

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

Wrong

Right

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Raise the Profile of
Corporate Secretaries

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and Better Governance

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13th National
Conference
of PCS

**VALUES &
ETHICS**



**THE INSTITUTE OF
Company Secretaries of India**

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

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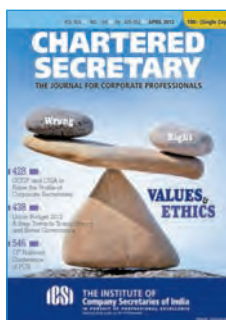


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CHARTERED SECRETARY



April
2012

- 01 >> GRI Focal Point India Advisory Group Meeting held at ICSI House, New Delhi - Bhaskar Chatterjee (Chairperson, GRI Focal Point India Advisory Group and DG, IICA, standing 7th from left) seen with team members and officers of the Institute.
- 02 >> Visit of President, SAFA and Former President, IFCS to ICSI HQ. - Standing from Left: N.K. Jain, Nesar Ahmad, Muhammad Rafi (President SAFA), Mushtaq A. Madraswala (ED, ICMA, Pakistan & Former President, IFCS) and Alka Kapoor.
- 03 >> Signing of MOU between ICSI and Madras Stock Exchange Ltd.- Standing from Left: N.K. Jain, R. Sridharan, Sutanu Sinha, V. Balasubramoniam (Secretary, Madras Stock Exchange Ltd., Chennai), Gopalakrishna Hegde, Nesar Ahmad and S.S. Marthi.
- 04 >> SIRC - Press Meet - Sitting on the dais from Left: Baiju Ramachandran, N.K. Jain, Gopalakrishna Hegde, Nesar Ahmad, R. Sridharan and S.S. Marthi.
- 05 >> ICSI-BSE - Joint Programme on Changing Regulatory Landscape - Inaugural Session - Standing from Left: Ananta Barua (ED, SEBI), Mahavir Lunawat, Ashish Chouhuan (Dy.MD, BSE), Nesar Ahmad, P.K. Malhotra (Presiding Officer, SAT), S.N. Ananthasubramanian, N.K. Jain and Ragini Chokshi.
- 06 >> EIRC: Full Day Seminar on Exploring New Areas of Profession - Sitting from Left: Arun Khandelia, K.K. Chhaparia, Ranjeet Kumar Kanodia, Rakesh Kumar Goel (IRS, CIT Appeal, Govt. of India) and B.K. Mallick (IRS, JD, Dte. of Enforcement (FEMA & PMLA)).
- 07 >> EIRC - Bhubaneswar Chapter - Half Day Workshop for Directors of State PSUs - J.B. Das addressing. Others sitting on the dais - J.K. Mohapatra (IAS, Principal Secretary to the Government, Department of Finance, Odisha), S. Garg (IAS, Commissioner cum Secretary to Govt., Deptt. of Public Enterprises, Odisha) and A Acharya.
- 08 >> NIRC - Seminar on Value Creation through Corporate Restructuring - Standing from Left: Rajiv Bajaj, Ranjeet Pandey, Nesar Ahmad, Justice Manmohan (Hon'ble Company Judge, Delhi High Court), NPS Chawla, Vineet K. Chaudhary, Deepak Kukreja and Manish Gupta.
- 09 >> NIRC - Jaipur Chapter - Full Day Seminar on Union Budget 2012 and Contemporary Corporate Challenges - Sitting from Left: Vimal Gupta, Nesar Ahmad, N.K. Jain, Shyam Agrawal and Ansul Jain.
- 10 >> WIRC - Indore Chapter - One Day Seminar on Role of Legal Advisor & Merchant Banker in IPO and Private Equity Investment - Ashish Karodia addressing. Others sitting from Left: Dhanya Menon, Ritesh Gupta, Rajat Bopaiah, Ashish Garg and Dinesh Kumar Sharma.
- 11 >> EIRC - North Eastern Chapter - Full Day Workshop on Revised Schedule VI, Life Skills and Critical Analysis of Union Budget - Sitting from Left: Neha Qureshi, Amit Pareek, P. Gaggar, R.K. Sharma, P.K. Jain and C.S.Sharma.





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Global Corporate Governance Forum

Better Companies, Better Societies

Forum and CSIA to Raise the Profile of Corporate Secretaries

Washington, DC, February 2012 - The Corporate Secretaries International Association (CSIA) and the Forum launched the development of the Corporate Secretary Training Supplement through a four-day workshop involving the project's working-group members from seven countries.

As the board's 'conscience,' a corporate secretary has a key role in shaping how a board – and the company – is governed. Corporate secretaries provide counsel on best practices, oversee corporate disclosures of financial information, ensure that board directors are fully informed, and often work closely with stakeholders.



■ The participants discuss the content of the future training materials.

The training supplement will cover the role of corporate secretaries in corporations, family-owned or family-controlled companies, and state-owned enterprises. It will examine the corporate secretary's value in improving a

company's performance through better governance. The supplement also will explore the secretary's core responsibilities – as communicator, board advisor, and compliance officer. The final section will look at the emergence of independent practitioners in providing audits of corporate secretaries' roles and performance as well as other consulting services. Throughout the supplement, the emphasis will be on examples and practical insights.

The supplement will be modeled on the Forum's highly successful Board Leadership Training Resources Toolkit, which has pioneered adult-learning methodologies to train trainers, who, in turn, train board directors. "This project will benefit from more than three years of experience by the Forum in helping train directors in more than 50 countries," says Ghita Alderman, a Forum projects officer. "The CSIA's global network will support the supplement's contents, particularly in providing practical insights and advice that participants in our training have found invaluable."

In raising awareness of the role of corporate secretary – among boards, institutes, and government officials – the supplement will help boards that currently have no corporate secretary establish this role. It will also serve to further develop the role where secretaries are already in place but underused.

"Advancing good corporate governance must include corporate secretaries as part of efforts to build board capacity in the emerging market and developing countries," says Philip Baldwin, chief executive officer of the Hong Kong Institute of Chartered Secretaries and CSIA's representative. "Corporate governance must be a core competency of corporate secretaries."

In Detail: Corporate secretaries have a central role in corporate governance through their performance of the following responsibilities:

- ◆ Manage governance processes, including board and committee meetings, information flowing to and from directors, new director orientation, strategic planning, and public disclosures.
- ◆ Arrange and manage the process of calling and holding annual, general, or special meetings, and advise the board on matters to be raised at the meeting for shareholder vote.
- ◆ Assess and manage compliance with corporate governance laws, regulations, and practices.
- ◆ Review legal and regulatory developments affecting the company's operations, including listing rules, and ensure that directors are properly informed.
- ◆ Ensure statutory compliance.
- ◆ Act as a sounding board for the chairman and directors on corporate governance matters, and provide counsel.
- ◆ Engage with stakeholders to ensure that their views are heard by the board and to relay board decisions.
- ◆ Manage investor relations concerning corporate governance issues.



At a Glance

Articles (A 137 - 186)

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Union Budget 2012 A Step Towards Transparency And Better Governance

p- 438

N. K Jain

The Government has taken several positive steps to improve the infrastructure which would definitely boost the economy. There is a clear push towards propelling infrastructure development through reforms in sectors like roads, ports and power. In the midst of global economic slowdown, the Finance Minister has done a commendable job in addressing the economic concerns through pragmatic measures of promoting investments in key sectors.

Negative for Positive ? Service Tax & Union Budget 2012

p- 446

Vikas Khare

The amendments to the service Tax even if it is understood have been made or proposed keeping GST framework in mind, are made in patches. The patches will be visible on the legal framework of service tax. It is going to be a tough learning curve for the administrators of service tax, consultants and assesses. Instead of patchy work more wholesome exercise would have been the right approach for the Government. When taxing of Services is moving from positive to negative, the service tax law has certainly moved from simple law to most complex law of the land and therefore everyone in industry is keeping eye on the GST with a hope that it would be really a Good Simple Tax.

Union Budget-2012 and its Impact on Capital Market

p- 454

Kapil Dev Taneja

The Union Budget for the year 2012-13 is a continuation of Government's Policy to counter the needs of Indian Economy in troubled times facing tremendous domestic and global challenges. The stakeholders (Industry & Services) have been guarded in their response to the Budget. No grand schemes on social expenditures were announced this year. However, on a careful perusal of the Budget document the Government's intention to gather resources from foreign multinational companies to the tune of Rs.40,000 crores becomes clear. This is a controversial issue and a final decision on this aspect is expected from the Supreme Court. The pragmatic players in the industry have hailed the Budget as a far sighted and progressive one, reflecting the policies of the UPA Government. Impact of the Budget on the capital market is briefly portrayed in this article.

Superseding Supreme Court's Decision in Vodafone's Case by Amendment to Operate Retrospectively Erodes Government's Credibility

p- 456

T.N. Panday

The most controversial amendment proposed vide Finance Bill, 2012 relate to their operation retrospectively, in some cases, from as far back as year 1962. Doing so in respect of concluded assessments is most unfair and unjust. It has been emphasized in the article that doing so shakes the confidence of the taxpayers and investors and erodes the credibility of the Government. The arguments given in support of such action by the Finance Minister & Revenue Secretary are, prima-facie, not convincing.

Competition Commission Notification on Combinations An Analysis

p- 459

D K Prahlada Rao

To achieve faster growth, synergy of operations and securing enlarged market for their products, corporate organizations take recourse to mergers and amalgamation of like or diversified enterprises. This is integral to business strategy and the corporates endeavour to achieve the aforesaid objectives through domestic and cross border transactions. The recent times has seen increasing cross border transactions which bring foreign enterprises in closer relationship with domestic enterprises. The Indian industry is very much concerned about the manner in which the combination proposals are going to be handled by the Commission and to what extent it will hinder acquisition of new enterprises. While business expansion and diversification is a legitimate business activity, it has to sub-serve national priorities as outlined in the Competition Act. In this backdrop this article makes an in-depth analysis of the amended Combination Regulations, 2011.

Amended Combination Regulations Relief to Corporates & Bonanza for Company Secretaries

p- 469

G. R. Bhatia

Post amendments to Combination Regulations an intra-group merger/amalgamation involving wholly owned subsidiaries need not be reported to the CCI and resultant impact is reduced burden of compliance on the business houses. A bonanza for the profession of Company Secretary is that a duly authorized Company Secretary is also now allowed to sign and verify Form I (Short Form) and Form II (Long Form) whereby a combination transaction is reported to the CCI. The pinch of salt is that there is exponential hike in filing fee in reporting an acquisition, merger or amalgamation to the Competition Commission of India.



Joint Venture Legal and Regulatory Framework

p- 472

Naresh Kumar

Joint ventures facilitate business cooperation for mutual advantage between business entities. Setting-up of JV require compliance with legal and regulatory framework of India and host country. As such, the parties entering into JV agreement and shareholders' agreement should provide a comprehensive road map on the rights and obligations of the parties and minimize differences and disputes. Further, factors like the eligibility criteria, merits and demerits of different forms of business organization, fund raising avenues and type of instruments, transfer of capital and repatriation, tax concessions and incentives etc., should be carefully considered. As JV involves co-ownership and co-management, it is essential that the parties contribute their complementary resources and skills in the JVC continuously for mutual benefits. In this context, article discusses the important legal issues relating to joint ventures and their successful operation.

Buy-back Law, Procedure and Practice

p- 481

Shashikala Rao

Buy-back one of the modes for corporate restructuring and distribution of surplus, has inherent benefits both for the companies as well as shareholders. Buy-back is primarily governed by sections 77A, 77AA and 77B of the Companies Act, 1956. Separate procedures and compliances have been prescribed for listed and unlisted companies. SEBI in February 2012 has amended the Regulations applicable to listed companies. This article aims to concisely bring out the applicable laws, procedures, compliance as also practical aspects in connection with a buy-back programme.

Legal World (LW 40 - 52)

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- ♦ **LW 30.04.2012** Bombay High Court asks SEBI to reconsider the issue of granting recognition to MCX as stock exchange.
- ♦ **LW 31.04.2012** Delhi High Court rejects the winding up petition based on disputed facts.
- ♦ **LW 32.04.2012** Prima facie it is seen that the statutory orders under section 234 of the Act was not delivered to the petitioner and that being so the complaint was not maintainable. [Del]
- ♦ **LW 33.04.2012** The period of limitation begins from the day actionable knowledge is gained by the competent authority. [Del]
- ♦ **LW 34.04.2012** However, though our hearts may bleed for the appellant, we are bound by the law and are unable to find any error in the legal reasoning given by the Learned Company Judge approving the action of the respondent Company of reducing the share capital. [Bom]
- ♦ **LW 35.04.2012** Considering the exercise of discretion by the Appellate Tribunal directing the appellant to deposit 5%, in our considered view, no question of law is involved to entertain the appeal. [Mad]
- ♦ **LW 36.04.2012** In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there

is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. [SC]

- ♦ **LW 37.04.2012** It is settled that the Court under Section 34 of the Arbitration Act, if case is made out of illegality and /or perversity, can set aside even the reasoned award. [Del]
- ♦ **LW 38.04.2012** Vacation of a leased property by the lessee together with a notice to the lessor to take delivery of the same would amount to possession being delivered and it shall be deemed for all purposes that as soon as the property was vacated and possession offered, constructive possession would be with the lessor. [Del]
- ♦ **LW 39.04.2012** It is settled law that power under section 482 Cr.P.C. of this Court are wide and amplitude, but, these cannot be exercised for the purpose of determining the questions of facts. [Del]
- ♦ **LW 40.04.2012** The issue as to the liability to pay penalty when the assessee had deposited the tax due before the issue of show cause notice is remanded to the Tribunal for reconsideration by the Supreme Court.
- ♦ **LW 41.04.2012** Industrial award passed without considering the merits of the dispute is liable to be set aside. [Mad]

From the Government (GN 75 - 87)

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- ♦ Constitution of a Committee to formulate a Policy Document on Corporate Governance
- ♦ Allotment of Director's Identification Number (DIN) under Companies Act, 1956
- ♦ Registration of Companies or LLPs which have one of their objects is to carry on the profession of Chartered Accountant, Cost Accountant, Architect, Company Secretary etc.
- ♦ Allocation of debt limits in corporate debt old and Government Debt long term category to FIs
- ♦ Clearing and Settlement of OTC trades in Commercial Paper (CPs) & Certificates of Deposit (CDs)
- ♦ Guidelines for Credit Rating Agencies
- ♦ Circular on Mutual Funds
- ♦ Offer For Sale of Shares by Promoters through the Stock Exchange Mechanism - Clarification
- ♦ Offer For Sale of Shares by Promoters through the Stock Exchange Mechanism
- ♦ Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2012
- ♦ Convergence of Indian Accounting Standards with International Financial Reporting Standards - Urban Co-operative Banks
- ♦ Foreign Institutional Investor (FII) investment in 'to be listed' debt securities

Other Highlights

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- ♦ Members Admitted/ Restored
- ♦ Certificate of Practice Issued/Cancelled
- ♦ Licentiate ICSI Admitted
- ♦ Payment of Annual Membership and Certificate of Practice Fee
- ♦ News From the Regions
- ♦ Company Secretaries Benevolent Fund
- ♦ Calendar of National Programmes
- ♦ Reconstituted Examination Committee of the Council of the Institute for the year 2012-13
- ♦ Panel of Paper Setters/Examiners for CS and PMQ Exams.
- ♦ 13th National Conference of PCS
- ♦ PMQ Course in Corporate Governance Examinations
- ♦ Empanelment as a "Peer Reviewer"
- ♦ Capital Markets Week
- ♦ 40th National Convention of Company Secretaries Suggestions on Theme and Sub-Themes
- ♦ 7th International Professional Development Fellowship Programme - 2012
- ♦ Our Members

CG & CSR : WATCH

The Institute has always been in the frontline to promote good corporate governance and it has been the constant endeavour of the Institute to raise awareness among the members and students in Corporate Governance arena. This watch gives an update of the latest happenings in the area of Corporate Governance and Corporate Social Responsibility.

NEW DEVELOPMENTS

1. OECD Releases its new Publication Report titled "Reform Priorities in Asia: Taking Corporate Governance to a Higher Level"

The OECD Released its new publication "Reform Priorities in Asia: Taking Corporate Governance to a Higher Level" on March 1, 2012 which defines corporate governance reform priorities and makes recommendations that reflect the specific conditions and needs within Asia and includes an overview of corporate governance frameworks in 13 Asian economies including India, Bangladesh, Pakistan, China, Malaysia, Singapore, South Korea etc.

The report identifies reform priorities in Asia and makes recommendation on the following topic:-

- Priority 1:** Public and private-sector institutions should continue to make the business case for the value of good corporate governance among companies, board members, gatekeepers, shareholders and other interested parties, such as professional associations.
- Priority 2:** All jurisdictions should strive for active, visible and effective enforcement of corporate governance laws and regulations.
- Priority 3:** The quality of disclosure should be enhanced and made in a timely and transparent manner.
- Priority 4:** Board performance needs to be improved by appropriate further training and board evaluations.
- Priority 5:** The legal and regulatory framework should ensure that non-controlling shareholders are adequately protected from expropriation by insiders and controlling shareholders. Gatekeepers such as external auditors, rating agencies, advisors, and intermediaries should be able to inform and advise shareholders free of conflicts of interest.
- Priority 6:** Shareholder engagement should be encouraged and facilitated, in particular by institutional investors.

The detailed recommendation is given in the aforesaid report on reform priorities in Asia.

Copy of the publication can be accessed at:

<http://www.oecd.org/dataoecd/26/42/49801431.pdf>

2. Consultation on Gender imbalance in corporate boards in the European Union

European Commission Progress Report "Women in economic decision-making in the EU" was presented on March 5, 2012. It shows that limited progress towards increasing the number of women on company boards has been achieved. Just one in seven board members at Europe's top firms is a woman (13.7%). This is a slight improvement from 11.8% in 2010. However, it would still take more than 40 years to reach a significant gender balance (at least 40% of both sexes) at this rate.

On the basis of the Progress Report, the European Commission is considering a legislative initiative to improve the gender balance in the boards of companies listed on stock exchanges and accordingly the Commission has launched a public consultation of stakeholders on possible measures in this context.

This consultation will feed into an assessment of possible EU-level measures to enhance female participation in economic decision-making, which will inform the Commission's decision on whether to propose action and on the form it should take.

The target group of this consultation are Member States, business or industry organisations, individual companies, civil society organisations with an interest in gender and/or social issues, trade unions, equality bodies, and other organisations or individuals.

The deadline for this consultation is 28 May 2012.

Details can be accessed at:

http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htm

GREEN CORNER

GREEN IDEA



- If:** ♦ You care about the environment...
♦ You want to save earth...

Save/Plant Trees to make your contribution

Every day number of trees disappear from the face of the earth. It's time to save and plant trees before we forget the color green.

- Use recycled products like paper etc. to save trees.
- Plant trees to shade your home. It can reduce the temperature inside by 10 to 20 degrees.
- Dedicate a tree to every member of your staff or Gift a tree to mark employee birthdays.

Something Good:

Grow-Trees.com-Online way of planting a Tree



Grow-Trees.com is set up by Pradip Shah, founder of CRISIL, India's first and largest credit rating agency. The idea for Grow-Trees.com came to him from a garden of 100 trees planted in his honour in Israel for technical assistance that he provided to their rating agency.

Grow-Trees.com is conceptualized as a social business. At Grow-Trees, one can plant a tree on community and public lands for the price of a greeting card (Rs. 50/- presently), and obtain triple benefits:

- ♦ **greet** someone for a birthday, anniversary, or special occasion with a tree and the recipient will get a e-certificate of planting a tree.
- ♦ **offset** carbon emissions from daily activities;
- ♦ and thereby **gift** flowers, fruit, fodder and fuel to communities and living creatures.

To Remember

April 7 - World Health Day [WHO]

April 22 - International Mother Earth Day

April 26 - World Intellectual Property Day [WIPO]

Quote of the month

“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”

- Kofi Annan

FORTHCOMING EVENTS (ICSI Capital Market Week)

As part of its initiative towards investor education and good governance, the ICSI has decided to observe ICSI Capital Market Week on the theme Capital Markets - Growth Drivers, from April 23 to April 28, 2012 throughout the country with the inaugural programme in Mumbai, on April 23, 2012 and culminating at New Delhi on April 28, 2012.

Details are available at www.icsi.edu

World Investment Forum (WIF) 2012

Investing in Sustainable Development

The World Investment Forum (WIF) 2012 will take place in the Qatar National Convention Centre, from 20-23 April 2012 in Doha, Qatar.

WIF 2012 will address investment-related challenges and opportunities arising from emerging global economic governance structures, and contribute to developing partnerships and policy options for promoting sustainable investment.

For more information visit <http://unctad-worldinvestmentforum.org/>

FEEDBACK & SUGGESTIONS

Readers may give their feedback and suggestions on this page to Mrs. Alka Kapoor, Joint Director, ICSI
(alka.kapoor@icsi.edu)

Disclaimer:

The contents under '**CG & CSR: Watch**' have been collated from different sources. Readers are advised to cross check from original sources.



From the President



Excellence is not so much a battle you fight with others, but a battle you fight with yourself, by constantly raising the bar and stretching yourself and your team. ●●

Azim Premji

Dear Professional Colleagues,

Excellence does not come instantly. It is built continuously and developed into habit. As the times are changing at a speed of light, there is one thing that contributes unconditionally and significantly to success is "pursuit of excellence". It is the starting point, yet an enduring process. It is an obsession to step a little further than what is standardized to achieve the highest.

In a dynamic environment, professionals are expected to keep up to the mark, especially when the dynamism is global. In that context, excellence demands that every aspect of our professional endeavour is of the highest quality. As regards our

profession we witness changes in terms of new regulations, new technology, new models of business, new alliances and new possibilities. Thus, in today's fiercely competitive dynamic environment, excellence is no longer a long-term goal, but an imperative to sustain growth momentum. Taking cue from my previous communication, I would like to emphasise that quality and excellence are two sides of the same coin, and as Mr. Ajim Premji has rightly said it should be our constant endeavour to raise the quality of our professional services to reach the level of excellence.

Corporate Governance Policy

The Ministry of Corporate Affairs has constituted a Committee under the Chairmanship of Mr. Adi Godrej to formulate a policy document on Corporate Governance, I deem it my privilege to be appointed as member secretary/convenor of this Committee.

In this context, the Institute has prepared a "**Concept Paper on National Corporate Governance Policy, 2012**" which is available on the website of the Institute for public information and comments. The concept paper has been prepared after considering the emerging best corporate governance practices. The concept paper meant to facilitate public discussion and ascertaining views of all stakeholders, will serve as the basis for the deliberation in the Committee.

The first Meeting of the Committee will be held on April 5, 2012 at New Delhi. I will keep you informed of the developments.

Capital Markets Week 2012

You are aware that the Institute has been actively engaged in promoting the interest of investors and the orderly development of the capital market in India. Our members have been authorised by SEBI - the capital market regulator, stock exchanges to issue various certificates and to undertake internal audit of capital market intermediaries. The Institute is also engaged in



research activities and bringing out publications on various aspects of the capital markets and securities laws.

I am pleased to inform you that, as part of its initiative towards investor education and good governance in capital market, the Institute has decided to observe **ICSI Capital Markets Week** on the theme **Capital Markets - Growth Drivers**, from April 23 to April 28, 2012 throughout the country. ICSI Capital Markets Week will commence with mega programme at Mumbai on April 23, 2012 and culminate at New Delhi on April 28, 2012. Other mega programmes are scheduled in Kolkata, Chennai, Bangalore and Ahmedabad. The topics to be deliberated during the Capital Markets Week include Capital Markets: Challenges, Opportunities for Innovation; Recent Regulatory Changes in Capital Markets; SME Exchange: Empowering India's SME Sector; and Indian Capital Market: How to Rebuild Investor Confidence.

In addition, a number of other activities will be undertaken during the week such as panel discussions, lectures, interactive meetings with capital market regulators/stock exchanges and investor awareness programmes by the Regional Councils and Chapters of ICSI. I invite all of you to attend and participate in these programmes and extend your wholehearted support and cooperation in making the Capital Markets Week a grand success. The details are being published elsewhere in this issue.

13th National Conference of Practising Company Secretaries

I am pleased to inform you that the 13th National Conference of Practising Company Secretaries is being held at Srinagar (J&K) on May 25-26, 2012 on the Theme **"Emerging Trends & Opportunities - Preparedness for PCS"**. Eminent faculty with comprehensive exposure to the practical aspects of the topics will address and interact with the participants on the four sub-themes - Mastering Secretarial Audit; Peer Review - A tool for Professional Excellence;

Opportunities in New Taxation Regime - DTC & GST; and Opportunities for Professional Services in the International Market. I urge upon all of you to join this annual congregation of practicing members in large numbers and make this event a memorable one. I sincerely believe that the scenic beauty of Srinagar and refreshing climate of the Himalayas would help you rejuvenate your energies to move ahead with greater vigour and enthusiasm. The details of the National Conference are being published elsewhere in this issue.

ICSI Corporate Governance Week

Institute is actively engaged in promoting good corporate governance and corporate social responsibility amongst the corporate sector in India. Furthering this cause, the Institute had decided the previous year to observe "ICSI Corporate Governance Week" as an annual event. Accordingly, the Institute observed its first "ICSI Corporate Governance Week" in August, 2011, whereat a number of programmes including power breakfast and CG Conclave were organised.

This year also the Institute has decided to observe the **"Corporate Governance Week"** from **August 27-31, 2012** by organizing programmes, interactive sessions etc. for members, students, industry executives, professionals and other stakeholders on the various facets of the corporate governance and sustainability. The Corporate Governance Week will commence with a mega programme in Chennai and culminate with Corporate Governance Conclave on August 31, 2012 at New Delhi. I am sure all of you would extend your support and cooperation in making it a resounding success as in the previous year.

Meeting of GRI Focal Point India Advisory Group

The meeting of GRI Focal Point India Advisory Group was held on March 22, 2012 at ICSI House in New Delhi. The Group deliberated on strategies



From the President

to mainstream sustainability reporting in India and how to make GRI Focal Point India a self-sustained unit. Mr. Bhaskar Chatterjee, Director General, Indian Institute of Corporate Affairs (IICA) was elected as the Chairman of the Advisory Group.

7th International Professional Development Fellowship Programme - 2012

The International Professional Development Fellowship Programme started in 2005 have come a long way and in the year 2012, we can see value addition accrued from these programmes in terms of capacity building, international exposure and networking.

I am pleased to inform you that the Institute has decided to organise 7th International Professional Development Fellowship Programme from June 15 to June 22, 2012 in South Africa, tentatively covering Suncity, Johannesburg and Cape Town. International Conference will be organised at Johannesburg during the Fellowship Programme. We are inviting Institute of Chartered Secretaries Southern Africa to be partner in International Conference. The details of the International Professional Development Programme are being finalised and will be available on the ICSI Website www.icsi.edu shortly.

Study Material on the website

Continuous Students' knowledge development has been receiving focused attention of the Institute since its inception in terms of providing quality study material, knowledge updates, better infrastructure by opening new chapter premises in various cities across the country, providing better training including communication and soft skill development. Recently, the Institute as part of its green initiatives, leveraged technology for providing online services to students. It is in this direction that the Institute has uploaded on its website, the study material for the Foundation,

Executive and Professional programmes. I am sure the students are getting benefit of this facility.

Short term Certificate Courses

The capacity building of members of the Institute has been the corner stone of Institute's policy orientation. It was in this direction that the Institute has been organising programmes on topics of professional interests, introducing PMQ courses and entering into MOUs with Chambers of Commerce, Universities, Stock Exchanges and sister professional bodies abroad.

It is in this sequence and in line with technological developments and changing business environment, the Institute is in the process of developing short term Certificate Courses on Valuation, IPR, XBRL and LPO in collaboration with organisations specialised in the relevant fields. These short term courses will provide specialised application oriented knowledge and enable the members to render services in newer areas.

Corporate Compliance Executive Certificate Course

In order to create trained personnel to provide company secretarial support service to trade and industry and to fill the gap in the trade and industry vis-à-vis current demand for company secretarial support services, the Institute has decided to launch Corporate Compliance Executive Certificate Course. Under this course the students who have passed the Foundation Examination and two papers of Intermediate/Executive Programme will be awarded Corporate Compliance Executive Certificate subject to certain requirements with respect to training, professional development programmes etc. I am pleased to inform you that this certificate course will be launched shortly.

Empanelment as Paper Setter/Examiner

Sharing knowledge is the greatest source of acquiring knowledge. The more you share, the



more you gain from sharing. One of the principal component of social responsibility for an organisation, professional and individual is that what you receive from society must pay back to society in some proportion. In the context of knowledge institutions, such as ours, it become all the more important and demands sharing of much higher proportion of your knowledge and expertise accumulated over a period of time. It is in this context, I invite all of you to come forward and share the wealth of your knowledge and expertise by empanelling yourself with the Institute as paper setter/examiner and support your Institute in its endeavours to raise the quality and standards of education. An announcement to this effect is being published in this issue.

Visit to Regional Councils/Chapters

I had an opportunity to visit Regional Councils at Mumbai & Chennai and also Hyderabad & Jaipur Chapters. During the visits I availed the opportunity to interact with senior members,

students, media, PPP centres, faculty and counsellors.

CSBF Cultural Evening at Jaipur

Jaipur Chapter of the Institute organised a CSBF Cultural Evening on March 18, 2012 at Jaipur. I alongwith Mr. N K Jain, Secretary and CEO attended the programme. I am pleased to note that majority of 23 new members consented to become member of CSBF have obtained the membership. I once again appeal to all members who have not yet become the member of CSBF to become the member at the earliest.

With kind regards,

Yours sincerely,

New Delhi
March 30, 2012

(CS NESAR AHMAD)
president@icsi.edu

ATTENTION MEMBERS !

Compulsory Attendance of Professional Development Programmes by the Members

The Council of the Institute at its 200th Meeting held on March 18, 2011 at New Delhi amended the Guidelines for Compulsory Attendance of Professional Development Programmes by the Members to provide as under:

1.	Current block of three years	April 01, 2011 to March 31, 2014
2.	Min. number of Programme Credit Hours (PCH) to be acquired by Members in Practice	15 PCH in each year or 50 PCH in a block of three years w.e.f April 01, 2011
3.	Min. number of PCH to be acquired by Members in Employment (i.e. members in whose name Form 32 has been filed to work as Company Secretary under the provisions of Sec. 383A of the Companies Act, 1956)	10 PCH in each year or 35 PCH in a block of three years w.e.f April 01, 2011
4.	Min. number of PCH to be acquired by Members above the required to obtain 50% age of 60 years	Members above the age of 60 years are of the PCH required to be obtained by the members below 60 years w.e.f April 01, 2011.



Articles

Union Budget 2012

A Step Towards Transparency And Better Governance

N. K. Jain*, FCS

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The ICSI,
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The Union Budget is one of the most important annual economic events in India as it provides policy direction towards growth and development of the Economy.

The Union Budget 2012-13 seems to be realistic, attainable and is a sincere attempt towards achieving fiscal consolidation.

The Union Budget is one of the most important annual economic events in India as it provides economic and industrial policy direction towards growth and development of Indian economy. The Union Budget 2012-13 seems to be realistic, attainable and is a sincere attempt towards achieving fiscal consolidation. Hon'ble Finance Minister announced major steps in simplifying and placing the procedures concerning taxation, trade and tariffs on electronic interface. This will set the tone for a newer, vibrant and more inclusive economic growth.

* The views expressed herein are personal views of the author and do not necessarily reflect those of the Institute.





Indian economy in the current year witnessed decelerating growth performance as the GDP is estimated for the year 2011-12 at 6.9%. However, there are indicators to show that the economy has bottomed out and a gradual upswing is imminent and thereby the GDP growth during the year 2012-13 is expected to be 7.6%. Yet, the weak industrial growth and increasing fiscal deficit remained concerns.



ECONOMIC SURVEY

Rate of growth estimated was to be 6.9% for the year 2011-12. The share of services in India's GDP at factor cost (at current prices) increased from 33.5 per cent in 1950-51 to 55.1 per cent in 2010-11 and 56.3 per cent in 2011-12 as per Advance Estimates. Agriculture including allied activities accounted for 13.9 per cent of GDP at 2004-05 prices in 2011-12 as compared to 14.5 per cent in 2010-11. This shows that services sector continued to do well and agriculture recovered but the mood in the economy was increasingly being set by the industrial sector and, in particular, manufacturing, which constitutes 75.5 per cent of industrial value added. Wholesale Price Index (WPI) inflation remained persistently high and relatively sticky at around 9 per cent during 2011. Though inflation remained high throughout the year, it has shown signs of moderation lately. The Budget for 2011-12 sought to carry forward the process of fiscal consolidation through a reduction in the fiscal deficit to 4.6 per cent of GDP.

FISCAL MEASURES

Some of the major fiscal measures in the Budget 2012 under direct and indirect taxes are as follows:

DIRECT TAXES

A number of amendments proposed in the direct taxes, are directed towards implementation of Direct Taxes Code. The report of Standing Committee on Finance on Direct Taxes Code Bill, 2010 presented in the Parliament which is under examination of Finance Ministry, indicates towards an early implementation of the new code.

Major Budget proposals are as under:

Deductions and other benefits:

- The Exemption limit for the general category of individual taxpayers enhanced from ₹1,80,000 to ₹ 2,00,000 giving uniform tax relief of ₹ 2,000. Further, slab of 20% proposed to be raised from ₹ 8,00,000 to ₹ 10,00,000. It is in line with DTC.
- A deduction of up to ₹ 10,000 has been proposed for interest income from savings bank accounts.
- It has also been proposed to allow deduction of ₹ 5,000 for preventive health check-up. It widens the scope of existing provision relating to medical insurance premium.

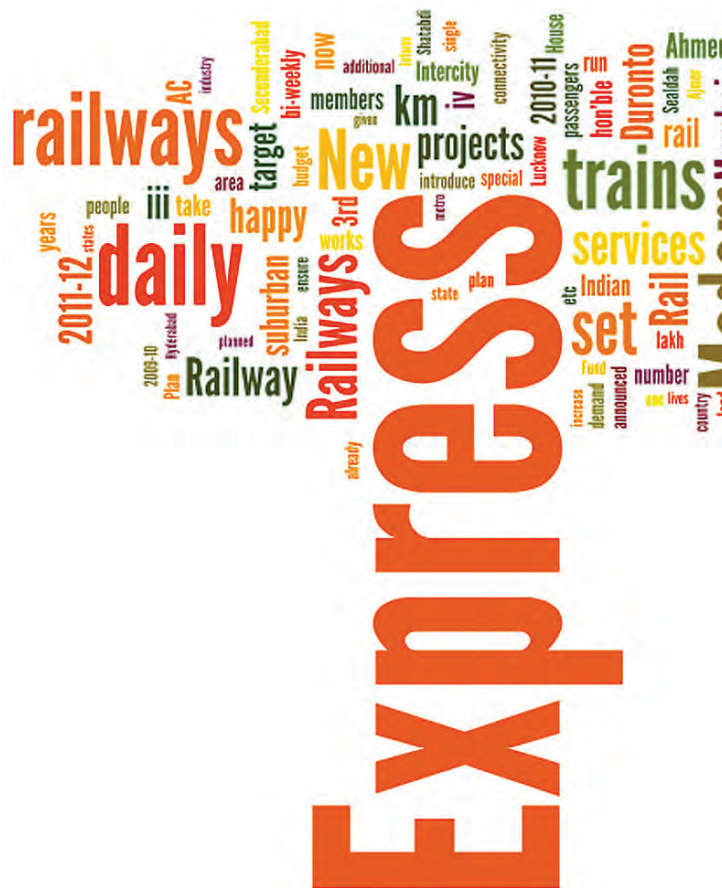




- For senior citizens not having income from business, it has been proposed to exempt them from payment of advance tax.
- A new scheme called Rajiv Gandhi Equity Savings scheme is proposed to encourage flow of savings in financial instruments and improve the depths of domestic capital market. In this Scheme, a deduction of 50 per cent is proposed to be allowed to new retail investors, who invest up to ₹ 50,000 directly in equities and whose annual income is below ₹ 10 lakhs. The scheme will have lock-in period of three years.

Widening of Tax Base:

- **Alternate Minimum Tax:** The existing provisions of Alternate Minimum Tax (AMT) applicable on Limited Liability Partnership are proposed to be amended to widen the tax base *vis-à-vis* profit linked deductions on a person other than a company, who has claimed deduction under any section (other than section 80P) inserted in Chapter VI-A under the heading C - "Deductions in respect of certain incomes" or under section 10AA.
- **Tax deduction at source on transfer of certain immovable properties:** In order to collect tax at the earliest point of time and also to have a reporting mechanism of transactions in the real estate sector, it is proposed to insert a new provision to provide TDS @1%, if the consideration paid or payable for the transfer of such property exceeds 50 lakh rupees in case such property is situated in a specified urban area; or 20 lakh rupees in case such property is situated in any other area.



- **Tax deduction at source on director's fees:** TDS to be deducted @ 10% from the amount paid to the director not in the nature of salary.
- **Tax collected at Source:** In order to reduce the quantum of cash transaction in bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery, it is proposed that the seller of bullion and jewellery shall collect tax at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds two lakh rupees and the sale is in cash.

Steps to prevent generation and circulation of unaccounted money

- Introduction of compulsory reporting requirement in case of assets held abroad.
- Allowing for reopening of assessment upto 16 years in relation to assets held abroad
- Unexplained cash credit, unexplained money, unexplained expenditure, unexplained investment to be taxed @30% irrespective of the threshold limit or losses.
- Share capital, share premium, share application to be considered as deemed income where a closely held company fails to provide satisfactory explanation



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Union Budget 2012 - A Step Towards Transparency And Better Governance



With a view to bring down Tax litigation and to provide Tax certainty to the foreign investors, the Union Budget proposed to introduce Advance Pricing Agreement (APA).



The application and extension of scope of transfer pricing regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions. It will create legally enforceable obligation on assessee to maintain proper documentation. However, extending the transfer pricing requirements to all domestic transactions may be challenging from compliance perspective.

- **Advance Pricing Agreement:** With a view to bring down Tax litigation and to provide Tax certainty to the

foreign investors, the Union Budget proposed to introduce Advance Pricing Agreement (APA). In Globalized Economy with expanding cross border production chains, APA can significantly bring down tax litigation and provide tax certainty to foreign investors. The introduction of Advance Pricing Agreements is a step in the right direction for bringing about certainty in transfer pricing disputes. Though APA has been included in the DTC Bill, 2010 the government has brought forward its implementation by introducing it in the Finance Bill 2012.

International Taxation

- **The scope and applicability of section 9 and section 195 being widened:** Certain judicial pronouncements have created doubts about the taxability of indirect transfer of shares of an Indian company by non-residents. Therefore, retrospective amendment is being proposed to tax overseas acquisitions having substantial value derived from underlying Indian assets.
- **Tax Residence Certificate (TRC) for claiming relief under DTAA:** It is proposed to amend Section 90 and Section 90A of the Act to make submission of Tax Residency Certificate containing prescribed particulars, as a necessary but not sufficient condition for availing benefits of the agreements referred to in these Sections. This will take care of such instances where the taxpayers who are not tax resident of a contracting country claim benefit under the DTAA entered into by the Government with that country.

General Anti-Avoidance Agreements (GAAR):

General Anti-Avoidance Rule is proposed in the Income Tax Act to deal with aggressive tax planning involved in the international transactions. Now, in case the Assessing Officer finds that the entered arrangement results in misuse or abuse of provisions of tax laws or any other specified tests then he shall make a reference to the Commissioner for invoking GAAR and on receipt of reference the Commissioner shall hear the taxpayer and if he is not satisfied with the reply of taxpayer and is





of the opinion that GAAR provisions are to be invoked; he shall refer the matter to an Approving Panel and thereafter the arrangement can be declared as "impermissible avoidance arrangements".

INDIRECT TAXES

Efforts have been made in the Budget for the early implementation of Goods & Service Tax as Negative list of services and Place of Provision of Service Rules are being proposed in the service tax. Further, hon'ble Finance Minister also mentioned in his speech that the GST network will be operational by August 2012. Major Budget proposals in regard to indirect taxes are as under:

A) Service Tax

- **Rate of Service Tax:** Rate of service tax is being increased from 10 per cent to 12 per cent.
- **Negative List of Services:** A Negative List approach to taxation of services is being introduced thereby all services will now attract service tax, except those in the negative list. The negative list has 17 heads and includes services provided by Specified Persons, Social Welfare and Public Utilities, Financial Sector, Transport, Construction & Real Estate, Education, Health, and Others. In addition to the negative list, there is a list of exemptions which include health care, services provided by charities, religious persons, sports persons, performing artists in folk and classical arts etc.
- **Place of Provision of Services Rules:** To support the negative list approach to taxation of services, draft Place of Provision of Services Rules, 2012 has been proposed. Rules contain principles on the basis of which taxing jurisdiction of a service can be determined. When the Place of Provision of Services Rules would come into effect, the existing 'Export of Services Rules, 2005' and 'Taxation of Services (Provided from outside

India and received in India) Rules, 2006' will be rescinded.

