by the Council, Regional Council or Chapter, as the case may be.

Q 14: How long a candidate can remain as a Licentiate?

Ans: Under Regulation 29(3) of the Company Secretaries Regulations, 1982 any student enrolled as a licentiate is not ordinarily be allowed to renew his enrolment for more than five years after passing the Final or Professional Programme examination of the Institute.

Q 15: If a candidate does not apply within six months of his completing the Final or Professional Programme Examination of the Institute, can he apply for licentiateship?

Ans: The candidate can apply for licentiateship after the expiry of six months of his completing the Final or Professional Programme Examination of the Institute along with the reasons in writing for delay in applying for the same.

Q 16: What is the status of a licentiate?

Ans: Grant of licentiateship under regulation 29 of the Regulations shall entitle the licentiate to use the descriptive letter 'Licentiate ICSI' to indicate that he has qualified in the Final or Professional Programme examination of the Institute. However, the same neither confers on such licentiate any rights of a member nor entitle him to claim any form of membership of the Institute or its Regional Council or Chapter, as the case may be.

Q 17: What is the procedure for obtaining the certificate of practice of the ICSI?

Ans: A member who desires to obtain certificate of practice of the Institute may apply in the appropriate Form-D duly completed in all respects for issue of certificate of practice enabling him to practice as a Company Secretary anywhere in India. The application is to be accompanied with annual certificate of practice fee of Rs. 1000/- only 50% of the Annual certificate of practice fee is payable if the application for issue of certificate of practice is made between 1st October - 31st March of the relevant financial year.

The member is also required to intimate his earlier engagements, if any. In case the member was in employment earlier, a copy of relieving letter from his immediate past employer company, a copy of Form-32 in respect of his cessation of his employment, if employed as whole time Company Secretary or letter of cancellation of certificate of practice of the concerned professional body if earlier engaged in some other profession. The annual membership fee for the current year (Rs. 1125/- for ACS or Rs. 1500/- for FCS) is to be paid at the time of applying for issue of certificate of practice, if not already paid.

Q 18: Is a member entitled for issue of certificate of practice of the Institute while in employment?

Ans: No. A member who is in employment evidencing a master - servant relationship with the employer or contract of service is not entitled for issue of certificate of practice of the Institute in terms of Regulation 168 of the Company Secretaries Regulations, 1982.

Q 19: Is a member entitled for issue of certificate of practice of the institute while holding Certificate of practice of the Institute of Chartered Accountants of India / The Institute of Cost Accountants of India / Bar Council or any other professional body?

Ans: No. A member who is holding certificate of practice from any professional body including ICAI, ICWAI or any Bar Council is not entitled for issue of certificate of practice of the ICSI in terms of Regulation 168 of the Company Secretaries Regulations, 1982.

Q 20: Whether a member of the Institute (whether in practice or not) is required to take permission of the Council for pursuing further academic/professional/diploma course?

Ans: No. Members are not required to take any permission from the Council of the Institute for pursuing any academic/professional/ diploma course. However, they may forward the certificate of having completed the course for noting in the records

FAQs on Membership

of the Institute.

Q 21: What is the procedure for approval of name of proprietorship concern or partnership firm of company secretaries?

Ans: A member who wishes to practise as a proprietorship concern or in the partnership firm may apply to the Institute for approval of name of the concern / firm in accordance with the guidelines laid down by the Council for approval of firm name under Regulation 169 of the Regulations. The guidelines are available on the website of the institute at www.icsi.edu.

Q 22: How to convert an Individual / Proprietorship concern of Company Secretaries into a Partnership Firm ?

Ans: Members holding Certificate of Practice and willing to convert their Individual or Proprietorship concern into a Partnership Firm by entering into a Partnership agreement and they may submit the conversion alongwith the appropriate Form-I duly filled in and signed by all the partners along with copy of partnership deed to the Institute for approval.

Q 23: How to induct a new partner in the already existing Partnership Firm of Company Secretaries?

Ans: A new partner can be inducted in the already existing Partnership Firm with the prior approval of the Institute. The details of reconstituted partnership firm are to be submitted to the Institute in the appropriate Form-I duly signed by all the partners along with the deed of reconstitution.

Q 24: How to apply for approval of name of the Partnership Firm?