- **Special Audit:** A new section 72A is being inserted to introduce provisions relating to special audit in the service tax law on the lines of section 14A and section 14AA of the Central Excise Act, 1944.
- **Settlement Commission:** Section 83 is being amended to make Settlement Commission provisions applicable to service tax in line with the similar provisions contained in sections 31, 32, 32A to 32P of the Central Excise Act, 1944.
- **Renting of immovable property service:** Union Budget proposes to waive the penalty for those taxpayers who pay the service tax due on the renting of immovable property service in full along with interest. This scheme of penalty waiver will be open only for a period of six months from the date of enactment of the Finance Bill, 2012.
- **Cenvat Credit Rules, 2004:**
 - Existing rule 5 to be replaced with a new rule to simplify the procedure for refund of unutilized credit on the account of exports;
 - Credit is being allowed on motor vehicles (except those of heading nos. 8702, 8703, 8704, 8711 and their chassis).
 - The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed;

B) Central Excise

- The effective rate of excise duty of 10% on non-petroleum products is being increased to 12% with a few exceptions where exemptions/ concessions have been given.
- Excise duty on certain categories of cigarettes and bidis, pan masala and chewing tobacco is being increased.

C) Custom

- The method of computation of Education Cess and Secondary & Higher Education cess on imported goods is being simplified. Currently, these cesses are first charged on the CVD portion of customs duty and thereafter on the aggregate of





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customs duties (excluding special CVD). The portion of cesses leviable on the CVD portion of customs duty is being exempted so as to avoid computation of such cesses twice.

- The duty-free allowance under the Baggage Rules is being increased from ₹ 25000 to ₹ 35000 for adult passengers of Indian origin and from ₹ 10,000 to ₹ 15,000 for children upto 10 years of age.
- Section 122 is being amended to enhance the monetary limits for adjudication of cases involving confiscation of goods and imposition of penalty from ₹ 200,000 to ₹ 500,000 for Deputy/ Assistant Commissioners and from ₹ 10,000 to ₹ 50,000 for Gazetted Officer lower in rank to Assistant/ Deputy Commissioner.

Goods and Service Tax

The structure of GST Network (GSTN) has been approved by the Empowered Committee of State Finance Ministers, GSTN will be set up as a National Information Utility and will become operational by August 2012. The GSTN will implement common PAN - based registration, returns filing and payments processing for all States on a shared platform. The use of PAN as a common identifier in both direct and indirect taxes will enhance transparency and check tax evasion.

Capital Market

The capital markets will get a boost with measures like reduction in the security transaction tax. The Budget proposes tax incentive for new investors as well as to broaden the investor base and reach of IPOs. IPO equity

The interest subvention scheme for providing short term crop loans to farmers at 7 per cent interest per annum is proposed to be continued in 2012-13. An additional subvention of 3 per cent will be available to prompt paying farmers.

offer of ₹ 10 crore and above to be made in addition to existing mechanism, electronically is a step forward. Allowing Electronic Voting facility shall provide opportunities for wider shareholder participation. Simplification of process of issuing Initial Public Offers (IPOs) and lowering of cost would improve the investment climate in the country.

Agriculture Sector

The interest subvention scheme for providing short term crop loans to farmers at 7 per cent interest per annum is proposed to be continued in 2012-13. An additional subvention of 3 per cent will be available to prompt paying farmers. In addition, the same interest subvention on post-harvest loans up to six months against negotiable warehouse receipt will also be available. This will encourage the farmers to keep their produce in warehouses. Kisan Credit Card (KCC) is an effective instrument for making agricultural credit available to the farmers. KCC scheme is proposed to be modified to make KCC a smart card which could be used at ATMs. A Short term RRB Credit Refinance Fund is being set-up to enhance the capacity of Regional Rural Banks to disburse short term crop loans to the small and marginal farmers. A fund of ₹ 10,000 crore is being allocated to NABARD for refinancing the Regional Rural Banks. To mobilise large resources to fund irrigation projects, a Government owned Irrigation and Water Resource Finance Company is being operationalized. The Company would start its operations in 2012-13 by focusing on financing sub-sectors like micro-irrigation, contract farming, waste water management and sanitation. Moreover, the government has set certain mission for rapid agricultural development.

Food Security

Government has taken definite steps to create food



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security at the household level by making food a legal entitlement for all targeted people, especially for the poor and vulnerable segments of the population. Further, with a view to realize the objectives of the National Food Security Bill, a Public Distribution System Network is being created using the Aadhaar platform. A National Information Utility for the computerization of PDS is being created and will be operational by December 2012.

Disinvestment

The government has set a target of ₹ 30,000 crore from disinvestment. This will provide a level playing field *vis-a-vis* the private sector with regard to practices like buy-backs and listing at stock exchanges, etc. This will also help in unlocking the value and resources for all stakeholders.

Strengthening Investment Environment

The Budget proposals for the country, allowing Qualified Foreign Investors (QFIs) to access Indian Corporate Bond market is a welcome move, Tax Free Bonds of ₹ 60,000 crore for financial infrastructure projects, Setting up of ₹ 5,000 crore India Opportunities Venture Fund for MSME sector to help small enterprises, External Commercial Borrowings (ECB) to part finance Rupee debt of existing power projects and Efforts to arrive at broad based consensus with state governments on allowing FDI in multibrand retail up to 51 per cent would boost up market sentiments. Removal of restriction on Venture Capital Funds (VCFs) to invest only in nine specified sectors will promote higher level of investments.

Micro, Small and Medium Enterprises

The Small and Medium Enterprises (SMEs) are the

building blocks of our economy. They rely primarily on loans from banks and informal sources for their capital. To provide these enterprises greater access to finance, two SME exchanges have been launched in Mumbai recently. Moreover, promoting market access of Micro and Small Enterprises, Government has approved a policy which requires Ministries and CPSEs to make a minimum of 20 per cent of their annual purchases from MSEs.

Housing sector

The Budget proposes External Commercial Borrowings for low cost affordable housing projects. It will provide pace to the growth of Real estate sector. To give strength to the economically weaker section the existing scheme of interest subvention of 1 per cent on housing loan up to ₹ 15 lakh where the cost of the house does not exceed ₹ 25 lakh has been proposed to be extended for one year.

Governance

It is proposed to bring out White Paper on Black Money. Directorate of Income Tax Criminal Investigation has been established in CBDT to investigate into black money cases. This all show the commitment of government to check the menace of generation and circulation of black money. Allocation is proposed for increasing the coverage of UID-Aadhar.

Conclusion

The Government has taken several positive steps to improve the infrastructure which would definitely boost the economy. The Budget trajectory is headed in the right direction. Despite baby steps, the fiscal consolidation exercise is positive for country's finances. Announcement on Power, Infrastructure, Agriculture and cap on subsidies is positive. It focuses on measures that will enable broadening of the capital markets, facilitating corporates to access funds through External Commercial Borrowings and Infrastructure bonds. There is a clear push towards propelling infrastructure development through reforms in sectors like roads, ports and power. In the midst of global economic slowdown, which has also affected India in the form of inflation, rising fiscal deficit and weakening of the rupee, the Finance Minister has done a commendable job in addressing the economic concerns through pragmatic measures of promoting investments in key sectors, e.g. infrastructure, power, etc. ■





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NEGATIVE FOR POSITIVE? SERVICE TAX & UNION BUDGET 2012

Normally, Service Tax rate change comes into effect when Finance Act is assented by the President of India.

However, this time the increase of tax rate from 10 to 12 percent will be effective from 1st April, 2012 as Notification No.8/2009-ST dated February 24, 2009 is being rescinded. Rates for Educational Cess and Secondary and Higher Education Cess remain the same. Therefore, the effective rate would be 12.36% on the gross value of taxable services.



As we all are aware, the Finance Minister presented the Union Budget for the financial year 2012-13 in the Lok Sabha on 16.03.2012. The focus of the Government is augmenting its revenues by rationalization of Service Tax and we can see the reflection of the intent of the Government through the changes made or proposed in levy, imposition and collection of Service Tax.

Apart from increasing service tax rate from 10 per cent to 12 per cent, with consequential changes in rates for services that have individual tax rates, the Finance Minister in his Budget Speech touched upon the following facts and also reaffirmed the Government's commitment to move

*Central Council Member, The ICSI.



towards Goods and Service Tax (GST) and the policy aspects with respect to the Service Tax:

- a. The share of services in GDP is 59 per cent.
 - b. At the end of June this year, service tax will attain adulthood by completing 18 years.
 - c. The Constitution Amendment Bill, a preparatory step in the implementation of Goods and Service Tax (GST) was introduced in Parliament in March 2011 and is before the Parliamentary Standing Committee. As we await recommendations of the Committee, drafting of model legislation for Centre and State GST in concert with States is under progress;
 - d. The structure of GST Network (GSTN) has been approved by the Empowered Committee of State Finance Ministers. GSTN will be set up as a National Information Utility and will become operational by August 2012;
 - e. The GSTN will implement common PAN-based registration, returns filing and payments processing for all States on a shared platform. The use of PAN as a common identifier in both direct and indirect taxes, will enhance transparency and check tax evasion. It is therefore time to shift gears and accelerate ahead. However, service tax needs to confront two important challenges to sustain the journey.
 - f. The share of services in taxes remains far below its potential. There is a need to widen the tax base and strengthen its enforcement.
 - g. 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 GST.
 - h. All services except those in the negative list will be liable for service tax. The list comprises 17 heads and has been carefully drawn up, keeping in view the federal nature of
- our polity, the best international practices and our socio-economic requirements.
- i. The important inclusions in the negative list comprise all services provided by the government or local authorities, except a few specified services where they compete with private sector. The list also includes pre-school and school education, recognised education at higher levels and approved vocational education, renting of residential dwellings, entertainment and amusement services and a large part of public transportation including inland waterways, urban railways and metered cabs, Agriculture and animal husbandry enjoy a very important place in our lives. Practically all services required for cultivation, breeding, production, processing or marketing up to the stage the produce is sold in the primary markets are covered by the list.
 - j. In addition to the negative list, there is a list of exemptions which include health care, services provided by charities, religious persons, sports persons, performing artists in folk and classical arts, individual advocates providing services to non-business entities, independent journalists, and services by way of animal care or car parking.
 - k. Movement towards the negative list will result in reducing nearly 290 definitions and descriptions in the Act to 54, and the exemptions from the existing 88 to 10, of course merging some of the existing exemptions into a revised notification. In terms of number of pages, the law will be shorter by nearly 40 per cent.
 - l. To take financial services to the door steps in rural areas, the services of business facilitators and correspondents to banks and insurance companies have been exempted.
 - m. As a measure of harmonization between Central Excise

To introduce Negative List approach to taxation of services it is proposed to introduce new Sections 65B, 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act, 1994. The services specified in the 'Negative List' (Section 66D) shall remain outside the tax net (Non Taxable Services). It means that if an activity meets the characteristics of a "service" it is taxable unless specified in the Negative list, comprising 17 heads listed in proposed new Section 66D, or otherwise specifically exempted would be chargeable to service tax.



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Negative for Positive? -Service Tax & Union Budget 2012



- and Service Tax, a number of alignments have been made. These include a common simplified registration form and a common return for Central Excise and Service Tax, to be named EST-1. This common return will comprise only one page, which will be a significant reduction from the 15 pages of the two returns at present;
- n. Revision Application Authority and Settlement Commission are being introduced in Service Tax to help resolve disputes with far greater ease.
 - o. Cascading of taxes has been significantly reduced by permitting utilisation of input tax credits in a number of services such as catering, restaurants, hotel accommodation, pandal and shamiana and transport sectors;
 - p. Place of Supply Rules, that will determine the location where a service shall be deemed to be provided, *are being placed in public domain for stakeholders' comments and shall be notified when the negative list is put into effect.* These rules will also provide a possible backdrop to initiate an informed debate to assess all the issues that may arise in the taxation of inter-state services for the eventual launch of GST.
 - q. It is proposed to set up a Study Team to examine the possibility of a common tax code for service tax and central excise which could be adopted to harmonise the two legislations as much as possible at the right time.
 - r. There are a number of other proposals both for the facilitation of business and to check malpractices. Most of these measures are guided by the need to move towards a system that is simple, equitable and progressive but are unlikely to make the exchequer richer in any significant.
- In the backdrop of the above canvas provided by the Finance Minister, let us now analyze the Budgetary changes relating to service tax this year. The intent seems to be the desire to create the required framework for the

eventual launch of GST in a far more familiar environment. The changes in the service tax as effected or proposed are the following:

- a. Clauses 143 to 145 of the Finance Bill, 2012, cover the legislative changes relating to Service Tax.
- b. Changes have also been made in the rules as well as exemptions through Notifications i.e. Notification No. 1/2012 ST to Notification No. 15/2012 ST all dated 17th March 2012. It is interesting to note that all these notifications dated 17th March 2012 duly signed by the Under Secretary to the Government of India though made available to the public on 16th December 2012 itself, one needs to check the legality of Issuing Notifications like "post dated cheques".
- c. A number of other changes are proposed to be introduced in subordinate legislation at the time the legislative provisions are made effective.

Some of the major changes brought into effect and/or proposed, relating to Service Tax law, in consequence to presentation of Union Budget 2012, are as under:

Rate changes

1. The rate of service tax would be increased to 12% from 10% at present. Normally, Service Tax rate change comes into effect when Finance Act is assented by the President of India. However, this time 12% rate will be effective 1st April, 2012 as the increase in tax rate is sought by rescinding Notification No.8/2009-ST dated February 24, 2009. Rates for Educational Cess and Secondary and Higher Education Cess remain the same. Therefore, the effective rate would be 12.36% on the gross value of Taxable Services. In view of the increase, Consequent changes have also been made in composition rates as follows.
 - (a) **Life insurance:** 3% for the first year premiums while retaining the rate @1.5% for the subsequent years (simultaneously restoring full Cenvat credit);
 - (b) **Money changing:** Raising the existing rates proportionately by 20%;
 - (c) **Distributor or selling agent of lotteries:** Raising the specified amounts proportionately and suitably rounded off to ₹ 7,000 and ₹ 11,000;
 - (d) **Works contracts:** Increased from 4% to 4.8% plus Educational Cess and Secondary and Higher Education Cess.
2. The rate for CENVAT reversal for exempt services has been increased to 6% from 5% presently in Rule 6(3) of CENVAT Credit Rules (CCR), 2004, (w.e.f. 1st April, 2012)



Rule 6(4B) has been amended to provide adjustment of excess tax paid without any monetary limit. Intimation to Superintendent is not required. Self-adjustment of excess credit is not allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

3. The dual tax structure for air transportation is proposed to be replaced with a uniform ad valorem levy at standard rate, with an abatement of 60% on all sectors and all classes.
4. For the first time, the term "service" would be defined in Clause (44) of new Section 65B.

Negative List

1. To introduce Negative List approach to taxation of services it is proposed to introduce new Sections 65B, 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act, 1994. The services specified in the 'Negative List' (Section 66D) shall remain outside the tax net (Non Taxable Services). It means that if an activity meets the characteristics of a "service" it is taxable unless specified in the Negative list, comprising 17 heads listed in proposed new Section 66D, or otherwise specifically exempted would be chargeable to service tax.

For example, Vastu Shastra Consultants or Horoscope Consultants were outside the service tax net as those services were not specifically included in the definition of taxable services. With Negative List approach, these services will be pulled in Service Tax net unless exempted by issue of exemption notification.

Negative list approach to taxation of services shall come into effect from a date to be notified, after the Finance Bill, 2012 receives the assent of the President. In view of proposed shift to Negative List approach, a number of changes have been proposed in Chapter V of the Finance Act, 1994.

Detailed information regarding these changes is made available as a Guidance Paper, which is placed on the website of the Department.

2. Provisions relating to existing Sections 65, 65A, 66, and 66A currently appearing in Chapter V of the Finance Act, 1994, though will continue to remain in statute (remain relevant in respect of services provided prior to the coming into force of the new provision) will cease to operate from a date to be notified later, as and when the negative list approach begins to operate.
3. A new charging Section is proposed to be introduced by inserting Section 66B to levy taxes on all services, other than those in the negative list, provided or agreed to be provided in the taxable territory by one person to another.
4. To support the Negative List approach to taxation of services, new set of Rules, known as "Place of Provision of Services Rules, 2012" ("PPS Rules"), has been proposed. These rules would be notified after the Finance Bill, 2012 receives the assent of the President. When the PPS Rules come into effect, existing "Export of Services Rules, 2005" and "Taxation of Services (Provided from outside India and received in India) Rules, 2006" would be rescinded, as the PPS Rules, 2012 will take care of the rescinded rules.
5. Most of the 88 exemptions as existing will be either rescinded, being redundant, or modified in some manner, or merged in a mega Notification, leaving the final tally of exemptions to just ten.

Service Tax Rules, 1994

1. Besides complying with some revised drafting needs due to negative list, the Rules will need changes in respect of person liable to pay tax; to provide for recipient persons relating to services provided to business entities by Government, Advocates or Arbitrators; change in services provided from non-taxable territory; some changes to services provided by GTA and the deletion of all those services that are now exempt. e.g. mutual funds-agents and distributors.
2. Since the Export Rules will be rescinded, the required provisions will be incorporated in Service Tax Rules. A transaction will qualify as export when it meets following requirements:
 - (a) the service provider is located in Taxable territory;
 - (b) service recipient is located outside India;
 - (c) service provided is a service other than in the negative list.
 - (d) the Place of Provision of the service is outside India; and



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- (e) the payment is received in convertible foreign exchange.
- 3. Invoice can be issued within 30 days [present limit 14 days]. Banking company or Financial Institution can issue invoice within 45 days [Rule 4A of Service Tax Rules amended]
- 4. Rule 6(4B) has been amended to provide adjustment of excess tax paid without any monetary limit. Intimation to Superintendent is not required. Self-adjustment of excess credit is not allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
- 5. Fourth proviso to Rule 6(1) has been inserted to provide that service tax payable on receipt basis by all individual and partnership firms (including LLP) upto turnover of '50 lakhs', if turnover of taxable services of the entity in respect of previous year was below '50 lakhs'.

The above changes will be effective 1st April, 2012

Valuation Rules

- 1. Negative List Approach will require movement towards general rules rather than service-specific provisions. In that direction, the abatements under Notn.No.1/2006-ST and composition rate under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 have been restructured to suit the changed framework.

These rules shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect.

Point of Taxation Rules

- 1. Whenever there is change in effective rate of service tax or service tax is taxed for the first time, the date of payment shall be date of credit in bank account [(Rule 2A of Point of Taxation Rules)].
- 2. In case of exporters, the period extended by the Reserve Bank of India is now explicitly included in the period for which the tax is allowed to be deferred.
- 3. The definition of continuous supply of service is being amended to capture the concept in a more wholesome manner, namely the recurrent nature of services and the obligation for payment periodically or from time-to-time.

The above changes will be effective 1st April, 2012

Abatements

- 1. Notification No. 13/2012-(Service Tax) proposes certain changes in the abatements in view of Negative List Approach. Whereas, Taxable portion of value is increased the input tax credit is liberalized. This change is in line with the principle of neutrality of taxes that the burden of taxes should not raise the cost *per se* but passed on to the point of consumption.

S.No.	Service	Existing taxable value	Proposed taxable value	Cenvat credits
1.	Convention center or mandap with catering	60%	70%	All credits, except on inputs, of chapter 1 to 22, will now be available.
2.	Pandal or Shamiana with catering	70%	70%	All credits, except on inputs, of chapter 1 to 22, will now be available.
3.	Coastal shipping	75%	50%	No credits as at present
4.	Accommodation in hotel etc.	50%	60%	Credits on input services allowed.
5.	Railways: goods	30%	30%	All credits will be allowed
6.	Railways: passengers	New levy	30%	All credits will be allowed

This notification shall come into force from the date on which proposed section 66B of the Finance Act, 1994 comes into effect.

Cenvat Credit Rules, 2004

- 1. Cenvat Credit Rules, 2004, would require changes so as to dovetail with Negative List Approach. First of all the service-specific references in the Rules by clauses will be replaced by broad descriptions retaining the essence of the existing provisions.
- 2. Exports will cease to be a taxable service *per se* and required effects will be given by changing the definition of "output service" to include exports of service and that too without payment being received until the period available under the RBI requirements. This will allow continuation of the benefit of not reversing the input tax credits for exports, without treating them exempt until the period specified for realizing export proceeds. It means that if the payment is not received until the period available under the RBI requirements, the exporter will be exposed to penalty and the interest.
- 3. Interest on loans or advances will be an exempt service. This will require reversal of credit used for earning such income. For the banking and financial sector, provisions are available to reverse credit up to 50% in Rule 6(3D).

For the aforesaid purpose, the value of service would be net of interest, i.e. interest earned less interest paid on



deposits, subject to a minimum of 50% of interest paid on deposits. For the non-financial sector they may reverse credits on gross interest basis.

4. Further, existing Rule 5 is to be replaced with a new Rule to simplify the procedure for refund of unutilized credit on the account of export of excisable goods and taxable services.
5. Cenvat Credit would be allowed on motor vehicles (except those of Heading Nos.8702, 8703, 8704, 8711 and their Chassis). The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed.
6. Credit of insurance and service station service is being allowed to-
 - (i) Insurance companies in respect of motor vehicles insured and re-insured by them; and
 - (ii) Manufacturers in respect of motor vehicles manufactured by them.
7. At present, credit on goods can be taken only after they are brought to the premises of the service provider. Rule 4(1) and 4(2) are being amended to allow a service provider to take credit of inputs or capital goods whenever the goods are delivered to him, subject to specified

conditions. This is a welcome change and many disputes will get resolved.

8. Rule 7 on input service distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed *pro rata* on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates. This will result into lots of complications and initial disputes and demands though it is to be understood that this kind of provision may require maintaining federal structure of revenue sharing in GST regime.

The above changes will be effective 1st April, 2012

Rebate of service tax on export of goods

1. To strengthen electronic refund, it is proposed to amend Section 93A of Finance Act, 1994. After its enactment, Notn.No.52/2011-ST dated 30.12.2011, concerning refund service tax paid on export of goods at the post-manufacture/removal stage, will be placed under this Section. This means that in future, service tax refunded will be recoverable, without any time bar, from the exporter, against whose shipping bill, sale proceeds have not been received from abroad.

This notification shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect.

SEZ Units

A retrospective amendment w.e.f. 16-6-2005 has been made in Cenvat Credit Rules to provide that Cenvat Credit Reversal not required if exempted taxable service provided to SEZ - [clause 144 of Finance Bill, 2012].

This is a welcome step and will resolve many disputes pending at various levels of adjudication/appeals.

Other legislative changes

1. A new Section 67A is proposed to be inserted to prescribe the relevant date for the application of rate of exchange, valuation or rate of taxable service to make the situations clearer in case of import and export of taxable services and the rate of tax shall be determined in terms of Point of Taxation Rules, 2011. Today there is no such clarity.
2. A new Section 72A is proposed to be inserted to introduce provisions relating to special audit in the service tax law on the lines of Section 14A and Section 14AA of the Central





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Excise Act, 1944. Professionals should be happy and welcome this provision.

3. The provisions of Section 73 are proposed to be amended as follows:
 - i) The period for issue of demands (limitation) in normal situations is being raised from 12 months to 18 months. This is being done to take care of the shorter period available due to the periodicity of the new return (EST-1) being reduced to one month for large assesseees from the existing 6 months. The Service Tax Department will have the benefit of audited accounts available for the purpose of scrutiny of returns with this extended period.
 - ii) A new sub-section (1A) is being inserted to prescribe that follow-on notices issued on the same grounds need not repeat the grounds but only state the amount of service tax chargeable for the subsequent period. Accordingly, statement of tax due for the subsequent period, served on the assessee with reference to the earlier demand notice, will be deemed as a notice under Section 73(1) of the Finance Act, 1994. This can be described as "green initiative" of the Budget 2012.
 - iii) Reference to sub-section (3) is being deleted in sub-section (4A) so that the latter Section will not overrule the earlier;
4. The Provisions relating to Settlement Commission would be applicable to Service Tax also. Section 83 would be

amended to make provisions relating to Settlement Commission applicable to the Service Tax law by adding Sections 31, 32 and 32A to 32P of the Central Excise Act in Section 83.

5. Section 33A restricting hearing only three times before adjudication and Section 34A relating to confiscation or penalty have been made applicable, through proposed amendment to Section 83.
6. The periods for filing appeals in service tax are being aligned with Central Excise. Thus, time limit for filing appeal with Commissioner Appeals will get reduced to two month. These are covered by relevant amendments in Sections 85 and 86. New limitation will apply to decisions or orders passed after the date on which Finance Bill, 2012, receives the assent of the President.
7. At present in service tax, appeals against the order of Commissioner (Appeals) lie before the Tribunal, whereas in Central Excise, a revision mechanism is available before Joint Secretary (RA), Govt. of India, to hear certain specified matters (i.e. credit of any duty allowed to be utilized towards payment of excise duty on final products, rebate on exports). It is proposed that this revision mechanism may also be made available for service tax, to the extent applicable. Accordingly, Central Excise provisions relating to revision mechanism (Section 35EE of Central Excise Act) are proposed to be made applicable to service tax by amending Section 83.
8. Clause (a) of Section 89 relating to prosecution for non-issue of invoice is proposed to be replaced with the words "knowingly evades payment of service tax". This will meet the demand of service sector that mere non-issue of invoices should not be made punishable with prosecution.
9. Section 94(2) is proposed to be amended to obtain powers (a) to provide for the manner of compounding and to specify the amount of compounding of offences along the lines of Central Excise (Compounding of Offences) Rules, 2005; (b) to provide for rules for settlement of cases, along the lines of central excise.
10. Powers of Advance Ruling Authority to hear cases relating to Cenvat credit will also cover cases of Central Excise duty. This was an anomaly due to the applicability of the then 2002 Cenvat Credit Rules only to service tax credit that has been corrected.

All the legislative changes would come into force from the date of Notifications on or after the Finance Act, 1994 comes into effect.



Reverse Charge Mechanism

1. There are a number of changes relating to reverse charge provisions. First of all, the term "taxable territory" has been defined in the Act and only services provided in taxable territory will be liable to tax. Thus any service provided in the state of J&K will not be liable to tax. The Place of Supply Rules, 2012 will determine whether a service is being provided in J&K.
2. If the service provider is located in J&K but the service is being provided in taxable territory, in terms of the stated rules, the tax will be collected from the service receiver.
3. To ensure proper collection of service tax, a new scheme is proposed to be introduced for collection of tax by recipient of service.
4. A proviso to sub-section (2) of Section 68 has been added to place the onus of payment of service tax on reverse charge basis partly on service provider and partly on service receiver. The scheme is proposed to be made applicable on three specific services i.e. hiring of means of transport; construction and man power supply. A notification will be issued after the Finance Bill, 2012 receives the assent of the President.
5. The scheme is proposed for three services where the service provider is either an individual or a firm or LLP and the recipient is a body corporate. The three services and the portion of tax payable are as follows:

S.No.	Description of service	Service recipient	Service provider
1.	Hiring of a motor vehicle designed to carry passengers: (a) with abatement (b) without abatement	100% 40%	NIL 60%
2.	Supply of manpower for any purpose	75%	25%
3.	Works contract service	50%	50%

Some relief for Renting of immovable property service

Constitutional validity of the levy of service tax on renting of immovable property has been the subject matter of litigation leading to pronouncement of court judgments favorable to revenue, including those of Hon'ble Delhi High Court and Hon'ble Supreme Court. Taking an overall view, the Government has decided to waive the penalty for those taxpayers who pay the service tax due on the renting of immovable property service (as on 06.03.2012), in full along with interest. For this purpose, a new section 80(2) is being inserted in the Finance Act, 1994. This scheme of penalty waiver will be open only for a period of

six months from the date of enactment of the Finance Bill, 2012.

This is a welcome step as many small assesses were not paid service tax by the recipient of the service in view of then ongoing disputes.

Retrospective Exemptions

1. Vide Notification No.24/2009-ST dated 27.07.2009 service tax on repair of roads is already exempted. Vide Section 97 of the Finance Act, 1994, the exemption granted to repair of roads is being extended for the earlier period from 16.06.2005 to 26.07.2009.
2. Management, maintenance or repair service undertaken in relation to non-commercial Government buildings is being exempted from service tax vide Section 98, with effect from 16.06.2005 till the new charging section, namely Section 66B, comes into force.
3. In the last budget, Sub-rule (6A) was inserted in rule 6 of the CENVAT Credit Rules, 2004 to protect the service providers located in the Domestic Tariff Area from the reversal of Cenvat credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule (6A) is being given retrospective effect from 10.02.2006.
4. Service provided by an association of dyeing units in relation to common effluent treatment plants was exempted from service tax, vide Notn. No.42/2011-ST dated 25.07.2011. The scope of the exemption is being expanded and the amended notification is being given retrospective effect from 16.06.2005.

All the above changes would come into force from the date of Notifications on or after the Finance Act, 1994 comes into effect.

Above are the major changes made in the Service Tax law.

Even if it is understood that the amendments have been made or proposed keeping GST framework in mind, the amendments are made in patches. The patches will be visible on the legal framework of service tax. It is going to be a tough learning curve for the administrators of service tax, consultants and assessee. Instead of patchy work more wholesome exercise would have been the right approach for the Government. When taxing of Services is moving from positive to negative, the service tax law has certainly moved from simple law to most complex law of the land, and therefore everyone in industry is keeping eye on GST with a hope that it would be really a Good Simple Tax. ■



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Union Budget-2012 and its Impact on Capital Market

Several measures were taken by the Government during the year 2011-12 with a view to strengthen the capital market which is very vital for the Economy of the Nation. To what extent the Budget proposals for 2012-13 address the requirements of the capital market is briefly outlined here.

The Union Budget for 2012-13 presented on 16th March, 2012 has been termed as "AMLA" (" Emblica Officinalis ") by a leading north India based Two Wheeler manufacturer. This is so because like the Amla fruit, the Budget is tasteless or bitter in the short term. However, it addresses the long term concerns of the Indian Economy and is therefore, beneficial for the long term. It remains a fact that it doesn't carry any great message or grandiose.

It contains only small and minor tinkering with the tax laws and introduction of regulations viz., GAAR, Advance Pricing Mechanism, Domestic Transfer Pricing, Negative List based Service Tax regime, etc. No grand schemes have been announced for social expenditure. It is pragmatic in the sense that there is no major policy change. Some analysts have called this document

reminiscent of the Budget of 1980s with lots of detailing. However, it is designed to fulfill the overall needs of the National Economy.

During the year 2011-12, a series of steps were taken to strengthen the capital market and encourage investment in infrastructure sector. The current Budget proposes next steps to further augment the reforms process in Capital market, which mainly include the following steps:

- 1) Removal of cascading effect of Dividend Distribution Tax (DDT): This will help in creating value for the investors thus bringing in more investors in the market as companies will have a higher cash flow, since the tax burden will be less. Hence they are likely to increase the dividend pay-out.
- 2) Two way fungibility in Indian Depository Receipts (IDRs): This will benefit companies who have issued IDRs. They will be in a position to attract foreign capital.
- 3) Reduction of Securities Transaction Tax (STT) to 0.1% from current 0.125% (a drop of 20%) on cash delivery transactions: This step has also been hailed by the industry. The STT on non-delivery transactions such as



derivatives trade and that on intra-day trade have been left untouched. However, in order to attract more investors into the capital market with a long term investment perspective, STT should have been abolished.

- 4) Allowing QFIs (Qualified Foreign Investors) to access Indian Corporate Bond Market: This step will bring in additional market participants, liquidity and increase depth in the corporate debt market.
- 5) Investment into newly launched "Rajiv Gandhi Equity Savings Scheme" to the extent of Rs.50,000 (for an investor with annual income of upto Rs.10 lakhs): This is expected to increase flow of money into equity market and thus increase liquidity. This scheme coupled with Increase of duty on Gold, it is expected, will help in ploughing household savings into the capital market. The proposed lock-in period of three years in the scheme will bring long term investment into the equity market.
- 6) Proposal to make it mandatory for companies to issue Initial Public Offerings (IPOs) of Rs.10 crores and above in electronic form through nationwide broker network of stock exchanges: This is a progressive move and will help in increasing reach of primary market. Provision of electronic voting facilities will incentivize people to invest in market, particularly from rural, tier 2 and tier 3 cities and towns as they will get an opportunity to participate in important decisions of the companies which would be made mandatory initially for top listed companies.
- 7) Power companies and airlines have been allowed to use External Commercial Borrowing (ECB) to finance part of their rupee debt and working capital: This is a move to help these sectors recover from the massive slowdown they have been experiencing over the last many years and bring back investors confidence.
- 8) An extremely controversial step taken in this Budget is the proposed amendment to Section 9 of the Income Tax Act, 1961 to allow the government to re-open the transactions like the sale of Hutch to Vodafone. The Government proposes to bring the above amendment with retrospective effect (from 01st April 1962) to cover under the tax net, overseas merger and acquisition transactions involving domestic entities. Plugging a loophole which allows companies to avoid payment of income tax on capital gains is a desirable option for a developing country such as India. However, this has already invited huge skepticism and controversy in view of the recent landmark judgment of Supreme Court in Vodafone's case which preceded this move. The Central Government had filed a review petition after losing the case in the ₹ 11,000 crores tax liability against Vodafone, which was dismissed by Supreme Court on March 20, 2012. The Supreme Court will have the final word given this amendment's retrospective effect. The Central government has already filed a review petition after losing the case in the ₹ 11,000 crores tax liability against Vodafone. The government assesses additional revenue of ₹ 40,000 crores on

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account of this amendment. Other major cases which could be impacted include various cases of Tatas, AV Birla Group, Vedanta's deal on Sesa Goa and SAB Miller acquisition of Foster.

- 9) The Budget this year lays focus on infrastructure, the multi headed hydra which is holding back potential high growth to bring our nation at par with China. There are complete sections of 26 paragraphs targeted at removing key growth constraints and catalyzing high growth in a number of areas such as: -

- ◆ Operation of toll roads
- ◆ Lowering the high operating cost of Airlines
- ◆ Bridging the viability gap funding for public private partnership projects
- ◆ Supply of coal and other fuels for power generation, etc.

CONCLUSION

Union Budget this year is a reflection of the ground reality, without being sensational. It is a reflection of faithful practice of coalition dharma, being the fourth Budget of the present UPA Government. Later, Finance Minister clarified at the VigyanBhawan post Budget interaction with representatives of all three leading Indian chambers of commerce (CII, FICCI & ASSOCHAM), that he did not want to announce ambitious Budget proposals/reforms for short term appreciation, only having to scale them down, subsequently.

With the next Budget being the last one due before the general elections, the opportunity to ring in more radical reforms and to usher in the needed high growth, will have to wait for at least another two years. For the sake of development, the people of India will have to give a thumbs up to one of the national parties, at the centre. Till, then alas, the present policies are likely to continue.



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Superseding Supreme Court's Decision in Vodafone's Case by Amendment to Operate Retrospectively Erodes Government's Credibility

The retrospective amendments to sections 9 and 195 of the Income tax Act, 1961 proposed by the Finance Bill, 2012 have the effect of nullifying the decision of the Supreme Court in Vodafone's case which wiped off the tax demand of over Rs. 11,000 crores. In this brief discussion the author says that these amendments erode the credibility of the Government and therefore there is an urgent need to review the proposals.



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Very recently there was considerable discussion regarding Supreme Court's decision in the case of *Vodafone International Holdings B.V. v. UOI* [Civil Appeal No. 733 of 2012, Arising out of S.L.P. (C) No. 26529 of 2010] reversing the decision of Bombay High Court in favour of the I.T. Dept. *Prima-facie*, being unable to accept the Supreme Court's decision, leading to wipe off of a demand of USD 2 billion (nearly Rs.11,000 plus crores), the Govt. has proposed amendment of I.T. Act, 1961 (Act) to counteract the Apex Court's decision, where it had ruled that gains derived from transfer of shares of a foreign company cannot be taxed in India even if the value of shares is substantially derived from assets located in India.

To supersede this decision, the FM has come up with a spate of amendments, which are to apply on a retrospective basis



from 01.04.1962 to bring Vodafone Hutchison type transactions within the income-tax net.

A number of amendments have been proposed to sections 9 and 195 of the Act. In the context of subject, being discussed, reference to clause (4) of the Finance Bill, 2012 is necessary and in this clause it is stated thus:-

"It is clarified that an asset or a capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives directly or indirectly, its value substantially from the assets located in India".
[Explanation 5]

[To be substituted for the extract already given earlier]

The amendment has to take effect retrospectively from 01.04.62. The impact of this retrospective amendment is that if any decisions contrary to the above mentioned clause contained in the Finance Bill, 2012, have been taken, the same can be re-opened within a period of 6 years as provided in section 149 of the Act. The proposal is to have a re-look in regard to share transfers generally of Indian assets and/or control or management right in an Indian company. The impact of this decision is that Vodafone and other cases of similar nature completed, which fall within the limitation period of 6 years can be reopened and adjudicated upon by the I.T. Dept., raising I.T. demand, to be paid to Indian authorities.

There are other proposals also of a similar nature, to be applicable retrospectively to nullify earlier court orders on software demands, lease of satellite and use of telecommunication services, etc. These are not the subject matter of discussion in this write up.

FM's justification

The FM's defence of such amendment is that in proposing the amendments, he was only following the suggestion that if the State wanted to tax such transactions, it should change the law. Therefore, what he was doing, is making the intention of the legislature clear about taxation. Obviously, this alibi of court's observation is not valid because the court has not said that you can amend the law retrospectively. In the matter of retrospective amendment, the FM was to be guided by the observations made by the courts in other cases.

It needs to be examined as to what the SC has observed concerning retrospective application of law. The following passage on the topic of legislation in "Jurisprudence - The Philosophy and Method of the Law" by Edger Bodenheimer (First Indian Reprint 1996) at page 327, clarifies the principle (quoted by the Supreme Court in *Transmission Corporation of*

A.P. v. Prabhakar (2004) 19 ILD 343 (SC):-

"The large majority of enactments passed by Legislature take effect *ex nunc*, that is, they are applied to situations and controversies that arise subsequent to the promulgation of the enactment. It is a fundamental requirement of fairness and justice that the relevant facts underlying a legal dispute should be judged by the law which was in existence when these facts arose and not by a law, which was made *post factum* (after the fact) and was therefore, necessarily unknown to the parties when the transactions or events giving rise to the dispute occurred. The Greeks frowned upon *ex post facto* laws, which are applied retrospectively to past-fact situation. The *Corus Juris Civilis* of Justinian proclaimed a strong presumption against the retrospective application of laws. Bracton introduced the principle into English Law. Code and Blackstone gave currency to it, and the principle is recognized today in England as a basic rule of statutory construction. In the United States, *ex post* laws in criminal cases and retrospective State laws impairing the obligation of contracts are expressly forbidden by the terms of federal Constitution, in other types of situations, a retroactive legislative infringement of vested rights may present a problem of constitutional validity under the due process clause of the Constitution".

The objection to retrospective application of law is founded on the proposition that since every citizen is presumed to know the law and to order his affairs in accordance with its provisions, it would be unjust even where the Legislature has the power to enact a law with retrospective effect to allow the enactment of legislation to operate in retrospection.

The objection against retrospective operation is strong. The statute, if operated retrospectively, would prejudicially affect the rights or legality of past transactions or impair prejudice or impose a new duty or liability in respect of past transactions or consideration already passed.

It has been said time and again and has been considered as a cardinal principle of construction that a statute that affects substantive rights (and it is so in the case of Vodafone) has to operate prospectively but a provision concerning procedure can be made to operate retrospectively because no person has a vested right in any court of procedure. Fiscal legislation is generally governed by the presumption that it is not retrospective and it is an established principle of the tax law that the law, to be applied is in force in the A.Y.

Revenue Secretary's defence for retrospective amendment

During the course of an interactive session at Vigyan Bhawan



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on 18.03.12, addressed by the FM, an issue was raised concerning retrospective amendment by the explanation mentioned earlier. The Revenue Secretary justified the retrospective amendment on the ground that if the amendment is not made retrospectively, the income consequent to capital gains in a case like Vodafone would escape taxation. It would not be correct and therefore, bringing such profits/gains to tax by the proposed amendment is quite correct and justified. On this issue, it is respectfully said that if there is no law for taxing gains or profits, then there is no compulsion to tax it by retrospective amendment. The established rules regarding taxation are:-

Lord Halsbury in *Tenant v. Smith* (1892) AC 150 (HL) has said that the subject is not to be taxed without clear words for that purpose. It has been said that -

"If the person sought to be taxed comes within the letter of the law, he must be taxed, however, great the hardship may appear to the judicial mind to be; on the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute".

[Lord Cairns in *Partington v. AG* (1869) LR 4 HL 100 at P 122 referred to in *IRC v. Duke of Westminster* (1936) AC 1 (HL) at p 24]

In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used [Per Rowlatt, J., in *Cape Brandy Syndicate v. IRC* (1921) 1 KB 64 at p 71, cited, referred to and approved in numerous cases in England as well as in India. See also *CST v. Modi Sugar Mills Ltd.*, AIR 1961 SC 1047].

The subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him [Per Lord Simonds in *Russel v Scott* (1948) 2 AER 1 (HL) at p 5].

Hence, if the intention is to tax capital gains by all means it can be done so prospectively but for the period when the law does not authorize such taxation, it would be wrong and unfair to make a retrospective amendment to tax the same. Precedent in the past

Precedent in the past

During the discussion in the interactive session (*supra*) it was

The objection against retrospective operation is strong. The statute, if operated retrospectively, would prejudicially affect the rights or legality of past transactions or impair prejudice or impose a new duty or liability in respect of past transactions or consideration already passed.

mentioned that there are umpteen instances of retrospective amendments in the I.T. Act and there is no reason to object only to such amendments in the Finance Bill, 2012. However, there are also precedents, where after enactment of a provision to work retrospectively, its operation was restricted. S.14A, inserted in the Act by the Finance Act, 2001 was made to operate from 01.04.62. However, consequent to considerable opposition to such a retrospective amendment and to remove the fears that past cases can be re-opened because of such a retrospective amendment, the Finance Act, 2002 inserted a proviso in section 14A that the assessment made before 01.04.01 will not be re-opened. The relevant proviso reads thus:- "Provided that nothing contained in this section shall empower the A.O. either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any A.Y. beginning on or before the 1st day of April, 2001".

Concluding comments

The amendments of this nature create uncertainty in regard to application of tax laws in a country and deter persons from abroad to make investments in India. There is widespread belief that such retrospective amendment will deter FDI in the country. To this observation, the reply of the Secretary (Revenue) during the interactive session was that in China after such amendment, the FDI has not decreased. That such situation can arise in the context of India can only be a matter of conjecture but there is a credibility angle too. In a situation when there was no provision in the Act in India for taxing profit of the nature in Vodafone's case (and this gets confirmed by the Supreme Court's observation that the Govt. may amend the law if it so desires), it would be unfair to tax the same by making a retrospective amendment. Doing so, in my view, would erode Govt.'s credibility, which would not be worth the tax, to be collected, by retrospective amendment. Hence, a review regarding the Explanation proposed to be inserted by the Finance Bill, 2012 seems necessary.



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Competition Commission Notification on Combinations An Analysis

In June 2011 the Competition Commission came out with the Combination Regulations specifying therein the procedure relating to mergers and amalgamations. The Commission brought about certain amendments to these Regulations in February, 2012. This article makes an indepth analysis of the Regulations and the effect of the recent amendments.



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The Competition Commission of India (CCI) has issued the CCI (Procedure in regard to the Transactions of Business Relating to Combinations) Regulations, 2011 vide Notification No 98 dated 11-05-2011 effective from 1st June, 2011. This notification, *inter alia* laid down the procedure for regulating, mergers and amalgamations of industrial enterprises which is of vital importance to the Indian corporate sector. It reflects the substantive provisions of sections 5 and 6 of the Competition Act, 2002 (The Act) and the procedure which CCI will follow in handling combination proposals in respect of which notice has to be filed with the Commission.

The main purpose is to ensure that acquisitions of shares, voting rights or assets, acquiring/increasing control over other enterprises, any merger or amalgamations proposed by individuals/enterprises/groups which causes or is likely to cause an appreciable adverse effect on competition within



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India are eliminated. This is expected to ensure fair market mechanism for the players in the market and to protect the interest of the consumers.

These Regulations have been amended by the Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Amendment Regulations, 2012 [Notification No 40 dated 23rd February, 2012] making a few more changes.

SCOPE OF SECTIONS 5 & 6 OF THE ACT

Section 5 of the Act deals with several types of combinations and covers the following:

- (a) Acquisition of control, shares, voting rights or assets by the parties to the acquisition either in India or outside India having, in the aggregate, the value of assets or turnover stipulated in section 5(a) of the Act.
- (b) Acquisition of control by any person over an enterprise when such person is already in direct or indirect control over another enterprise or the group as the case may be, the value of assets or turnover stipulated in section 5(b) of the Act.
- (c) In respect of merger or amalgamation, the enterprise remaining after merger or the enterprise created as a result of amalgamation having either in India or outside India, in the aggregate the value of assets or turnover as prescribed in section 5(c) of the Act. In the case of merger or amalgamation by an enterprise belonging to a group, the enterprise remaining after merger or amalgamation or the enterprise created as a result of such merger or amalgamation would belong or would have assets either in India or outside India the value of assets or turnover exceeding the limit prescribed therein.

It is worth noting some of the expressions defined in the Act. The word "control" is defined as including controlling the affairs or management by one or more enterprises either singly or jointly over another enterprise or group or one or more groups either singly or jointly over another group or enterprise. "Group" is defined to mean two or more enterprises which directly or indirectly are in a position to exercise 26% or more of the voting rights in the other enterprise or appoint more than 50% of the members of board of directors in the other enterprise or control the management or affairs of the other enterprise. These definitions are relevant and important for proper understanding the coverage of section 5 of the Act.

REGULATIONS ISSUED BY THE CCI

There are 35 Regulations together with Schedule I (under Regulation 4) and Schedule II (under Regulations 5 and 8)

containing Forms I to IV. Reference to combination in these regulations shall mean a proposed combination or combined entity, if the combination has come into effect, as the case may be. While section 5 of the Act describes the manner of acquisition of combination, the prohibition against such combination is described in section 6 of the said Act which declares that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination is declared as void.

Notwithstanding what is stated above, Reg 4 declares and clarifies that the categories of combinations mentioned in schedule I are ordinarily not likely to cause an appreciable adverse effect on competition in India and hence notice under section 6(2) need not normally be filed. This is a very bold clarification and sets at rest apprehensions expressed in Industry circles when draft regulations were published by the CCI. However, the use of the words "ordinarily" and "normally" in Reg 4 gives an indication that certain combination may not fall under what is specifically mentioned in Schedule I. The Commission has reserved to itself the power to determine the procedure in certain circumstances and in specific matters, if so required. This introduces an element of uncertainty in regard to the matters covered by Schedule I.

CONTENTS OF SCHEDULE I

- (i) An acquisition of shares or voting rights by the parties referred to in sub-clause(i) or sub-clause(ii) of clause(a) of section 5 of the Act, solely as an investment or in the ordinary course of business, not exceeding twenty five percent (25%) of the total shares or voting rights of the





acquiring company, not leading to control of the enterprise is not likely to trigger adverse effect on competition. The threshold for "control" being 26% any acquisition less than 26% should not invoke the jurisdiction of CCI. The CCI appears to have adopted 15% share holding norm previously from SEBI guidelines which was a substantial acquisition and triggered public offer of shares. The shareholding of 15% has now been increased to 25% by SEBI under the new Takeover Code effective from 1st October, 2011. CCI has also increased the threshold limit. Acquisition of equity shares carries with it voting right, the exercise of which results in exercise of some measure of control. From the business perspective it is difficult to classify investments made solely as an investment simpliciter or in the ordinary course of business as such investments may not necessarily lead to substantial control by an investor. Some are trade investments and they are business related made for the purpose of procuring the much needed raw material on a preferred basis. Acquisition of shares or voting power in section 25 company may be considered for exemption as such companies are intended to serve social or charitable purposes as part of CSR activity.

- (ii) An acquisition of shares or voting rights referred to in sub-clause(i) or sub-clause(ii) of clause(a) of section 5 of the Act, where the acquirer, prior to acquisition, has fifty percent(50%) or more shares or voting rights in the enterprise whose shares or voting rights are being acquired except in the cases where the transaction results in transfer from joint control to sole control. This may possibly exclude acquisition of shares by private limited companies in which there is no public participation. Such companies are not bound to issue equity shares alone for expansion of capital base, with or without voting rights, as section 86 of the Companies Act is not applicable to such companies. Private companies being family owned and without public capital participation may possibly be kept out of combination purview.
- (iii) An acquisition of assets referred to in sub-clause(i) or sub-clause(ii) of clause(a) of section 5 of the Act, not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operation in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not.

Sometimes acquisition of an enterprise takes place in different stages starting with acquisition of assets in a modest manner leading ultimately to the acquisition of entire assets of an enterprise in an unrelated manner.

Sometimes acquisition of an enterprise takes place in different stages starting with acquisition of assets in a modest manner leading ultimately to the acquisition of entire assets of an enterprise in an unrelated manner. The exemption contemplated above relates to acquisition of assets unrelated to the business of an enterprise. The use of the word "substantial" is devoid of exactitude and introduces an element of uncertainty and leaves a lot of scope for the Commission to interpret what amounts to "substantial" acquisition of asset in any particular case.

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- (iv) An amended or renewed tender offer where notice to the Commission has been filed by the party making the offer, prior to such amendment or renewal of the offer. Provided that the compliance with the regulation 16 relating to intimation of any change is duly made.
- (v) An acquisition of stock-in-trade, raw materials, stores and spares in the ordinary course of business.
- (vi) An acquisition of shares or voting rights by a person acting as a securities underwriter or registered stock broker of stock exchange on behalf of its clients, in the ordinary course of business, and in the process of underwriting or stock broking, as the case may be.
- (vii) An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue to the extent of their entitled proposition, not leading to acquisition of control.

In the case of bonus issue there cannot be any increase in the percentage share holding as such shares are issued on capitalisation of reserves in proportion to the



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existing equity shares of the holder. Similar is the position in the case of rights issue except where additional shares are acquired out of the unsubscribed quota. It is curious to note what is not contemplated is the conversion of convertible preference shares or convertible debentures into equity shares or issue of sweat equity shares. These are authorised under the FEMA and the Companies Act.

- (viii) An acquisition of control or shares or voting rights or assets by one person or enterprise of another person or enterprise within the same group, as defined in explanation(b) to section 5 of the Act.

An additional clause (8A) has been added to Schedule I reading as under. "A merger or amalgamation involving a holding company and its subsidiary wholly owned by enterprises belonging to the same group and/or merger or amalgamations involving subsidiaries wholly owned by enterprises belonging to the same group." This is an addition to Schedule I items and the underlying presumption is that such acts of consolidation will not result in appreciable adverse effect on competition in India. Clause 8A should have been qualified to the effect that such consolidation has not caused or is not likely to cause appreciable adverse effect on competition on the market within India.

- (ix) An acquisition of current assets in the ordinary course of business, as attributed to them in schedule VI of the Companies Act.
- (x) A combination referred to in section 5 of the Act taking place entirely outside India with insignificant local nexus and effect on markets in India.

It appears that the types of transactions covered by Schedule I are those relating to activities in the ordinary course of business as such activities are not directed towards merger or amalgamation activities covered by sub-section(c) of section 5 of the Act. One thing that runs through the schedule I items relate to those activities which do not lead to acquisition of control of another enterprise. However Schedule I makes sense and gives a good deal of freedom to the corporates to carry on their business activities unhindered by the provisions of the Act.

FORM OF NOTICE FOR THE PROPOSED ACQUISITION

An enterprise which proposes to enter into a combination is required to give ordinarily notice to the Commission in Form I of Schedule II in accordance with section 6(2) of the Act, duly filled in, verified and accompanied by the requisite fee. Form I filing is required in the following cases(Reg 5);

The parties are also required to furnish to the Commission four copies of approval of the proposal relating to merger or

amalgamation by the Board of Directors of the enterprise(s) concerned referred to section 6(2)(a) of the Act and/or other document executed in relation to the acquisition or acquiring of control referred to in section 6(2)(b) of the Act.

Filing of the notice is mandatory in following cases:

- (a) where none of the parties is engaged in horizontal or vertical combination relating to production, supply, distribution, storage, sale or trade of similar or substitutable goods or services in which another party to the combination is involved.
- (b) the parties to the combination are predominantly engaged in export of goods or services from India and continue to occupy predominant position in regard to export after combination takes effect. This means export of goods or services to the extent of at least 75% of the turnover of the party to the combination. However such a party may have a combined market share of less than 15% in the relevant market in India.
- (c) an acquisition or acquiring of control over an enterprise by a Liquidator, administrator, receiver appointed through court proceedings or through a scheme approved under the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or under the Sick Industrial Companies(Special Provisions) Act, 1985 or any other modification or re-enactment of the law;
- (d) an acquisition resulting from gift or inheritance;
- (e) an acquisition by a trustee company or arising from change of trustees of mutual fund established under the Securities & Exchange Board of India (Mutual Fund) Regulations, 1996 as amended from time to time.
- (f) the parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or services and their combined market share after such combination is less than 15% in the relevant market.
- (g) the parties to the combination are engaged at different stages or levels of production chain in different markets in respect of production, supply, distribution, storage, sale or trade in goods or services and their individual or combined market share is less than 25% in the relevant market.

In the above cases filing of notice is mandatory but the items included are trade related. The combinations which are export oriented, combination with less than 15% market share in respect of similar or identical goods or services or 25% market share in the case of combinations engaged at different stages or levels of production chain etc. are expected not to create appreciable adverse effect on competition in the market within India.

Notwithstanding what is stated above the parties to the combination may, at their option file notice in Form II to Schedule II to these regulations preferably in the instances where (a) the parties to the combination are



engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than 15% in the relevant market; (b) the parties to the combination are engaged at different stages or levels of the production chain in different markets in respect of production, supply, distribution, storage, sale or trade in goods or provision of services and their individual or combined market share is more than 25% in the relevant market.

If the Commission wants additional information it may direct the parties to furnish such information. The time taken by the parties to furnish additional information will be excluded from the period of 210 days prescribed by section 31(11) of the Act(as reduced by the periods mentioned in the explanation thereto) read with Reg 19 of these regulations for the Commission to pass an order or direction in the matter. However the fee paid while filing Form I will be reduced from the fee payable for filing the notice in Form II.

There is another situation where the aforesaid regulation may be invoked. If the parties while filing the notice in Form I or Form II has not furnished certain information, if they are not available, the parties have to indicate clearly against relevant column in the notice. The time taken by the parties to furnish information will be excluded from the period of 210 days referred to above.

Where the parties have filed notice in Form I and the Commission requires information in Form II to form its *prima facie* opinion whether the combination is likely to

cause appreciable adverse effect on competition within the relevant market, the Commission may direct the parties to file the notice in Form II. The time period mentioned in sub-regulation(2A) of section 6 of the Act, sub-regulation(11) of section 31 of the Act shall commence from the date of receipt of notice in Form II.

If the required details are not available for any of columns in Form I or Form II, the date on which they may be submitted should be clearly indicated against those columns. The time taken by the parties shall be excluded from the period of 210 days mentioned in Section 31(11) of the Act. For determining this period, 30 days specified in sub-regulation(6) and a further period of 30 days specified in sub-regulation(8) will be excluded.

There is reference to the "Board of Directors" in section 6((2)(a) of the Act means and includes (a) a sole proprietor in the case of an individual (b) karta in the case of HUF, (c) the Board of Directors in the case of a company (d) the person or the body empowered by the legal instrument that created in the case of corporation established by Central or State or Provincial Act or Govt. company, or association of persons or body, whether incorporated or not, or laws of a country outside India or co-operative society or local authority, in the case of a firm, the partner(s) so authorised.

The amended regulation has added sub-regulation(9) to regulation 5 reading as under:

"Where in a series of steps or individual transactions that are related to each other, assets are being transferred to an enterprise for the purpose of such enterprise entering into an agreement relating to an acquisition or merger or amalgamation with another person or enterprise, for the purpose of section 5 of the Act, the value of assets and turnover of the enterprise whose assets are being transferred shall also be attributed to the value of assets and turnover of the enterprise to which the assets are being transferred."

This additional clause has a bearing on item 3 of Schedule I relating to acquisition of assets.

NOTICE IN FORM III- ACQUISITION BY PUBLIC FINANCIAL INSTITUTIONS ETC.

Details of acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund pursuant to



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any covenant of loan agreement or investment agreement shall be filed without any fee along with a certified copy of loan agreement or investment agreement referred to in section 6(5) of the Act. Where details of acquisition are received by the Commission beyond the limit mentioned in the aforesaid provision, the Commission may admit such details of acquisition in Form III (Regulation 6).

FAILURE TO FILE NOTICE

Where there is a failure to file the notice, the Commission may under section 20(1) of the Act upon its own knowledge or information inquire into such combination to find out, without prejudice to any penalty, whether the combination has caused or is likely to cause an appreciable adverse effect on competition within the relevant market in India. For this purpose the Commission may direct the parties to file the notice in Form II duly filled in, verified and accompanied by evidence of payment of fee. The notice shall be filed within 30 days from the date of communication from the Commission. (Regulation 8).

BELATED NOTICE

Where a notice filed in Form I or Form II under sub regulation(2) or (3) of regulation 5 is received by the Commission beyond the time limit specified in section 6(2) of the Act, the Commission may, without prejudice to other provisions including section 43A of the Act, admit such notice. The Commission is empowered to impose penalty upto one percent of the total turnover or the assets, whichever is higher upon such combination under section 43A (Regulation 7).

OBLIGATION TO FILE THE NOTICE

The Regulations set out the procedure for filing of notice in different situations. In the acquisition or acquiring control of enterprise/s, the acquirer is required to file the notice in Form I or Form II, as the case may be, duly signed by the individual including a sole proprietor firm, karta in the case of HUF, the Managing director or in his absence any director, duly authorised by the board of directors in the case of a company, the president or secretary in the case of association or society or similar body or the person so authorised by a legal instrument that created the association or the society or body, a partner in the case of partnership firm, the chief executive in the case of co-operative society or local authority etc., as required by regulation 11 of the Competition Commission of India(General) Regulations,2009.

In the case of an enterprise which is being acquired without its consent, the acquirer is required to furnish such information as is available to him, in Form I or Form II, as the case may be, relating to the enterprise being acquired. The information not available with the acquirer is required to be filed within 15 days of the notice. If the acquirer is not able to do so, the

Commission may direct the enterprise concerned, which is being acquired, to furnish such information as it deems fit. The time taken by such enterprise in furnishing the information is excluded from the period of 210 days as provided in section 31(11) of the Act together with the explanation thereto and Regulation 19 of these Regulations.

In the case of merger or amalgamation, the notice in Form I or Form II is required to be filed jointly, duly signed by the persons as per Regulation 11 referred to above. Apart from these persons, the aforesaid form may also be signed by the Company Secretary of the company, duly authorised by the board of directors of the company.

If the intended effect of a business transaction is to be achieved by a series of steps or smaller individual transactions which are inter-connected or inter-dependent on each other, one or more of which may amount to combination, a single notice covering all the transactions may be filed by the parties to the combination.(Regulation 9)

Obligation to pay the fee & the amount of fees

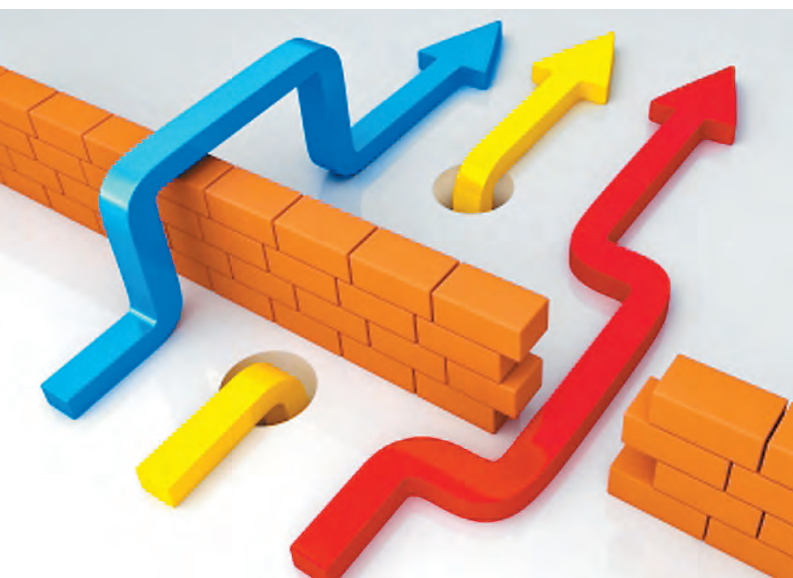
Purpose	Fee
(a) Notice in Form I.....	Rs. 10,00,000 (Rupees ten lakhs)only.
(b) Notice in Form II.....	Rs. 40,00,000 (Rupees Forty lakhs) only.

Where the notice is filed jointly, the fee may be paid jointly or severally. The fee may be paid either by tendering demand draft or pay order or bankers' cheque payable in favour of the Competition Commission of India(Competition Fund),New Delhi or through Electronic Clearance Service(ECS) by direct remittance to the Competition Commission of India (Competition Fund), Account No 1988002100187687 with Punjab National Bank, Bhikkaji, Cama Place, New Delhi-110066. (Regulations 11&12)

PROCEDURE FOR FILING NOTICE

The duly filled in and verified notice under Regulations 5 or 8,as the case may be, along with two copies and an electronic version should be delivered to the Commission at the address published on its official website. All responses or other documents required before the Commission are also to be filed as aforesaid. The Secretary to the Commission may through public announcement inform the procedure for electronic filing or increase or decrease in the number of copies or vary the format for electronic version.

The amended regulation also provides that a summary of the combination, not containing any confidential information in not less than 2000 words, comprising, *inter alia*, the details regarding(a) the products, services and business(es) of the parties to the combination,(b) the values of assets/turnover for the purpose of section 5 of the Act,(c) the respective markets in which the parties to the combination operate,(d) the details of agreement(s)/other documents and the board resolution(s) executed/passed in relation to combination,(e) the nature and purpose of the combination, and(f) the likely impact of the



combination on the state of the competition in the relevant market(s) in which the parties to the combination operate, along with nine copies and an electronic version thereof shall be separately given to the Commission while delivering the notice under sub-regulation (1). (Reg 13).

SCRUTINY OF NOTICE

(a) Mode of service of Notice

The service of any notice or intimation to any person or enterprise under these regulations shall be effected in the manner provided in Regulation 22 of the CCI (General) Regulations, 2009 or by electronic transmission as considered appropriate by the Commission. (Regulation 18).

Every notice or other document required to be served on or delivered to any person under these regulations may be served personally or sent by registered post or by speed post or by courier service at the address furnished by him or her or it for service or at the place where the person ordinarily resides or carries on business or occupation or works for gain. It may also be sent through facsimile transmission or by electronic mail. There is also provision for substituted service if the circumstances of the case requires. (Regulation 22 aforesaid.)

As regards filings before the Commission, all information or responses thereto or other document which are required to be filed before the Commission shall be typed in Arial 12 fonts on one side of A4 size (210X297 mm or 8.27X11.69") white bond paper in double space with 2" margin on all other sides. Only neat and legible photo copies or scanned documents duly certified as true copies may be filed as exhibits or

annexes. Eight copies of each document, in addition to a soft copy in document format, wherever possible shall be filed. (Reg 23 of CCI General Regulations).

In the case of acquisition of control of enterprises, the acquirer should file the notice in Form I or Form II as the case may be, duly signed by the persons specified under regulation 11 of the CCI (General Regulations), 2009. In the case of merger or amalgamation, parties to the combination should jointly file the notice duly signed by the person(s) in accordance with the aforesaid general regulations.

(b) Valid Notice

Where the information/documents filed along with the notice has any defect or incomplete in any respect, the Commission shall ask the parties to remove such defect or furnish any information or documents. Failure to do so within the time specified, will result in the notice being treated as an invalid notice. (Regulation 14(3)).

- (i) the parties having filed a notice should inform the Commission of any change in the information provided during the proceedings under the Act. Thereupon, the Commission shall assess the significance of such change. If the Commission is of the view that the change is likely to affect the factors for the determination of the appreciable adverse effect on competition significantly, then after giving reasonable opportunity of being heard and after recording reasons, it may treat the notice already filed as not valid. No additional fee is payable if a notice is filed again. (Regulation 16).
- (ii) the proceedings under the Act shall be terminated upon (a) receiving an intimation from the person or enterprise(s) who filed the notice to the effect that the proposed combination will not take effect, or (b) passing of an order by the Commission under section 31 of the Act. (Regulation 17)

PRIMA FACIE OPINION ON THE COMBINATION

The Commission is required to form its *prima facie* opinion on the notice filed as to whether the combination is likely to cause or has caused an appreciable adverse effect on competition within 30 days from the date of receipt of notice. (Regulation 19(1)).

For the above purpose, the commission may require the parties to furnish additional information or accept modification. The parties may also offer modification before the Commission has formed its *prima facie* opinion. The time taken by the parties in furnishing additional information will be excluded from the period of 210 days under section 31(11) of the Act. (Regulation 19(2)).



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Where modification has been offered by the parties to the combination as aforesaid, the Commission will require additional time not exceeding 15 days to evaluate the offered modification. If need be, the Commission may call for information from any other enterprise to form its opinion in the matter (provisos to Regulation 19).

CALLING FOR A REPORT FROM THE DIRECTOR GENERAL

The Commission after receipt of response from the parties to the show cause notice may decide to call for a report from the DG within the time specified by the Commission. The Secretary to the Commission should convey the direction of the Commission to the DG along with a copy of the notice together with all other documents, materials, affidavits, statements which are filed or otherwise available with the said notice and the response of the parties to the same (Regulation 20).

REPORT BY THE DIRECTOR GENERAL

The DG is required to include in his report the basis on which it has reached the conclusions together with all evidences or documents or statements collected during the investigation and analysis thereof. The DG is required by section 41 of the Act to assist the Commission in investigating into any contravention of the provisions of the Act or any rules or regulations made there under. For this purpose, the DG has all the powers as are conferred on the Commission under section 36(2) of the Act. This confers the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit. These powers include (i) summoning and enforcing the attendance of any person and examining him on oath, (ii) requiring the discovery and production of documents, (iii) receiving evidence on affidavit, (iv) issuing commissions for the examination of witnesses or documents (v) requisitioning any public record or document or copy of such record from any office, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872.

Two copies of the report of the DG duly signed by him on each page or his authorised officer, along with an electronic version on documents format should be forwarded to the Secretary within the time specified by the Commission. (Regulation 21).

PUBLICATION OF DETAILS OF COMBINATION

If the Commission is of the *prima facie* opinion that the combination has caused or is likely to cause adverse effect on competition within the relevant market in India, the Secretary

should within four working days convey the direction of the Commission to the parties to the combination to publish the details of the combination within ten working days of such decision. The publication shall be in Form IV specified in schedule II to these Regulations. Details of combination to be published are to be given to the Commission before publication and the Commission may host the same on its official website. The parties may also be asked to host the same on the websites of the respective parties not later than the time specified. Details of combination are to be published in all India editions in four leading newspapers including at least two business newspapers. (Regulation 22).

Copies of publications are to be given to the Secretary not later than fifteenth days of the direction of the Commission. (Regulation 23). Form IV requires any person(s) adversely affected or likely to be affected by the combination to submit in writing to the Secretary within 15 working days his/her comments, objections and suggestions stating the name, address and contact details of the person with supporting documents and how such a person is adversely affected or is likely to be affected by the combination.

APPEARANCE BEFORE THE COMMISSION

There is nothing in the Act requiring the Commission to give an opportunity of fair hearing to the parties. However, where the Commission deems it necessary to give an opportunity of being heard to the parties to the combination before deciding to deal with the case, it may through its Secretary convey its decision to the parties to appear before it by giving a notice of such period as directed by the Commission. (Regulation 24).

MODIFICATION TO THE PROPOSED COMBINATION

Where the Commission is of the opinion that any combination has or is likely to have appreciable adverse effect on competition, but such adverse effect can be eliminated by suitable modification, it may propose appropriate modification to the combination to the parties concerned. If the parties accept the modification under section 31(3) or the Commission agrees with it and approves the combination under section 31(7) of the Act or the parties in terms of section 31(8) of the Act accept the modification proposed by the Commission, the parties are required to carry out such modification as per the terms and conditions and within such period specified by the Commission and submit an affidavit to that effect.

Where the parties accept the modification proposed by the Commission or the Commission agrees with the amendment submitted by the parties, it shall by order, approve the combination. If the parties fail to accept the modification proposed by the Commission within the time specified in section 31(6) of the Act or within further period provided in section 31(8) of the



Act, the combination shall be deemed to have an appreciable adverse effect on competition and it shall be dealt with in accordance with the provisions of the Act. (Regulation 25) Where the Commission has directed that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition, it may by order direct that the acquisition referred to in section 5(1)(a) of the Act, or the acquiring of control referred to in clause(b) of section 5, or the merger or amalgamation referred to in clause (c) of section 5 shall not take effect (Section 31(10)). This is without prejudice to any penalty which may be imposed or prosecution which may be initiated under the Act. The Commission may, if it considers appropriate, frame a scheme to implement its order(section 31(10)) of the Act. If the Commission does not, on the expiry of a period of 210 days from the date of notice given or pass an order or issue direction under section 31(1) or 31(2) or 31(7) of the Act, the combination shall be deemed to have been approved by the Commission. (Section 31(11) of the Act.)

COMPLIANCE REPORT

The modification referred to in the previous regulation should be carried out by the parties to the combination within the period specified by the Commission. The parties are also required to file a compliance report with the Secretary to the Commission within seven days. If the parties fail to do so, the Secretary shall place the matter before the Commission regarding non-compliance (Regulation 26).

APPOINTMENT OF INDEPENDENT AGENCIES TO OVERSEE MODIFICATION

Where the Commission is of the opinion that the modification proposed by it and accepted by the parties needs supervision, it may appoint agencies to oversee such modification on such terms and conditions as may be decided by the Commission. Such agencies should be independent of the parties to the combination having no conflict of interest and may include an accounting firm, management consultancy, law firm or any other professional organisation or at par thereof or independent practitioners of repute. The agencies are required to carry out the responsibilities entrusted to them and submit a report to the Commission upon completion of each of the actions required to carry out the modification. Payment to the agencies shall be borne by the parties by depositing it with the Commission or as may be directed by the Commission (Regulation 27).

ORDERS OF THE COMMISSION

If the Commission is of the opinion that the combination has or is likely to have an appreciable adverse effect on competition in the relevant market in India, it should pass an order that the combination shall not take effect (section 31(2)). On the other hand if the combination does not or is not likely to have an

appreciable adverse effect on competition, the Commission shall pass an order approving the combination (Section 31(1)). Where the Commission approves the combination with modification, it shall specify the terms, conditions and the timeframe for all the actions required for giving effect to the combination. If the parties fail to carry out the modifications within the stipulated time limit the Commission shall issue appropriate direction and convey the same to the parties through its Secretary. The Commission shall endeavour to pass an order or issue direction within one hundred and eighty days of filing of the notice. The orders passed by the Commission shall be published on its website. (Regulation 28).

APPEAL TO COMPETITION APPELLATE TRIBUNAL ON COMBINATION

As provided in section 53B of the Act, the Central Govt. ,the State Govt. ,or a local authority or enterprise or any person who is a party to the proceedings before the Commission may prefer an appeal to the Appellate Tribunal relating to combination if aggrieved of any direction, decision or order passed by the Commission.(Regulation 29).

REQUEST FOR CONFIDENTIALITY

Any request for confidentiality of information or documents submitted during investigation should be duly considered by the Commission having regard to the procedure laid down in the Competition Commission of India (General) Regulations, 2009 as amended from time to time. The parties may, *inter alia*, clearly state the reasons, justification and implications for the business of the parties to the combination so that all relevant factors may be considered by the Commission while taking decision in the matter. (Regulation 30).

Regulation 35 of the aforesaid general regulations provide for detailed procedure for treating any document or information as confidential. Such a request is entertained if the disclosure of any document results in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury.

FILING OF NOTICE UNDER SECTION 6(2) OF THE ACT

The Notice referred to in section 6(2) is applicable (a) for mergers or amalgamations referred to in clause 5(c) of the Act in regard to proposals approved by the board of directors on or after 1st day of June, 2011, and (b) for acquisitions referred to in clauses (a) & (b) of section 5 of the Act. Notice need be filed only where binding document(s) is executed on or after the



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Competition Commission Notification on Combinations-An Analysis

It appears that the types of transactions covered by Schedule I are those relating to activities in the ordinary course of business as such activities are not directed towards merger or amalgamation activities covered by sub-section(c) of section 5 of the Act. One thing that runs through the schedule I items relate to those activities which do not lead to acquisition of control of another enterprise. However Schedule I makes sense and gives a good deal of freedom to the corporates to carry on their business activities unhindered by the provisions of the Act.

1st day of June, 2011. Approval of the board under clause (a) refers to final decision of the board of directors (Regulation 31).

OVERRIDING EFFECT

These Regulations shall have effect in all matters relating to combination notwithstanding anything contained inconsistent there with in any other regulations framed under the Act (Regulation 32).

MISCELLANEOUS PROVISIONS

The Commission may, from time to time, in discharge of its duties, issue general or sector specific directions, guidelines, clarifications or circulars for regulation of combinations having regard to the provisions of the Act. (Regulation 33).

Where the Commission deems fit, it may seek opinion of any other agency or statutory authority in relation to a combination. (Regulation 34).

If any doubt or difficulty arises in the matter of implementation of these regulations, the same shall be placed before the Commission and the decision of the Commission thereon shall be final and binding (Regulation 35).

CONCLUSION

In order to prevent practices having adverse effect on competition in the relevant market in India, the Act seeks to regulate combinations which, *inter alia*, include mergers and amalgamations. The instant Regulations seek to establish the procedure for filing notice with the CCI in respect of combination proposals. This is to be seen in the context of increasing business opportunities during the post 1991 era and such opportunities are unlimited. To achieve faster growth, synergy of operations and securing enlarged market for their products, corporate organizations take recourse to mergers and amalgamation of like or diversified enterprises. This is integral to business strategy and the corporates endeavour to achieve the aforesaid objectives through domestic and cross border

transactions. The recent times has seen increasing cross border transactions which brings foreign enterprises in closer relationship with domestic enterprises. The Indian industry is very much concerned about the manner in which the combination proposals are going to be handled by the Commission and to what extent it will hinder acquisition of new enterprises. While business expansion and diversification is a legitimate business activity, it has to sub serve national priorities as outlined in the Act. The Commission has held out that it will endeavour to clear the combination proposals expeditiously. The Minister in charge of MCA has gone on record recently and asserted that the CCI will check mergers that end in creating monopolies or abuse of dominance harmful to consumers, small producers and impede orderly economic growth.

The effect of the amended regulations are as follows:

- (a) Option to give notice in Form II if the parties are engaged in horizontal or vertical combinations having a combined market share of more than 15% (for horizontal) or 25% in the case of vertical combination. This means payment of fee of Rs. 40 lakhs, instead of Rs. 10 lakhs.
- (b) The period of 210 days mentioned in section 31(11) of the Act, as reduced by the period/s stated in the explanation thereto, will commence from the date of receipt of the notice in Form II.
- (c) In respect of series of individual transactions relating to asset transfer in connection with acquisition or merger or amalgamation with another person or enterprise, the value of assets or turnover will be added to the assets/turnover of the enterprise to which the assets are being transferred.
- (d) Public financial institutions, foreign financial investor, bank or venture capital fund are required to file with the Commission a certified copy of the loan or investment agreement.
- (e) Form I or Form II may also be signed by the Company Secretary of the company, duly authorised by the BOD of the company.
- (f) Increase in filing fee from Rs. 50,000 to Rs. 10 lakhs in the case of Form I and from Rs. 10 lakhs to Rs. 40 lakhs in the case of Form II.
- (g) Need to file a summary of the combination transaction containing the details referred to in Regulation 13(1) with the Commission in nine copies with an electronic version thereof, while delivering the notice.
- (h) Increase in the threshold limit from 15% to 25% in the case of acquisition of shares or voting rights of another company. This is in relation to item 1 of Schedule I to the Regulations.
 - (i) Addition of "Buy back" of shares to item 6 of Schedule I not leading to acquisition of control.
 - (ii) Addition to Schedule I items (not likely to result in appreciable adverse effect on competition in India) in the case of consolidation on account of merger or amalgamation of wholly owned subsidiary(ies) with the holding company.



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Amended Combination Regulations Relief to Corporates & Bonanza for Company Secretaries

The Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combination) Regulations which were enforced just less than a year ago have recently been amended mainly to amplify Schedule I, Rationalize Forms I, II and III, increase the filing fee, allowing the company secretaries to sign the Forms on behalf of the company and bring about few other changes. The scope and impact of the amendments made in February 2012 have been explained in this Article.

The enforcement of Mergers and Acquisitions regime which in Indian Competition Law is described as 'Combination' is in place by now for about nine months. In its short enforcement era, a sole national primary competition law enforcement authority viz. the Competition Commission of India (CCI), has cleared all notices filed with it in less than 30 days. So far, the CCI has held good on its promises. Listening to stakeholder's voice, the CCI has amended the Competition Commission of India (Procedure in regard to the transaction of business relating to Combination) Regulations, 2011 even though it has been only nine months since their enforcement. All these demonstrate

that the CCI's reforms rabbit has not been allowed to become turtle.

The amended regulations seek to (a) provide relief to business houses from notifying certain transactions (in addition to existing exempted categories) which are unlikely to raise adverse competition concerns, (b) align with changed norms of revamped Takeover Code, (c) reduce the compliance requirements, (d) make filings simpler, (e) ensure predictability and certainty; and (f) geometrical raise in filing fee linked to cost incurred on resources deployed on 'competition assessment of transaction' and also as an endeavor to make CCI financially independent.

The changes made can broadly be grouped into three categories, namely (i) amplifications in Schedule I; (ii) rationalization in Forms I, II and III; (iii) increase in filing fee/ancillary changes; and (iv) allowing Company Secretary to sign the forms on behalf of the company.

* Also Member, Expert Committee on National Competition Policy and ranked as Lead Anti Trust Counsel in Asia by Chambers & Partners, 2012.



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Amended Combination Regulations Relief to Corporates & Bonanza for Company Secretaries

I. Amplifications in Schedule I

Schedule I of the Combination Regulations carves out certain categories of transactions that are not likely to cause an appreciable adverse effect on competition (AAEC) in India and need not be normally reported to the CCI for approval. Some of the additions/modification/amplifications to such categories of transactions, are as under:-

- 1.1 Raise in threshold of acquisition:** The Combination Regulations now do not require an acquirer to notify a transaction and have prior clearance before its consummation in case the acquisitions that are less than 25% of the shares or voting rights in target company on cumulative basis. Hitherto, the benefit of exemption was available only when the extent of holding was limited to 15% on a cumulative basis in the acquired entity. However, the touchstone that the acquisition is solely as an investment or in the ordinary course of business remains. Further, in case the acquisition has the element of control (direct or indirect), the benefit of exemption is not available notwithstanding the extent of acquisition;
- 1.2 Intra Group restructuring:** The amended Combination Regulations have now dispensed with the requirement of filing a notice in respect of intra-group mergers or amalgamations involving enterprises wholly owned by the group companies. The benefit of exemption however is not extended to group companies which are not wholly owned. Thus, the scope of the exemption to an acquisition of shares, voting rights or control within the same group has been extended to intra group mergers and amalgamation but it has been confined only to merger/amalgamation of wholly owned group companies.
- 1.3 Acquisitions in the wake of buy back/right issue:** Acquisitions of shares carrying voting rights pursuant to buy back scheme and acquisition of shares carrying voting rights pursuant to subscription of rights issue (without the restriction of their 'entitled proportion') will not be required to be reported to the CCI. Here again the benefit of exemption is available only if post buy back or post subscription to right issue, there is no change in 'control'.

II. Changes in Forms notifying the transaction

- 2.1 Form I (which is commonly referred to as "Short Form") is preferable to be filed when the

transaction is covered by the instances covered as per sub regulation (2) of Regulation 5 of the Combination Regulations. Until now, Part Form I was to be filled up in case (a) parties are not engaged in same or similar business, (b) parties are predominantly in export business, (c) acquisition of control is in the wake of liquidation or proceedings under the specified Acts, (d) acquisition is in the wake of gift/inheritance and (e) acquisition is of a trustee company or changes in the trustee company. Also earlier, Part Form II was required to be filled up in case the transaction is between parties engaged in same/similar business but post combination the total market share is less than 15% or parties are at different levels of production chain and their individual or combined market share is less than 25% in the relevant market. In order to make the filing simple and straightforward, no more such distinction subsists. Also, some simplifications have been made in Form I to introduce greater uniformity and clarity in the filing process.

- 2.2 To make Form I more relevant and self contained, a filer is required to provide details of value of the assets and turnovers for the purpose of Section 5 and also a copy of the agreement, board resolution etc. as mentioned in Section 6(2).
- 2.3 In order to facilitate a quick and efficient review of the notice in Form I, the parties are required to file a brief executive summary of the combination, when filing the notice. The summary shall consist of basic information on combination, products of the parties, products similarity/substitutability and the relevant market in which the parties operate. It be noted that executive summary is different from the Summary as envisaged in Column 5.1 which *inter-alia* is required to mention additional information such as type, nature and purpose/economic rationale of combination besides expected time frame for completion etc.
- 2.4 Parties retain the option of filing Form II, especially in those cases where there may be significant horizontal overlap exceeding 15% and/or significant vertical relationship in excess of 25% between the parties.
- 2.5 Form III is required to be filed (only for the purpose of intimation) when the acquirer happens to be a public financial institution, bank, foreign institutional investor or the venture capital fund and the acquisition is in the wake of investment or loan agreement. Till Feb 23, 2012, such intimation was required to be filed within 7 days from the day of



acquisition and there was mandate on the filer to file a copy of such agreement with the form. The amended regulation mitigate the hardship of '7 days is too less time to file' and a provision has been inserted to allow belated filing. Also in order to make the filing self eloquent, the filled up Form III is now required to be accompanied with a copy of loan/investment agreement which led to acquisition.

III. Steep hike in filing fee and other change

- 3.1 Taking into account (a) the resources deployed in the assessment of the notice, (b) the fees charged by other regulatory authorities in India and abroad, the filing fee has been raised from INR 50,000 to INR 10,00,000 in respect of Form I and from INR 10,00,000 to INR 40,00,000 in respect of Form II. It is believed that as the number as well as the scope of exempted categories of transaction has been increased, the resultant effect will be reduced number of filings.
- 3.2 In order to provide certainty about transactions involving asset transfers and calculation of value of assets and turnover for the purposes of Section 5 of the Act, a new provision has been introduced for attribution of value of assets and turnover of a transferor company to the transferee company where assets are transferred to the transferee company for the purpose of effecting a combination.

IV. Authorization to Company Secretary to sign the Forms of filing

Recognising that a Company Secretary of the company is a corporate planner, a strategic manager and a vital link between a company and the Regulator, the amended Regulations do permit a Company Secretary, if duly authorized by Board, to sign Form I or Form II which is required to be filed by an acquiring company or by a company which is party to merger or amalgamation. Hitherto, only the Managing Director or the Director authorized by the Board of the filing was authorized to sign these forms.

V. The Road Ahead

Law is ever evolving and the competition law is not an exception and much less in case of the merger regulation where market dynamics shifts quickly. A critical analysis suggests that further modifications such as those highlighted below are called for:

merger/amalgamation provided the enterprise(s) is wholly owned. In competition assessment, 'control' is key and the mode/process of its acquisition is immaterial. In the interest of parity, simplicity and clarity, it would be appropriate to exempt all intra group transactions from the applicability of combination regulations as was envisaged in original draft of Combination Regulations.

- 5.2 In terms of Government of India notification of 4th March, 2011, a transaction will be combination for the purposes of Act only if size of acquired enterprise is either at least INR 250 crores in terms of assets in India or turnover is less than INR 750 crores in India. This notification requires a relook and the benefit of *de minimus* exemption needs to be extended to mergers and amalgamations as well.
- 5.3 A duly authorized Company Secretary in employment has been allowed to sign a notification to be filed with the CCI. A Company Secretary in employment with a PFI, Bank, VCF and FII needs to be authorized to sign Form III also when such investor acquires shares pursuant to loan/finance agreement.
- 5.4 As Company Secretary of a company has been authorized to file merger notices to be filed with the CCI, thus there is greater recognition and realization that he is a compliance officer and a conscious keeper of the company. In the premises, it would be advisable to mend the General Regulation and allow a Company Secretary of a company to sign information or a reply to the notice or direction issued by the CCI and the DG. This is all the more appropriate as a Company Secretary in practice is already authorized to represent and sign documents on behalf of its client in terms of Section 35 of the Act.
- 5.5 The CCI has put in place the facility of informal consultation to a party to combination and it can be availed of on making a formal request. Currently, the scope of informal consultation is limited to guidance in regard to filing of a notice and it is not extended to clarification on a provision of law or regulation. Incidentally, both these compartments of consultation are intertwined. CCI needs to extend the scope of informal consultation so that party can have the benefit of non binding consultation on scope and interpretation of combination provisions and this will ameliorate the whip of expensive filing fee of Rs. 10 lakhs/Rs 40 lakhs which is required to be paid to the CCI along with Form I/II respectively. ■

- 5.1 The benefit of exemption has been limited to intra group



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Joint Venture Legal and Regulatory Framework

With globalization and liberalization of Indian economy, there has been a significant increase in joint ventures between the Indian and multinational companies for mutual gain and competing in the global market. The broad legal and regulatory framework relating to joint ventures is outlined in this article.

INTRODUCTION

With globalization and liberalization of Indian economy, joint ventures (JV) in India have become an integral part of global business strategy for competitive advantage. India has, therefore, witnessed a phenomenon increase in joint venture agreements (JVAs) between the Indian and multinational companies for mutual gain. For the Indian economy, the major advantages of JVAs include transfer of modern technical know-how, value-addition to productive resources and foreign direct investment (FDI). Whereas the modern technical know-how enables

world class manufacturing infrastructure to meet international quality and standards of products, FDI enables resources to expand operations and compete in the global market. In this context, an attempt is made to discuss the important legal and regulatory issues relating to JVAs.

STRENGTHS OF INDIA

The major strengths of India include the following:

- ◆ Political stability, transparency and security of foreign investments.
- ◆ Growing economy and expanding business sector to attract and absorb incremental FDI.
- ◆ World-class infrastructure in metropolitan cities.
- ◆ Availability of highly qualified managerial, technical and skilled manpower.
- ◆ Well developed legal system and independent judiciary.
- ◆ Fast growing market and growing middle-class population with higher disposal income.



JOINT VENTURE

Concept

A JV is essentially a partnership or strategic alliance between two or more persons for mutual gains. They enter into a shareholders' agreement to promote and incorporate a special purpose vehicle called 'Joint Venture Company' (JVC) to create greater economic value. They contribute their tangible and intangible assets and own equity in the JVC in the agreed proportion and share the risks and benefits of the JVC.

Essential Features

In JV two or more persons create a separate entity to carry out business in which each person contributes and plays an active role in decision making process. The essential features of a JV include - (a) agreement between the parties, (b) pooling of tangible and intangible assets, (c) mutual control and management; and (d) sharing of profits. The Apex Court in *New Horizons Limited v. Union of India* [1995 SCC (1) 478], while deliberating upon the essentials of a joint venture company, sharing of risks, community of interests, contribution to assets and the intent to jointly run an undertaking were the elements of a joint venture.

Types of Joint Venture

The important types of JVs according to the International Trade Center of United Nations Conference on Trade and Development (UNCTAD) are:

1. Equity JVs involving formation of a new company in which each owns a certain portion of the equity or alternatively, there may be equity participation in an existing company.
2. Contractual JVs without equity participation wherein the

rights and obligations of parties are governed by a contract which may take any of the following forms:

- a) Licensing Agreement involving grant of access to technology or know how for manufacture or marketing for a royalty or a lump sum.
- b) Manufacturing contract i.e. an agreement to manufacture a product as per specification of a party which will sell them under its own name.
- c) International subcontracting in the form of outsourcing. Other forms of contractual arrangement may include turnkey contract; production sharing contracts is in petroleum sector, management contracts, franchising, financial leasing etc.

Advantages of Joint Venture

The important advantages of joint venture include:

- ◆ Convergence of strategic goals of the parties despite divergence of competitive goals
- ◆ Overcoming constraints of size, market, power and resources compared to industry leaders
- ◆ Effecting way of entering cross boarder markets
- ◆ Sharing of risks
- ◆ Access to technology/R&D, while limiting access to proprietary skills

FORMATION OF JOINT VENTURE COMPANY

The steps for setting up a joint venture company are signing a memorandum of understanding (MOU), shareholders agreement, JVA and registration of JVC. The parties in the MOU set out the objects and broad features of the proposed JVA. The shareholders' agreement contains the percentage

Legally the duties of promoters are complete, the moment JVC is incorporated or when the Board of Directors is appointed to take over the management of the affairs of the company from the promoters. In practice, however, the duties continue until the JVC has implemented the Project for which it was formed to manage and has raised the required share capital. ● ●



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and number of shares to be subscribed by the parties and their voting and profit sharing rights. The JVA contains the terms and conditions of the agreement according to which the JVC will be formed and managed.

The JVA should include following aspects:

- ◆ Object
- ◆ Role, functions and responsibilities of parties
- ◆ Important matters to be included in the Memorandum and Articles of Association
- ◆ Pattern and mode of equity holding
- ◆ Restrictions on sale of equity shares
- ◆ Right of first refusal
- ◆ Control, Management, board structure, MD, Chairman
- ◆ Matters to be decided by majority of 75% or more
- ◆ Exit route, valuation of shares and payment
- ◆ Dispute resolution, governing law and seat of arbitration
- ◆ Confidentiality
- ◆ Intellectual property rights
- ◆ Service of Notice
- ◆ Effective date and duration
- ◆ Termination
- ◆ Consequences of breach of terms and conditions
- ◆ Exclusiveness
- ◆ *Force Majeure*

Rules of JVA Drafting

Experience shows that difficulties and differences arise due to lack of proper understanding of the applicable law and use of loose language in drafting. As such, to avoid controversies following rules should be followed while drafting a JVA:

Clarity of the objectives and expectation of JV;

Selection of appropriate partners contributing the required resources in terms of finance, knowledge and management for the success of JV;

Clear understanding of venture and implications of applicable laws in the light of court rulings to avoid disputes at a later stage. Clearly lay down the legal position, role, rights and responsibilities of promoters.

All clauses should be fair to both parties and should stand the test of the law because the test of a JVA is its enforcement.

Keep the language direct, simple and lucid to make the intention of the parties crystal clear.

Clearly mention the arbitral tribunal, applicable law, venue and language of communication in arbitration clause. Choice of governing law should be in accordance with the mandatory



laws in the country where the obligations are to be performed. For example, if the Reserve Bank of India's permission is required for a particular transaction under Indian laws, then the governing law should be the Indian law.

Check that the kind of disputes referred to arbitral tribunal must be capable of being settled by arbitration. For example, insolvency comes under court jurisdiction and cannot be referred to arbitral tribunal.

LEGAL AND REGULATORY FRAMEWORK

In India, the basic laws governing a JV include the Indian Contract Act, 1872 and Partnership Act, 1932. In addition, JVC have to comply with the legal and procedural requirements of the Companies Act, 1956; Foreign Exchange Management Act, 1999; Securities Contracts (Regulation) Act, 1956; Securities and Exchange Board of India Act, 1992; Foreign Direct Investment Policy, Industries (Development and Regulation) Act, 1951, Competition Act, 2002, Foreign Trade (Development and Regulation) Act, 1992 and Arbitration and Conciliation Act, 1996 for smooth implementation and functioning of the JVC.

Setting up JV in India

A JVC in India has to comply with the above laws. Further, foreign investment in India is governed by FDI Policy and sub-section (3) of section 6 of the FEMA dealing with capital account transactions, read with Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000.



Setting up JV abroad

JV abroad means a foreign entity formed in accordance with the laws and regulations of the host country in which the Indian party makes direct investment. As such, the parties have to comply with the legal and regulatory framework of the respective countries, which provide the rights and obligations of the participating parties. Further, investment in foreign securities by Indian partner is a permissible capital account transaction under schedule 1 of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, and Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004.

Position of Promoters

Promoter of a company is a person, who does the necessary preliminary work for the formation and establishing the company. A promoter(s) does all work from conceiving the idea to incorporation of company, arranging finance and implementing the project. Provision is made in the Articles of Association of the company, for the reimbursement of the preliminary expenses incurred by the promoters in connection with its incorporation.

Promoters' Contracts

Generally promoters enter into pre-incorporation agreements for supplying technical know-how, land and building, plant and machinery for implementation of the JV project to be owned by the JVC - called "promoters' contracts". Such contracts are legally not binding on the JVC because it was not in existence when these contracts were entered into by the promoters with third parties.

Promoters, according to the Companies Act, 1956 occupy a fiduciary position in relation to the proposed JVC and, therefore, cannot make, either directly or indirectly, any profit at the cost of the JVC. Further, they are required to full disclosure of all relevant facts, including any profit made by them or their companies in all contracts and deals with the

proposed JVC [*Erlanger v. New Sombrero Phosphate Co.* (39 LT 269)]. In case they make any secret profit, the JVC can compel them to account for and surrender the secret profits [*Emma Silver Mining Co. v. Grant* (1879) 11 Ch. D; *Erlanger v. New Sombrero Phosphate Co.*, (1878) 3 A.C; *Gluckstein v. Barnes*, (1900) A.C; and *Wigpool Iron Ore Co. v. Bird* (1866) 33 Ch. D. 85].

Duties of Promoters

The two fiduciary duties of promoters are:

- (i) Not to make any profit, directly or indirectly, at the expense of the JVC, without the knowledge and consent of the company, otherwise the company can repudiate the contract and compel him to account for it;
- (ii) Can make profit out of promotion with the consent of the JVC in the same way as an agent may retain a profit obtained through his agency with his principle's consent subject to complete disclosure.

In view of the above, the promoters in selling their own properties to the JVC have to disclose the facts relating to the sale transaction either to (a) an independent Board of Directors; or (b) in the articles of association of the company; or (c) in the prospectus; or (d) existing and intended shareholders directly.

Legally the duties of promoters are complete, the moment JVC is incorporated or when the Board of Directors is appointed to take over the management of the affairs of the company from the promoters. In practice, however, the duties continue until the JVC has implemented the Project for which it was formed to manage and has raised the required share capital (*Lagunas Nitrate Co. v. Lagunas Syndicate Ltd.* (1899) 2 Ch. 392).

Pre-incorporation Contracts

Section 199 of the Indian Contract Act, says that the principal must have been in existence at the time the agent originally acted. As such, the pre-incorporation contract entered into by promoters on behalf of the company cannot be ratified by the company after incorporation, because, if permitted, ratification will relate back to the point of time when promoters originally acted and at that time the company was not in existence. It was held in *Kelner v. Baxter LR* (1886) 2CP 174 that the company could not ratify contract made by a promoter before its incorporation.

As a matter of practice, the JVC on its incorporation enters into fresh "Deed of Novation of Promoters' Contracts" with the third parties on the lines of the promoters' contracts to make

Disclosure of related party transaction assumes significant importance in a JVC. Simply stated, two or more parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.



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them binding on the company. The essential feature of novation is that the right under the original contract is relinquished and a new right referable to a new contract is created. The substituted contract must, in order to affect a novation, be enforceable in law.

Sections 15 and 19 of the Specific Relief Act, 1963, provide that specific performance of a contract may be enforced by and against a company in respect of contracts entered into by promoters on behalf of the company, if such a contract is warranted by the terms of incorporation and the company has accepted the contract after incorporation and communicated the acceptance to the other party.

A JVC has following remedies against promoters in case of violation of duties:

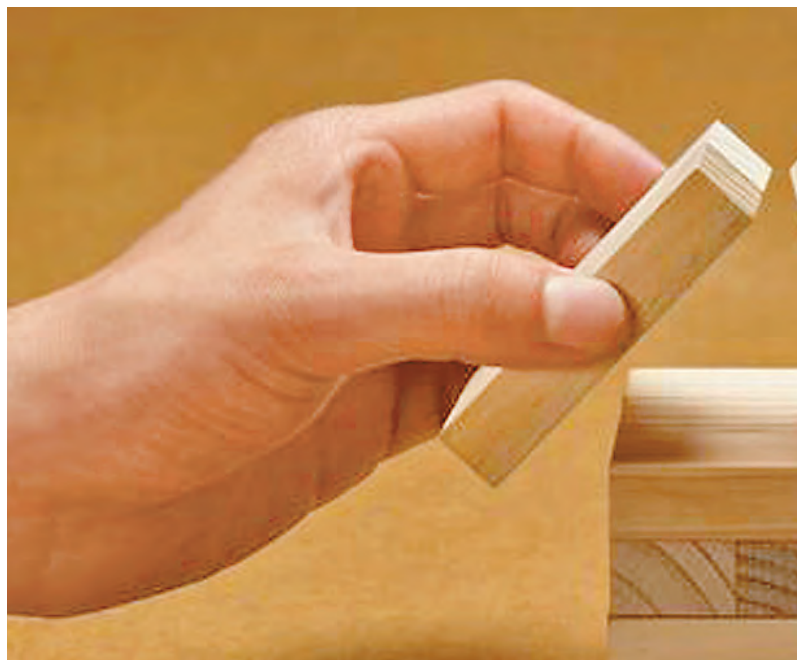
- (i) A promoter is not in a fiduciary position, when he acquired the property, but only when he sold it to the company. As such, if a promoter has or acquired property, before he takes any active steps in the promotion of a JVC and subsequently sells the property to the JVC; he is entitled to retain profit subject to disclosure.
- (ii) Where the promoter was in fiduciary position when he acquired the property and when he sold it to a JVC, he occupies fiduciary position and cannot make any profit out of the transaction, unless he makes full disclosure and allowed by the JVC.

In the above situations, the company may either:

- (a) rescind the contract and if he has made a profit on some ancillary transaction that may also be recovered; or
- (b) retain the property, paying no more for it than what the promoter has paid, depriving him of his profit; or
- (c) In cases where the above remedies are inappropriate (when the property has been altered and the promoter has already received his inflated price), the company may sue promoters for misfeasance. In such a case, the amount of damages will be the difference between the market value of the property and the contract price.

Contracts in which directors are interested

The Board of Directors (BOD) of a JVC, for entering into certain contracts in which particular directors are interested have to comply with Section 297 of the Companies Act. The provisions of section 297 of the Act are also founded on the principle of fiduciary relationship of directors with the company. The underlying object is that if a director is



interested in a contract or arrangement with the JVC, the other directors must have knowledge of it so that they can take an unbiased decision on the matter in the best interest of the JVC. A JVC is entitled to the collective wisdom of its directors and if all or any of them are interested in a contract with the company, the company loses the benefit of its unbiased judgment.

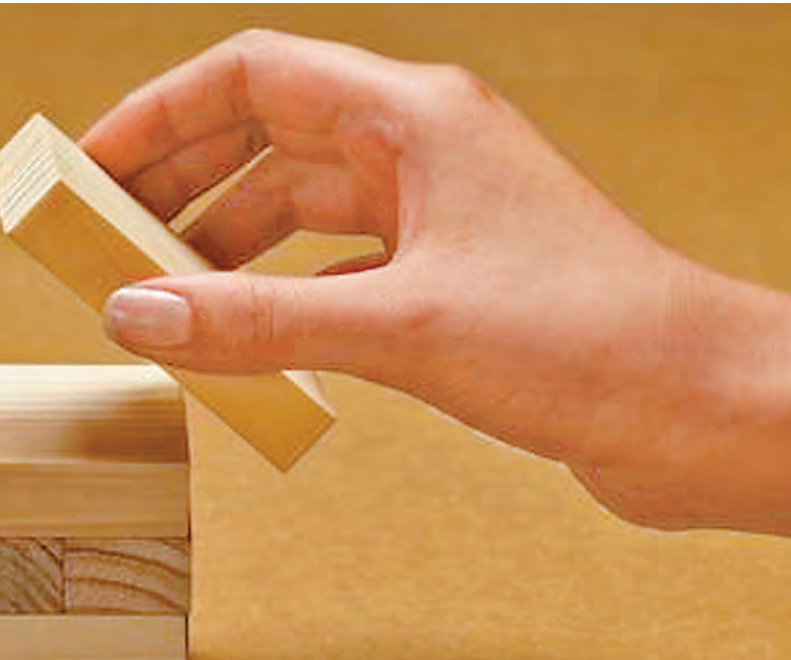
Simply stated, one of the important functions of the board of directors is to monitor and manage potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

Every director, directly or indirectly, concerned or interested in an arrangement must disclose it to the board, and abstain from ensuring discussions and voting. Failure by a director to make disclosure is punishable with fine.

Related Party Disclosures

Disclosure of related party transaction assumes significant importance in a JVC. Simply stated, two or more parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions. The disclosure requirements to nip the evil of related party transactions include disclosure of information regarding the transaction of the top management team and substantial shareholders of companies in Annual Reports of companies as well as to the government.

The object of IND AS-24 of the Institute of Chartered



Accountants of India, is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances, including commitments, with such parties.

Ownership and Control

In a JVC ownership and control are distinct and separate. JVC, being a distinct and separate legal entity, owns in its own name all assets and properties. The Supreme Court in *RC Cooper v. Union of India* (AIR 1970 SC 564) and *Mrs. Bacha*

It is advisable that the JVC must provide 'right to first refusal' to ensure that differences and conflict amongst the parties do not paralyze the operation of the JVC. Right of first refusal in a JVA is a device under which a party planning to exit the JVC is obliged to offer his shares to the existing party before selling these to an outside party. The object is to preserve the sanctity of the JVA by preventing entry of outsiders into the JVC.

F. Guzdar v. Commissioner of IT, Bombay, AIR 1955 SC 74) has ruled that a shareholder has merely an interest in the company arising under the Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit. He has merely a right to participate in the profits of the company subject to the contract contained in the articles of association. The Madras High Court in *R.F. Perumal v. H. John Deawin* (AIR 1960 Mad.43) ruled that 'no member can claim himself the owner of the company's property during its existence or in its winding-up'.

Control of the JVC is exercised by the board of directors (BOD). As such, the JVA should carefully specify the composition of BOD in the JVC with a view to maintain balance of control among the promoters. Normally JV partners reserve their rights to nominate specified number of directors and provide for rotation of chairman turn by turn.

Shareholding Agreement

The promoters, with a view to avoid any controversy at a later stage, must incorporate the provisions of their pre-incorporation contracts as well as shareholders agreement in the Articles of Association of the JVC. In the absence of clear provisions in the Articles of Association, the agreements will only bind the promoters but not the JVC. The articles on registration, as per provisions of Section 36 of the Companies Act, bind the company and the members thereto as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the articles. Simply stated, articles of association are binding agreement between the company and the members, and members *inter-se*. The Supreme Court in *Union of India v. Kishori Lal Gupta* (AIR 1959 SC 1363) and *BV Rangaraj v. BV Gopalakrishnan and others* (AIR 1992 SC 453) has ruled that in case of conflict between the AOA and shareholders' agreement, the former will prevail. The Bombay High Court in *Perucchini Ltd.* (2003) 52CLA 35 (Bom) also clarified that: "It is a general principle that effect cannot be given to a shareholders' agreement even in the matters of management, unless the agreement has been incorporated in the Company's Articles." It was held that the provisions in an agreement between the shareholders of a company could not be enforceable against the company in question (even if the company is a party to such agreement) unless the same provisions have been reflected in the articles of association of the company.

Right of first refusal in JVA

It is advisable that the JVC must provide 'right to first refusal' to ensure that differences and conflict amongst the parties do



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The law regarding transferability of shares in a JVC under section 111A has been controversial in India. The judiciary in following cases has dealt with the issue - whether the right of first refusal (pre-emptive rights) in a JVA constitutes restriction on the free transferability of shares. Private companies in their Articles of Association can restrict shareholders' rights to transfer the shares. However, in case of public limited company, even if the right of first refusal has been incorporated in the articles of association, transfer of share cannot be restricted under section 111A, which provides for free transferability in public companies.

The Supreme Court of India in the celebrated case of *V.B. Rangaraj v. V.B. Gopalakrishnan* (1992) 73 Comp. Cas. 201 AIR 1992 SC 453 ruled that "Any restriction on transfer of shares, which is not specified in the Articles, has no binding effect on either the company, its members or those who purchase the shares from members." The Court refused to enforce restrictions on transfer of shares of a private company agreed *inter-se* its shareholders, on the grounds that such private arrangements were not incorporated in the articles of association of the private company.

The Company Law Board in *Shree Madhu Industrial Estates Ltd. v. Arjun S. Kalro* (1997) 1 Comp LJ 318 (1997) 24 CLA 63 (CLB) ruled that any provision in the articles of a public company, which was destructive of free transferability of shares in a manner not permitted by the Act is null and void *ab-initio*.

The Madras High Court in *Crompton Greaves Ltd. v. Sky Cell Communication Ltd.* (2002) 39 SCL 704 (Mad-DB), ruled that transfer of shares was valid because the restrictive clause of the agreement was not included in the Articles of Association. In this case one of the terms of the agreement was that the members of the company would not transfer their shares without the consent of writing of other members. However, this term was not included in the Articles of Association.

The High Court of Delhi in *PushpaKatoch Ltd. v. Manu Maharani Hotels Limited* (2005) observed that even if there is restriction in the Articles of Association of a public company, it would have been beyond the provisions of the Act, and, a company cannot provide in its Articles of Association any matter, which contravenes the provisions of the Act. The High Court even observed that if an aggrieved party wanted to have an arrangement (to restrict transfer of shares), they should have been wise enough to incorporate a private company and provide such a clause in its Articles of Association. These

In arbitration, the law governing international contracts is of key importance. As an international commercial contract has different segments and it is not necessary that single law may govern the entire contract. It is also not necessary that the same law will apply at all times to the contract. The law applicable may change with the stage of the transaction/case. Moreover, different countries have their own legal system, and, more than one set of laws may govern a contract, giving rise to conflict of laws.

observations were in the form of the *obiter dicta* of the case and not the *ratio-decidenti* of the case. An *obiter* means remarks of a judge made by the way, which are not necessary to reaching a decision.

In the case of *A. Arumugam & Ors. v. Pioneer Bakeries (P) Limited* (2007) 80 CLA 103 (CLB) Article 19 of the Articles of Association of the Company provided that no share was transferable to a non-member, provided any member was willing to purchase the same at a mutually agreeable value. The Petitioner objected registration of transfer of shares on the ground that the transfer was made in violation of the provisions of the Articles of Association, as he was not provided the opportunity to purchase the shares being an existing member of the Company.

The Company Law Board observed that every transfer of shares in a private limited company has to be strictly in accordance with its Articles of Association of the Company with the approval of the board of directors. As the language used in the relevant Articles is in the negative form, emphasizing insistence of compliance with the previous sanction of the Board, such requirement is mandatory in character and not merely directory. It was, therefore, required for a member before transferring his shares to a non-member, to ascertain the willingness of any member to purchase the shares so offered by the selling member. The Company Law Board while setting aside the decision of the Board of Directors approving transfer of shares in violation of the Articles of Association, directed for rectification of Register of Members.

The Single Judge of the Bombay High Court in *Western Maharashtra Development Corpn.v. Bajaj Auto Ltd.* (2010) 96 CLA 131, dealing with section 111A of the Companies Act, 1956 ruled that there could be no restriction of the



transferability of shares in public company and an agreement granting a right of pre-emption is patently illegal.

The Bombay High Court has, however, taken a different view in *Messer Holdings Ltd. v. S M Ruia* 2010(98) CLA 325 (Bom.) that the restriction on transfer of shares in the agreement does not violate section 111A. The Court ruled that the parties, by consent, could create restrictions on their enjoyment of right as shareholders and it cannot be argued that since Section 111A of the Companies Act speak of "free transferability" and, therefore, no restrictions can be imposed under the Share Purchase Agreement. If the company wants to even prohibit the right of the shareholders, it has to provide for an express condition in the Articles of Association. The legal provision contained in section 111A of the Companies Act does not expressly restrict or take away the right of shareholders to enter into consensual agreement in respect of shares held by him.

Reserved Matters

For practical reasons, partners in JVA reserve certain matters in respect to which neither the shareholders, nor the BOD shall take any action, except with the affirmative vote of the specified number of directors present and representing the partners in the meeting. Some of the reserved matters pertaining to the JVC are:

- (i) Any amendment to the Memorandum of Association and/or Articles of Association;
- (ii) Any issue of share capital or debenture or altering the capital structure;
- (iii) Any reconstruction, merger, amalgamation or sale of substantial assets;
- (iv) Forming a subsidiary of the Company or subscribing to the shares or debentures or investing the funds in any other company;
- (v) Disposing of any trade related intellectual rights (TRIPs) in respect of manufacturing technology or research and development;
- (vi) Granting loans or providing guarantees;
- (vii) Creating any mortgage, charge or other encumbrance on the properties and assets except for loans advanced by banks and financial institutions;
- (viii) Abandonment, waiver or settlement or any legal action, suits, claims and other legal proceedings.

RESOLUTION OF DISPUTE

Parties from different countries following different legal systems enter into a JVA for mutual gain. Experience shows that dealings between the parties are as smooth as honeymoon until disputes arise. As soon as disputes arise, a well planned honeymoon turns into a case of divorce and parties raise all sorts of claims and counterclaims. Consequently, the amount of claims and compensation becomes higher than the total value of the contract. As commercial disputes are a part of business world, dispute

resolution assumes significant importance.

Litigation in the international contracts is costly affair and has far reaching consequences for the business of parties. Arbitration has, therefore, become the most appropriate mode of commercial disputes resolution in JVA. The Arbitration and Conciliation Act, 1996 provides parties freedom to choose the governing law.

Applicable Law under Arbitration

The law of contract provides parties freedom to choose the governing law, but precise formulations may depend on the negotiation between the parties. In a JVA the choice of applicable laws, therefore, becomes quite important as they provide the basic framework for all business transactions and dispute resolution.

In arbitration, the law governing international contracts is of key importance. As an international commercial contract has different segments and it is not necessary that single law may govern the entire contract. It is also not necessary that the same law will apply at all times to the contract. The law applicable may change with the stage of the transaction/case. Moreover, different countries have their own legal system, and, more than one set of laws may govern a contract, giving rise to conflict of laws.

According to Dicey and Morris (10th Ed. P.747): "The proper law of contract means the system of law by which the parties intended the contract to be governed, or, where their intention is neither expressed nor to be inferred from the circumstances, the system of law with which the transaction has its closest and most real connection."

The proper law of contract is the law or relevant legal rules governing substantive issues in disputes. The expression 'proper law of a contract' refers to the legal system by which the parties to the contract intended their contract to be governed. If their intention is expressly stated in the contract, such intention determines the proper law of the contract. Where the intention of the parties is not expressly stated in the arbitration clause, efforts are made to determine the applicable law from surrounding circumstances, and if no inference about the intention is drawn, their intention as such has no relevance. In that event, the courts endeavour to impute intention by identifying the legal system with which the transaction has its closest and most real connection.

As per the rules of private international law applicable in India and the UK, a given contract is to be construed in accordance with the proper law of contract. In the absence of an express statement about the governing law, inferred intention of the parties determines that law. True intention of the parties, in the absence of an express selection, has to be discovered by applying sound ideas of business, convenience and sense to the



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language of the contract itself.

In a JVA, where the parties have not expressly or impliedly selected proper law, arbitral tribunals and courts impute an intention by applying the objective test to determine what the parties would have as just and reasonable persons intended as regards applicable law, had they applied their minds to the question. They have to determine proper law for the parties in such circumstances by putting himself in place of a "reasonable man". He has to determine the intention of the parties by asking himself "how a just and reasonable person would have regarded the problem".

In a JVA the relevant factors for this purpose are - place where the contract was made, form and object of the contract, the place of performance and place of residence or business of the parties. Arbitral tribunals and courts determine the system of law with which the transaction has its closest and most real connection, examine reference to the courts having jurisdiction and such other links.

The United Nations Commission on International Trade Law (UNCITRAL) Rules for International Commercial Arbitration provide for the determination of contract in accordance with:

- ◆ The law chosen by the parties (the substantive law of the country and not including rules of private international law);
- ◆ In case the parties fail to make a choice of law, the applicable law shall be the one determined by the rules of private international law, which the tribunal thinks appropriate.

The Rules of Arbitration by the ICC also provide for the law chosen by the parties at the first instance as the applicable law and in its absence, it leaves the question to be determined by the arbitral tribunal.

It may be noted that despite the clear mention of the governing law, the arbitration procedure could be that of the venue or country where arbitration proceedings are held.

In case of *Saudi Arabia v. Arabian Oil Co.* (27ILR 168 (1963)), the International Arbitration Tribunal ruled that laws of Saudi Arabia had to be supplemented or construed by the general principles of law, practice and customs and usage in the oil business in Saudi Arabia and by thoughts of untainted jurisprudence and the defendant's rights could not be protected in an authentic style by the legislation in force in Saudi Arabia.

The Supreme Court of India has ruled that the law of arbitration and seat of arbitration can be different, if so provided in the arbitration clause. In *Videocon Industries Limited v. Union of India & Anr.* Civil Appeal No. 4269 of 2011 (arising out of SLP (C) No.16371 of 2008), the arbitration clause 34.12 of the agreement between parties provided that the agreement shall be governed by the laws of England and seat of arbitration would be Kuala Lumpur, Malaysia.

However, due to outbreak of epidemic, SARS, the arbitral tribunal decided to hold its sittings first at Amsterdam and then at London and the parties did not object to this. In the proceedings held on October 14 and 15, 2003 at London, the arbitral tribunal recorded consent of parties for shifting the juridical seat of arbitration to London. The issue before the Supreme Court was whether shifting of juridical seat of arbitration to London amounted to arbitration from Kuala Lumpur to London.

The Apex Court ruled that mere fact that the parties had agreed for shifting of the seat of arbitration to London cannot be interpreted as anything except physical change of the venue of arbitration from Kuala Lumpur to London.

Under the English law the seat of arbitration means juridical seat of arbitration, which can be designated by the parties to the arbitration agreement or by any arbitral or other institution or person empowered by the parties to do so or by the arbitral tribunal, if so authorized by the parties. In contrast, there is no provision in the Act under which the arbitral tribunal could change the juridical seat of arbitration which, as per the agreement of the parties was Kuala Lumpur. Therefore, mere change in the physical venue of the hearing from Kuala Lumpur to Amsterdam and London did not amount to change in the juridical seat of arbitration. The parties had agreed to exclude the provisions of Part I of the Arbitration and Conciliation Act and the mere fact that the appellant had earlier filed similar petitions was not sufficient to clothe the High Court of Delhi with the jurisdiction to entertain the petition filed by the Respondents.

CONCLUSION

JV is an excellent concourse for facilitating business cooperation for mutual advantage. However, before deciding a JV, factors like the eligibility criteria, merits and demerits of different forms of business organization, fund raising avenues and type of instruments, transfer of capital and repatriation, tax concessions and incentives etc., should be carefully considered.

Setting-up of JVCs require compliance with legal and regulatory framework of India and host country. As such, JVA and shareholders' agreement should be carefully drafted to provide a comprehensive road map on the rights and obligations of the parties and minimize differences and disputes. Further, the salient features of the JVA and shareholders' agreement must be incorporated in the articles of association of the JVC to be legally enforceable.

A JV involves co-ownership and co-management. Lack of harmonious relationship and trust may jeopardize the operation of the JV. As such, to be successful, it is essential that the parties contribute their complementary resources and skills in the JVC continuously for mutual benefits. ■



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Buy-back

Law, Procedure and Practice

Consequent to the insertion of sections 77A, 77AA and 77 B in the Companies Act, 1956 through the Companies (Amendment) Act, 1999, companies can now buy-back their shares and securities. The SEBI has since come out with suitable Rules and Regulations governing buy-back. In the light of these legislative and regulatory provisions this article explains the law and procedure governing buy-back.

Buy-back is one of the important provisions in the Companies Act, 1956 ("the Act") which enables a company to purchase its own shares or other specified securities with inherent benefits to the company and its shareholders. A program of buy-back is resorted to by a company to enable it to:

- ◆ Achieve the desired capital structure;
- ◆ Return surplus cash to shareholders/security holders;
- ◆ Ensure the underlying value of shares/security is properly reflected;
- ◆ Control unwarranted fall in share / security price

STATUTORY FRAMEWORK

Buy-back is governed by the following:

- (a) The Companies Act, 1956 - Sections 77A, 77AA and 77B
- (b) Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998 (SEBI BBR)
- (c) Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999
- (d) Listing Agreement
- (e) Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the bye-laws framed thereunder.

SEBI has by notification dated February 7, 2012 notified SEBI (Buy-Back of Securities) (Amendment) Regulations, 2012 *inter-alia* prescribed revised timelines for tender-offer, reservation for small shareholders, new Schedules II and III and by circular dated February 9, 2012 issued revised guidelines in respect of disclosures to be made in Letter of offer (LOO).

I. The Companies Act, 1956

Sections 77A, 77AA and 77B the provisions which govern a buyback were inserted in the Act by the Companies (Amendment) Ordinance, 1999 and subsequently enacted by the Companies (Amendment) Act, 1999. Pursuant to the provisions of section 77A of the Act, a company can effect reduction of its paid-up share capital, to the extent of the shares purchased in the buy-back. Such reduction of capital will not require compliance with the provisions of sections 100 to 104 of the Act.

1.1 Source of funds

Buy-back can be made out of :

- i) free reserves; or
- ii) securities premium account or
- iii) proceeds of any shares or other specified securities.



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1.2 Authorisation and approvals

The primary requirement is that the articles of association of the company should authorise buy-back. In case, such a provision is not available, it would be necessary to alter the articles of association to authorise buy-back.

Buy-back can be made with the approval of the Board of directors at a meeting and/or by a special resolution passed by shareholders in a general meeting. In case of a listed company, approval of shareholders shall be obtained only by postal ballot.

1.3 Limits for buy-back

- Board of directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company.
- Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company.

The aforesaid 10% and 25% limits have to be calculated with reference to the last audited balance sheet of a company. 'Free reserves' for the purpose of this calculation shall have the meaning assigned to it in clause (b) of Explanation to section 372A of the Act.

In case of buy-back with Board approval, the company cannot make any further offer of buy-back for a period of 365 days except with the approval of shareholders. There can be more than one buy-back offer within a period of 365 days with shareholders' approval. Further, the 10% and 25% limit approved by the Board or shareholders, respectively indicate the sum that can be expended by a company towards buyback.

Howsoever, in a financial year, the company cannot buy-back equity shares more than 25% of its total paid-up equity capital. This restriction is applicable only for buy-back of equity shares and not any other security.

Buy-back is required to be completed within 12 months from the date of passing the special resolution or the Board resolution, as the case may be. As per section 217(2B) of the Act, in case of failure to complete the buy-back within 12 months, the reasons for such failure shall be provided in the Board's report.

Calculation of the above stated limits is explained by an illustration given below:

a	Equity shares fully paid up (face value Rs. 10)	Rs. 1 cr
b	Equity shares Rs. 5 paid - up (face value Rs. 10)	Rs. 1 cr
c	Equity shares DVR fully paid - up (face value Rs. 10)	Rs. 1 cr
d	Preference shares fully paid - up (face value Rs. 100)	Rs. 1 cr
e	Free reserves	Rs. 7.5 cr

How much can the company buy-back?

Equity with Board approval (10% of (a+b+c+e))	10% of Rs. 10.5 cr = Rs. 1.5 cr
Equity with shareholders' approval (25% of (a+b+c+d+e))	25% of Rs. 11.5 cr = Rs. 2.87 cr
Overall limit for buy back of equity shares = Rs. 75 lacs i.e. 25% of paid-up equity capital in a financial year (25% of (a+b+c))	

In the above example, the following points need to be noted:

- Although the amount paid-up on partly paid-up equity shares is considered for computing the limits for buy-back, partly paid-up equity shares cannot be bought back.
- Buy-back of preference shares is not the same as redemption i.e. buy-back can be done before the redemption date.
- Although preference shares can be bought back under section 77A of the Act, it would be advisable to redeem the preference shares in accordance with the articles of the company, the terms of issue of the said preference shares and section 80 of the Act. This procedure would be simpler than complying with the provisions relating to buyback.

1.4 Important provisions

- The post buy-back debt-equity ratio should not be more than twice the capital and its free reserves.
- All the shares or other specified securities for buy-back should be fully paid-up.
- Consideration should be only in cash.
- Declaration of solvency in prescribed form 4A of General Rules and Forms shall be filed with the Registrar of Companies (ROC) along with e-Form 62. In case of listed companies it would also be necessary to file the said declaration of solvency with SEBI.
- In case of a listed company, any person or insider shall not deal in the securities of the company on the basis of unpublished information relating to buy-back.

1.5 Restrictions for buy-back as per Companies Act, 1956

- No company shall directly or indirectly, purchase its own shares or other specified securities in the following circumstances:
 - if the company has defaulted in repayment of deposit or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank and such default is subsisting;
 - through any subsidiary company or investment company;
 - non-compliance with the provisions of sections 159, 207 and 211 of the Act.
- Where a company completes a buy-back of its



shares or other specified securities under section 77A of the Act, it shall not make further issue of the same kind of shares or other specified securities including by way of a rights issue under section 81(1)(a) of the Act for 6 months after completion of buy-back, except by way of bonus issue, conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

II. Modes of Buy-back

- ◆ Listed Companies
 - a) Tender offer on proportionate basis
 - b) Open market through stock exchanges or book building process
 - c) Odd lot holders
 - d) Purchase of ESOP/ Sweat equity shares
- ◆ Unlisted Companies
 - a) Proportionate basis through private offer
 - b) Purchase of ESOP/ Sweat equity shares

III. SEBI (Buy-Back of Securities) Regulations, 1998 (SEBI BBR)

3.1 Restrictions / Prohibitions

- a) The company shall not issue any shares or other specified securities including by way of bonus till the date of closure of the offer.

"Specified securities" for this purpose shall have the meaning assigned in the explanation under section 77A of the Act. Accordingly, "specified securities" would include employees' stock option or other securities as may be notified by the Central Government from time to time.

- b) The company shall not buy-back locked-in shares or other specified securities and non-transferable shares or other specified securities till the pendency of the lock-in or till the shares or other specified securities become transferable.
- c) The company shall not withdraw the offer after the draft letter of offer (LOO) is filed with SEBI or public announcement (PA) is made.
- d) The promoter or persons in control shall not deal in shares or other specified securities of the company in the Stock Exchanges (SE) during the period.
- e) The company shall not buy-back its shares or other specified securities from any person through negotiated deals, whether on SE or

through spot transactions or through any private arrangements.