Ans: Members holding certificate of practice who desire to practise as a partnership firm may apply to the Institute for approval of firm name in accordance with the guidelines laid down by the Council under Regulation 169 of the Regulations. The guidelines are available on the website of the Institute at link <http://www.icsi.edu/CSPractice/FirmnamesGuidelines.aspx>

Q 25: Can a member holding certificate of practice of the Institute engage himself as a partner in a business firm?

Ans: A member holding certificate of practice can not engage himself in any business or occupation. The member with the specific and prior approval of the Institute may have interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.

Q 26: Whether a member in practice can engage himself as lecturer in University, Educational Institutions and coaching colleges or as a private tutor? Is he required to obtain a permission of the Council?

Ans : The member in practice can engage in Teaching assignment under the Coaching Organization of the Institute or any other organization, so long as the hours during which a member in practice is so engaged in teaching do not exceed

ceiling of average four hours in a day.

Q 27: Whether a member in practice can run a coaching centre?

Ans: No. A member in practice can not run a coaching centre. However, he can engage himself as a faculty for teaching purpose and the total teaching hours should not exceed average ceiling of four hours in a day.

Q 28: Does the Council allow the opening of Branch office which is not in the separate charge of any member of the Institute?

Ans: Applications for opening of branch office without a member in the separate charge at places where there are few or no Company Secretaries in Practice are decided by the Council on the merits of each case subject to the following general conditions:

- (i) The branch office shall be an independent office and not in the office of some other professional.
- (ii) One of the partners of the firm shall attend the branch office at least 100 days in a financial year. However, if a final or Professional Programme pass student who has completed Management / Apprenticeship Training of the Institute is posted at the said branch office, then one of the partners shall attend branch office at least 60 days in the financial year.
- (iii) The approval shall be valid for a period of two years.

Q 29: Can a Company Secretary in Practice or a firm of such Company Secretaries open branch Office in any part of the state/ country?

Ans: Yes. As per section 37(1) of the Company Secretaries Act, 1980 a Company Secretary in Practice or a firm of such Company Secretaries can open branch Office in any part of the state/country but such office must be in the separate charge of a member of the Institute.

However, the Council may exempt in suitable cases any Company Secretary in Practice from the operation of sub-section (1) of Section 37.

Q 30: How many compliance certificates and annual returns can a member in practice sign in a calendar year?

Ans: The Council has fixed the ceiling of signing of 80 compliance certificates and annual returns in total in a calendar year.

Q 31: What is the procedure for getting the certificate of practice cancelled?

Ans: The certificate of practice of a member can be cancelled at his request in writing duly signed and the member is required to intimate the fact of his ceasing to be in practice within 30 days from the date he ceases to be in practice.

Q 32: What are the consequences of cancellation of certificate of practice?

Ans: When the certificate of practice is cancelled, the member is

not entitled to practice as a Company Secretary from the date his certificate of practice is cancelled. He will also cease to be a partner of partnership firm of Company Secretaries in which he is partner and the partnership firm will be reconstituted accordingly. In the event of his having a proprietorship concern, the same ceases to be in existence from the date the certificate of practice of the member is cancelled.

Q 33: Can a member holding certificate of practice of the ICSI practise in his own name?

Ans: Yes, a member holding certificate of practice of the ICSI can practice in his own name and submit the particulars of his office in the appropriate Form-I to the Institute.

Q 34: Whether the certificate of practice of a member can be restored retrospectively?

Ans: The certificate of practice would be renewed in the same financial year in which it was due for renewal provided the fee for renewal has been received and accepted by the Institute in the same financial year. Where the certificate of practice is required to be cancelled on failure to pay the annual fee for certificate of practice on or before the due date prescribed and an application for restoration of certificate of practice has been received and accepted by the Institute in the same financial year, the certificate of practice would be restored on payment of the requisite annual fee for certificate of practice for the current year and a restoration fee of Rs.250/-. Where the certificate of practice has not been renewed or accepted for renewal in the same financial year, and as a result of which it is required to be cancelled, a fresh certificate of practice will be issued with effect from the date of acceptance of application for the issue of fresh certificate.

Q 35: Under what circumstances the name of the member can be removed from the register of members?

Ans: The name of the member can be removed from the Register of Members under the following circumstances:-

- a. On receipt of request from the member to that effect.
- b. If the member has not paid any prescribed fee required to be paid by him.
- c. In the event of death of a member.
- d. If the member is suffering from any of the disabilities mentioned in section 8 or for any other reason has ceased to be entitled to have his name borne on the Register.

An order has been passed under the Company Secretaries Act, 1980 for removing his name from the membership of the Institute.

Q 36: What is the procedure for restoration of name of a member whose name has been removed from the Register of Members?

Ans: A member whose name has been removed from the register of members is required to apply for restoration of his name in appropriate Form-BB duly filled in and signed alongwith the following payment of fees:-

- a. Arrears of Annual Membership fee.
- b. Membership fees for the year in which the restoration is being sought.
- c. Entrance fee (Rs.1,500/- for Associate & Rs.1,000/- for Fellow) in case of Associate / Fellow
- d. Restoration fees of Rs. 250/-.

The name of the member would be restored from the date on which the application for restoration of Membership in the appropriate form completed in all respects and the fees due are received. However, in case the name was removed during the same financial year, the name would be restored with effect from the date on which it was removed from the register.

Q 37: Who is eligible for admission as a Fellow member of the Institute?

Ans: An Associate member holding membership of the Institute for a continuous period of five years is eligible for admission as a Fellow member on his fulfilling the requirements of Regulation 4 (2) as given below:-

- (i) is an Associate and has been in continuous practice in India as a Company Secretary for at least five years; or
- (ii) is an Associate for a continuous period of not less than five years and possesses experience of not less than five years on the date of application in a supervisory position, of which at least three years shall be as a secretary or in a post considered equivalent or higher thereto by the Council in a company or body corporate having an aggregate paid-up capital of not less than rupees twenty-five lakhs; or
- (iii) is an Associate for a continuous period of not less than five years and possesses five years total experience in the disciplines of law, management or commerce, either in a Group A post in the Central Government or any equivalent post in the State Government or local Authority or in a supervisory position in any organization deemed by the Council as equivalent to the experience specified in clauses (c) or (d).

Eligible members may apply for Fellow Membership of the Institute in approved Form B available on the website of the Institute www.icsi.edu. The application should be accompanied with the following:

Experience Certificate indicating the designation, period of employment, details of nature of duties, paid up share capital of the organization issued by the competent authority or copy of certificate of practice of the respective professional body/ Institute;

Application for membership can be made online alongwith remittance of the requisite fee by net banking through Institute's portal www.icsi.in.

Upon his advancement to Fellowship, the member is entitled to

FAQs on Membership

use the descriptive letters "FCS" after his name to denote that he is a Fellow Member of the Institute.

Q 38: What is the fees required to be paid for becoming Fellow member of the Institute?

Ans: The members applying for Fellow membership of the Institute are required to pay the following fees along with the application for Fellow membership:-

I. Entrance fee for Fellow	Rs.1,000/-
II. Fellow annual membership fee	Rs.1,500/-
TOTAL	Rs.2,500/-

However, members who have already paid the annual membership fee for the relevant year will pay the difference of annual membership from Associate to Fellow i.e. 375/- along with entrance fee of Rs.1,000/-.

Q 39: Whether a member is eligible to become Fellow automatically after completion of period of five years as Associate member?

Ans: No. A member on completion of five years as an Associate member of the Institute will not automatically become a fellow member of the Institute. For admitting as a Fellow member, he has to apply for admission as a fellow in the appropriate Form-B along with requisite fee and documents of experience. He will be admitted as a Fellow only if his experience fulfills the requirement Regulation 4(2) of the Regulations.

Q 40: What is the procedure for noting the change in the name of a member in the records of the Institute?

Ans: The members are required to make an application in writing for change of name along with an attested copy of Notification published in the official Gazette notifying the change in the name of the member. However, the request for change in the surname of the member consequent upon marriage may be made along with an attested copy of marriage registration certificate. In case marriage registration certificate is not available on written declaration of the member along with marriage invitation card in original.

Q 41: Whether it is compulsory for a member to intimate his change in professional address to the Institute?

Ans: Yes. It is mandatory for a member to communicate to the Institute any change of professional address within one month of such change.

Q 42: How the member can get a list of members published by the Institute?

Ans: The list of members as on 1st April, 2012 has been published in CD and is available to members on his request on making a payment of Rs.250/- by way of cheque at par or demand draft payable at New Delhi favouring "the Institute of Company Secretaries of India".

Q 43: Can a member whose name stood removed from the Register of Members is entitled to get the Chartered Secretary Journal free of cost?