3.2 General provisions applicable to listed companies

- a) The resolution passed by Board of directors or shareholders should specify maximum price for buy-back.
- b) Copy of the Board resolution should be filed within 2 working days and shareholders' resolution should be filed within 7 days with SEBI and SEs.
- c) At least 2 working days prior intimation about the Board Meeting at which proposal for buy-back is proposed to be considered should be given to SEs, where the company's securities are listed (Clause 19 – Listing Agreement).
- d) The decision of the Board at its meeting should be informed to the SEs within 15 minutes of the closure of the meeting (Clause 20 – Listing Agreement).
- e) The company shall appoint a merchant banker registered under section 12 of the SEBI Act, 1992.
- f) PA will be required. (Public Notice no longer required).
- g) The explanatory statement shall contain disclosures as per Schedule II, Part A (as per SEBI notification February 7, 2012).

3.3 Buy-back through Tender offer

Provisions relating to tender offer have been substantially amended by SEBI notification February 7, 2012.

- a) Revised timelines have been provided.
- b) SEBI is required to give comments on LOO within 7 days.
- c) LOO shall contain a record date for the purpose of determining the entitlement and names of security holders who are eligible to participate in the offer and ratio of buy-back as per entitlement.
- d) Reservation for small shareholders i.e. persons holding shares or other specified securities whose market value is not more than Rs. 2 lacs as on record date (on the basis of closing price of shares or other specified securities on recognized SE in which highest trading volume in respect of such security). The reservation shall be for 15% of the offer size or number of securities as per entitlement, whichever is higher.
- e) The basis of acceptance shall be in three phases :
 - i) As per entitlement ;



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- ii) Proportionate within category;
- iii) Proportionate with other category which will happen only if any securities are left to be bought back after acceptance within category is completed.

Illustration of acceptance under tender offer are given below:

Ratio	5:1	SS holding	Rs. 5 cr
Total paid-up eq. cap	Rs. 100 cr	Reservation for SS	Rs. 3 cr
Buy-back offer	Rs. 20 cr	Entitlement of SS (Rs. 5 cr / 5, as per ratio)	Rs. 1 cr
Reservation for SS- higher of 15% of 20 cr = Rs. 3 cr or 1 cr, i.e. Rs. 3 cr		Entitlement of GC (Rs.95 cr / 5, as per ratio)	Rs. 19 cr

	Reserved category ("RC")	General category ("GC")
Offer received	Rs. 4 cr	Rs. 25 cr
Acceptance based on entitlement	Rs. 1 cr	Rs. 17 cr
Acceptance proportionate within RC (i.e. remaining 3 cr offer received to be accepted in proportion with the balance 2 cr reserved)	2 cr	Due to reservation for SS, shares less than entitlement will be accepted from GC

The offers received should be less than the entitlement in order to go in to proportionate basis of acceptances. Further, if the reservation to small shareholders is higher than the entitlement, the chances of spill over between categories will be minimal or else the offers received in the reserved category should be substantially low in order that a spill over should happen.

- f) Explanatory statement *inter-alia* should contain the following :
 - i) promoters intend to offer their shares or other specified securities;
 - ii) the quantum proposed to be tendered and details of their transactions and holdings for last 6 months prior to the passing of special resolution including information of number of shares acquired, price and date of acquisition.
- g) The company shall open an escrow account before opening of the offer and deposit the prescribed amount. The escrow account shall consist of -
 - i) cash deposit with scheduled commercial bank; or
 - ii) bank guarantee in favour of merchant banker; or
 - iii) deposit of acceptable securities with appropriate margin with merchant banker; or
 - iv) any combination of (i), (ii) or (iii) above.
- h) Immediately after the closure of the offer, the company shall open a special account with banker to issue and deposit such amount which together with 90% of the amount lying in the escrow account shall suffice for the payment of consideration for the buy-back.

i) Revised timeline for tender offer would be as given below:

Board resolution / special resolution	X
File copy of BR with SEBI and SE	X+2 WD
File copy of SR by shareholders passed at GM with SEBI and SE	X+7
Issue PA - Schedule II - Part A in newspapers, File copy with SEBI	X+2 WD
File draft LOO (containing ratio & record date) with SEBI (5 WD after PA) - Schedule IV	X+7 WD
SEBI to give comments within 7 working days (In case of any clarifications required period would stand extended)	X+14 WD
Despatch LOO with tender form to eligible shareholders (not later than 5 WD from receipt of SEBI's comments)	X+19 WD
Offer open date (not later than 5 WD from date of despatch of LOO)	X+24 WD
Offer open period (10 WD)	X+33 WD
Verification of offers and payment / return of shares (within 7 WD of closure)	X+40 WD

* SR - Special resolution; BR - Board resolution; WD - Working days ; GM - General meeting

The requirement to file special resolution with SEBI and SE should be changed to 2 working days (presently 7 days), since PA is required to be issued and filed with SEBI within 2 working days.

3.4 Buy-back from Open Market

A. Through stock exchanges

- a) The offer for buy-back shall not be made to promoter or persons in control of the company.
- b) PA shall be made at least 7 days prior to the commencement of buy-back.
- c) PA shall contain disclosures as per Schedule II, Part B (as per SEBI notification February 7, 2012) and copy shall be filed with SEBI within 2 days along with the fees as specified in Schedule IV.
- d) Buy-back shall be made only through order matching mechanism and on SE having nationwide trading terminals.
- e) The company and the merchant banker shall submit the information regarding the shares or other specified securities bought back to SE on daily basis and also publish it in a national daily on fortnightly basis.
- f) Such fortnightly reporting shall not be required where there is no buy-back during a particular period.
- g) Publishing in a national daily will also be required every time an additional 5% of the buy-back is completed.

◆ Although SEBI BBR does not specify that SEBI approval is required in case of open market method through SE, in practice the SEs insist upon written approval of SEBI prior to activating the terminals and issuing a separate scrip code (for physical shares) for buy-back. This results in unnecessary delay in opening the buy-back on the scheduled date. Further, non-commencement of buy-back also creates



apprehension in the minds of investors and brokers as to the intention of the company in announcing the buy-back.

- ◆ In case of open market method through SE, SEBI also mandates that the company has to purchase some quantum of shares every week and at least 25% of the offer should be purchased during the offer period. There is no obligation on the company to place a 'buy order' every day nor to place an order on both SEs (NSE and BSE) under normal trading segment. However, some purchase has to be done on weekly basis. Daily reporting should not be required on a daily basis, when no purchases are made i.e. **nil daily reporting should not be required.**
- ◆ In view of the requirement for a company to make weekly purchase, the provision that "the fortnightly publication in a national daily will not be required where there is no purchase during a particular period" would be rendered redundant. Hence, the said provision should be deleted.

- h) The purchase price may differ on day to day basis, i.e. unlike in other methods there would be no uniform purchase price.
- i) Shareholders holding shares in physical form would be required to submit their shares through brokers in the odd lot segment. The modalities would be determined by the company in discussion with SE and SEBI.
- j) Shareholders holding shares in electronic mode should mark the transaction as "For Off Market Trade" in the delivery instruction slips.
- k) Verification of acceptances should be completed within 15 days of payout.

Under regulation 19(1)(b) of SEBI BBR, a company is prohibited from issuing any further shares or other specified securities including by way of bonus during the offer period. This restriction is also applicable to employee stock options (ESOP) as the expression "specified securities" in the explanation under section 77A of the Act, includes ESOP. The offer period under the SE route may extend to a period of 12 months, whereas, the offer period under tender offer or book-building process extends from 15 to 30 days. ESOP being a contractual obligation, prohibiting a company for a period of 12 months (i.e. offer period in case of buy-back under SE route) from granting, vesting and allotting shares against options already vested, pursuant to an ESOP scheme appears to be rigid and is contrary to the interests of the employees. While granting of an ESOP, requires a positive act on the part of the company and/or its management, the vesting of an ESOP granted would be as per the terms of the ESOP Scheme and usually based on a pre-determined criteria. Further, an ESOP once vested confers the right on the employee to have the shares allotted in his favour upon

payment of the requisite amount and if the allotment is delayed the employee is unnecessarily deprived of owning the shares inspite of making required payment. Prohibiting the vesting or allotment of shares against options already vested for a period of 12 months, would also result in employees retiring or resigning from the employment during the said 12 months being permanently deprived of the benefits which they would have otherwise derived.

While granting of an ESOP during the offer period may be prohibited, vesting of ESOP already granted and allotment of shares towards options already vested should be permitted, subject to the condition that the company shall not buy-back such shares in the offer.

B. Through book-building process

- a) PA shall be made at least 7 days prior to the commencement of buy-back.
- b) PA shall contain detailed methodology of book-building process.
- c) copy of PA shall be filed with SEBI within 2 days along with the fees specified in Schedule IV.
- d) The provisions for deposit in the escrow account and special bank account would be similar to that applicable in case of tender offer.
- e) The number of bidding centres shall not be less than 30.
- f) The offer period shall be not less than 15 days and not exceeding 30 days.
- g) The company and merchant banker shall determine the buy-back price based on the acceptances received.
- h) The final buy-back price i.e. the highest acceptance shall be paid to all holders.
- i) Verification of acceptances, payment of consideration or return the shares or other specified securities should be completed within 7 working days of the closure of the offer.

3.5 Extinguishment of certificates

- ◆ Certificates in physical form shall be extinguished and destroyed in presence of a Registrar to the issue or the Merchant banker and the Statutory Auditor within 15 days of the acceptance of shares or other specified securities.
- ◆ Certificate in this connection shall be furnished to SEBI signed by ;
 - i) Registrar to the issue or Merchant banker;
 - ii) Two directors, one of whom shall be managing director where there is one and
 - iii) Statutory Auditor.
- ◆ In case of securities held in electronic form, corporate action shall be done within 15 days of acceptance.



Articles

Buy-back Law, Procedure and Practice

3.6 Other important provisions

- a) Within 2 days of completion of buy-back, public advertisement shall be issued in a national daily disclosing :
 - ◆ number of shares or other specified securities bought and price
 - ◆ total amount invested
 - ◆ details of buy-back of 1% and above
 - ◆ changes in capital structure and
 - ◆ pre and post shareholding pattern
- b) Maintain register of securities bought back in form 4B of General Rules and Forms.
- c) File e-form 4C of General Rules and Forms with Registrar of Companies (ROC) and SEBI within 30 days of completion.
- d) Transfer sum equal to nominal value of shares purchased to capital redemption reserve account.
- e) Make appropriate disclosure in balance-sheet.

C. Odd lots

The provisions of SEBI BBR applicable to a buy-back by tender offer shall apply *mutatis mutandis* to an odd lots buy-back.

It is mandatory for the shares of listed companies to be traded in electronic form. Further, the concept of odd lot shares is no longer significant in connection with shares held in dematerialized form. Although trading in electronic mode is mandatory in case of listed companies, a large number of listed companies have 2% to 5% of total shareholding held by shareholders in physical form. Such shareholders, hold shares in odd lot and of not significant value. The prevailing buy-back mechanism through SE route, requires that the shares should be offered on nationwide trading terminals through brokers. In view of the prevailing KYC norms for brokers, it is not possible for shareholders holding shares in physical form to submit their shares for buy-back and hence, small shareholders are deprived from participating in the buy-back. Even ordinarily, the price paid for sale of shares held in physical form on the SE are discounted to the market value of the shares. Hence, such shareholders would be able to get a better price for their shares if they are allowed to participate in a buy-back in the open market route through SE. It is therefore necessary that enabling provisions and comprehensive modalities be included under the open market route through SE to facilitate shareholders holding shares in physical form to offer their shares for buy-back directly to the company.

3.7 Duties and obligations of merchant banker (MB) under SEBI BBR

- ◆ The MB shall ensure compliance of the Act and other laws and rules as may be applicable for buy-back.
- ◆ MB shall furnish due diligence certificate to SEBI along with LOO.
- ◆ MB shall be responsible for release of balance amount from escrow or special bank account to the company.
- ◆ MB shall send final report to SEBI in specified form within 15 days from the date of closure of the offer.
- ◆ SEBI can take penal action against MB for failure to comply with the obligations or observe due diligence.

IV. Private Limited and Unlisted Public Companies

- a) Buy-back by private and unlisted public companies shall be governed by the provisions of the Companies Act, 1956 and Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999 **(the Rules)**.
- b) Neither public notice nor PA is required.
- c) Explanatory statement shall contain details as in Schedule I of the Rules.
- d) Promoters and persons in control shall disclose in the Explanatory statement their intent to offer and other details as required under SEBI BBR in respect of a tender offer.
- e) Draft LOO as per Schedule II of the Rules shall be filed with RoC before buy-back.
- f) LOO shall state minimum and maximum shares proposed for buy-back and confirm availability of funds earmarked for the purpose.
- g) LOO to be despatched within 21 days of filing with Ro C.
- h) Offer period - 15 to 30 days from date of dispatch.
 - i) Acceptance to be on proportionate basis.
 - j) Verification to be completed within 15 days of closure.
 - k) Rejection to be communicated within 21 days from closure.
- l) The company to open special bank account immediately after closure of the offer and deposit entire sum.
- m) Payment to be made within 7 days of acceptance.
- n) Extinguish and destroy certificate in the presence of Company Secretary in whole-time practice within 7 days of acceptance.
- o) Furnish certificate to RoC certifying compliance within 7 days of extinguishment of certificates.

V. Exemption under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations, 2011")

Regulation 10 of SAST Regulations, 2011 *inter alia*



provides for exemption from the obligation to make an open offer in the event of increase in voting rights pursuant to a buy-back under section 77A of the Act.

- a) If pursuant to a buy-back, the increase in voting rights in a target company of any shareholder is beyond the limits under sub-regulation (1) of regulation 3 of SAST Regulations, 2011 i.e. 25%, the shareholder shall be exempt from the obligation to make an open offer, provided such shareholder reduces the excess voting rights to the threshold level under regulation 3(1) within 90 days from the date of such increase.
- b) If the shareholder holds more than 25% but less than the maximum permissible non-public shareholding, and the buy-back results in increase in voting rights of more than 5 % in a financial year, then exemption from making an open offer will be available if :
 - ◆ the shareholder has not voted on the resolution authorizing the buy-back (either shareholders' resolution or Board resolution) and
 - ◆ such increase does not result in acquisition of control by such shareholder over the target company.

Even if, the above conditions as set out under regulation 10(4)(c) are not satisfied, the shareholder can seek exemption from the obligation to make an open offer, provided he reduces the excess voting rights within a period of 90 days, to such level that it would not attract the obligation to make the open offer under sub-regulation (2) of regulation 3 of SAST Regulations, 2011.

The increase in voting rights of the shareholder, pursuant to a buy-back, should not at any time exceed the maximum permissible non-public shareholding.

Illustrations :

1. A promoter is holding 55% of the total voting rights and is not participating in the buy-back. Post buy-back his voting rights increase by 7%, i.e. his aggregate voting rights post buy-back is 62%. He can claim exemption under regulation 10 of SAST Regulations, 2011 as given in (b) above, either by satisfying the conditions or reducing the additional voting rights to 5%.
2. A promoter is holding 69% of the total voting rights and is not participating in the buy-back. Post buy-back his voting rights increase by 7%, i.e. his aggregate voting rights post buy-back is 76%. In this case, the shareholder will have to reduce his shareholding to 75% within 90 days, else, he will be required to make an open offer pursuant to the SAST Regulations, 2011.

3. A promoter is holding 72% of the total voting rights and is not participating in the buy-back. Post buy-back his voting rights increase by 5% i.e. his aggregate voting rights post buy-back is 77%. In this case, the shareholder will have to reduce his shareholding to 75% within 90 days, else, he will be required to make an open offer pursuant to the SAST Regulations, 2011.

The SEBI Appellate Tribunal (SAT) in the matter of Raghu Hari Dalmia and others v. SEBI [Appeal No. 134 of 2011 (SAT-Mum) dated 21.11.2011 Presiding Officer. Justice N.K.Sodhi] held that increase in voting rights of the promoters who did not participate in a buyback under section 77A of the Companies Act, 1956 did not attract the provisions of Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The acquisition for the purposes of the said Regulation 11(1) should be a positive act of the acquirer with a view to gain control over the voting rights. A passive increase in the voting rights of the promoters of the company would not attract the obligation to make an open offer.

In similar circumstances, it would be necessary for the concerned shareholders to seek exemption from SEBI from making an open offer. In terms of SAST Regulations, 2011, the exemption from the obligation to make an open offer, in the event of increase in voting rights pursuant to a buyback would be subject to fulfillment of the additional conditions as provided in regulation 10 of SAST Regulations, 2011.

VI. Applicability of Income- tax Act, 1961 (IT Act)

As per section 46A of the Income-tax Act, 1961 and subject to provisions of section 48 of the said Act, the difference between cost of acquisition and value of consideration received by a shareholder or holder of other specified securities pursuant to a buy-back shall be deemed to be capital gains arising to such person in the year of buy-back.

VII. Exemption under Combination Regulations

As per the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) (Amendment) Regulations, 2012, notified on February 23, 2012, any acquisition of shares or voting rights pursuant to a buy-back will not be considered to cause an appreciable adverse effect of competition in India. Hence, any increase in voting rights pursuant to a buy-back has been specifically included in the exempted category and will not attract the provisions of the Competition Act, 2002. ■



Corporate Laws



LW 30.04.2012

MCX STOCK EXCHANGE LIMITED v. SEBI & ORS [BOM]

Writ Petition No. 213 of 2011
D Y Chandrachud & Anoop V Mohta, JJ

[Decided on 14/03/2012]

Sections 11(1), 19 and 30 of the Securities and Exchange Board of India Act, 1992 read with sections 13, 16 and 18(A) of the Securities Contracts (Regulation) Act, 1956 - permission to undertake business of a stock exchange other than for currency derivative segment - rejection of the application by the Board- whether correct - Held,No.

Brief facts

The Whole Time Member of the Securities and Exchange Board of India has rejected an application filed by the Petitioner for permission to undertake business as a Stock Exchange, other than for the Currency Derivatives Segment.

The order is under Section 4 of the Securities Contracts (Regulation) Act, 1956 (SCRA) and Sections 11(1) and 19 of the Securities and Exchange Board of India Act, 1992. The Petition challenges the legality of the order.

Decision: Petition allowed and the matter remanded back for fresh adjudication.

Reason

After elaborately discussing various issues and case laws, the court arrived at the following conclusions:

- (i) Though the MIMPS Regulations in terms apply to a stock exchange in respect of which a Scheme for demutualisation and corporatisation has been approved under Section 4B, the application of those regulations was extended to the Petitioner by SEBI as a condition for the grant of recognition. Though initially SEBI demanded full compliance with the MIMPS Regulations, the requirement which was imposed while extending recognition thereafter, was full compliance with the relevant Regulations. In either view of the matter, there must be a genuine, *bona fide* and honest attempt to comply with the MIMPS Regulations;
- (ii) SEBI as a regulatory authority was, while exercising its wide ranging statutory powers, acting within its jurisdiction in imposing a requirement of compliance with the MIMPS Regulations as a condition attaching to the recognition of the stock exchange;
- (iii) Regulation 8 prescribes the limit for holding of shares in a stock exchange by a person resident in India, individually or with persons acting in concert. The manner in which a dilution of the equity stake of the promoters had to take place in order to ensure compliance with the provisions of the MIMPS Regulations was not confined to the modes specified in Regulation 4. Many of the modalities prescribed in Regulation 4 do not apply to a stock exchange like the Petitioner which has no trading members. So long as there is a genuine divestment of the equity stake of the promoters in excess of the limit prescribed by Regulation 8, that would fulfil the requirement of Regulation 8;
- (iv) Stock Exchanges are an integral part of the statutory framework which SEBI regulates in relation to the securities market. The relationship between a stock exchange and SEBI is one based on trust and utmost good faith. A stock exchange is duty bound to make a full and honest disclosure of all material and relevant facts which have a bearing on the issue as to whether the requirements of the MIMPS Regulations have been fulfilled. The existence of the buyback agreements was a material circumstance which ought to have been disclosed to SEBI;
- (v) The sanctioning of the Scheme of capital reduction by the Company Judge under Sections 391 to 393 read with Sections 100 to 103 of the Companies Act, 1956, does not preclude SEBI as a statutory regulator from determining as to whether the provisions of the MIMPS Regulations have



been complied with. SEBI is independently entitled to ensure compliance with the MIMPS Regulations which have been made a condition for the grant of recognition. The statutory functions conferred upon SEBI under the SCRA and cognate legislation are not diluted;

- (vi) During the course of the proceedings before SEBI as well as before this Court, undertakings have been filed by the promoters to the effect that the provisions of the MIMPS Regulations including the ceiling on the holding of the shares would be complied with notwithstanding the exercise of the option under the buyback agreement and the warrants for the allotment of shares. Both the promoters have now held themselves down to hold together, jointly and severally no more than five per cent of the equity capital. There is no reasonable basis to reject the undertakings which have been filed;
- (vii) The buyback agreements cannot be held to be illegal as found in the impugned order of the Whole Time Member of SEBI on the ground that they constitute forward contracts. A buy back confers an option on the promisee and no contract for the purchase and sale of shares is made until the option is exercised. The promisor cannot compel the exercise of the option and if the promisee were not to exercise the option in future, there would be no contract for the sale and purchase of shares. Once a contract is arrived at upon the option being exercised, the contract would be fulfilled by spot delivery and would, therefore, not be unlawful.
- (viii) The alternate submission which has been urged on behalf of SEBI at the hearing that the buyback agreements constitute an option in securities and being derivatives violate the provisions of Section 18A of the SCRA is not the basis either of the notice to show cause that was issued to the Petitioner or of the order passed by the Whole Time Member of SEBI. SEBI has in fact, issued a notice to show cause to the Petitioner subsequent to the order asserting that as a ground. In that view of the matter, it will not be appropriate or proper for this Court to render any finding on that aspect, particularly when it did not find a place either in the notice to show cause or in the order passed there on;
- (ix) The definition of the expression "persons acting in concert" is for the purpose of the MIMPS Regulations derived from the Takeover Regulations, by Explanation (IV) to Regulation 8 of the MIMPS Regulations. Regulation 8 after its amendment in 2008, refers only to the holding of shares and not to the acquisition and holding of the shares as earlier. In applying the provisions of Regulation 2(1)(e) of the Takeover Regulations (which defines "persons acting in concert") to the MIMPS Regulations, it would be permissible following well settled principles in that regard to make some alteration in detail to render the regulations meaningful and effective. However, the essential ingredients of the expression "persons acting in concert" in the Takeover Regulations cannot be abrogated. SEBI when

it incorporated the definition of "persons acting in concert" from the Takeover Regulations was conscious of the definition in those Regulations and must be attributed with the knowledge of the manner in which it has been interpreted. The Supreme Court has held that the existence of a common objective or purpose is a necessary requirement of the expression which must be fulfilled by an agreement, formal or informal;

- (x) The impugned order passed by the Whole Time Member has failed to apply the principal test enunciated by the judgment of the Supreme Court in *Daichi Sankyo (supra)* in determining as to whether certain persons may be held to be acting in concert. The mere fact that two persons have come together in promoting a Company does not lead to the inference that they are acting in concert for the purposes of the Takeover Regulations. The further finding of the Whole Time Member of SEBI that the two promoters of the Petitioner had a common Manager is based primarily on the execution of one letter. The finding does not take into account the test spelt out by the Supreme Court in *Alagappa Textile (supra)* that a person in order to be a manager within the meaning of Section 2(24) of the Companies Act, 1956 must have the management of the whole or substantially the whole of the affairs of the Company and be subject to the superintendence, control and directions of the Board of Directors. The findings which have been arrived at in the impugned order are contrary to law since they ignore the relevant legal tests which have been laid down by the Supreme Court;
- (xi) In any event, both the promoters of the Petitioner have, during the course of the hearing of these proceedings, tendered undertakings to the Court to the effect that notwithstanding the exercise of the option conferred by the warrants and by the buyback agreements, their shareholding jointly and severally in the petitioner shall not exceed five per cent as prescribed in Regulation 8 of the MIMPS Regulations;
- (xii) On the aspect as to whether the Petitioner is a fit and proper person for the grant of recognition, the finding which has been arrived at in the impugned order is *inter alia* based on a conclusion as to the illegality of the buyback agreements on the ground that they are forward contracts, which is found to be erroneous in the present judgment. The effect of the non-disclosure of the buyback agreements to SEBI should be considered having regard to the fact that a genuine attempt has been made by the promoters by tendering an undertaking to the Court that their shareholding together shall not exceed five per cent of the equity capital, notwithstanding the exercise of the options.



In view of these conclusions and for the reasons that we have indicated above, we are of the view that the impugned order passed by the Whole Time Member of SEBI would have to be set aside. We direct accordingly. We direct, in consequence, that the application filed by the Petitioner shall be reconsidered afresh in terms of the observations contained in this judgment. Upon remand, a fresh decision shall be arrived at after furnishing the Petitioner an opportunity of being heard within a period of one month from today. Rule is made absolute in the aforesaid terms.

LW 31.04.2012

**M/S. RAJESH AND CO v. RAVISSANT
PVT LTD[DEL]**

CO.PET. 63/2001

Manmohan, J

[Decided on 24/02/2012]

Companies Act, 1956 - Sections 433(e), 434, 439- winding up petition - transaction between group concerns - adjustment of dues of one concern in the accounts of another- no admitted debt - whether winding up petition to be allowed-Held,No.

Brief facts

The facts as stated in the present petition are that the petitioner firm had supplied fabric to the respondent company on regular basis from 1996 onwards and as per the reconciliation of accounts for the period from 1st April, 1997 to 31st March, 1998, a sum of Rs. 17,26,952 was due and payable by the respondent company, which the respondent-company had failed to pay, hence this petition.

Decision: Petition dismissed.

Reason

Having heard the parties and having perused the papers, this Court is of the opinion that it would be appropriate to first examine the submission of the respondent company that the petitioner firm as well as its sister concern, M/s. RMP Fabrics and the respondent company as well as its sister concern, M/s. Indian Handicrafts used to have transactions mutually exchanged with each other from time to time and there should be consolidated reconciliation of accounts of all these four concerns.

This Court finds credence in the arguments of the respondent

company that respondent-company and its sister concern were acting as one economic entity. This Court takes note of the respondent's ledger account maintained by the petitioner itself for the period from 1st April, 1997 to 31st March, 1998 wherein three credit entries dated 24th April, 1997, 30th April, 1997 and 19th June, 1997 are in the name of Indian Handicrafts, the sister concern of the respondent-company. This Court further finds that certain bills were first raised by the petitioner on Indian Handicrafts which were later transferred and also raised on the respondent-company with the same bill number, amount and date.

In fact, this Court in *Pankaj Aluminium Industries Pvt. Ltd. v. Bharat Aluminium Company Ltd.*, 2011 IV AD (Delhi) 212 after relying upon *DHN Food Distributors Ltd. & Ors v. London Borough of Tower Hamlets* [1976] 3 ALL ER 462 at Page 467 has recognised the doctrine of single economic entity. In *DHN Food Distributors Ltd. (Supra)*, it was held as under:-

".....We all know that in many respects a group of companies are treated together for the purpose of general accounts, balance sheet and profit and loss account. They are treated as one concern. Professor Gower in his book on company law says: there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group. This is especially the case when a parent company owns all the shares of the subsidiaries, so much so that it can control every movement of the subsidiaries. These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says. A striking instance is the decision of the House of Lords in *Harold Holdworth & Co. (Wakefield) Ltd. v. Caddies*. So here. This group is virtually the same as a partnership in which all the three companies are partners. They should not be treated separately so as to be defeated on a technical point. They should not be deprived of the compensation which should justly be payable for disturbance. The three companies should, for present purposes, be treated as one, and the parent company, DHN, should be treated as that one. So that DHN are entitled to claim compensation accordingly. It was not necessary for them to go through a conveyancing device to get it."

For a winding up petition to be allowed, the petitioner is required to show that the alleged admission is clear and unambiguous. In the present case, the respondent-company has not denied the letter dated 26th March, 1998 but at the same time has set up the defence that subsequent to the abovesaid letter, two debit notes dated 30th June, 1998 had been issued by the sister concern of the respondent company. In fact, in the recovery suit filed by the petitioner's sister concern, petitioner's application under Order XII Rule 6 of CPC was dismissed for a similar reason. It is pertinent to mention that the aforesaid order has attained finality inasmuch as the same was not challenged either by the petitioner or its sister concern.

Moreover, the jurisdiction of Company Court is summary in



nature and the issues of *inter-se* transactions between the parties and the veracity of the debit notes cannot be examined in the present case as it involves disputed questions of fact and would require evidence to be led. Certainly, the defence set out by the respondent in its reply to the statutory notice cannot be said to be a moonshine or sham. In fact, the Supreme Court in *M/s. IBA Health (I) P. Ltd. v. M/s. Info-Drive Systems SDN. BHD.* (2010) 10 SCC 553 has held that "the Company Court is expected to ascertain that the company's refusal is supported by a reasonable cause or a *bona fide* dispute in which the dispute can only be adjudicated by a trial in a civil court." (Refer "para 31")

Consequently, the present petition is dismissed, but without any order as to costs. Needless to say, the civil court would decide the case on merits without being influenced by any observations made by this Court.

LW 32.04.2012

JIYUAN LI v. REGISTRAR OF COMPANIES & TIANJIN TIANSHI INDIA PVT LTD v. REGISTRAR OF COMPANIES [DEL]

Crl.MC No. 3579/2009 & Crl.MC No. 3811/2009

M.L. Mehta, J

[Decided on 01/03/2012]

Companies Act - Sections 234(1), 234 (3A), 234 (6), 234 (4) (a) - issue of statutory notice not proved - whether prosecution proceedings to be quashed - Held, Yes. - Limitation period to take cognizance - whether non filing of reply is a continuous offence - Held,No.

Brief facts

The Registrar of Companies (ROC) received a complaint regarding the affairs of M/s. Tianjin Tianshi India Pvt Ltd (the Company) being irregular and illegal. A letter dated 24.02.2004 was issued by the ROC to the company to inquire about its affairs. This was duly replied vide letter dated 15.04.2004. The reply was examined and thereafter an order dated 19.04.2004 under section 234(1) of the Companies Act (hereinafter referred to the "Act") was issued to the company which remained unresponded. Thereafter another order dated 16.06.2004 under section 234 (3A) of the Act was issued by ROC requesting the Company to furnish the desired information, but no response was received. As no response was received *qua* the aforesaid two orders, a show cause notice dated 26.07.2005 was issued to the company under section 234 (4) (a) of the Act which also did not evoke any

response. Thereafter a report was sent by ROC to the Central Government in terms of section 234 (6) of the Act seeking advice for prosecution of company under section 234 of the Act. It was thereafter that the Complaint (CC No. 939/2007) was filed in the Court of ACMM by the ROC against the Company and its functionaries including the petitioners. The ACMM passed the impugned order of summoning of all the accused including the petitioners. The present petitions assail the order dated 11.09.2007 passed by the Ld. Addl. Metropolitan Magistrate (ACMM) summoning the petitioners in CC No. 939/07.

Decision: Petition allowed.

Reason

The impugned order is assailed mainly on the ground that the same has been passed in a mechanical manner without ensuring that mandatory and statutory notice under Section 234 of the Act was issued to the petitioners. The cognizance taken by the ACMM was also assailed on the ground of limitation. It was submitted that the alleged offences being punishable with fine only, the limitation of taking cognizance under Section 468(2) Cr.PC was six months. It was submitted that in absence of there being any order of condonation of delay, the cognizance taken by learned ACMM was bad being beyond the period of limitation.

On the question raised regarding non-issuance of notice under Section 234 of the Act to the petitioners, it is seen that ROC issued a letter dated 24.2.2004 to the company to enquire about its affairs. The same was replied by the company vide letter dated 15.4.2004. It is submitted that three orders dated 19.04.2004, 16.06.2004 and 26.07.2005 under Section 234 (1), 234 (3A) and 234 (4) (a) of the Act respectively were issued by the ROC to the petitioner company, but these evoked no response. However, from the perusal of the record, it can be seen that there is no evidence which was brought by the respondent to *prima facie* prove the service of such orders on the petitioner company. The receipt of such statutory orders is a *sine-qua-non* for alleging non-compliance of the orders of the respondent. Reply to the letter by the petitioner company cannot be equated to acknowledgement of a statutory notice as per the requirement of law. In the present case, absence of any documentary proof of service of such orders of ROC on the petitioner company indicates that the prosecution was initiated without giving any opportunity to the petitioner company to advance its reply. The respondent/complainant has made an averment regarding the issue of statutory orders, however, they are silent as regard to the factum of delivery or mode of proof of delivery of the said statutory orders. Thus, *prima facie* it is seen that the statutory orders under section 234 of the Act was not delivered to the petitioner and that being



so the complaint was not maintainable.

Coming to the contention of the petitioner that cognizance by the Trial Court was barred by the limitation, the Trial Court record must be perused. The show cause notice to the petitioner was issued on 26.7.2005, whereas the cognizance of the offence by the learned Trial Court was taken on 11.9.2007. The contention of the counsel for the respondent that the complaint was filed within the period of limitation as the limitation period commenced from the date the Central Government gave its approval for prosecution, cannot be accepted as there is no embargo under Section 234 of the Act for the respondent to seek approval from the Central Government before initiating the prosecution against the petitioner. The period of limitation for taking cognizance of the offences commences when the knowledge of the commission of offence is gained by the prosecuting agency. Furthermore, there was no application on record advanced by the respondent for the condonation of delay in the Trial Court.

The present offence arises out of a failure to comply with the statutory rule and such liability will continue until the requirement is complied with. It is not a case where the offence was repeated or committed on a daily basis after the initial default. Thus, the present offence is not a continuing offence and the complaint *prima facie*, is time barred.

In view of the above discussion, this seems to be a fit case for the exercise of the inherent powers possessed by this court under Section 482 CrPC to meet the ends of justice. Accordingly, the petition is allowed and the summoning order is quashed *qua* the present petitioners.

Region, Noida regarding irregularity/ illegality in the affairs of the Petitioner Company. The complaint was forwarded to the Respondent/ Complainant for it to take appropriate action. Thereafter the Respondent/Complainant vide order dated 10/10/2006 under section 234(1) of the Companies Act (hereinafter referred to as the Act) called upon certain documents and details *qua* the Petitioner company. The Accused vide their letter dated 09.11.2006 communicated to the Respondent/ Complainant their inability to furnish the necessary details and sought time for the same. Not receiving the desired information within the time sought by the petitioners, order dated 20.11.2006 under section 234 (3A) of the Act was issued to the petitioners and again 7 days' time was sought by the Petitioners. That on examining the replies it was understood that the Petitioners were evading and neglecting to furnish the desired information and thus a show cause notice under section 234 (4)(a) was issued against the Petitioners which evoked no response. Thereafter a report under section 234 (6) of the Act was sent to the Central Government with the necessary particulars seeking advice on prosecuting the Petitioners and after examining the case the Central Government gave the go ahead for the prosecution of the Petitioners under section 234 (4)(a) of the Act. The complaint was received in the court of the Ld. ACMM on 11.05.2007 and the summons issued to Petitioners on 19.05.2007.

The present petition assails the order of the Ld. ACMM dated 19.05.2007 summoning the Petitioner and seeks quashing of the CC No. 938/2007 contending the cognizance taken by the Ld. ACMM to be beyond the period of limitation.

Decision: Petition dismissed.

Reason

The present petition brings up an interesting question as to the commencement of the period of limitation for an offence. It is an admitted fact that the Petitioners had filed a reply to the Order under section 234 (1) vide letter dated 09.11.2006. Thereafter not receiving the desired information the Respondent/ Complainant vide order dated 20.11.2006 issued another order seeking such details from the Petitioners. Section 469 CrPC establishes the date from which the period of limitation for taking cognizance of an offence ought to begin.

A bare perusal of section 469 CrPC makes it amply clear that the period of limitation commences from the day the offence comes to the knowledge of the complainant. In the present case the "offence" of non-compliance with the order came to the knowledge of Respondent/ Complainant when the petitioners defaulted in furnishing the details to the Respondent/ Complainant at the expiry of the compliance period of the Order dated 20.11.2006 under section 234 (3A). Thus the computation of the limitation shall begin from the date of expiry of the compliance period as provided vide Order dated

LW 33.04.2012

**M/S. KHULOOD IMPEX PRIVATE LIMITED
& ORS v. THE REGISTRAR OF
COMPANIES [DEL]**

CrI.M.C. No. 2730/2009

M.L. Mehta, J

[Decided on 01/03/2012]

Companies Act - Sections 234(1), 234 (6), 234 (3A), 234 (4) (a) - Filing of criminal complaint - taking cognizance thereof - computation of period of limitation - Court explains the issue of limitation to take cognizance of an offence.

Brief facts

A complaint was received by the Regional Director, Northern



20.11.2006 under section 234(3A) of the Act. The cognizance of the offence was taken on 19.05.2007 which is within the period of limitation of the alleged offence. Therefore the period of limitation begins from the day actionable knowledge is gained by the competent authority. In view of the above observations I find no merit in the present petition and the same is hereby dismissed.

LW 34.04.2012

CHANDER BHAN GANDHI v. RECKITT BENCKISER (INDIA) LTD [DEL] CO.APP. 1/2012

Rajiv Sahai Endlaw, J

[Decided on 07/03/2012]

Companies Act, 1956 - Sections 100, 102, 103, 104 and 105 - reduction of capital - extinguishment of shares held by particular class of shareholders- whether tenable - Held, Yes

Brief facts

The appellant was holding 536 out of 2,62,79,612 fully paid up equity shares of Rs.10/- each of the respondent Company. Of the remaining shares, 1,67,85,722 shares constituting 63.87% of the total shareholding were held by M/s. Reckitt Benckiser Plc being the promoter of the respondent Company, 94,65,355 shares constituting 36.02% were held by M/s. Lancaster Square Holdings SL a subsidiary of the promoter company and 27,995 shares were held by other members of the public as the appellant and 4 shares were held by employees of the company. The public shareholders including the appellant held 28,531 shares constituting only 0.11% of the shareholding of the respondent Company.

The respondent Company being desirous of reducing its share capital by 1.55% by cancelling and extinguishing 3,78,614 equity shares held by M/s. Lancaster Square Holdings SL and 28,531 shares held by the public, appointed Chartered Accountants to determine the fair value of its equity shares. The said Chartered Accountants recommended value of Rs.836/- per share for payment to the shareholders whose shares were sought to be cancelled/extinguished. However the Board of Directors of the respondent Company in the meeting held on 3rd March, 2010 while approving such reduction in the share capital, enhanced the payment from Rs.836/- to Rs.940/- per share. M/s Reckitt Benckiser Plc being the largest shareholder expressed intent to retain its shareholding. The Extraordinary General Meeting (EOGM) of the shareholders of the respondent Company held on 24th April, 2010 by a special majority also approved such reduction. The appellant voted against the said resolution.

The respondent Company thereafter filed the petition for approval of its action of reduction of share capital. Initially 24 shareholders including the appellant filed objections. However upon the respondent Company offering to pay an amount of Rs.1,500/- per share as against the amount of Rs.940/- proposed by the Board of Directors and approved in the EOGM, 23 of the said objectors accepted the said offer and withdrew their objections leaving only the appellant in the fray. The appellant objected to the scheme on various grounds including that of change in government policy and pricing but the single judge rejected his objections and allowed the scheme of capital reduction. The appellant appealed against the judgment.

Decision: Appeal dismissed.

Reason

We have given our anxious consideration to the matter and perused the memorandum of appeal carefully. The same is drafted, finding no faults in the legal reasoning given by the Learned Company Judge, but as a critique to the economic policies of the government and the *modus* of the respondent Company and drawing sympathy to the appellant who is now over 80 years of age and had acquired the shares aforesaid nearly 35 years ago. However, though our hearts may bleed for the appellant, we are bound by the law and are unable to find any error in the legal reasoning given by the Learned Company Judge approving the action of the respondent Company of reducing the share capital. Though we were a little anxious as to the valuation of the shares, since the Board of Directors of the respondent Company itself had not accepted the valuation at ₹ 836/- per share of the Accountants engaged by the respondent Company and had increased the valuation to ₹ 940/- and further since the respondent Company when faced with the objections had further increased the said valuation to ₹ 1,500/- but nevertheless find that there can be no better indice of valuation than the market forces. The acceptance by all the other public shareholders except the appellant of the price of ₹ 1,500/- clearly establishes that though the price of ₹ 940/- offered may not have been the correct price but the price of ₹ 1,500/- clearly was. The appellant before us also has not produced anything to dissuade us. Our conscience is thus satisfied as to the price also.

LW 35.04.2012

SYED AHAMED BUHARI v. SPECIAL DIRECTOR, ENFORCEMENT DIRECTORATE& ANR [MAD]



Civil Miscellaneous Appeal No.3900 of 2011 and M.P.No.1 of 2011
R.Banumathi & S.Vimala, JJ

[Decided on 22/02/2012]

Section 52 of the Foreign Exchange Regulation Act, 1973 read with section 19 of the Foreign Exchange Management Act, 1999 - Appellate Tribunal ordered a pre-deposit of 5% of the penalty- whether correct-Held, Yes.