Ans: No. Only members whose names are borne on the Register of Members are entitled to receive the monthly journal Chartered Secretary free of cost.

Q 44: What is the procedure for obtaining the duplicate certificate of membership or certificate of practice?

Ans: The member may submit a written request for obtaining the duplicate certificate of Associate or Fellow membership or certificate of practice, as the case may be along with charges of Rs.20/- per duplicate certificate and also return the mutilated / torn certificate for cancellation. In case, the original certificate is lost, the member has to submit an affidavit to that effect in the specified format on non judicial stamp paper of Rs.10/- duly attested by Notary Public / Oath Commissioner /1st class Magistrate.

Q 45: What is meant by certificate of good standing and how it can be obtained?

Ans: A certificate of good standing means a certificate issued to a member of the Institute at his request for specific purpose indicating that he is a bonafide member of the Institute in good standing and nothing adverse about him has come to the notice of the Institute. A good standing certificate is normally required for the purpose of joining employment, immigration and visa purposes. A member may send a request in writing or send an email for issue of certificate of good standing stating the purpose for which certificate of good standing is required.

Such certificate is issued to member whose name is borne on the register of members.

Q.46: What is a transcript and what is the procedure for obtaining a transcript?

Ans: A transcript is a certificate issued by the Institute to a member describing the details of subjects and statement of marks of the examinations of the Institute passed by the member concerned including his membership details.

For obtaining copies of transcript, member may make a request in writing accompanying the following :-

- I. A transcript fee of Rs. 100/- per transcript.
- II. Copies of certificates of passing of Foundation, Intermediate or Executive Programme and Final or Professional Programme Examinations.
- III. Copies of Associate/Fellow membership certificates.

Q 47: What is the procedure for obtaining the members' Identity Cards? Whether any charges are required to be paid for obtaining the Identity cards?

Ans:Members are required to make a request in writing along with two passport size photographs to the Institute or send the scanned

image of photograph in jpeg format be sent separately at e-mail ids acs@icsi.edu / Santosh.jha@icsi.edu . At present, no amount is charged from the members for issue of Identity Cards

Q 48: What is procedure for obtaining a duplicate identity card?

Ans: Members who have lost their Identity Cards or their identity cards are mutilated may apply in writing along with a copy of F.I.R. and remittance of charges of Rs. 100/- for issue of a duplicate identity card.

Q 49: Can members pay their annual membership fee and other fees online?

Ans: Yes. Members can make online payment of their Annual Membership Fee, Certificate of Practice Fee, Restoration Fee, Entrance Fee and Subscription for life membership of CSBF through Institute's web portal www.icsi.in

Q 50: Can members make online applications through Institute's web portal www.icsi.in?

Ans: Yes. Members can make online applications/requests through Institute's web portal www.icsi.in on the following:

- » Elevation as FCS
- » Issue of Certificate of Practice
- » Change of Address
- » Duplicate I Card
- » Request for issue of Chartered Secretary Journal
- » Restoration/Cancellation of Membership
- » Renewal /Restoration /Cancellation of Certificate of Practice
- » Approval of Proprietorship Concern/Partnership Firm Name of Company Secretaries in Practice
- » Enrolment as Life Member of CSBF
- » Issue of Transcript

Q 51: Can members do online change of address on their own?

Ans: Yes. Members can change their professional and residential address and/contact details through Institute's portal www.icsi.in by following the steps given below:

- » Login to www.icsi.in
- » Login to self profile and click on the link 'change of address'
- » Click on the relevant button i.e. 'professional/residential' and click the 'go' button
- » Change the details as required and the details will be automatically updated.

Q 52: Whether the newly admitted ACS and FCS members can generate their letter of admission on their own?

Ans: Yes. The newly admitted members can generate their admission letters on their own by following the steps given below:

- » Login to www.icsi.in
- » Login to self profile and click on the link 'letters'
- » Click on the relevant button i.e ACS/FCS Letter
- » The letter in PDF Format will be displayed

Q 53: What is Company Secretaries Benevolent Fund?

Ans: The ICSI established the Company Secretaries Benevolent Fund (CSBF) in the year 1976 which seeks to create security umbrella for dependent family members.

Q 54: What is the nature of Company Secretaries Benevolent Fund?

Ans: Company Secretaries Benevolent Fund is a society registered with the Registrar of Societies, New Delhi under the Societies Registration Act, XXI of 1860.