Brief facts

Adjudicating authority found the appellant guilty of violating the provisions of FERA by receiving an amount of Rs.2,39,82,310/- from persons working in Kuwait in contravention of Section 9(1)(b) and also said to have made payments to an extent of Rs.2,37,42,487/- in contravention of Section 9(1)(d) of FERA. The appellant was also alleged to have remitted/caused to be remitted an amount of Rs.2,81,82,310/- in contravention of Section 9(3) of FERA. The appellant by receiving payment of Rs.42 lakhs and also making payments totalling Rs.41,58,000/- is said to have contravened Sections 9(1)(b) and 9(1)(d) of FERA. The adjudicating authority had taken up the case for adjudication and based on the available materials and reply to the show cause notice concluded the adjudication proceedings holding that the appellant and Kamal Basha has contravened the provisions of Section 9(1)(b) and 9(1)(d) of FERA 1973 and 9(3) of FERA. The adjudicating authority imposed a penalty of Rs.1.25 Crores on the appellant under Section 50 of FERA read with Section 49(5) and (6) of FEMA.

The appellant has preferred an appeal under Section 19 of FEMA together with an application for dispensation of penalty before the Honourable Appellate Tribunal. After considering the request made by the appellant for dispensation of pre-deposit, by order dated 18.09.2009, the Appellate Tribunal granted dispensation of 95% of the penalty and directed the appellant to deposit 5% of the penalty amount within thirty days from the date of receipt of the order. The appellant has failed to comply with the pre-deposit in compliance with the order dated 18.09.2009. For non-compliance of the order under Section 52(2) of FERA, by the impugned order, the Appellate Tribunal dismissed the appeal on 4.1.2010. Challenging the order dismissing the appeal, the appellant has preferred this appeal.

Decision: Appeal dismissed.

Reason

Section 19 of FEMA deals with Appeal to Appellate Tribunal, which is the corresponding provision to Section 52 of FERA. As

per proviso to Section 19(1), any person appealing against the order of the Adjudicating Authority, or Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government. As per the second proviso to Section 19(1), in any particular case, where the appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

As per Section 52(2) of the FERA or Section 19(1) FEMA and the second proviso thereon, the Order directing the deposit of penalty and the order dispensing with the condition of pre-deposit is discretion of the Appellate Authority. By the impugned order, the Appellate Authority has exercised its discretion in dispensing pre-deposit of major penalty of 95% and directed the appellant to deposit only 5% of the penalty imposed. Considering the exercise of discretion by the Appellate Tribunal directing the appellant to deposit 5%, in our considered view, no question of law is involved to entertain the appeal.

The question falling for consideration is, whether the appellant has shown "undue hardship". As per Section 50 of FERA, the penalty shall be upto five times of the alleged violation. Even though the alleged contravention by the appellant is to the extent of more than Rs.5 Crores, the adjudicating authority/Additional Commissioner imposed only a penalty of Rs.1.25 Crores. The Appellate Tribunal has directed the appellant to deposit 5% of the penalty amount. In our considered view, there is no improper exercise of discretion to entertain this appeal. It cannot be said that the impugned order has caused undue hardship to the appellant warranting interference with the order. ■

General Laws

LW 36.04.2012

OFFICE OF THE CHIEF POST MASTER GENERAL & ORS v. LIVING MEDIA INDIA LTD & ANR. [SC]

Civil Appeal No. 2474-2475 of 2012 (Arising



out of SLP (C) Nos. 7595-96 of 2011)

[Decided on 24/02/2012]

Limitation Act, 1963 - Section 5- condonation of delay - appellant filed appeal after a delay of 427 days - no proper reasons/explanation for the delay given - whether delay to be condoned because the appellant is a State - Held, No.

Brief facts

These appeals have been filed against the common final judgment and order passed by the High Court of Delhi whereby the Division Bench while upholding the judgment and order dated passed by the learned single Judge of the same High Court dismissed the appeals filed by the appellants herein.

The Supreme Court has not gone into the merits of the appeal as it decided the case on the basis of limitation issue. The issue relating to limitation was whether the Office of the Chief Post Master General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before this Court.

Depending on the outcome of the above issue, other issues to be considered are:

- ◆ Whether the impugned advertisement inserted in the Reader's Digest issue of December, 2005 is in conformity with the requirement of law.
- ◆ Whether the Department has made out a case for interference under Article 136 of the Constitution of India to reopen concurrent findings of fact rendered by the High Court.

Decision: Appeal dismissed

Reason

It is relevant to note that in the affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have

not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of *bonafide*, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was *bonafide* effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

LW 37.04.2012

**ANAND RATHI SHARE & STOCK
BROKERS LTD v. DEVENDRA SINGH
BAGGA [BOM]**

**Arbitration Petition No. 566 of 2010
Anoop V Mohta, J**

[Decided on 27/02/2012]



Sections 31(1) and 34 of the Arbitration and Conciliation Act, 1996 read with Bye-laws, Rules and Regulations of the National Stock Exchange of India - dispute between broker and client - arbitrator passed award without considering vital facts and law - whether the award is sustainable - Held, No.

Brief facts

The Respondent (original Applicant) executed Member-Client Agreement dated 10 May 2006 and thereby appointed the Petitioner (Original Respondent) as his share and stock broker to effect the transactions on the Cash Market Segment, as well as, Futures and Options Segment at NSE. The Respondent has signed various other relevant documents. The transactions on all exchanges were carried on accordingly, since 2006. The Respondent most of the time engaged in speculative transactions and basically operated through the client ID Code. The communications were exchanged on mobiles/telephones also. The Respondent used to collect the contract notes/contract-cum-bills regularly.

The Petitioner scored off outstanding position of the Respondent and the Respondent disputed the transaction through the Petitioner. The Respondent therefore, filed a claim Petition against the Petitioner to recover a sum of ₹ 9,62,995.27 together with interest @ 12% p.a. The Petitioner opposed and resisted the same by its reply. The learned Arbitrator has passed the award on 15 October 2009 and accepted the case of the Respondent by overlooking the basic and legal submissions made by the Petitioner. Aggrieved by the award, the Petitioner challenged the award before the High court.

Decision: Petition allowed and matter remanded to arbitrator for fresh adjudication.

Reason

It is necessary to consider, in the present case, the concept of trade, operations, deposit requirements, margin requirements and margin from the constituents. The learned Arbitrator, however, without considering all of the above concepts and requirement and without giving details how amount, as awarded, is calculated and from which accounts, especially when the case of the Petitioner which was submitted with the documents shows that the Respondent had various transactions and the accounts with the Petitioner.

The learned Arbitrator ought to have considered the provisions/bye-laws, the margin requirement for the trade operations which are basically the obligations of the constituent. If there is a constituent's default, as inspite of receipt of contract notes/delivery notes and relevant intimations, he failed to deposit and/or maintain the margin, in such situation only the trading member has power to ask for the balance amount

and/or to square off the account. The discretion is always with the trading member based upon the relationship between the parties and commercial exigencies. The long standing relationship and assurance from time to time always play an important role when the trader member continues to do business even on oral instructions or telephonic instructions. The transactions therefore if carried out though there was no margin and/or margin had fallen and though there was negative balance, it, in no way, can be stated to be in violation of SEBI guidelines. Mere allegations that the complaints were lodged before the SEBI, BSE, NSE on 18.06.2008 that itself, cannot be the reason to grant undetailed sum of Rs. 9,62,995/- with 10% interest. The trading member, continue with the business, without proper margin, if any, but on instructions, he takes the risk but it cannot be stated to be in violation of any bye-laws and/or any SEBI guidelines. The broker is responsible to stock exchange for such money and not the investor or constituent. No such guidelines are placed on record to justify the observation made in para 27 by the Arbitrator.

The learned Arbitrator failed to consider that the transactions for and on behalf of the Respondent were through the net system as per the agreement. The transactions were confirmed by the Respondent from time to time. He also received contract notes and bills regularly. However, the Respondent, disputed the transactions on Future and Option Segment between April 2008 and June 2008, but never objected to the other transactions. There is a material placed on record by the Petitioner to prove that the communications made from time to time by which the Respondent confirmed the transactions executed in his accounts. The learned Arbitrator was further wrong in holding that the Petitioner failed to prove that they demanded any amount from the Respondent towards margin after April 2008. All F&O transactions were executed in the Respondent's accounts. The other client's letters supporting the Respondent's case cannot justify and/or deny the facts if it was based upon the *inter-se* communications between the parties. It cannot be relied upon to state that the Respondent only traded on the Cash market segment and never visited the Petitioner's Branch office. There were no instructions to do the business ought not to have been accepted by the Arbitrator, on the basis of such third person's letters. In such a transaction, the communications between the parties bind them. The third person who never had occasion to listen to the oral communications cannot deny and/or support what oral communications, the parties had, before and/or after entering into the transactions. The learned Arbitrator overlooked the fact that the Respondent had carried on trades even during the disputed period at the NSE and on Cash segment. The certain cheques were also paid by the Respondents after considering the ledger position.

The learned Arbitrator ought to have considered as the Respondent was holding outstanding position on Future and option Segment prior to 16 June 2008 and was required to pay a sum of ₹ 22,525/- which was squared off on 16 June 2008. As



the Respondent failed to comply with the margin obligations, the Respondent's outstanding position with respect to Federal Bank was squared off on 24 June 2008. Therefore, considering the relation between the parties and to give sufficient opportunity, the petitioner merely delayed to take action of squaring off that itself cannot be the reason to hold that the Respondent can wipe off its own liability to pay the due amount. The grant of consolidated amount by holding this delayed action against the Petitioner is nothing but granting premium to the Respondent's own wrong, specifically when the Respondent had three separate account with the Petitioner i.e. NSE Cash Market Segment, NSE Future and Option Segment and BSE Cash Market Segment. It is settled that the Court under Section 34 of the Arbitration Act, if case is made out of illegality, perversity, can set aside, even the reasoned award. Taking overall view of the matter as the Award is not based upon the provisions of law and the record and it is illegal, I am inclined to quash and set aside the same.

LW 38.04.2012

ASSOCIATED JOURNAL LIMITED v. ICRA LIMITED [DEL] RFA(OS) 62/2007 AND RFA(OS) 63/2007

Pradeep Nandrajog & Pratibha Rani, JJ.

[Decided on 14/03/2012]

Transfer of Property Act - Section 108 - lease and determination thereof - lessee determined the lease while lessor refused to take possession-whether constructive possession be inferred - Held, Yes.

Brief facts

The respondent took on lease from the appellant 4450 sq.ft. area on the fourth floor of a building for which the monthly rental agreed was Rs.125/- per sq.ft. and the duration of the lease was 8 years. As recorded in clause-4 of the lease deed an interest free security deposit in sum of Rs.66,75,000/- was received by the appellant and three months' service charges, adjustable in the following 12 months in sum of Rs.16,68,750/- were also received. The security deposit had to be refunded within 7 days upon termination/determination of the lease. Vide clause-21 of the lease deed, the respondent was entitled to terminate the lease by giving three months' notice in writing or three months' rent in lieu thereof. The appellant was enjoined, vide clause-6, to supply at least 20 KW power for the respondent to maintain and operate its air-conditioners and other electronic office gadgets. The appellant was obliged to ensure that there was no leakage from the overhead water tanks at the roof.

The respondent, vide a letter dated November 18, 1997

terminated the lease alleging water leakage and inadequate electricity supply resulting in non-effective air-conditioning; and calling upon the appellant to adjust three months' rent, required the appellant to return ₹ 50,06,250/-. It was informed that the lease would stand determined with effect from November 19, 1997. The appellant responded stating that low voltage was due to DESU supplying electricity with low voltage and as regards the seepage, stated that its engineers would be rectifying the problem shortly. Appellant requested the respondent not to insist upon the lease being determined. The respondent insisted that it was no longer interested in continuing with the lease and informed the appellant that it had moved out to another premises and told the appellant to take vacant possession of the tenanted property and since 7 days had expired after the lease was determined, it should refund ₹ 50,06,250/-.

The sparring bout continued with the parties exchanging letters and the respondent filed the suit claiming decree in sum of ₹ 46,72,500/ and Key of the tenanted premises was deposited in Court. The learned Single Judge has held that the respondent was entitled to terminate the lease as per clause-21 and since it had validly determined the lease and had offered possession to the appellant, which was declined by the appellant, constructive possession would be deemed to be with the appellant and hence the decree in sum of ₹ 46,72,500/- and counter-claim of the appellant denied. Hence the appeals.

Decision: Appeal dismissed.

Reason

It was the absolute right of the respondent to terminate the lease, under clause 21 of the lease deed, by either giving three months prior notice of the lease being determined or rent in lieu thereof. This right was not contingent upon any default committed by the appellant. Thus, it hardly matters whether the air-conditioning in the demised premises was defective and/or there was seepage on account of water overflowing from the water tanks atop the roof of the demised premises.

Respondent terminated the lease and offered vacant possession to be received the very next day i.e. on November 19, 1997. The respondent clearly told the appellant that in lieu of three months' notice, it could appropriate three months' rent and thus required ₹ 16,68,750/- to be adjusted from the security deposit and the balance refunded. It was for the appellant to have taken possession and within seven days of lease being determined to have returned the balance security deposit. The appellant did not do so.

Now, Section 111 of the Transfer of Property Act deals with the modes of determination of the lease and vide clause (e) thereof provides that a lease can be determined by express surrender and vide clause (f) by an implied surrender. Clause (h) deals



with the notice of intention to determine the lease. It is true that as per clause (q) of Section 108 of the Transfer of Property Act, the lessee is bound to put the lessor in possession of the property leased, but this would mean that it is inherent that the landlord should accept the possession of the property whenever it is delivered and cannot claim a right to receive the possession only upon the lessee paying dues or otherwise. We highlight immediately, that in the instant case, it is not the case of the appellant that it had any dues, by way of damages or otherwise, against the respondent's possession. Vacation of a leased property by the lessee together with a notice to the lessor to take delivery would sufficiently discharge the lessee of any further obligation to pay the rent and any impediment put by the lessor in the matter of delivery of possession would amount to possession being delivered and it shall be deemed for all purposes that as soon as the property was vacated and possession offered, constructive possession would be with the lessor. Even if the lessor has any claim, by way of damage to the property or otherwise, the right of the lessor is not to decline to receive possession and then insist that further lease rental had accrued each month. The right of the lessor is to sue and recover the damages.

We agree with the reasoning of the learned Single Judge and thus we dismiss both appeals, but refrain from imposing any costs.

LW 39.04.2012

ANIL METRE v. STATE & ANR [DEL]

**Crl.M.C 2960/2008 & Crl.M.A 10891/2008,
13225/2010 & Crl.M.C. 2961/2008 &
Crl.M.A 10893/2008, 13229/2010**

M.L. Mehta, J

[Decided on 14/03/2012]

Sections 138, 139, 141 of the Negotiable Instrument Act, 1881 read with section 482 of the Criminal Procedure Code - cheque dishonour - trial court issuing summons - accused moved the High court to quash the proceedings based on disputed facts - whether permissible-Held,No.

Brief facts

The respondent/complainant company had filed the aforesaid complaints, through its authorized person Mr. Kailash Nath Jasoria on the averments that they had jointly given loan of Rs.20,00,000/- to the petitioner on the terms and conditions as per the agreement executed between them on 16th November,

2001. The loan was given for a period of 12 months which was to be repaid along with interest @ 24% per annum. The petitioner/accused executed demand promissory note jointly in favour of the company and Mr. Jasoria. In discharge of the aforesaid liability towards the payment of the outstanding dues, the petitioner/accused issued two cheques bearing No. 294664 and 294663 of Rs.7,50,000/- and Rs.12,50,000/- respectively, both dated 12.09.2004. Since the cheques on presentation were dishonoured on account of "insufficient fund", the respondents issued legal notice dated 23rd September, 2004 to the petitioner. The petitioner having failed to make payment of the cheque amounts, complaints were filed for prosecution. The MM vide the impugned order summoned the accused/petitioner and the said order is assailed by these petitions.

Decision: Petition dismissed.

Reason

I have heard learned counsel for the parties and perused the records. Admittedly, loan of Rs.20,00,000/- was taken by the petitioner from the respondent/ complainant vide agreement dated 16.11.2001. It would be seen, from clauses 4,5 and 9 of the agreement, that the petitioner had pledged the shares of Spectrum Magazines Ltd. as towards repayment of the interest and principal loan amount etc. The respondent/complainant enjoyed right to sell, dispose of or transfer the shares and realise the amounts in the event of the petitioner failing to repay the loan and the interest within one year. The shares and the promissory notes (not placed on record) were towards continuing security to the respondent for all monies due from the petitioner. Further, as per Clause (10) of the agreement also it was reiterated the same to be continuing security and enforceable for all monies due from the petitioner.

It is settled law that power under section 482 Cr.P.C. of this Court are wide and amplitude, but, these cannot be exercised for the purpose of determining the questions of facts. From the above, it is seen that there is no mention in the agreement about the above said two cheques having been given by the petitioner to the respondent/ complainant either as security or towards discharge of loan liability. The averments of the petitioner that since he had borrowed money from the petitioner he had given several cheques including the two cheques in question to the complainant/ respondent and also that both the cheques were dated 16.11.2001, but were altered to 12.09.2004, are triable questions. If the aforesaid two cheques would have been given as security on 16.11.2001 when the agreement was executed, this would have *prima facie* found mentioned in the said agreement also. The possibility cannot be ruled out of these cheques having been given in addition to the shares by some separate instrument. On the other hand, the possibility also cannot be ruled out of both these cheques also having been given in addition to the shares as security or towards discharge of liability. All these required to be determined by Trial Court and cannot be determined in these proceedings.



Prima facie, there existed presumption of cheques having been given towards discharge of loan liability as these are of the equivalent amount, but at the same time, the presumption is rebuttable and the onus lies upon the petitioner to rebut the same. That can only be done in the course of trial. Further the pleas which have been taken by the petitioner that the shares have been pledged and the loan amount realized by the respondent/ complainant can only be raised before the Trial Court. This court cannot examine the documentary and the oral evidence which may have to be led by the petitioner before the trial court. Further it was also a matter of evidence whether the cheques were dated 16.11.2001 and were altered by the respondent to 12.09.2004. This is another disputed fact which cannot be resolved in these proceedings under section 482 Cr.P.C. ■

Brief facts

The issue in this appeal is, whether penalty and interest can be levied and collected when the duty has been paid before the issue of Show Cause Notice under the provisions of the Central Excise Act, 1944 (the Act' for short). In the present case, it is the stand of the assessee that the assessee had paid the duty under the provisions of the Act before the issue of the Show Cause Notice and, therefore, not liable for the payment of penalty and interest on the duty so paid under Section 11 AC of the Act. The Tribunal, accepting the stand of the assessee and by relying on the observations made by this Court in the case of *Rashtriya Ispat Nigam Ltd. v. CCE*, 2004 (163) ELT A 53 (SC), has allowed the assessee's appeal and has set aside the demands raised by the Revenue for payment of penalty and interest. The Revenue, being aggrieved by the orders passed by the Tribunal, is before us in this appeal.

Decision: Case remanded for fresh adjudication.

Reason

Learned counsel appearing for the Revenue, would submit that the issue raised in this appeal is now squarely covered by the decision of this Court in *Union of India v. Dharmendra Textile Processors & Ors.*, (2008) 13 SCC 369 and, therefore, submits that the judgment and orders passed by the Tribunal requires to be annulled by this Court. *Per contra*, learned counsel appearing for the assessee would submit that though the issue is now covered by the decision of this Court in the case of *Dharmendra Textile Processors (supra)*, the matter requires to be remitted to the Tribunal for fresh consideration and decision. In this connection, the learned counsel invites our attention to para 20 of the judgment in *Dharmendra Textile Processors (supra)*.

This Court, in the aforesaid cited decision after considering the effect of Section 11 AC of the Act, has come to the conclusion that the view expressed in *Dilip N. Shroff v. C.I.T.*, (2007) 6 SCC 329 is not correctly decided and accordingly has accepted the view taken in *S.E.B.I. v. Cabot International Capitals Corporation*, (2006) 5 SCC 361. After doing so, the three Judge Bench of this Court thought it fit to set aside the orders passed by the High Court and the Tribunal and remitted the matter to the High Court/Tribunal, as the case may be, for fresh adjudication in the light of the decision of this Court in *Dharmendra Textile Processors case (supra)*.

In view of the above, we are left with no other alternative but to set aside the orders passed by the Tribunal and remit the matter to the Tribunal for its fresh consideration and decision. We also make it clear that the Tribunal now will decide the issue afresh, keeping in view the observations made by this Court in *Dharmendra Textile Processors case (supra)*. ■

Tax Laws



LW 40.04.2012

COMMISSIONER OF CENTRAL EXCISE v. PLAXAIR INDIA PVT. LTD [SC]

Civil Appeal No. of 2012
(Dy.No.11065 of 2006)
H.L. Dattu & Anil R. Dave, JJ

[Decided on 22/02/2012]

Central Excise Act, 1944 - Section 11(AC)-Payment of duty before issue of show cause notice - Whether penalty leviable - Supreme Court remits the case to Tribunal to decide afresh in the light of certain decided cases.



LABOUR LAWS

LW 41.04.2012

**D.VETRITHINGAL v. TIRUVARUR
CONSUMER COOPERATIVE WHOLESALE
STORES LTD & ANR [MAD]**

W.P.No.27082 of 2007
K.Chandru, J.

[Decided on 07/02/2012]

Industrial Disputes Act - Section 10(4), 11(A) - dismissal from service - labour court decided the dispute based only on the preliminary issue - award against the workman - whether correct - Held, No.

Brief facts

It is seen from the records that the petitioner was employed, as accounts manager, with effect from 1.1.1976 in the 1st respondent society. He was given a charge memo dated 15.5.2001 by the Special Officer of the 1st respondent society. The petitioner gave his explanation. Subsequently, a domestic enquiry was conducted and on the basis of the enquiry report, his further explanation was called for. He also gave explanation on 12.8.2002. He was given a personal hearing. Thereafter by an order dated 26.8.2002, he was dismissed from service.

Thereafter, the workman raised a dispute before the Conciliation Officer and the Conciliation Officer after notice to the society, as he could not bring about mediation submitted his failure report dated 31.1.2003. On the strength of the failure report, the workman filed his claim statement dated 2.3.2003. The said claim statement was taken on file and registered as I.D.No.48 of 2003 and notice was ordered to the Society.

The Labour Court concentrated more on the jurisdiction of the Special Officer to initiate action against the petitioner but did not deal with the merits of the charges levelled against the workman as to whether the enquiry conducted was fair and

proper and in case the enquiry was held to be proper, whether the charges levelled against the workman were proved. In assuming that the charges were proved and the punishment was proportionate to the gravity of the charges, after discussing on the jurisdiction of the Special Officer, the Labour Court in one sentence held that on the basis of the Society's bye-laws and the other relevant case laws, the power to take action by the Special Officer has been proved and the dismissal was justified and the workman was not entitled for any relief, thus dismissed the industrial dispute.

Decision: Petition allowed.

Reason

It is rather unfortunate that the Labour Court which derives power has to comprehensively answer all issues and cannot contend itself only on the question of preliminary issue relating to the jurisdiction of the Special Officer to pass orders against an employee of the Cooperative Society.

A perusal of the claim statement and the written brief submitted clearly shows that before the Labour Court arguments were also addressed on the merits of the allegation made against the petitioner. Thus the Labour Court failed to discharge its obligations vested in terms of Section 10(4) read with Section 11-A of the Industrial Disputes Act. However, this Court is not inclined to accept the stand of the worker that the Special Officer lacks jurisdiction in taking disciplinary action against any one of the members of the society. As rightly held by the Labour Court, the power so far vested on the Board of Directors is now vested on the Special Officer by the Act created by the Tamil Nadu Legislature in appointing the Special Officer. But, at the same time, the Labour Court has got bounden duty to decide the justifiability of the non-employment of the petitioner by going into the merits of the case for which the enquiry proceedings have been filed by the 1st respondent society.

In the said circumstances, the impugned award insofar as dismissing the Industrial Dispute without any discussion on the merits of the non-employment of the petitioner hereby stands set aside on finding that the Special Officer has got powers to impose penalty. At the same time, as the Labour Court has not passed any comprehensive award, this Court is obliged to remand the matter in I.D.No.48 of 2003 to the Labour Court, Cuddalore for disposal in terms of law.

The Labour Court shall proceed to give notice to both sides and dispose of the Industrial Dispute on the merits of the case in terms of the powers vested under Section 11-A of the Industrial Disputes Act. The Writ Petition stands allowed to the extent indicated above. Since the dispute is of the year 2003 and more than 9 years have elapsed, the Labour Court shall give preference for the disposal of the industrial dispute and in any event after due notice to the parties shall dispose of the same within a period of six months from the date of receipt of this order. However, the parties are allowed to bear their own costs.



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From the Government

Corporate Laws



01 Constitution of a Committee to formulate a Policy Document on Corporate Governance

Issued by the Ministry of Corporate Affairs, vide General Circular No. 6/2012. Dated 21.03.2012.]

In continuation of this office O.M. of even number dated 7.03.2012 the undersigned is directed to say that Shri Sudhir Mittal, Additional Secretary in this Ministry shall be the nominee of the Ministry of Corporate Affairs in the Committee to formulate a policy document on Corporate Governance.

Sanjay Shorey
Joint Director

02 Constitution of a Committee to formulate a Policy Document on Corporate Governance

Issued by the Ministry of Corporate Affairs, vide No. 17/46/2012-CL-V. Dated 19.03.2012.]

In continuation of this office O.M. of even number dated 7.03.2012, the following amendments/modifications are made in the composition of the Committee to formulate a policy document on Corporate Governance.

- (i) Para 5.2.(x) may be read as "Shri Y.M.Deosthali, Chairman, L&T Finance Holdings Ltd." instead of "Shri Deosthali, L & T."
- (ii) Para 5.2.(xiii) may be read as "Shri Keki Mistry, Vice Chairman & CEO, HDFC" instead of "Shri K.K Mistry, CFO, L&T"
- (iii) Para 5.2.(xiv) may be read as "Ms. Zia Modi" instead of "Ms. Ziya Modi".

Sanjay Shorey
Joint Director

03 Allotment of Director's Identification Number (DIN) under Companies Act, 1956

Issued by the Ministry of Corporate Affairs, vide General Circular No. 4/2012. Dated 09.03.2012.]

In continuation of General Circular Nos. 32/2011 dated 31.05.2011, 66/2011 dated 04.10.2011 and 70/2011 dated 15/12/2011 on the subject cited above, I am directed to say that the time for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details has been extended upto 30.04.2012.

U.C. Nahta
Director (Inspection & Investigation)

04 Constitution of a Committee to formulate a Policy Document on Corporate Governance

Issued by the Ministry of Corporate Affairs, vide General Circular No. 3/2012. Dated 07.03.2012.]

The undersigned is directed to state as under:-

1. While the issue of how corporates decide to carry on their affairs is largely a matter of their choice subject to conformity with the law, the increasing importance of businesses to the economies and complexities of operating in an inter-dependent world have brought home the need for business chambers, professions, regulators and even the governments to take interest in this aspect.
2. Concerns relating to the quality of corporate governance system and the need to maintain its integrity and public accountability have resulted in a number of public interventions all over the world including the well known Cadbury Code (1992) and the Sarbanes-Oxley Act (2002) of the UK and US respectively. In India, too, a few elements of good corporate governance find mention in



- legal frameworks like the listing agreement of SEBI and a few of the provisions of the Companies Bill 2011. More detailed guidelines are also available, including the Voluntary Code on Corporate Governance of the CII (1998) and the National Voluntary Guidelines on Corporate Governance of this Ministry (2009) which are currently under revision by a Committee under the Chairmanship of Shri Kiran Karnik.
3. A need has, however, been felt to also have a formal policy document that synthesizes the disparate elements in diverse guidelines, draws on innovative best practices adopted by specific companies, incorporates the current international trends, and anticipates emerging demands on corporate governance in enterprises in various classes and scales of operation. While the policy is expected to be applicable across the corporate sector, it is not intended to dilute or whittle down the liberty to self-govern that is the hallmark of functioning of this sector - it is only intended to ensure that board and management practices and other processes conform to more standardized norms.
 4. The Institute of Company Secretaries of India (ICSI) has prepared a concept paper on the subject entitled "Concept Paper on National Corporate Governance Policy, 2012 prepared by the Institute of Company Secretaries of India" which is available for public information at the websites www.icsi.edu. The concept paper is meant to facilitate public discussion and in ascertaining views of all stakeholders and suggesting a policy document by the Committee constituted vide paragraph 5 of this Resolution. The paper is also meant to serve as the basis for the deliberations and the outcome of the work of the Committee.
 5. To prepare a draft policy document for the Concept Paper as stated above, a Committee is hereby constituted with the following composition.
 1. Shri Adi Godrej – Chairman
 2. Members:
 - i) Dr. Kiran Mazumdar Shaw, CMD, Biocon Ltd.
 - ii) Shri Sidharth Birla, FICCI
 - iii) A Nominee of CII
 - iv) Nominee of ASSOCHAM
 - v) DG, IICA
 - vi) Shri M.K. Chauhan, Vice Chairman, Asian Centre for Corporate Governance & Sustainability
 - vii) Sri R.S. Sharma, former MD, ONGC
 - viii) A representative of Ministry of Corporate Affairs
 - ix) Shri G. Ramaswamy, former President, ICAI
 - x) Shri Deosthali, L&T
 - xi) Shri S. Balasubramanian, former Chairman, Company Law Board
 - xii) Shri S.K. Rungta, ex-CMD, SAIL
 - xiii) Shri K.K. Mistry, CFO, L&T
 - xiv) Ms. Ziya Modi, Lawyer
 - xv) Nominee of The Institute of Cost Accountants of India
 - xvi) President, ICSI - Member Secretary/Convener

The ICSI will render secretarial assistance and logistic support to the Committee which shall submit its report to the Ministry of Corporate Affairs not later than six months from the date of holding of its first meeting.

 6. In carrying out its task the Committee may,
 - (a) Elicit opinions about the necessity of having a formal policy document on corporate governance;
 - (b) Hold wide consultations with all the stakeholders in the corporate sector, academics and members of public;
 - (c) Hold seminars, workshops and meetings as may be considered necessary for clarification of issues and obtaining clarity;
 - (d) Issue questionnaires and invite written comments through public advertisements; and
 - (e) Take such other steps as may be considered necessary to suggest a comprehensive policy framework to enable corporate governance of highest quality in all classes of companies without impinging on their internal autonomy to order their affairs in their best judgment.
 - (f) To suggest ways and means of engendering and enhancing the synergies between the public governance system and corporate governance.
 - (g) To examine the case for making sustainability reporting an integral part of the corporate governance policy framework.
 - (h) Take into consideration the recommendations of Kiran Karnik Committee on revised national voluntary guidelines.

Sanjay Shorey
Joint Director

05 Registration of Companies or LLPs which have one of their objects is to carry on the profession of Chartered Accountant, Cost Accountant, Architect, Company Secretary etc.

Issued by the Ministry of Corporate Affairs, vide General Circular No. 2/2012. Dated 01.03.2012.]

1. I am directed to say that at the time of incorporation of companies where one of the objects is to carry on the business of Banking, Insurance or to practice the profession of Chartered Accountancy, Cost Accountancy



From the Government

& Company Secretaries, then the concerned Registrar of Companies shall incorporate the same only on production of in-principle approval / NOC from the concerned regulator/professional Institutes.

2. Further, in this connection, it is also stated that where one of the objects is to carry on the business/profession of Architecture, then the concerned Registrar of Companies/Registrar of LLP shall incorporate the same only on production of in-principle approval / NOC from the concerned regulator.
3. This issues with the approval of CAM.

Monika Gupta
Assistant Director

06 Allocation of debt limits in corporate debt old and Government Debt long term category to FIIs

Issued by the Securities and Exchange Board of India vide CIR/IMD/FIIC/09/2012. Dated 12.03.2012.]

1. Based on the assessment of the utilization of the limits to FIIs for investments in corporate debt old and Government Debt long term category, it has been decided to allocate the unutilized limits. The bidding for this limit shall be done on the BSE from 15:30 hrs to 17:30 hrs, on March 16, 2012, in terms of SEBI circular IMD/FII&C/37/2009 dated February 06, 2009, subject to the modifications stated below:-
 - a. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than INR 450 cr. of the investment limit in each of above categories. Where a single entity bids on behalf of multiple entities, in terms of para 7 of SEBI circular CIR/IMD/FIIC/18 /2010 dated November 26, 2010, then such bid would be limited to INR 450 cr. in each of above categories for every such single entity.
 - b. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII & C/ 37/2009, the minimum amount which can be bid for shall be INR 1 cr. in each of above categories.
2. The fees for the bidding process shall be remitted to SEBI by the respective custodians of the entities within 3 working days after the bidding process.
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 Clearing and Settlement of OTC trades in Commercial Paper (CPs) & Certificates of Deposit (CDs)

Issued by Securities and Exchange Board of India vide Cir. /IMD/DF/8/2012. Dated 05.03.2012.]

1. SEBI vide circular No. CIR/IMD/DF/6/2010 dated July 30, 2010 made it mandatory for that all SEBI Regulated entities shall report their OTC transactions in CDs and CPs on the FIMMDA reporting platform within 15 minutes of the trade for online dissemination of market information with effect from August 16, 2010.
2. It has now been decided that all SEBI regulated entities shall settle their OTC trades in CDs and CPs on the lines of already existing process for settlement of OTC trades in corporate bonds, through National Securities Clearing Corporation Limited (NSCCL) and Indian Clearing Corporation Limited (ICCL) with effect from April 01, 2012.
3. All transactions cleared and settled in terms of this circular will be subject to such norms as may be specified by NSCCL and ICCL.
4. This circular is issued in exercise of powers conferred by sub-section (1) of section 11 and section 11A of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
5. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Corp Debt Market".

Maninder Cheema
Deputy General Manager

08 Guidelines for Credit Rating Agencies

Issued by Securities and Exchange Board of India vide CIR/MIRSD/3/2012. Dated 01.03.2012.]

1. According to SEBI (Credit Rating Agencies) Regulations, 1999 (the Regulations), a credit rating agency (CRA) has been defined as a body corporate which is engaged in the business of rating of securities offered by way of public or rights issues. The term "securities" has been defined in Clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.
2. However it is observed that the CRAs registered with SEBI also carry out rating of other securities / instruments and loans / facilities provided by banks which are not regulated by SEBI. Such ratings are being used by the other regulators or their regulated entities for the specified purposes.



3. Therefore, it is desirable that in addition to the review/accreditation process put in place by these regulators, if any, such ratings should also be governed by the same stringent norms as applicable for rating of securities issued by way of public and rights issues.
4. In view of the above, it has been decided in consultation with the CRAs and also with other regulators that for the above mentioned ratings, CRAs shall follow the applicable requirements pertaining to rating process and methodology and its records, transparency and disclosures, avoidance of conflict of interest, code of conduct, etc, as prescribed in the Regulations and circulars issued by SEBI from time to time.
5. The half-yearly internal audit for the CRAs as prescribed by SEBI shall also cover the above mentioned ratings.
6. This circular is issued in exercise of the powers conferred by Section 11(1) of Securities and Exchange Board of India Act, 1992 and Regulation 20 of the Regulations.
7. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Circulars".

Asha Shetty
Deputy General Manager

09 Circular for Mutual Funds

Issued by Securities and Exchange Board of India vide Cir/IMD/DF/7/2012. Dated 28.02.2012.]

A. Distributor Due Diligence

1. Please refer to SEBI circular no. SEBI/IMD/DF/13/2011 dated August 22, 2011 regarding the captioned matter.
2. It is hereby clarified that the due diligence of distributors is solely the responsibility of mutual funds/AMCs. This responsibility shall not be delegated to any agency. However, mutual funds/AMCs may take assistance of an agency of repute while carrying out due diligence process of distributors.

B. Clarification to Regulation 24 of SEBI (Mutual Funds) Regulations, 1996

1. In order to address the issue of conflict of interest wherein a fund manager manages schemes of Mutual Fund and is engaged in other permissible activities of AMC, SEBI has amended Regulation 24 of the SEBI (Mutual Funds) Regulations, 1996.
2. The amended Regulation mandates that AMCs shall appoint separate fund manager for each separate fund managed by it unless the investment objectives and assets allocations are the same and the portfolio is replicated across all the funds managed by the fund manager.

3. It has been represented to SEBI that the perfect replication of portfolio between the mutual fund scheme and schemes/products under other permissible activities of AMC may not be achieved at all times.
4. On examination of the same, it has been decided that the replication of minimum 70% of portfolio value shall be considered as adequate for the purpose of said compliance, provided that AMC has in place a written policy for trade allocation and it ensures at all points of time that the fund manager shall not take directionally opposite positions in the schemes managed by him.
5. In order to bring transparency while addressing the issue of conflict of interest wherein a fund manager is common across mutual fund schemes and schemes/products under other permissible activities of AMC, then the AMC shall :
 - a) disclose on their websites, the returns provided by the said manager for all the schemes (mutual fund, pension funds, offshore funds etc) on a monthly basis.
 - b) in case of any performance advertisement is issued by the AMC for any scheme, then the details of returns of all the schemes (mutual fund, pension funds, offshore funds etc) managed by that fund manager shall be provided.
 - c) in case the difference between the annual returns provided by the schemes managed by the same fund manager is more than 10% then the same shall be reported to the trustee and explanation for the same shall be disclosed on the website of the AMC.

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

Medha Sonparote
Deputy General Manager

10 Circular on Mutual Funds

Issued by Securities and Exchange Board of India vide Cir/IMD/DF/6/2012. Dated 28.02.2012.]

A. Amendments to SEBI (Mutual Funds) Regulations, 1996

1. Please find enclosed a copy of the gazette notification No. LAD-NRO/GN/2011-12/38/4290 dated February



From the Government

21, 2012 pertaining to Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2012 for your information and implementation.

B. Valuation of Debt and Money Market Instruments

1. The valuation of money market and debt securities shall be in terms of the Eighth schedule.
2. In clause 2 (I) and 2(II) of the SEBI circular SEBI/IMD/CIR No.16/ 193388/2010 dated February 2, 2010, reference to "91 days" shall be replaced with "60 days" with effect from 30.09.2012. Consequently, changes shall be carried out in clause 2(V) of the said circular.
3. In order to further enhance transparency, the AMCs shall disclose all details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio on AMCs' website and the same shall be forwarded to AMFI for consolidation and dissemination as per format enclosed. These disclosures shall be made settlement date wise on daily basis with a time lag of 30 days.

C. Advertisement

1. Advertisement shall be in terms of Sixth Schedule.
2. SEBI circulars dated June 05, 2000, June 26, 2003, February 26, 2008, December 15, 2009, January 18, 2010 and February 04, 2010 relating to Advertisement stands withdrawn. However, mutual funds shall continue to comply with the following:
 - ◆ While advertising pay out of dividends, all

advertisements shall disclose the dividends declared or paid in rupees per unit along with the face value of each unit of that scheme and the prevailing NAV at the time of declaration of the dividend.

- ◆ Impact of Distribution Taxes: While advertising returns by assuming reinvestment of dividends, if distribution taxes are excluded while calculating the returns, this fact shall also be disclosed.
- ◆ Pay out of Dividend/ Bonus: While advertising pay outs, all advertisements shall disclose, immediately below the pay out figure (in percentage or in absolute terms) that the NAV of the scheme, pursuant to pay out would fall to the extent of payout and statutory levy (if applicable).
- ◆ In case of Money Market schemes or cash and liquid schemes, wherein investors have very short investment horizon, the performance can be advertised by simple annualisation of yields if a performance figure is available for at least 7 days, 15 days and 30 days provided it does not reflect an unrealistic or misleading picture of the performance or future performance of the scheme.

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

Medha Sonparote
Deputy General Manager

Format for reporting of all transaction in debt and money market securities

S.No	Name of the Security	ISIN	Fund House	Scheme Name	Maturity Date	Residual days	Settlement Type	Trade Date	Valuation Date	Settlement Date	Quantity Traded	Value of the Trade	Price at which valued	Yield at which valued	Type of trade*

* Inter-scheme/off market trade/market trade

11 Offer For Sale of Shares by Promoters through the Stock Exchange Mechanism - Clarification

Issued by Securities and Exchange Board of India vide CIR/MRD/DP/ 8 /2012. Dated 27.02.2012.]

1. This has reference to SEBI circular No CIR/MRD/DP/05/2012 dated February 1, 2012 and CIR/MRD/DP/07/2012 dated February 23, 2012 on the subject.
2. It is clarified that the contents of the advertisement, if any, to be issued in terms of Para 4 (a) of the aforementioned circular dated February 1, 2012, shall be restricted to the contents of the notice as given to the stock exchange under Para 5 (b) of the said circular.
3. All other provisions of the aforesaid circulars remain unchanged.

4. Stock Exchanges are advised to:
 - a. take necessary steps and put in place necessary systems for implementation of the above.
 - b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - c. 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.
 - d. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
5. 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.