- The Fund is recognized under Section 12A of the Income Tax Act.
- Contribution to the Fund qualify for the deduction under section 80G of the Income Tax Act, 1961.

Q 55: What are the Objectives of the Company Secretaries Benevolent Fund?

Ans: Benevolence, Financial assistance to the families of the deceased members, Medical Assistance and Assistance for Children Education

Q 56: How to become a life member of the Company Secretaries Benevolent Fund?

Ans: A member can become a life member of the CSBF by making an application in 'Form A' duly filled in and signed along with one time subscription of Rs.7500/-. Form A is available on the website of the Institute i.e. www.icsi.edu . The application can be made online along with the subscription through Institute's web portal www.icsi.in .

Q 57: How to make the subscription of CSBF?

Ans: The one time subscription of CSBF can be made through cheque at par or demand draft payable at New Delhi of Rs.7500/- drawn in favour of 'Company Secretaries Benevolent Fund' or online through Institute's web portal www.icsi.in.

Q 58: Does the subscription or contribution towards the CSBF qualify for deduction under Section 80 G?

Ans: Yes. The subscription and contribution towards the CSBF is exempted under Section 80G of the Income Tax Act, 1961.

Q 59: What are the benefits of becoming a life member of the CSBF?

Ans: The benefits of becoming a life member of the CSBF are :

- » Financial Assistance upto Rs.5,00,000/- to the dependants of the deceased members upto the age of 60 years
- » Financial Assistance upto Rs.2,00,000/- to the dependants of the deceased members who are above the age of 60 years.
- » Reimbursement of Medical expenses upto Rs.60,000/- for the members and/ or their dependants.
- » Financial Assistance for Children's education up to Rs.20,000 per child (maximum for two children) in case of the member leaving behind minor children. (One time Payment)

A Governance Initiative

Information on Corporate Governance

1. The Corporate Social Responsibility Voluntary Guidelines, 2013- Securities and Exchange Commission of Pakistan -

The Securities and Exchange Commission of Pakistan (SECP) has issued of Corporate Social Responsibility Voluntary Guidelines recently. The objective of the Guidelines is to promote the development of a framework for CSR initiatives by all companies. The guidelines encourage companies to strive and work in cooperation with stakeholders for implementing a transparent and socially responsible strategy.

The guidelines encourage companies to have a CSR policy endorsed by the board of directors ("board") of the company, reflecting their understanding and commitment to CSR. CSR policy of a company is expected to be formulated in a manner that serves as a guide to its strategic plans, paves way for a systematic CSR management system and projects the roadmap of CSR initiatives. Thereby companies are expected to clearly determine the priority areas wherein the CSR projects are currently being managed (ongoing projects) and are planned to be initiated (upcoming projects).

The important feature of the guideline is that the company may undertake arrangement for obtaining assurance by an external party. The external assurance is expected to be implemented in a manner that is systematic, documented, evidence-based, and characterized by defined procedures. The guidelines also expect that the companies report concise and material information regarding their CSR policy and activities that may be consolidated and reported in the form of a separate CSR Report.

The details of can be had at: http://www.secp.gov.pk/notification/pdf/2013/VoluntaryGuidelinesforCSR_2013.pdf

GREEN CORNER

Control of Soil Pollution



Soil pollution is the addition of toxic and harmful chemicals, salts, microorganisms and radioactive elements to the soil layer. These substances decrease soil fertility by reducing its mineral content. They also adversely affect plant and animal growth.

- Bio-fertilization and manures should be used instead of their chemical alternatives.
- De-forestation, the cutting down of trees, causes erosion, pollution and the loss of fertility in the topsoil.
- Weeds soak up minerals in the soil. Reducing weed growth helps reduce soil pollution.
- Designated pits should be used for the dumping of soil wastes.

Good Things Around

National Consumer Helpline (NCH) is a project of the Union Ministry of Consumer Affairs, operating from the University of Delhi. NCH provides a Toll Free No-1800-11-4000 (for BSNL/MTNL Users) to deal with a multitude of problems arising in their day-to-day dealings with business and service providers.

National Consumer Helpline supports consumers by:

- Guiding consumers in finding solutions to problems related to Products & Services.
- Facilitating consumers in filing complaints against defaulting Service Providers
- Empowering consumers to use available Consumer Grievances Redressal Mechanisms, Educating Consumers about their Rights and Responsibilities.

Complaints can be registered also on the [website: www.nationalconsumerhelpline.in](http://www.nationalconsumerhelpline.in)

8 March : International Women Day

Remember
22 March : World Water Day

24 March : World Tuberculosis Day

Moments of Thought



The two key complexities which I see today are the challenges of corporate governance and sustainability. Corporates that aspire to survive will meet these challenges.



Mr. Kamal Nath

Union development Minister,
Corporate Governance and Sustainability Awards,2013
Indian Chamber of Commerce

COMPANY SECRETARIES EXAMINATIONS JUNE, 2013



TIME-TABLE AND PROGRAMME FOR OMR BASED FOUNDATION PROGRAMME EXAMINATION

Day & Date of Examination : Saturday, the 1st June, 2013

PART	Morning Session (10.00 A.M. to 11.30 A.M.)	PART	After-noon Session (1.30 P.M. to 3.00 P.M.)
PART-1	Business Environment and Entrepreneurship	PART-3	Business Economics
PART-2	Business Management, Ethics and Communication	PART-4	Fundamentals of Accounting and Auditing

Time-Table & Programme

Date and Day	MORNING SESSION (9:00 AM TO 12:00 NOON)		AFTERNOON SESSION (1:30 PM TO 4:30 PM)
	FOUNDATION PROGRAMME	PROFESSIONAL PROGRAMME	EXECUTIVE PROGRAMME
2/6/2013 Sunday		Company Secretarial Practice (MODULE-I)	General and Commercial Laws (MODULE-I)
3/6/2013 Monday		Drafting, Appearances and Pleadings (MODULE-I)	Company Accounts, Cost and Management Accounting (MODULE-I)
4/6/2013 Tuesday		Financial, Treasury and Forex Management (MODULE-II)	Tax Laws (MODULE-I)
5/6/2013 Wednesday		Corporate Restructuring and Insolvency (MODULE-II)	Company Law (MODULE-II)
6/6/2013 Thursday	English and Business Communication	Strategic Management, Alliances and International Trade (MODULE-III)	Economic and Labour Laws (MODULE-II)
7/6/2013 Friday	Economics and Statistics	Advanced Tax Laws and Practice (MODULE-III)	Securities Laws and Compliances (MODULE-II)
8/6/2013 Saturday	Financial Accounting	Due Diligence and Corporate Compliance Management (MODULE-IV)	
9/6/2013 Sunday	Elements of Business Laws and Management	Governance, Business Ethics and Sustainability (MODULE-IV)	



Our Members

ATTENTION MEMBERS

CHANGE OF ADDRESS

Member's attention is drawn to Regulation 3 of the Company Secretaries Regulations, 1982 according to which every member of the Institute is required to communicate to the Institute any change of professional address within one month of such change. The contravention of the same amounts to professional misconduct under clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980.

Members are, therefore, requested to intimate the change in their professional address within the specified period.

- A.** The members may change their professional and residential address and other details online through Institute's portal www.icsi.in by following the steps given below:-
- Login to portal www.icsi.in
 - Login to self profile by entering the membership number and password
 - Once logged in, the member has to click on the Link 'Change of Address'
 - A window will be displayed with the option 'Professional' or 'Residential'
 - Click on the relevant option i.e. 'Professional' or 'Residential' and change the details and click on 'go' button
 - A screen will be displayed with the options 'Existing details as per records' and 'Enter change details'
 - Change the details as required and press on 'submit' button
- B.** Members may also send their request for change of address to the Institute's email IDs at member@icsi.edu & aditya.mishra@icsi.edu from their e-mail ID as recorded with the Institute.
- C.** Members may send the request through electronic mode as described under A, B & C above. Otherwise, members may also send their request through post to the Membership Section of the Institute at ICSI House, 22 Institutional Area, Lodi Road, New Delhi - 110003.

For clarifications if any, members may contact Mr. Aditya Ranjan Mishra, Sr. Assistant at telephone no. 011 45341061 or Mr. Santosh Kumar Jha, Programmer at telephone no. 011 45341062 or write at e-mails aditya.mishra@icsi.edu & santosh.jha@icsi.edu.