Harini Balaji
Deputy General Manager



12 Offer For Sale of Shares by Promoters through the Stock Exchange Mechanism

Issued by Securities and Exchange Board of India vide CIR/MRD/DP/ 7/2012. Dated 23.02.2012.]

1. Please refer to SEBI circular No CIR/MRD/DP/05/2012 dated February 1, 2012 on the captioned subject.
2. It has been decided to modify Para 5 (e) (ii) of the aforesaid circular, pertaining to 'Order placement' as under: (ii) "Cumulative orders/ bid quantity information shall be made available online by the exchanges at specific time intervals. The indicative price shall be disclosed by the exchanges only during the last half an hour of the duration of the offer for sale."
3. It is further clarified that the indicative price shall reflect the volume weighted average price of all the bids that have exhausted the quantity offered.
4. All other provisions of the aforesaid circular remain unchanged.
5. Stock Exchanges are advised to:
 - a. take necessary steps and put in place necessary systems for implementation of the above.
 - b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - c. 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.
 - d. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
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.

Harini Balaji
Deputy General Manager

13 Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2012

Issued by Securities and Exchange Board of India, vide No. LAD-NRO/GN/2011-12/38/4290. Published in the Gazette of India, Extraordinary, Part III Section 4. Dated 21.2.2012]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India

(Mutual Funds) Regulations, 1996, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2012.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996,-
 - (i) in regulation 2, for clause (b), the following shall be substituted, namely:-
“(b) “advertisement” shall include all forms of communication issued by or on behalf of the asset management company/mutual fund that may influence investment decisions of any investor/prospective investors;”;
 - (ii) in regulation 25, after the sub-regulation (18), the following sub-regulations shall be inserted, namely:-
“(19) The asset management company shall compute and carry out valuation of investments made by its scheme(s) in accordance with the investment valuation norms specified in Eighth Schedule, and shall publish the same.

(20)The asset management company and the sponsor of the mutual fund shall be liable to compensate the affected investors and/or the scheme for any unfair treatment to any investor as a result of inappropriate valuation.

(21)The asset management company shall report and disclose all the transactions in debt and money market securities, including inter scheme transfers, as may be specified by the Board.”;
 - (iii) in regulation 30,
 - (a) in sub-regulation (1),
 1. the words, “in respect of every scheme” appearing after the word “Advertisement”, and before the words, “shall be in conformity with” shall be omitted;
 2. the symbols and figure, “(1)” shall be omitted;
 - (b) sub-regulation (2) shall be omitted;
 - (iv) for regulation 47, the following shall be substituted, namely:-
“**Valuation of investments**
47. Every mutual fund shall ensure that the asset management company computes and carries out valuation of investments made by its scheme(s) in accordance with the investment valuation norms specified in Eighth Schedule, and publishes the same.”;
 - (v) after regulation 75, the following regulation shall be inserted, namely:-



“Action against mutual fund and/or asset management company

75A. Without prejudice to regulation 68, a mutual fund and/or asset management company shall be liable for action under the applicable provisions of the Act and the Regulations framed thereunder,.

- (a) in case the advertisement issued is in contravention with the Advertisement Code specified in Sixth Schedule;
- (b) in case the valuation of securities is in contravention of the Principles of Fair Valuation specified in Eighth Schedule.”;
- (vi) for the Sixth Schedule, the following schedule shall be substituted, namely:-

“SIXTH SCHEDULE

Securities and Exchange Board of India
(Mutual Funds) Regulations, 1996
[Regulation 30]

ADVERTISEMENT CODE

- (a) Advertisements shall be accurate, true, fair, clear, complete, unambiguous and concise.
- (b) Advertisements shall not contain statements which are false, misleading, biased or deceptive, based on assumption/projections and shall not contain any testimonials or any ranking based on any criteria.
- (c) Advertisements shall not be so designed as likely to be misunderstood or likely to disguise the significance of any statement. Advertisements shall not contain statements which directly or by implication or by omission may mislead the investor.
- (d) Advertisements shall not carry any slogan that is exaggerated or unwarranted or slogan that is inconsistent with or unrelated to the nature and risk and return profile of the product.
- (e) No celebrities shall form part of the advertisement.
- (f) Advertisements shall not be so framed as to exploit the lack of experience or knowledge of the investors. Extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may detract the investors should be avoided.
- (g) Advertisements shall contain information which is timely and consistent with the disclosures made in the Scheme Information Document, Statement of Additional Information and the Key Information Memorandum.
- (h) No advertisement shall directly or indirectly discredit other advertisements or make unfair comparisons.
- (i) Advertisements shall be accompanied by a standard warning in legible fonts which states ‘Mutual Fund

investments are subject to market risks, read all scheme related documents carefully’. No addition or deletion of words shall be made to the standard warning.

- (j) In audio-visual media based advertisements, the standard warning in visual and accompanying voice over reiteration shall be audible in a clear and understandable manner. For example, in standard warning both the visual and the voice over reiteration containing 14 words running for at least 5 seconds may be considered as clear and understandable.”;
- (vii) in the Eighth Schedule,
 - (a) in the reference title, the word and number, “regulation 47” shall be substituted with the word and numbers “regulations 25(19), 47”;
 - (b) the words and symbol “Mutual fund shall value its investments according to the following valuation norms:” appearing under the heading “Investment Valuation Norms”, shall be omitted;
 - (c) after the heading “Investment Valuation Norms”, the following sub-headings and clauses shall be inserted, namely:.

“Principles of Fair Valuation

Mutual fund shall value its investments in accordance with the following overarching principles so as to ensure fair treatment to all investors including existing investors as well as investors seeking to purchase or redeem units of mutual funds in all schemes at all points of time:

- (a) The valuation of investments shall be based on the principles of fair valuation i.e. valuation shall be reflective of the realizable value of the securities/assets. The valuation shall be done in good faith and in true and fair manner through appropriate valuation policies and procedures.
- (b) The policies and procedures approved by the Board of the asset management company shall identify the methodologies that will be used for valuing each type of securities/assets held by the mutual fund schemes. Investment in new type of securities/assets by the mutual fund scheme shall be made only after establishment of the valuation methodologies for such securities with the approval of the Board of the asset management company.
- (c) The assets held by the mutual funds shall be consistently valued according to the policies and procedures. The policies and procedures shall describe the process to deal with exceptional events where market quotations are no longer reliable for a particular security.
- (d) The asset management company shall provide for the periodic review of the valuation policies and procedures to ensure the appropriateness and accuracy of the methodologies used and its effective



implementation in valuing the securities/assets. The Board of Trustee and the Board of asset management company shall be updated of these developments at appropriate intervals. The valuation policies and procedures shall be regularly reviewed (at least once in a Financial Year) by an independent auditor to seek to ensure their continued appropriateness.

- (e) The valuation policies and procedures approved by the Board of asset management company should seek to address conflict of interest.
- (f) Disclosure of the valuation policy and procedures (with regard to valuation of each category of securities/assets where the scheme will invest, situation where these methods will be used, process and methodology and impact of implementation of these methods, if any) approved by the Board of the asset management company shall be made in Statement of Additional Information, on the website of the asset management company /mutual fund and at any other place where the Board may specify to ensure transparency of valuation norms to be adopted by asset management company.
- (g) The responsibility of true and fairness of valuation and correct NAV shall be of the asset management company, irrespective of disclosure of the approved valuation policies and procedures i.e. if the established policies and procedures of valuation do not result in fair/ appropriate valuation, the asset management company shall deviate from the established policies and procedures in order to value the assets/ securities at fair value:

Provided that any deviation from the disclosed valuation policy and procedures may be allowed with appropriate reporting to Board of Trustees and the Board of the asset management company and appropriate disclosures to investors.

- (h) The asset management company shall have policies and procedures to detect and prevent incorrect valuation.
- (i) Documentation of rationale for valuation including inter scheme transfers shall be maintained and preserved by the asset management company as per regulation 50 of these regulations to enable audit trail.
- (j) In order to have fairness in the valuation of debt and money market securities, the asset management company shall take in to consideration prices of trades of same security or similar security reported at all available public platform.

In addition to the above, a mutual fund may value its investments according to the following Valuation Guidelines. In case of any conflict between the Principles of Fair Valuation as detailed above and Valuation Guidelines issued by the Board hereunder

or elsewhere, the Principles of Fair Valuation detailed above shall prevail.

Valuation Guidelines”;

- (d) in sub-clause (ii) of clause 2, after the words and symbol “Board of the asset management company.” and before the words, “Such decision of the Board”, the following words and symbol shall be inserted, namely:.

“For example, non traded debt and money market securities of short term maturities, as may be specified by the Board from time to time, may be valued on amortization basis provided that such valuation shall be reflective of the fair value of the securities and all investors are treated fairly.”

U. K. Sinha
Chairman

Banking Laws

14 Guidelines on Fair Practices Code for NBFCs

Issued by the Reserve Bank of India vide DNBS. CC.PD.No.266 /03.10.01/2011-12. Dated 26.03.2012.]

1. The Reserve Bank vide its circular dated September 28, 2006, issued guidelines on Fair Practices Code (FPC) for all NBFCs to be adopted by them while doing lending business. The guidelines *inter alia*, covered general principles on adequate disclosures on the terms and conditions of a loan and also adopting a non-coercive recovery method.
2. A review of the guidelines is made in view of the creation of a new category of NBFCs viz; NBFC-MFIs and also rapid growth in NBFCs' lending against gold jewellery. The revised guidelines issued under Section 45 L of the Reserve Bank of India Act, 1934 (Act 2 of 1934) and of all the powers enabling it in this behalf, in supercession of



From the Government

the CC dated September 28, 2006, is enclosed in the annex. The Guidelines have also incorporated the instructions issued vide CC No. 95 dated May 24, 2007 on 'Complaints about excessive interest charged by NBFCs' and CC No. 139 dated April 24, 2009 on 'Clarification regarding re-possession of vehicles financed by NBFCs' for reference.

3. 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.

Uma Subramaniam
Chief General Manager-in-Charge

ANNEX

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 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) 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.

(vii) 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.

(viii) 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.

(ix) 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 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.

15 Convergence of Indian Accounting Standards with International Financial Reporting Standards – Urban Co-operative Banks

Issued by the Reserve Bank of India vide UBD.CO.BPD. No. 25/12.05.001/ 2011-12 Dated 06.03.2012.]

1. The Core Group constituted by the Ministry of Corporate Affairs, Government of India had approved in March 2010, a road map for convergence of Indian Accounting Standards (IAS) with International Financial Reporting Standards (IFRS). In the Annual Policy Statement 2010-2011 of the Reserve Bank issued on April 20, 2010, it was stated that UCBs having net worth in excess of Rs. 300 crore would, in the preparation of their accounts, converge with IFRS in tandem with the time schedule given for scheduled commercial banks and accordingly convert their opening balance sheet as on April 1, 2013 in compliance with IFRS converged IAS. UCBs having net worth in excess of Rs. 200 crore but not exceeding Rs. 300 crore would convert their opening balance sheet as on April 1, 2014 in compliance with IFRS converged IAS. An extract of the relevant paragraphs (92 to 94) of the Annual Policy Statement of 2010-2011 is enclosed.
2. UCBs having net worth in excess of Rs. 200 crore are, therefore, advised to take necessary steps to ensure that they are in readiness to adopt the IFRS converged IAS from 1 of April 2013 or 1 April 2014 as the case may be.
3. Please acknowledge receipt of this circular to the concerned Regional Office of this Department.

A.Udgata

Chief General Manager-in-Charge



ANNEX

Reserve Bank of India – Annual Policy Statement 2010-11 – Convergence of Indian Accounting Standards with International Financial Reporting Standards

'Para 92. As a part of the efforts to ensure convergence of the Indian Accounting Standards (IASs) with the International Financial Reporting Standards (IFRSs), the roadmap for banking companies and non-banking financial companies (NBFCs) has been finalised by the Ministry of Corporate Affairs in consultation with the Reserve Bank. As per the roadmap, all scheduled commercial banks will convert their opening balance sheet as at April 1, 2013 in compliance with the IFRS converged IASs.

Para 93. However, with regard to UCBs and NBFCs, a gradualist approach is considered appropriate. The roadmap envisages UCBs having net worth in excess of Rs. 300 crore and NBFCs which are part of NSE Nifty 50 and BSE Sensex 30 as well as those NBFCs having net worth in excess of Rs. 1,000 crore to converge with IFRSs in tandem with the time schedule given for scheduled commercial banks, UCBs having net worth in excess of Rs. 200 crore but not exceeding Rs. 300 crore and other listed NBFCs as well as unlisted NBFCs having a net worth in excess of Rs. 500 crore shall convert their opening balance sheets as on April 1, 2014 in compliance with the IFRS converged IASs. Remaining UCBs, unlisted NBFCs not falling in the above categories and regional rural banks (RRBs) need to follow only the notified IASs which are not converged with IFRSs.

Para 94. Considering the amount of work involved in the convergence process, it is expected that banks and other entities concurrently initiate appropriate measures to upgrade their skills, management information system (MIS) and Information technology (IT) capabilities to manage the complexities and challenges of IFRSs. The implementation poses additional challenge as certain aspects of IFRSs, especially the standards on financial instruments, are under review and would take sometime before they are finalized. In order to facilitate smooth migration to IFRSs, it is proposed:

- ♦ To undertake a study of the implications of the IFRSs convergence process and also to issue operational guidelines as appropriate.
- ♦ To disseminate information through learning programmes with a view to preparing banks and other entities to adhere to the roadmap'.

16 Foreign Institutional Investor (FII) investment in 'to be listed' debt securities

Issued by the Reserve Bank of India vide A.P. (DIR Series) Circular No. 89. Dated 01.03.2012.]

1. Attention of Authorised Dealer Category - I (AD Category-I) banks is invited to Regulation 5(4) and Schedule 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, viz., Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time, in terms of which the Securities and Exchange Board of India (SEBI) registered FIIs are allowed to invest only in listed non-convertible debentures (NCDs) / bonds issued by an Indian company.
2. SEBI has, vide their circular CIR/IMD/FIIC/18/2010 dated November 26, 2010, issued instructions on the revised allocation of investment limits to FIIs. In terms of paragraph 8 of the circular, SEBI has allowed FIIs to invest in 'to be listed' debt securities. Accordingly, it has been decided that SEBI registered FIIs/sub-accounts of FIIs can now invest in primary issues of Non-Convertible Debentures (NCDs)/ bonds only if listing of such bonds / NCDs is committed to be done within 15 days of such investment. In case the NCDs/bonds issued to the SEBI registered FIIs / sub-accounts of FIIs are not listed within 15 days of issuance to the SEBI registered FIIs / sub-accounts of FIIs, for any reason, then the FII/sub-account of FII shall immediately dispose of these bonds/NCDs either by way of sale to a third party or to the issuer and the terms of offer to FIIs / sub-accounts should contain a clause that the issuer of such debt securities shall immediately redeem / buyback the said securities from the FIIs/sub-accounts of FIIs in such an eventuality.
3. Necessary amendments 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 will be issued separately.
4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
5. 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.

ICSI - HEADQUARTERS CALENDAR OF NATIONAL PROGRAMMES FOR THE YEAR -2012

S. No.	Contents	Date	Place / Venue
1.	Training Prog. For Peer Reviewers	January 7, 2012	ICSI Headquarters
2.	National Seminar on Emerging Regulatory Challenges and CS	January 14, 2012	Kolkata
3.	CRF 2012 jointly with MCA	February 13-17, 2012	New Delhi
4.	Training Prog. For Peer Reviewers	March-December 2012	Kolkata, Jaipur, Ahmedabad, Mumbai, Hyderabad, Chennai & Bangalore
5.	Capital Market Week	April 23-28, 2012	Chennai, Delhi, Mumbai, Kolkata, Ahmedabad and Bangalore
6.	National Seminar on IPRs	April, 2012	New Delhi
7.	National Seminar on Sustainability through Integrated Reporting jointly with IGNOU	May, 2012	New Delhi
8.	13 th National Conference for Practising Company Secretaries	May 25-26, 2012	Northern Region
9.	ICSI - ICRA Joint Programme	April, May, June, 2012	Lucknow/Kanpur/ Mysore/Nagpur/ Mumbai/Bhubaneswar/ Bangalore
10.	7 th International Professional Development Fellowship Programme	June 15-22, 2012	South Africa
11.	National Workshops on Secretarial Audit	June-July - August, 2012	Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad
12.	Workshop on Sustainability Reporting and Integrated Reporting	June, 2012	New Delhi
13.	One Day National Workshop on Competition Law Compliance (ICSI-CCI)	June, 2012	New Delhi
14.	Corporate Governance Week & CG Conclave	August 27-31, 2012	All Regional Councils/ Chapters & New Delhi
15.	Full Day Chain Programmes on "National Voluntary Guidelines and Integrated Reporting" Sponsored by NFCG	August-September, 2012	All Regional Councils/ A & B Grade Chapters
16.	40 th National Convention of Company Secretaries	October 4-5-6, 2012	WIRC
17.	ICSI Foundation Day	October, 2012	New Delhi
18.	Jury Meeting for ICSI National Award for Excellence in Corporate Governance	November 17, 2012	New Delhi
19.	12 th ICSI National Award for Excellence in Corporate Governance	December 21, 2012	EIRC
20.	Investor Awareness Programmes under IEPF	Being organised	Smaller Cities/Towns
21.	National Chain Programmes on Companies Bill	Immediately after passing of Bill	All over India
22.	National Seminar on Labour Laws	December, 2012	Delhi, Kolkata, Mumbai, Chennai, Bangalore



Institute News



MEMBERS ADMITTED

Sl. No.	Name	Membership No.	Region
---------	------	----------------	--------

FELLOWS*

1	Sh. Abhishek Chaudhary	FCS - 6701	NIRC
2	Sh Ranjan Kumar Sahu	FCS - 6702	NIRC
3	Ms. Arti Narayan Kamath	FCS - 6703	WIRC
4	Sh. Manish Shukla	FCS - 6704	NIRC
5	Sh Deepak Jain	FCS - 6705	WIRC
6	Sh. D Praveen Kumar	FCS - 6706	SIRC
7	Sh. Nitin B. Prabhune	FCS - 6707	WIRC
8	Sh. B Venkatesh Babu	FCS - 6708	SIRC
9	Sh. Parvinder Singh Arora	FCS - 6709	NIRC
10	Sh. Sushil Kumar Sakhuja	FCS - 6710	NIRC
11	Sh. Pramod Kumar Jain	FCS - 6711	WIRC
12	Sh. Raghuram Kota	FCS - 6712	SIRC
13	Sh. Arvind Bajpai	FCS - 6713	WIRC
14	Sh. Manish Aggarwal	FCS - 6714	NIRC
15	Ms. Sandhya Malhotra	FCS - 6715	WIRC
16	Ms. Shweta Siddharth Mande	FCS - 6716	WIRC
17	Sh. Biman Deb Nath	FCS - 6717	EIRC
18	Sh. R Kannan	FCS - 6718	SIRC

* Admitted on 21st February, 29th February, 2012 and 12th March, 2012



Post Budget Panel Discussion on DD News and Zee Business



Post Budget Panel Discussion with **CS Nesar Ahmad**, President, The ICSI was telecast Live on 16.3.2012 at **DD NEWS** between 3 and 4.15 P.M. in its programme Budget 2012 and on 17.3.2012 by **ZEE BUSINESS** in its programme Budget Impact between 1 and 2 P.M.

19	Sh. Navin Chandra J Desai	FCS - 6719	WIRC
20	Ms. Monica Kalra	FCS - 6720	SIRC
21	Sh. Sandeep Indubhai Gandhi	FCS - 6721	WIRC
22	Ms. Premalata G. Hosur	FCS - 6722	SIRC
23	Sh. Ajay Kumar Agarwal	FCS - 6723	EIRC
24	Ms. Sunita	FCS - 6724	NIRC
25	Sh. Ayyaswamy Rengarajan	FCS - 6725	SIRC
26	Sh. K Vaidyanathan	FCS - 6726	WIRC
27	Sh. Chhatrapal Sugandh	FCS - 6727	EIRC
28	Sh. G Ramasubramanian	FCS - 6728	SIRC
29	Ms. Sheetal Vaze	FCS - 6729	WIRC
30	Sh. Kunjabihari Pradhan	FCS - 6730	NIRC
31	Sh. Dinesh Kapoor	FCS - 6731	NIRC

ASSOCIATES*

1	Ms. Gauri Shashikant Pawar	ACS - 29639	WIRC
2	Sh. Sajeevan C V	ACS - 29640	WIRC
3	Mr. Digamber Shriram Mahajani	ACS - 29641	WIRC
4	Ms. Anchit Pandey	ACS - 29642	NIRC
5	Mr. Manoj Kumar Saxena	ACS - 29643	NIRC
6	Ms. Parul Pathak	ACS - 29644	NIRC
7	Ms. Bhawna Salwan	ACS - 29645	NIRC
8	Ms. Pooja Mangain	ACS - 29646	NIRC
9	Ms. Nidhi Sharma	ACS - 29647	NIRC
10	Sh. Mihir Mehta	ACS - 29648	WIRC
11	Ms. Aditi Pethkar	ACS - 29649	WIRC
12	Ms. Sharmin Vali Patel	ACS - 29650	WIRC
13	Sh. Anurag Gangrade	ACS - 29651	WIRC
14	Sh. Himanshu Nikendra Khona	ACS - 29652	WIRC
15	Sh. Pratik Shah	ACS - 29653	WIRC
16	Ms. Shimpi Mittal	ACS - 29654	WIRC
17	Mr. Deepak Walia	ACS - 29655	NIRC
18	Ms. Bhartee Srivastava	ACS - 29656	NIRC
19	Ms. Janki Shah	ACS - 29657	WIRC
20	Mr. Tanay Ojha	ACS - 29658	NIRC
21	Ms. Vasundhara Rathore	ACS - 29659	WIRC
22	Mr. Adit Bhuvra	ACS - 29660	SIRC
23	Ms. Neha Agrawal	ACS - 29661	NIRC
24	Mr. Raman Sharma	ACS - 29662	NIRC

* Admitted on 21st February, 29th February, 2012 and 12th March, 2012



25	Mr. Govind Kumar Mishra	ACS - 29663	NIRC	81	Ms. Yamini Budhiraja	ACS - 29719	NIRC
26	Ms. Renuka Bhura	ACS - 29664	WIRC	82	Ms. Ritu Daga	ACS - 29720	EIRC
27	Ms. Anjali Rastogi	ACS - 29665	NIRC	83	Ms. Sneha Bindra	ACS - 29721	NIRC
28	Mr. Ravindra Tukaram Uttekar	ACS - 29666	WIRC	84	Ms. Aditi Malik	ACS - 29722	NIRC
29	Mr. Gulshan Kumar Batra	ACS - 29667	NIRC	85	Sh. Vineet Kothari	ACS - 29723	EIRC
30	Ms. Srishtee Sinha	ACS - 29668	EIRC	86	Ms. Bijoyeta Chakrabarty	ACS - 29724	EIRC
31	Sh. Nitin Goyal	ACS - 29669	NIRC	87	Mr. Babulal Yadav	ACS - 29725	EIRC
32	Ms. Dharti Soni	ACS - 29670	WIRC	88	Ms. Rohini	ACS - 29726	EIRC
33	Ms. Renuka M C	ACS - 29671	SIRC	89	Ms. Muthu Lakshmi M	ACS - 29727	SIRC
34	Sh. Rituparna Kalita	ACS - 29672	EIRC	90	Sh. Abhisekh Jain	ACS - 29728	SIRC
35	Sh. Ashok Kumar Shukla	ACS - 29673	NIRC	91	Ms. Mercy Susan Paulose	ACS - 29729	SIRC
36	Sh. Suneet Singh Grover	ACS - 29674	NIRC	92	Sh. K Maheswaran	ACS - 29730	SIRC
37	Ms. Priti Gupta	ACS - 29675	NIRC	93	Sh. Vijay Gupta	ACS - 29731	NIRC
38	Ms. Tannu Sharma	ACS - 29676	NIRC	94	Ms. Ratika Ravi Gandhi	ACS - 29732	WIRC
39	Ms. Sonia Jain	ACS - 29677	NIRC	95	Mr. Adwait Sunil Kulkarni	ACS - 29733	WIRC
40	Ms. Neha Gupta	ACS - 29678	NIRC	96	Ms. Madhura Kiran Ubale	ACS - 29734	WIRC
41	Ms. Priyanka Makar	ACS - 29679	NIRC	97	Mr. Parag Anil Shah	ACS - 29735	WIRC
42	Ms. Kanika Nevatia	ACS - 29680	NIRC	98	Sh. Jignesh Maheshbhai Patel	ACS - 29736	WIRC
43	Ms. Kanika Khandelwal	ACS - 29681	NIRC	99	Ms. Aruna Subramanian	ACS - 29737	WIRC
44	Mr. Ravi Gour	ACS - 29682	NIRC	100	Mr. Husain Shahbuddin	ACS - 29738	WIRC
45	Mr. Greevas Job Panakkal	ACS - 29683	SIRC	101	Sh. T Nagarajan	ACS - 29739	SIRC
46	Ms. Anagha Paranjape	ACS - 29684	SIRC	102	Mr. Nikhil Rathod	ACS - 29740	SIRC
47	Sh. Pramod Vasant Patil	ACS - 29685	WIRC	103	Sh. Ayan Dutta	ACS - 29741	EIRC
48	Ms. Khushbu Laherchand Shah	ACS - 29686	WIRC	104	Sh. Sunil Agarwal	ACS - 29742	EIRC
49	Sh. Girish Sunitkumar Varma	ACS - 29687	WIRC	105	Ms. Pratibha Bafna	ACS - 29743	EIRC
50	Mr. K Gaurav Kumar	ACS - 29688	SIRC	106	Mr. Parag Dilip Derekar	ACS - 29744	WIRC
51	Ms. Rawal Jagruti Sohanlal	ACS - 29689	WIRC	107	Mr. Sivaramakrishnan J	ACS - 29745	SIRC
52	Ms. Sakina Chakkiwala	ACS - 29690	WIRC	108	Sh. Raman Kumar Jha	ACS - 29746	EIRC
53	Mr. Sagar Rajaram Khot	ACS - 29691	WIRC	109	Ms. Prachi Viranchi Shukla	ACS - 29747	WIRC
54	Mr. Gaurang Jai Prakash Mehta	ACS - 29692	WIRC	110	Mr. Jafar Ali Md Saleem Shaikh	ACS - 29748	WIRC
55	Mr. Prasad Suresh More	ACS - 29693	WIRC	111	Ms. Mayuri Chhichhiya Vijaykumar	ACS - 29749	WIRC
56	Ms. Meghal Mehta	ACS - 29694	WIRC	112	Sh. R Ragul	ACS - 29750	SIRC
57	Sh. Ashish Pasari	ACS - 29695	EIRC	113	Sh. Prasanth M S	ACS - 29751	SIRC
58	Mrs. Neha Agrawal	ACS - 29696	EIRC	114	Sh. Chandra Prakash Abar	ACS - 29752	SIRC
59	Mr. Rohit Manohar Soman	ACS - 29697	WIRC	115	Mr. Sankar Sundaresan	ACS - 29753	SIRC
60	Mr. Joel	ACS - 29698	NIRC	116	Ms. Kanta Kiroriwal	ACS - 29754	NIRC
61	Ms. Esha Chakraborty	ACS - 29699	EIRC	117	Mr. Abhishek Halan	ACS - 29755	EIRC
62	Ms. Swati Fitkariwala	ACS - 29700	EIRC	118	Ms. Mamta Udeshi	ACS - 29756	EIRC
63	Sh. Dhananjay Manohar Apte	ACS - 29701	WIRC	119	Ms. Sapana Sharma	ACS - 29757	NIRC
64	Mr. Prasad Prafulla Nene	ACS - 29702	WIRC	120	Ms. Meenakshi Goel	ACS - 29758	NIRC
65	Ms. Deepti Srivastava	ACS - 29703	NIRC	121	Sh. C Rakesh	ACS - 29759	SIRC
66	Ms. Shilpi Ojha	ACS - 29704	NIRC	122	Sh. Segar L K	ACS - 29760	SIRC
67	Ms. Sheeba Dhamija	ACS - 29705	NIRC	123	Sh. Chandan Navalkishor Kshirsagar	ACS - 29761	WIRC
68	Ms. Pranali Jitendra Parekh	ACS - 29706	WIRC	124	Sh. Asim Ahmed Rizvi	ACS - 29762	NIRC
69	Mr. Swapneel Shrikant Kuber	ACS - 29707	WIRC	125	Ms. Pooja Vijay Potdar	ACS - 29763	WIRC
70	Ms. Ruchita Vishwas Manerikar	ACS - 29708	WIRC	126	Mrs. Kajal Kiran Damania	ACS - 29764	WIRC
71	Mr. Dharmendra Kumar Mishra	ACS - 29709	NIRC	127	Mr. Srikumar B	ACS - 29765	NIRC
72	Mr. Sheetal Shah	ACS - 29710	SIRC	128	Sh. Shrikant C Rikhe	ACS - 29766	WIRC
73	Ms. Jyotmala Thakar	ACS - 29711	WIRC	129	Ms. Sharon Peter Dsouza	ACS - 29767	WIRC
74	Ms. Suchi Aggarwal	ACS - 29712	NIRC	130	Mr. Jayesh Jasrajbhai Khokhani	ACS - 29768	WIRC
75	Ms. Monikuntala Bowra	ACS - 29713	EIRC	131	Mr. Parth Makwana	ACS - 29769	WIRC
76	Ms. Raka Banerjee	ACS - 29714	EIRC	132	Mr. V Anantha Subramanian	ACS - 29770	SIRC
77	Ms. Arpita Banerjee	ACS - 29715	SIRC				
78	Ms. Jagadheeswari R	ACS - 29716	SIRC				
79	Ms. Anumita Mishra	ACS - 29717	EIRC				
80	Ms. Sweta Saxena	ACS - 29718	EIRC				



News from the Institute

133	Ms. Mary Misha M	ACS - 29771	SIRC
134	Mr. Avnish Malpani	ACS - 29772	NIRC
135	Ms. Ranjitha B P	ACS - 29773	SIRC
136	Ms. Monika Mittal	ACS - 29774	NIRC
137	Mr. Jayesh Ratan Ahire	ACS - 29775	WIRC
138	Ms. Shreya Kaushik	ACS - 29776	EIRC
139	Sh. Sandeep Kumar	ACS - 29777	NIRC
140	Ms. Sushma Srinath	ACS - 29778	SIRC
141	Ms. Meera Krishnakumar	ACS - 29779	SIRC
142	Ms. Bhavika Chandulal Ranparia	ACS - 29780	WIRC
143	Mr. Hitesh Hasmukhlal Thakkar	ACS - 29781	WIRC
144	Mr. Shravan Agrawal	ACS - 29782	EIRC
145	Mr. Heera Lal	ACS - 29783	NIRC
146	Ms. Jaya Jain	ACS - 29784	WIRC
147	Ms. Zankhana Rajen Zaveri	ACS - 29785	WIRC
148	Ms. Swati Agarwal	ACS - 29786	EIRC
149	Ms. Pallavi Prakash Shedje	ACS - 29787	WIRC

Restored*

1.	Sh. H Shambhu Sharma	ACS - 12609	SIRC
2.	Sh. K Chandrasekaran	FCS - 2327	SIRC
3.	Ms. Shweta Agarwal	ACS - 27057	NIRC
4.	Sh. Sanjeev Kumar Sapra	ACS - 11912	NIRC
5.	Ms. Namita Kumari	ACS - 24964	WIRC
6.	Sh. Sanjay K Singhal	FCS - 3178	NIRC
7.	Sh. Gouri Shanker Mishra	ACS - 16394	SIRC
8.	Mrs. Mridula Khemka	ACS - 25384	WIRC
9.	Sh. Sumit Kumar Gupta	FCS - 5059	NIRC
10.	Ms. Shweta Choudhury	ACS - 25882	EIRC
11.	Sh. Ajit Yadav	FCS - 3916	NIRC
12.	Sh. Nitesh Radheyshyam Goyal	ACS - 18899	WIRC
13.	Ms. Soma Gupta	ACS - 18014	NIRC
14.	Sh. Sarvesh Bhardwaj	FCS - 5028	NIRC
15.	Sh. Krishan Kumar	ACS - 17474	NIRC
16.	Sh. Rajesh Kumar Khurana	ACS - 6993	NIRC
17.	Sh. S V Krishnan	ACS - 15244	SIRC
18.	Mrs. Ruchita Amit Kumar	ACS - 23294	WIRC
19.	Sh. Pinkesh Kumar Jain	ACS - 19707	WIRC
20.	Sh. Navin Sinha	ACS - 11792	NIRC
21.	Sh. Janakraj	ACS - 8366	NIRC
22.	Sh. Dinesh Narang	ACS - 6654	NIRC
23.	Ms. N Anuradha	ACS - 19054	SIRC
24.	Sh. B Shivadutt	ACS - 10136	SIRC
25.	Sh. Sudarshan Motilal Jain	ACS - 10111	WIRC
26.	Sh. Sandeep Aggarwal	ACS - 18302	NIRC
27.	Sh. Shanker Bhatia	ACS - 17152	NIRC
28.	Sh. Anshu Agrawal	ACS - 21512	WIRC
29.	Sh. A K Goel	FCS - 1270	NIRC
30.	Sh. B N Murlidharan	ACS - 9612	SIRC
31.	Sh. Devendra Manchanda	ACS - 6350	NIRC
32.	Ms. Betsy Varghese	ACS - 17114	SIRC
33.	Sh. Sanjiv Kumar Shah	ACS - 16112	SIRC

34.	Sh. Mukesh S Thakur	FCS - 3545	WIRC
35.	Sh. Lakshmikanth Rachamadugu	ACS - 17624	SIRC
36.	Ms. Tanvi Aggarwal	ACS - 17554	NIRC
37.	Sh. S N Sridhar	FCS - 2346	EIRC
38.	Sh. A K Laxminarain	ACS - 7259	WIRC
39.	Sh. Mardan Singh	FCS - 1933	NIRC
40.	Ms. Reeba Varughese	ACS - 24030	NIRC
41.	Sh. Sanjeev Kumar Dhiman	ACS - 25879	NIRC
42.	Sh. Raghava Shukla	FCS - 5252	NIRC
43.	Sh. S Nandakumaran	ACS - 15773	SIRC
44.	Ms. Pooja Gupta	ACS - 23713	NIRC
45.	Sh. V. Lakshminarayanan	ACS - 4908	SIRC
46.	Sh. S Sampathkumar	FCS - 6194	SIRC
47.	Ms. Vanita Girdharilal Agrawal	ACS - 15966	WIRC
48.	Ms. Priya Jain	ACS - 19358	NIRC
49.	Sh. Prafulla Ambadasrao Deulkar	FCS - 6051	WIRC
50.	Sh. Tejpaal Bhatia	FCS - 1547	NIRC
51.	Sh. S Chockalingam	ACS - 22091	SIRC
52.	Sh. A Gopinathan	ACS - 9528	WIRC
53.	Ms. Babita Kedia	ACS - 20757	EIRC
54.	Sh. Dinesh Shivaram Shastri	FCS - 4194	SIRC
55.	Sh. Anuj Kumar	ACS - 15840	NIRC
56.	Sh. Sanjay Kumar Goel	ACS - 12037	NIRC
57.	Sh. Suresh Jayaraman	ACS - 12672	WIRC
58.	Ms. Venu Ladiwala	ACS - 16356	NIRC
59.	Sh. Gautam Chopra	ACS - 17594	NIRC
60.	Ms. Eti Suri	ACS - 23642	NIRC
61.	Sh. M. Venkatraman Iyer	ACS - 15531	WIRC
62.	Ms. Ritu Goyal	ACS - 13313	NIRC

CERTIFICATE OF PRACTICE

Sl. No.	Name	ACS/FCS No.	C P No.	Region
---------	------	-------------	---------	--------

ISSUED*

1	Sh. Ankit Poddar	ACS - 25443	10625	NIRC
2	Mr. Sandeep Kumar	ACS - 29086	10626	NIRC
3	Ms. Jasleen Kaur	ACS - 28854	10627	NIRC
4	Ms. Neha Jain	ACS - 22618	10628	NIRC
5	Ms. Sarla Baghel	ACS - 28995	10629	NIRC
6	Sh. Prabhakar Kumar	FCS - 5781	10630	NIRC
7	Ms. Sunaina Jhingan	ACS - 24249	10631	NIRC
8	Sh. B Chandrasekaran	FCS - 2431	10632	SIRC
9	Mr. Prince Mathew	ACS - 29439	10633	SIRC
10	Mr. Anubhav Jain	ACS - 29380	10634	NIRC
11	Ms. Rohini Jaiprakash Haridas	ACS - 28861	10635	WIRC
12	Ms. Ritika Sood	ACS - 28560	10636	NIRC
13	Ms. Nazia Ajaz	ACS - 27009	10637	NIRC
14	Mrs. Priyanka Padale	ACS - 28799	10638	WIRC

* Restored from 21st February 2012 to 20th March, 2012

* During the month of February, 2012

April
2012



CHARTERED SECRETARY

520



15	Ms. Anchal Agarwal	ACS - 25824	10639	EIRC
16	Ms. Shubham Agarwal	ACS - 21884	10640	NIRC
17	Ms. Kavita	ACS - 29535	10641	NIRC
18	Mr. Ashishkumar Govindlal Shah	ACS - 29017	10642	WIRC
19	Ms. Bindhu Kilari	ACS - 29174	10643	SIRC
20	Ms. Nirali Patel	ACS - 29452	10644	WIRC
21	Mrs. Richa Agarwalla	ACS - 23743	10645	EIRC
22	Ms. Sonia Bajpai	ACS - 29191	10646	NIRC
23	Mr. Mohit Nagar	ACS - 27492	10647	NIRC
24	Mrs. Yasmin Mehernosh Panthaki	ACS - 20237	10648	WIRC
25	Ms. Jayata Dashottar	ACS - 29551	10649	WIRC
26	Ms. Sneha Jain	ACS - 24454	10650	SIRC
27	Sh. Vijay Singh	ACS - 26057	10651	NIRC
28	Ms. Sejal Narendra Shah	ACS - 29609	10652	WIRC
29	Mr. Satyajit Prasad	ACS - 28731	10653	EIRC
30	Sh. Nirav Kirankumar Shah	ACS - 24347	10654	WIRC
31	Mr. Akshat Garg	ACS - 22637	10655	NIRC
32	Sh. Vivek Gupta	ACS - 29543	10656	NIRC
33	Ms. Payal Goenka	ACS - 27206	10657	EIRC
34	Mr. Aslam Ahmad	ACS - 29060	10658	NIRC
35	Ms. Shikha	ACS - 23574	10659	NIRC
36	Sh. A Chand Basha	FCS - 4176	10660	SIRC
37	Ms. Manasa Lalitha S	ACS - 27963	10661	SIRC
38	Ms. Kalpna Singhal	ACS - 29490	10662	NIRC
39	Ms. Aishwarya T M C	ACS - 28065	10663	SIRC
40	Ms. Bharati Nandkishor Lahoti	ACS - 27147	10664	WIRC
41	Mr. Nikhil Dua	ACS - 29603	10665	NIRC
42	Ms. Nisha Singhal	ACS - 27405	10666	NIRC
43	Mrs. Rachana Dawda	ACS - 21159	10667	WIRC
44	Ms. Anjana Manseta	ACS - 29605	10668	WIRC
45	Sh. Paras Rameshbhai Parikh	ACS - 21849	10669	WIRC
46	Sh. Bhupendra Pratap Chouhan	ACS - 29552	10670	WIRC
47	Ms. Ruchika Rushik Shah	ACS - 29160	10671	WIRC
48	Ms. Arpita Bisaria	ACS - 21324	10672	NIRC
49	Mr. Rahul Misra	ACS - 28850	10673	NIRC
50	Ms. Himangini Nandkumar Doshi	ACS - 29518	10674	WIRC
51	Ms. Jyoti Sharma	ACS - 28929	10675	NIRC
52	Ms. Nazia Rehman	ACS - 29226	10676	NIRC
53	Ms. Priyanka Kansal	ACS - 25436	10677	NIRC
54	Prof. Praveen Kumar Pandey	ACS - 21867	10678	NIRC
55	Mr. Samir Srivastava	ACS - 28528	10679	NIRC
56	Mrs. Renu Holani	ACS - 25637	10680	WIRC
57	Sh. Kunal Desai	ACS - 22751	10681	WIRC
58	Ms. Nidhi Pokharna	ACS - 28357	10682	WIRC
59	Ms. Bhartee Srivastava	ACS - 29656	10683	NIRC
60	Ms. Honey Satpal	ACS - 27401	10684	NIRC
61	Ms. Pooja Karia	ACS - 21076	10685	WIRC
62	Ms. Anshu Parikh	ACS - 26791	10686	NIRC
63	Sh. Shivajirao Namadeo Patil	ACS - 11038	10687	WIRC
64	Sh. T S P Balasubramaniam	ACS - 12100	10688	SIRC
65	Ms. Amita Jain	ACS - 19996	10689	EIRC
66	Ms. Tejal Jayant Waje	ACS - 26782	10690	WIRC