ATTENTION MEMBERS

UPLOADING OF SCANNED IMAGES OF PHOTOGRAPHS & SIGNATURES ON INSTITUTE'S WEBSITE

The Institute has reoriented its online services to capture the information pertaining to photographs and signatures of members. The members may upload the scanned image of their photograph and signature on the website of the Institute by following the steps given below:

- Open the Institute's website www.icsi.edu.
- At Homepage click on login button appearing on top of the website.
- Click on 'Members' Tab and then click on 'Member Login' button.
- Use your membership number as Axxxx for ACS and Fxxxx for FCS as your user name. For example, if the Associate Membership number of the member is 2502 then the user name should be written as A2502 and for FCS it should be written as F2502.
- Your password shall be the same as used by you earlier on our portal www.icsi.in.
- In case you have not created your password till date you may create your password by using www.icsi.in and then come back to the new portal www.icsi.edu after 48 hours.
- Once logged in click on 'Members' tab followed by 'My Account' tab.
- Click on the last tab 'Manage Image'.
- Click on the browse button to upload your photograph and signature.
(The format of the file containing the photograph and signature should be in .jpeg format and the size of the file containing the photograph and signature should be maximum of 150 kb each).

In case the members are facing any problem in doing the same, the members are requested to send their images of photograph and signature from their email id registered with the Institute to email IDs at santosh.jha@icsi.edu/ashish.tiwari@icsi.edu For clarifications if any, members may contact Mr. Santosh Kumar Jha, Programmer at telephone no. 011 45341062 or write at e-mail ids santosh.jha@icsi.edu or Mr. J S N Murthy, Administrative Officer at jsn.murthy@icsi.edu 011 45341049.



ATTENTION MEMBERS

PMQ COURSE IN CORPORATE GOVERNANCE EXAMINATION June 2013

- The Institute is pleased to announce that the Part -I next examination of the Post Membership Qualification (PMQ) in 'Corporate Governance' will be held from Wednesday, June 5, 2013 to Sunday, June 9, 2013 at the centres where the company secretaries June 2013 examination would be held.

TIME TABLE & PROGRAMME

DATE AND DAY	GROUP	MORNING SESSION 09.00 A.M. TO 12.00 NOON
5.6.2013 Wednesday	I	Conceptual Framework of Corporate Governance
6.6.2013 Thursday	I	Corporate and Board Management
7.6.2013 Friday	I	Legal and Regulatory Framework of Corporate Governance
8.6.2013 Saturday	II	Board Committees and Role of Professionals
9.6.2013 Sunday	II	Corporate Governance - Codes and Practices

- Members of the Institute registered for the PMQ Course in Corporate Governance on or before November 30, 2012 are eligible for appearing in the PMQ Course in Corporate Governance Examination to be held in June 2013.
- The last date for receipt of application forms (available in prospectus) for June 2013 examination from eligible candidates together with requisite examination fee @ Rs.1500/- per group by way of cash/crossed Demand Draft favouring “**The Institute of Company Secretaries of India**” payable at New Delhi, is 25th April, 2013. Examination forms complete in all respect along with fee mentioned above and with the late fee of Rs.100/- should reach the Institute on or before 4th May, 2013.
- For further details please contact Ms. Banu Dandona, Asst. Director (Academics) at the Institute Head Quarters at New Delhi.

ATTENTION MEMBERS

IDENTITY CARDS FOR MEMBERS

Members who are yet to get the Identity Card issued from the Institute are requested to apply for the same along with their latest two coloured passport size photographs in the format given below (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003. For queries, if any, contact on -

Phone No. 011 45341061 Mobile No. + 91 9868128682
Email Ids member@icsi.edu / acs@icsi.edu

Request for issue of Member's Identity Card

Please send latest two coloured passport size photographs mentioning your name & membership no. on the reverse of the photograph alongwith the following details:

Membership No. ACS/FCS

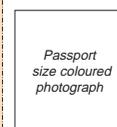
Name
 (in block letters) (First Name) (Middle Name) (Surname)

Date of birth

Phone: Office: Residence:

Mobile No.

E-mail address



Signature with date



Our Members

CONGRATULATIONS

Shri A. K. Rastogi, FCS, on his being honored with CA Professional Achiver Award in Public Sector Category by the ICAI at the 6th ICAI AWARDS 2012. The award was presented by K. rehman Khan, Union Minister for Minority Affairs and Shri Suresh Prabhu, Chairperson of the Council on Energy, Environment and Water, India and former Union Minister of Power.

ANNOUNCEMENT

Partial modification in the eligibility criteria for eMSOP

The Council of the Institute at its 211th meeting has approved partial modification in the eligibility criteria for undergoing eMSOP for Professional/Final pass students who have completed all training requirements or exempted therefrom. The modified guidelines will be effective from 01st March 2013.

The modified criteria is as under :

- a) Candidates occupying senior positions or practising professionals (e.g.:- Practising Chartered Accountants, Practising Cost Accountants & Practising Advocates), with atleast 10 years' experience and who have completed Company Secretaryship Final /Professional Programme exams four years prior to the application for undergoing e-MSOP; or
- b) Candidates occupying senior positions or practising professionals (e.g.:- Practising Chartered Accountants, Practising Cost Accountants & Practising Advocates), with atleast 15 years' experience and who have completed Company Secretaryship Final/Professional Programme exams two years prior to the application for undergoing e-MSOP; or
- c) Candidates who are presently settled abroad and who have completed Company Secretaryship Final/Professional Programme exams two years prior to the application for undergoing e-MSOP; or
- d) Candidates who have completed Company Secretaryship Final/Professional Programme exams five years prior to the application for undergoing e-MSOP.

CS QUIZ

Prize query

In an industrial dispute, the Labour Court awarded the payment of wages to a workman. Without disbursing the wages, the management of the company went in appeal to the High Court. A Single Bench of the High Court dismissed the appeal and ordered for initiation of contempt proceedings. Is such an order in consonance with the legal provisions?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th April, 2013.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query March, 2013 Issue**' and addressed to :

Deputy Director (Publications)

The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following members:

Shri A K Modi, FCS

(20.01.1937 - 07.02.2013), a Fellow Member of the Institute from Vadodara. He was a Central Council Member of the ICSI for two terms (1992 to 1994 and again from 1995 to 1997). He was also the Chairman of ICSI-WIRC in the year 1990.

Shri Dipanjan Kayal, ACS

(30.05.1983-13.01.2013), an Associate Member of the Institute from Kolkata.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed Souls rest in peace.



01



02



03



04



05

01» CS S. N. Ananthasubramanian, President, the ICSI addressing the media persons about New Syllabus of CS Course, Initiatives of ICSI, Student Education Fund Trust, Career Awareness Initiatives, etc.

02» WIRC - Thane Chapter - Programme on Turnaround Management and Corporate Restructuring - seen on the dais from Left: B. Narasimhan and speaker R. Balakrishnan.

03» NIRC - Gurgaon Chapter - Full Day Seminar jointly with ICRA on Capital Market, Corporate Governance and Credit ratings - Sitting on the dais from Left: Rranjeet Pandey, Rohit Gupta (ICRA), Javed Habib (ICRA), Dhananjay Shukla, Santosh Sharma and Punit Handa (addressing).

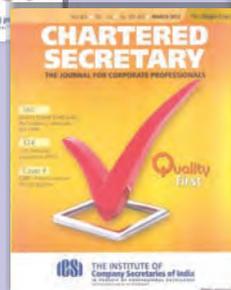
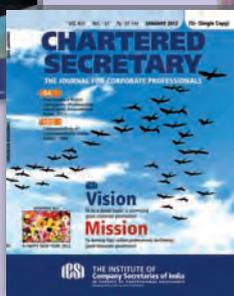
04» EIRC - Bhubaneswar Chapter - Half Day Seminar on Service Tax and Proposed Amendment in the New Companies Bill - Sanjay Kumar Gupta addressing. Others sitting on the dais from Left: M. Mishra, S. Mohanty, A. Acharya and D. Mohapatra.

05» SIRC - Madurai Chapter - Investor Awareness Programme - E. Selvaraj (RD, MCA, Chennai) addressing. Other sitting on the dais from Right: Kumaravelu (Area Head, Karvy Broking Ltd., Madurai), S Kumararajan and T. Margret.

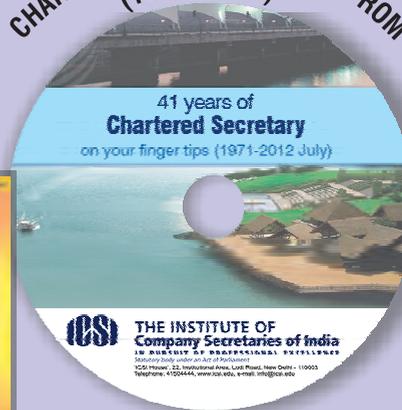
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