CANCELLED*

1.	Mr. Deepak Pratap Singh	ACS - 29140	10530	WIRC
2.	Mr. Mukesh Jain	ACS - 28959	10517	NIRC
3.	Sh. Rajat Gupta	ACS - 23153	9157	NIRC
4.	Sh. Bharat Bhushan	FCS - 3280	10170	NIRC
5.	Ms. Kirti Sharma	ACS - 24000	9390	NIRC
6.	Sh. Naresh Kumar Malhotra	ACS - 9191	9988	NIRC
7.	Sh. R Sivaram	ACS - 11043	9795	SIRC
8.	Mr. Amit Bharti	ACS - 28993	10540	EIRC
9.	Sh. Sandeep Agarwal	ACS - 20301	7573	NIRC
10.	Sh. Prabir Mahato	ACS - 13595	8086	EIRC
11.	Ms. Rajashree Anand Bapat	ACS - 15559	5149	WIRC
12.	Mrs. Shilpa Kotagiri	ACS - 23208	9405	SIRC
13.	Ms. Priyanka Kansal	ACS - 25436	10131	NIRC
14.	Ms. Nidhi Adhikari	ACS - 28099	10326	NIRC
15.	Mr. Amit Dave	ACS - 28787	10466	NIRC
16.	Mr. Md Irfan Ansari	ACS - 27617	10034	EIRC
17.	Ms. Pooja Jain	ACS - 27906	10119	NIRC
18.	Ms. Roopali Kirit Gala	ACS - 25580	9182	WIRC
19.	Sh. Deepak Goyal	ACS - 18961	10309	NIRC
20.	Sh. C J Joseph	ACS - 11206	10290	SIRC

LICENTIATE ICSI

Sl. No.	Name	Licentiate No.	Region No.
---------	------	----------------	------------

ADMITTED**

1.	Sh. Shraavan Guduthur	6313	South
2.	Sh. Nilesh Laghate	6314	West
3.	Sh. Gaurav Sharma	6315	East
4.	Sh. Sagar Rajendra Chordiya	6316	West
5.	Sh. Mohit Kumar Bansal	6317	West
6.	Amritha E. R. (Ms.)	6318	South
7.	Sh. Darshan Vijaykar Monkad	6319	West
8.	Shradha Bhama Shah Gupta (Ms.)	6320	West
9.	Sh. Sumit Nandkishor Agrawal	6321	West
10.	Sh. Sarthak Ahuja	6322	North
11.	Sh. Harshul Malik	6323	North
12.	Sh. Amit Karansinh Tomar	6324	West
13.	Sh. Kushal Bansal	6325	North
14.	Sh. Amit Kumar Agarwal	6326	East
15.	Sh. Neeraj Sharad Jakatdar	6327	West
16.	Aishwarya Ramani (Ms.)	6328	South

* During the month of February, 2012

** During the period of 1st February, 2012 to 29th February, 2012



News from the Institute



List of Companies Registered for Imparting Training During the Month of February 2012

Region	Training Period	Stipend (Rs.)		
Eastern				
Wellman Carbo Metalicks (India) Ltd. BD 191, Salt Lake, Sector - 1 Kolkata 700064 <i>E-mail: wellman.kgp@gmail.com</i>	15 months Training	3500/-	Bhilwara Spinners Ltd. Gandhi Nagar, Bhilwara 311001 Rajasthan	15 months Training Suitable
Jet Air Agencies (P) Ltd 29B Rabindra Sarani 3rd Floor, Room No. 10E & 16 W Kolkata 700073 <i>E-mail: jetair05@rediffmail.com</i>	15 & 03 months Training	3500/-	Perfect Capital Services Ltd. T-24A, Green Park Extn. Near Mandir Wali Gali, Yusuf Sarai New Delhi 110016 <i>E-mail: info@perfectgroup.org</i>	15 months Training Suitable
Crescent Foundry Company Pvt. Ltd. Lords # 406 7/1 Lord Sinha Road Kolkata 700071 <i>E-mail: head.hr@crescentfoundry.in</i>	15 months Training	Suitable	Star Track Terminals Pvt. Ltd. ICD Dadri, Tilpata Road Gautam Budhnagar, Dadri Greater Noida 201311	15 months Training Suitable
Amazon Agro Products Ltd. Infinity Infotech Park 2nd Floor, Tower I Plot A3, Block GP, Sector 5 Electronic Complex, Kolkata 700091 <i>E-mail: info@amazonagro.com</i>	15 months Training	5000/-	SRS Global Securities Ltd. SRS Multiplex (Top Floor) City Centre, Sector 12, Faridabad 121007 <i>E-mail: info@srsparivar.com</i>	15 months Training 3500/-
Northern				
Shri Gaurav Dani Partner, Induslaw A-4 Sector 26, Noida 201301 <i>E-mail: delhi@induslaw.com</i>	6 months Training	Suitable	Advance Panels & Switchgears (P) Ltd. A - 257, DSIDC Narela Industrial park Narela, Delhi 110040 <i>E-mail: del1@advancepanels.com</i>	15 months Training 3500/-
Siyaram Exports India Pvt. Ltd Siyaram Street Durgapur Tonk Road, Jaipur	15 & 03 months	Suitable	Prime Hitech Engineering Ltd. Prime Group Building 11/5B, Pusa Road, New Delhi 110005 <i>E-mail: phel@prime-phel.com</i>	15 months Training Suitable
IL & FS Education and Technology Services Ltd. 2nd Floor, Niryat Bhawan Rao Tula Ram Marg New Delhi 110057 <i>E-mail: daisy.khanna@ilfsets.com</i>	15 & 03 months	7000/-	Jubilant Industries Ltd. I - A, Sector 16 A Noida 201301	15 months Training Suitable
			ITW India Ltd. Level 1, Lotus Plaza 732/1, Mehrauli Gurgaon Road Sector 14, Gurgaon 122001 <i>E-mail: info@itwindia.com</i>	15 & 03 months Training 7500/-
			Deem Construction Co. Private Ltd. AA-12, Jay Ambey Nagar Near Pawana Restaurant Gopalpura Moad, Tonk Road, Jaipur <i>E-mail: deemconstruction@sdsgrups.com</i>	15 months Training Suitable
			Globus Construction and Developers Ltd. C 165 Naraina Industrial Area Phase I, New Delhi 110028 <i>E-mail: gcdl@in.com</i>	15 months Training 7500/-
			Case Cold Roll Forming Ltd. Plot No 70, Sector 32 Gurgaon 122001 <i>E-mail: infra@casecold.com</i>	15 & 03 months Training Suitable
			Delhi State Industrial & Infrastructure Development Corporation Ltd. N 36 Bombay Life Building Connaught Circus New Delhi 110001 <i>E-mail: support@dsiidc.org</i>	03 months practical Training Suitable
			Brentwoods International Ltd. B 204, Ansal Chambers I Bhikaji Cama Place New Delhi 110066 <i>E-mail: info@brentwoodsclub.com</i>	15 months Training Suitable



Samarth Life Style Retailing Pvt. Ltd. 601, 6th Floor, Ganga Heights SB-154, Lal Kothi, Tonk Road, Jaipur	15 months Training	Suitable	Trinity Touch Private Ltd. D 10, Defence Colony New Delhi 110024 <i>E-mail: postmaster@trinitytouch.com</i>	15 months Training	Suitable
Supreme Build Cap Pvt. Ltd. 8 - A Commissioner Lane Civil Lines, Delhi - 110054	15 months Training	Suitable	Sohan Lal Commodity Management (P) Ltd. C 28 Lawrence Road, Industrial Area Delhi 110035 <i>E-mail: cs@slc-india.com</i>	15 months Training	5400/-
SMC Investments and Advisory Ltd. Upper Ground Floor Kanchenjunga Building 18 Barakhamba Road, Connaught Place New Delhi 110001 <i>E-mail: vimalk@smcinvestments.co.in</i>	15 months Training	Suitable	NTL Electronics India Ltd. B 10 Sector 58, Noida 201301	15 months Training	Suitable
Kavan Polytech Pvt. Ltd. E 42 Jamana Nagar Gali No 6, Sodala Jaipur 302001 <i>E-mail: amitkjainbaid@gmail.com</i>	15 months Training	Suitable	Southern Karnataka Antibiotics & Pharmaceuticals Ltd. Dr. Raj kumar Road, 1 st Block Rajajinagar, Bangalore-560010	15 months Training	Suitable
Oriental Trimax Ltd. 26/25 Bazar Marg Old Rajendra Nagar New Delhi 110060 <i>E-mail: info@orientaltrimax.com</i>	15 months Training	3500/-	Infronics Systems Ltd. 2 nd Floor, Ektha Towers Plot No 2 & 3, Whitefield Kondapur, Hyderabad	15 months Training	Suitable
KLJ Developers Pvt. Ltd. KLJ House, 63 Rama Marg Najafgarh Road New Delhi 110015 <i>E-mail: delhi@kljindia.com</i>	15 months Training	Suitable	Western Dolat Investments Ltd. 301-308, Bhagwati House A/19 Veera Desai Road Andheri (W), Mumbai 400058 <i>E-mail: post@dolatinvest.com</i>	15 months Training	3500/-
Cadillac Build well Pvt. Ltd. KLJ House, 63 Rama Marg Najafgarh Road New Delhi 110015 <i>E-mail: delhi@kljindia.com</i>	15 months Training	Suitable	Future Value Retail Ltd. Future Retail Home Office 7 th Floor, 247 Park, Tower C, L.B.S. Marg, Vikhroli, Mumbai (W) 400083	15 months Training	7000- 10,000/-
Pragya Products Pvt. Ltd. KLJ House, 63 Rama Marg Najafgarh Road New Delhi 110015 <i>E-mail: delhi@kljindia.com</i>	15 months Training	Suitable	IBH Books & Magazines Distributors (P) Ltd. 3rd Floor, Forum, Raghuvanshi Mills Compound, Lower Parel Mumbai 400013	15 months Training	8000/-
KLJ Organic Ltd. KLJ House, 63 Rama Marg Najafgarh Road New Delhi 110015 <i>E-mail: delhi@kljindia.com</i>	15 months Training	Suitable	Godawari Green Energy Ltd. 2nd Floor, Hira Arcade Near New Bus Stand Pandri, Raipur, Chhattisgarh 492001	15 months Training	Suitable
KLJ Plasticizers Ltd. KLJ House 63 Rama Marg Najafgarh Road New Delhi 110015 <i>E-mail: delhi@kljindia.com</i>	15 months Training	Suitable	MAC Financial & Management Consultants (P) Ltd. 101 - A Jolly Bhavan No 2 7 New Marine Lines Churchgate, Mumbai 400020 <i>E-mail: mgbco@mgbco.com</i>	15 months Training	Suitable
Kinetic Impex Ltd. KLJ House, 63 Rama Marg Najafgarh Road New Delhi 110015 <i>E-mail: delhi@kljindia.com</i>	15 months Training	Suitable	Hitech Plast Ltd. C/130 Solaris - I Opp L&T Gate No. 6 Powai, Saki - Vihar Road Mumbai - 400072 <i>E-mail: corp@hitechplast.co.in</i>	15 months Training	Suitable
Lorom India Corporation Pvt. Ltd. L 107, 2 nd Floor, Lajpat Nagar II New Delhi	15 months Training	Suitable			



News from the Institute

Zee Learn Ltd.
135, Continental Building
Dr. Annie Besant Road
Worli, Mumbai - 400018

15 months
Training

Suitable

Torrent Cables Ltd.
6th Floor, Pelican
GCCl Compound
Ashram Road, Ahmedabad 380009
E-mail: tolho@torrentcables.com

15 months
Training

Suitable

MR. /MS. CHANDAN KUMAR JHA
Company Secretary in Practice
Villa no. 4612, Achiever Status
Villa, Kalindi Hills, Sector - 49
Faridabad - 121 001

PCSA - 2875

MR. /MS. NAVIN DESAI
Company Secretary in Practice
27, 4th floor, Agrawal Center
Income tax, Ahmedabad - 380 014

PCSA - 2876

MR. /MS. ARUN KUMAR SINHA
Company Secretary in Practice
2nd floor, Vyapar Bhawan
Lalji-Hirji Road, Ranchi -834 001

PCSA - 2877

MR. /MS. PRASHANT PANGE
Company Secretary in Practice
Office No 4, 799
Swami Krupa, Gadgil Street
Sabashiv Peth, Pune 411030

PCSA - 2878

MR. /MS. ASHISH GOYAL
Company Secretary in Practice
101, 1st floor, Adeshwar Tower
Chopasni Road, Jodhpur

PCSA - 2879

MR. /MS. VIVEK KUMAR
Company Secretary in Practice
T-54, West Patel Nagar
New Delhi - 110 008

PCSA - 2880

MR. /MS. ANKIT KHATTAR
Company Secretary in Practice
145, Gagan Vihar Extension
Delhi -110 051

PCSA - 2881

MR. /MS. AMARENDRA KR. RAI
Company Secretary in Practice
B-182, Sector -50
Ground Floor, Noida - 201 301

PCSA - 2882

MR. /MS. ATUL CHAUHAN
Company Secretary in Practice
6/19, 2nd Floor
Single Storey, Ramesh Nagar
New Delhi -110 015

PCSA - 2883

MR. /MS. RUCHIKA JAIN
Company Secretary in Practice
212, Jagdamba Tower -13
Preet Vihar, Commercial Complex
Delhi- 110 092

PCSA - 2884

MR. /MS. RAKHI AGGARWAL
Company Secretary in Practice
1/11252, Street No.-10
Subhash Park, Shahdara
Delhi -110 032

PCSA - 2885

MR. /MS. S. JEGAN
Company Secretary in Practice
84, N.R.K.R Road,
Sivaksi - 626 123

PCSA - 2886

MR. /MS. VIKAS SHARMA
Company Secretary in Practice
"Om Kuteer", Birsa Dahar
1st Floor, Rourkela -769 012

PCSA - 2887

List of Practising Members Registered for the Purpose of Imparting Training During the Month of February, 2012



MR. /MS. TARUN GOYAL
Company Secretary in Practice
212-A, Jessore Road, Chanda Nilet Bldg
3rd Floor, Flat No. 3/1
Kolkata -700 089

PCSA -2868

MR. /MS. HEMENDRA PATEL
Company Secretary in Practice
505, Samedh, Nr. Associated petrol pump
C.G. Road, Ahmedabad - 380 006

PCSA -2869

MR. /MS. VINAY GUPTA
Company Secretary in Practice
164, V Mall, Near Saidham
Western Express Highway
Kandivali (e), Mumbai - 400 101

PCSA -2870

MR. /MS. BHAVIN B. RATANGHARYA
Company Secretary in Practice
212, Shahjanand Complex
B/h. Bhagwati Chamber
C.G. Road, Navrangpura
Ahmedabad -380 009

PCSA -2871

MR. /MS. ROOPANDE MEHRA
Company Secretary in Practice
D-10, Nimesh Apartments
S.V.P. Road, Borivali (W), Mumbai - 400 092

PCSA - 2872

MR. /MS. ASHWINI G. RAJESHIRKE
Company Secretary in Practice
E-504, Aaradhana Bldg.
Shiv Vallabh Road, Ashokvan, Borivali (East)
Mumbai- 400 066

PCSA - 2873

MR. /MS. MANISH TAMBOLI
Company Secretary in Practice
302, Princess Empire
12th Race Course Road, Indore - 452 001

PCSA - 2874



MR. /MS. SATISH KUMAR Company Secretary in Practice Shop no. - G-5 Om Shanti Tower Opp, Bangla School Lane Main Road Ranchi - 834 008	PCSA - 2888	MR. /MS. VAIBHAV P. SHAH Company Secretary in Practice A-11, Mahavir Dham, Modi Patel Road Bhayndar (West) - 401 101	PCSA - 2900
MR. /MS. CHANDRA G.A. VARDHAN Company Secretary in Practice 207, Ashoka Appt., Ranjeet Nagar Comm. Complex, Patel Nagar Delhi - 110 008	PCSA - 2889	MR. /MS. GAURAV KUMAR SHARMA Company Secretary in Practice Flat No. 310, Gaur Ganga Apt. Sector -4 Vaishali, Ghaziabad -201 010	PCSA - 2901
MR. /MS. RAHUL KHADRIYA Company Secretary in Practice 6/19, 2 nd Floor, Single Storey Ramesh Nagar New Delhi -110 015	PCSA - 2890	MR. /MS. ANKIT BHATIA Company Secretary in Practice, 251/3B/1 Street No - 6, Bhola Nath Nagar Shahdara, Delhi - 110 032	PCSA - 2902
MR. /MS. SUKHWINDER SINGH Company Secretary in Practice 2590, Shadipur, Mandir Lane West Patel Nagar New Delhi -110 008	PCSA - 2891	MR. /MS. DIPTI KUMAR GUPTA Company Secretary in Practice Hudco Housing Estate, Flat No. -11/151 Ultadanga Main Road, Kolkata -700 054	PCSA - 2903
MR. /MS. SURENDER KUMAR GAUR Company Secretary in Practice Nf-29, Shastri Nagar, New Delhi -110 052	PCSA - 2892	MR. /MS. RANAY GOSWAMI Company Secretary in Practice Stephen House, Room No - 45, 4 B.B.D. Bagh East 3 rd Floor, Kolkata -700 001	PCSA -2904
MR. /MS. KHUSHBOO GOYAL Company Secretary in Practice A-11, Sethi Colony Govind Marg, Jaipur -302 004	PCSA - 2893	MR. /MS. JAYSHRI R. SOLANKI Company Secretary in Practice 10A/25, Shakti Nagar, Delhi - 110 007	PCSA -2905
MR. /MS. JAY DILIP KUMAR MEHTA Company Secretary in Practice 301, Sona Chamber, 507/509 JSS Road, Chira Bazar, Marine Mumbai -400 002	PCSA - 2894	MR. /MS. MANDAR SHRIKRISHNA JOG Company Secretary in Practice Office No. 3, 2nd Floor, 2010, Sadashiv Peth Bramha Chambers, Tilak road, Pune - 411 030	PCSA -2906
MR. /MS. ABHISHEK KUMAR LAKHOTIA Company Secretary in Practice Office No. 504, 5 th Floor 2-B, Jaihind CHS, Bhuleshwar Mumbai -400 002	PCSA - 2895	MR. /MS. ANUPAM R. AGGARWAL Company Secretary in Practice C- 108, 2 nd Floor, Mohan Garden, Nawada Uttam Nagar - 110 059	PCSA -2907
MR. /MS. SUMEDHA S. DESHPANDE Company Secretary in Practice Sector no. -7, Plot No. -134/135 F-48/3, Vishweshwar Industrial Premises PCNTDA, Bhosari Pune -411 026	PCSA - 2896	MR. /MS. SONIKA BILOTIA Company Secretary in Practice A- 3 Mahaveer Nagar 1 st Tonk Road, Jaipur - 302018	PCSA -2908
MR. /MS. SANDHYA R. MALHOTRA Company Secretary in Practice Flat No. - 703, Rosemary Runwal Garden City, Walkum Thane (w) - 400 608	PCSA - 2897	MR. /MS. HARSHAL RAMESH WATE Company Secretary in Practice #303, Mahadkar Chambers Karishma Square, Karve Road Kothrud, Pune-411 038	PCSA -2909
MR. /MS. KAPIL KUMAR BALI Company Secretary in Practice 81-D/4, Mehrauli, New Delhi -110 030	PCSA 2898	MR. /MS. SANGEETA HARPALANI Company Secretary in Practice B-248, Phase-I Ashok Vihar Delhi - 110 052	PCSA -2910
MR. /MS. KAUSHIK NAHAR Company Secretary in Practice Kakaria's Excellenza, 2nd Floor Royal Fortune Complex, Daman Road Chala, Vapi -396 191	PCSA - 2899	MR. /MS. VIVEK VAMAN DIVEKAR Company Secretary in Practice Flat no. 21, Ganesh Kunj Society Next to Kandge Park Manikbaug Sinhgad Road Pune -411 051	PCSA -2911
		MR. /MS. MEGHA AGGARWAL Company Secretary in Practice C-49, Bali Nagar Delhi - 110 015	PCSA -2912



Our Members

Company Secretaries Benevolent Fund

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



Reg. No.	LM No.	Name	Mem No.	City
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EIRC

1	8635	Mr. Rajeeb Choudhury	ACS - 29112	Rayagada Distt.
2	8650	Sh. Uttam Bailing	ACS - 21207	Guwahati
3	8661	Ms. Kriti Kiran	ACS - 25010	Patna
4	8683	Mr. Ardhendu Rout	ACS - 28272	Bhubaneswar
5	8694	Sh. Arun Kumar Singhania	FCS - 4210	Kolkata
6	8714	Sh. Vivek Mishra	ACS - 25925	Kolkata
7	8721	Sh. Dharmendra Kumar	ACS - 27516	Kolkata
8	8729	Mrs. Prerna Agarwal	ACS - 28200	Kolkata
9	8776	Sh. Gora Chand Mondal	ACS - 19655	Murshidabad

NIRC

10	8638	Sh Rohit Shadeja	ACS - 20372	New Delhi
11	8639	Ms. Shilpi Bhardwaj	ACS - 24444	Delhi
12	8640	Ms. Manisha Mali	ACS - 29034	Rajsamand
13	8647	Ms. Pooja Agarwal	ACS - 15356	Bareilly
14	8648	Sh. Rajeev Babel	ACS - 23679	Udaipur
15	8652	Mr. Damodar Prasad Dhuper	ACS - 29119	Bhilwara
16	8653	Mr. Sandeep Mehra	ACS - 23624	Gurgaon
17	8655	Sh. Vimal Kumar Gupta	FCS - 6582	Jaipur
18	8656	Sh Kulbhushan Parashar	ACS - 20234	New Delhi

19	8665	Sh. Vishawjeet Kumar Gupta	FCS - 5157	Mohali Distt
20	8666	Mr. Deepak Walia	ACS - 29655	Zirakpur
21	8670	Sh. Gorav Arora	ACS - 14518	New Delhi
22	8671	Sh. Depesh Kumar	ACS - 15278	Ludhiana
23	8672	Sh. Sushil Sharma	FCS - 6535	Ludhiana
24	8674	Sh Gyan Sheel	ACS - 20343	Delhi
25	8675	Sh. Soumendra Das	FCS - 4833	New Shimla
26	8677	Mr. Rakesh Kumar	ACS - 28361	New Delhi
27	8680	Sh. Rama Kant Rai	FCS - 6035	Delhi
28	8681	Ms. Sarika Jain	ACS - 25004	New Delhi
29	8682	Ms. Parul Chauhan	ACS - 26968	New Delhi
30	8685	Mr. Nitin Kumar Bansal	ACS - 26601	Agra
31	8686	Ms. Shruti Gupta	ACS - 25236	Delhi
32	8693	Sh. Akhilesh Kumar Mishra	ACS - 27179	New Delhi
33	8700	Sh. Ashok Kumar Mittal	FCS - 3007	New Delhi
34	8703	Sh. Sanjiv Agrawal	ACS - 3959	Delhi
35	8705	Ms. Vimla Rupani	ACS - 24636	Jodhpur
36	8711	Sh. Arvind Kumar Bajoria	ACS - 15390	Amritsar
37	8716	Ms. Soumya Mittal	ACS - 22607	Agra
38	8718	Sh. Chandra Gupta Ashok Vardhan	FCS - 5583	New Delhi
39	8719	Sh. Amit Manchanda	FCS - 6615	Delhi
40	8735	Sh. Naresh Kumar	ACS - 24691	New Delhi
41	8736	Mr. Naveen Shree Pandey	ACS - 29126	Varanasi
42	8739	Mr. Arun Kumar	ACS - 23083	Delhi
43	8740	Sh. Amol Vyas	ACS - 19768	Jaipur
44	8741	Sh. Lokesh Gautam	ACS - 26181	Rohtak Distt.
45	8742	Sh. Tribhuwan Krishan Johari	ACS - 18842	Delhi
46	8743	Sh. Sanjeev Kumar	ACS - 11730	Faridabad
47	8746	Sh. Vikram Singh Yadav	ACS - 26969	Delhi
48	8747	Mr. Ram Kumar Bhargav	ACS - 28395	Panipat
49	8750	Sh. Saurabh Agrawal	FCS - 5430	New Delhi
50	8751	Sh. Kashif Shamim	ACS - 17625	New Delhi
51	8752	Ms. Garima Rai	ACS - 26070	New Delhi
52	8759	Sh. Tarun Kumar Jain	FCS - 6584	Kota
53	8760	Sh. Amit Goel	FCS - 5299	Delhi
54	8761	Sh. Pradeep Kumar Srivastava	ACS - 18902	Faridabad
55	8762	Ms. Ankita Gupta	ACS - 25266	Kanpur
56	8763	Sh. Devendra Soni	FCS - 5849	Jodhpur
57	8765	Sh. Rajeev Chawla	ACS - 29575	New Delhi
58	8766	Sh. Rajeev Bhambri	FCS - 4327	Ludhiana
59	8767	Sh. Srinivasulu Raju Y	ACS - 23243	Gurgaon
60	8768	Ms. Shalini Baghel	ACS - 26265	Agra
61	8772	Sh. Mukesh Girdhar	ACS - 26278	New Delhi
62	8773	Sh. Bipin Bihari Sah	ACS - 27354	New Delhi

* During the Period 18th February, 2012 to 20th March, 2012.

April
2012



CHARTERED SECRETARY

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Our Members



63	8774	Sh. Rajeev Gupta	ACS - 14669	Ghaziabad
64	8775	Mr. Vipul Sharma	ACS - 27737	Noida
65	8779	Ms. Madhvi Sharma	ACS - 24666	New Delhi
66	8780	Sh. Kapil Kumar Bali	FCS - 5284	New Delhi
67	8782	Dr. Girish Goyal	ACS - 11442	Jaipur
68	8783	Prof. Surendra Pratap Shahi	ACS - 23924	Gorakhpur
69	8785	Ms. Seema Singh	ACS - 26329	Bareilly
70	8786	Ms. Laxmi Mandal	ACS - 27020	New Delhi
71	8787	Mr. Sunil Yadav	ACS - 27609	New Delhi
72	8788	Mr. Govind Kumar Seth	ACS - 29464	New Delhi

SIRC

73	8634	Mrs. Divya Jalla	ACS - 29631	Hyderabad
74	8641	Sh. K J Chandramouli	ACS - 25315	Chennai
75	8642	Sh. Manoranjan Ray Mohapatra	ACS - 27265	Chennai
76	8643	Ms. Indrani Sanka	ACS - 26291	Coonoor
77	8645	Sh. Kiran Tangudu	ACS - 24215	Bangalore
78	8651	Sh. Venkata Subbareddy Y	ACS - 13142	Hyderabad
79	8659	Mrs. Shital Darak Mandhana	ACS - 23210	Bangalore
80	8662	Mr. K Muralidhara Kamath	ACS - 28171	Bangalore
81	8663	Sh. Nagaraj Goud Bodige	ACS - 19038	Hyderabad
82	8664	Sh. C Subramaniam	ACS - 15885	Coimbatore
83	8668	Sh. Devendra Suresh Malegaonkar	ACS - 20385	Chennai
84	8684	Ms. Rajeswari Nachiappan	ACS - 22316	Chennai
85	8689	Sh. Sunil Kumar Sharma	ACS - 21757	Hyderabad
86	8690	Sh. C R Rameshbabu	ACS - 3182	Bangalore
87	8692	Ms. Daijaritta Antony	ACS - 25080	Ernakulam Dist
88	8696	Sh. Champak Kesari Burma	ACS - 20719	Hyderabad
89	8698	Sh. B Bilu	ACS - 20996	Thiruvananthapuram
90	8699	Sh. Ramakrishna Kurra	ACS - 25519	Guntur
91	8702	Ms. Bhagya Mysore Gopalakrishna	ACS - 29324	Mysore
92	8704	Sh. Satya Narayan Mohanty	ACS - 22035	Krishnagiri Dist
93	8706	Sh. K Padmanabhan	ACS - 9861	Kochi
94	8707	Mr. Premjith S	ACS - 29115	Alleppy
95	8712	Mr. Vilas Ishwarappa Kuradikeri	ACS - 29293	Dharwad
96	8717	Sh. Udhayashankar Rajamanickam	ACS - 27605	Perambalur Dist
97	8720	Mr. Pramod Manjunath Hegde	ACS - 27775	Bangalore
98	8722	Sh. Shailesh Baheti	ACS - 23295	Hyderabad
99	8725	Sh. Palelli Kondareddy	FCS - 4384	Hyderabad
100	8726	Sh. Lakshmisha Babu S	ACS - 21097	Bangalore
101	8727	Ms. Malathy N	ACS - 20399	Ernakulam
102	8728	Sh. V. Sankara Subramanian	ACS - 17012	Chennai
103	8737	Sh. V Ragunathan	ACS - 27025	Chennai
104	8744	Ms. Revathi B	ACS - 25746	Chennai
105	8745	Ms. B Yazhini	ACS - 23422	Tuticorin
106	8748	Sh. G Srinath Reddy	ACS - 20681	Bangalore
107	8753	Ms. Ranjitha B P	ACS - 29773	Bangalore
108	8754	Mr. Vishu M	ACS - 28586	Hosur
109	8755	Mr. M Muruganandhan	ACS - 28576	Coimbatore
110	8756	Sh. Vinay Ramakrishna Sarji	ACS - 16228	Shimoga Dist
111	8757	Mr. Jitendra Dhruva Yalvigi	ACS - 28475	Bangalore

112	8758	Sh. Sita Ram P R	ACS - 24933	Bangalore
113	8764	Sh. S. Venkataraman	ACS - 16215	Chennai
114	8769	Sh. Chandra Prakash Abar	ACS - 29752	Chennai
115	8770	Sh. R Ragul	ACS - 29750	Coimbatore
116	8771	Sh. Segar L K	ACS - 29760	Chennai
117	8777	Ms. N. Jayanthi	FCS - 5808	Tiruchirapalli
118	8778	Ms. Kanchana Chitra T.N.	ACS - 19092	Bangalore
119	8784	Sh. K Praveen	ACS - 17110	Kochi

WIRC

120	8636	Sh. Harsheet Jayesh Patel	ACS - 23553	Pune
121	8637	Mr. Vikas Dnyaneshwar Gaikwad	ACS - 23493	Pune
122	8644	Sh. Sameer Shriram Apte	ACS - 21977	Dombivli (East)
123	8646	Sh. Hemant Rajnikant Kothari	ACS - 20872	Kolhapur
124	8649	Sh. Ramji Lal Gupta	FCS - 2930	Indore
125	8654	Mrs. Urvi Tapan Pota	ACS - 21084	Ahmedabad
126	8657	Sh. Viral Maheshkumar Shah	ACS - 22519	Ahmedabad
127	8658	Mr. Digamber Shriram Mahajani	ACS - 29641	Vadodara
128	8660	Sh. Subrata Dutta	ACS - 15815	Mumbai
129	8667	Mr. Pritesh Mahendrakumar Shah	ACS - 27940	Ahmedabad
130	8669	Ms. Binju Nirlap Vora	ACS - 19526	Mumbai
131	8673	Sh. Mihir Mehta	ACS - 29648	Ahmedabad
132	8676	Sh. Arvind Bajpai	FCS - 6713	Pune
133	8678	Ms. Vidya Adwait Joglekar	ACS - 13732	Mumbai
134	8679	Sh. Ravindra Baliram More	FCS - 6302	Mumbai
135	8687	Mrs. Priti Kumath	ACS - 13896	Indore
136	8688	Sh. Yogesh Madhusudan Bhatt	ACS - 26349	Vadodara
137	8691	Ms. Shubhra Gupta	ACS - 27876	Jabalpur
138	8695	Ms. Jyotmala Thakar	ACS - 29711	Vadodara
139	8697	Mrs. Prajakta V Gokhale	ACS - 20142	Pune
140	8701	Mr. Ashish Soni	ACS - 26538	Indore
141	8708	Sh. Utpal Mahendra Shah	ACS - 14645	Ahmedabad
142	8709	Mr. Roshan Bhanuprakash Dave	ACS - 26472	Mumbai
143	8710	Sh. Abhijit Bhalchandra Dakhawe	FCS - 6126	Pune
144	8713	Sh. Shrenik Uday Nagaonkar	ACS - 19673	Kolhapur
145	8715	Sh. T V Suresh	FCS - 4453	Navi Mumbai
146	8723	Sh. Sanjeev D Pathak	ACS - 19107	Mumbai
147	8724	Sh. Chetan Babaldas Patel	FCS - 5188	Ahmedabad
148	8730	Mr. Ramesh L Koduri	ACS - 28806	Ulhasnagar
149	8731	Mr. Deepak Omprakash Agarwal	ACS - 26856	Thane
150	8732	Mr. Dwarkaprasad Nimbalkar	ACS - 27943	Pune
151	8733	Mr. Sarthak Arun Malvadkar	ACS - 28473	Pune
152	8734	Ms. Bhakti Balwant Hosalkar	ACS - 27805	Pune
153	8738	Ms. Alfa Mustakhussain Baldiwala	ACS - 29210	Vadodara
154	8749	Sh. Subodh Ramesh Zare	ACS - 22980	Nagpur
155	8781	Dr. T V Ramachandran	FCS - 45	Pune



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■ Eastern India Regional Council

Investor Awareness Programmes

On 21.2.2012 the ICSI-EIRC supported by Ministry of Corporate Affairs, Government of India organised an Investor Awareness Programme under the aegis of Investor Education & Protection Fund at Syamaprasad College, Kolkata. The speakers were Debashish Bandopadhyay, Registrar of Companies, West Bengal, CS Ranjeet Kr Kanodia, Chairman, ICSI-EIRC, Dr Ashish Kr. Sana, Faculty, PG Deptt. of Commerce, University of Calcutta, Prof. Prabhat Kr. Dutta, President, Governing Council, Syamaprasad College, Dr. Nemai Bandopadhyay, Teacher In Charge, Syamaprasad College. Debashish Bandopadhyay informed the participants that this type of Investor Awareness Programmes are organised by the ICSI and the Ministry of Corporate Affairs under IEPF (Investor Education & Protection Fund) at various places to educate the investors and to create awareness among the investors regarding the capital market and in particular the working of the stock exchanges.

CS Ranjeet Kr Kanodia, in his address said that the Institute of Company Secretaries of India (ICSI) has been actively supporting the investor awareness initiatives taken by Ministry of Corporate Affairs by organizing Investor Awareness Programmes in various parts of our Nation. He also spoke on the investment avenues available for the general public. Prof. Prabhat Kr Dutta stated that the general public before investing should keep themselves aware of the investment choices and said that these types of programmes are forthcoming and are essential for the general public so that they can make better investment plans etc. Dr Ashish Kr Sana gave an interesting presentation on individual investments starting from the importance of personal investments to various avenues of investments, its types, the pros and cons. He also spoke on the role of SEBI, equity market, mutual funds, debentures, bonds, etc., each of which were viewed on the slides projected on the screen. His session was interactive. He moved the masses present with his lucid and penetrative way of speaking. He also spoke on the dos and don'ts of investing in equity market and suggested investments in mutual funds which are less risky. The Programme was attended by people from different walks of life comprising local businessmen, government employees, teachers, house-wives, students, retired

persons and others.

Again on 4.2.2012 at Institute for Inspiration and Self Development, Kolkata another programme was organised. The speakers were Muktar Singh, Deputy Registrar of Companies, West Bengal and CS Bhavesh Saxena, Additional Sr. Manager, Corporate Affairs, Mitsubishi Chemical Corpn. PTA India.

Muktar Singh said that the main aim of the programme is to make general public aware about instruments of Investment, information on Sensex and other Indices and trading in shares, mutual funds, debt market, derivatives. He spoke on the role of Government for any guidance or redressal of any grievances with respect to investments in capital market.

CS Bhavesh Saxena in his address said that the ICSI has been actively supporting the investor awareness initiatives taken by Ministry of Corporate Affairs by organizing Investor Awareness Programmes in various parts of our country. He said that general public before investing should keep themselves aware of the market, read documents like the prospectus of the company in which they are investing and make a good choice of a broker or a market intermediary. The investor can check out the details of incorporation of a company and read other documents of a company by visiting the company's website or the MCA website.

Dr R.N. Chakraborti, Director IISD addressed on the benefits of investment and talked about investment avenues, etc.

69th Management Skills Orientation Programme (MSOP)

From 25.1.2012 to 10.2.2012 the EIRC of the ICSI organized its 69th Management Skills Orientation Programme at ICSI-EIRC Premises, Kolkata.

Inaugural Session: CS Navrang Saini (Dr.), Regional Director (Eastern Region) Ministry of Corporate Affairs, was invited as the Chief Guest. CS Ranjeet Kumar Kanodia, Chairman, EIRC and CS Deepak Kumar Khaitan, Secretary, EIRC also addressed on that occasion.

Valedictory Session: On 11.2.2012 at the Valedictory session CS B P Dhanuka, Past President, the ICSI as Chief Guest first congratulated the participants for successful completion of the training and thereafter handed over the MSOP Completion Certificate to the participants. CS Ranjeet Kumar Kanodia, Chairman, EIRC and CS Deepak Kumar Khaitan, Secretary, EIRC also addressed on the occasion.

Best Participant Awards: Neha Kedia, Sweta Saxena and Abuzer Ahmed Siddique were selected as the first, second and third best participants of the MSOP.

HOOGHLY CHAPTER Half-day Workshop on Takeover Regulations, 2011

The Chapter organized a Half Day Workshop on Takeover Regulations, 2011 at Sarat Sadan, Howrah. CS Gautam Dugar,



Chapter Chairman, in his welcome address announced the CMS (Corporate Membership Scheme) for the Professional Development Programmes organized by the Chapter. He further said that the management trainee recruitment will start very soon through the Chapter.

Chief Guest B. Madhav Reddy, Managing Director & Chief Executive Officer of the Calcutta Stock Exchange Ltd announced the setting of CSE-CS Interface Committee with Hooghly Chapter of EIRC and to start management training for the students of the Chapter.

Guest of Honour D Bandopadhyay, Registrar of Companies, W.B. explained the guidelines of the takeover code and related it with the provisions of company.

CS Rajesh Chura, President, Dalmia Securities Ltd as the Keynote speaker on the subject explained the relevance of takeover. CS Anup Kumar Sharma, Vice President, V C Corporate Advisors Pvt. Ltd, a SEBI registered Merchant Banking Company as Guest Speaker explained the different provisions of takeover.

CS Manisha Saraf, Secretary, Hooghly Chapter; coordinated the programme. Around 120 delegates attended the programme.

Republic Day Celebration

The 63rd Republic Day was celebrated with full fervour and gaiety at the Hooghly Chapter of The ICSI. CS Gautam Dugar, Chairman, Hooghly Chapter hoisted the National Flag at the Chapter Office, Rishra. CS Rakesh Ghorawat, Vice-Chairman and CS Anil Prasad Shaw, Treasurer of the Hooghly Chapter along with CS V K Goenka & CS Ashok Purohit, Past Chairmen of Hooghly Chapter were also present on the occasion.

Full Day Workshop on Schedule VI and Companies Bill, 2011

On 12.02.12 the Chapter organized a Full Day Workshop on Schedule VI and Companies Bill- 2011 at Chapter Office, Rishra. In the first session Debashis Mitra; Past Chairman of EIRC of The ICAI explained the provisions of Revised Schedule VI, under The Companies Act 1956. He compared the revised schedule vis-à-vis existing schedule and its importance.

In the second session Rajesh Poddar, Deputy Company Secretary of ITC Limited and Past Chairman of EIRC of The ICSI, explained the emerging issues of the company law.

More than 130 delegates attended the programme.

Half Day Workshop on Competition Act

On 26.02.12 the Chapter organized a Half Day Workshop on Competition Act and Recent Cases at Sarat Sadan Hall, Howrah Maidan. CS Gautam Dugar, Chapter Chairman in his welcome address said that the Hooghly Chapter has always organized such workshops for the benefit of students and members to update themselves with the latest developments in

the professional arena. He further briefed about the various programmes organized by the Chapter.

Guest Speaker CS Anjan Kr Roy; Immediate Past Chairman of EIRC of The ICSI in his address said that Competition is a healthy factor for the growth of any economy; however, it should be free and fair competition. Competition Commission is gradually emerging as a very powerful regulator in India and CCI is keeping a watch over every Industry. He further said that towards the end of 90s, competition and antitrust issues gradually got greater attention worldwide and Competition Act, 2002 was enacted in India as a consequence of transformation of India.

Kunal Sen, Executive Director of Peerless Hotels Limited was the Chairman of the session. CS Manisha Saraf, Chapter Secretary coordinated the programme. More than 70 delegates attended the programme.

Foundation Day Celebration

On 08.03.2012 the Chapter celebrated its 4th Foundation Day. The event witnessed presence of all the past Chairmen of Hooghly Chapter and the students. CS V K Goenka, CS Rajesh Ghorawat, CS Manoj Shaw, CS Ashok Purohit, CS Arun Singhania said that it is encouraging to see that the Chapter has come a long way in the last four years and wished that the Chapter will reach new heights in the coming years. The Foundation day celebration was followed by Holi Meet as the date coincided with the Holi festival of the year.

Interactive Session with Government Body

On 11.03.2012 the Chapter organized a Workshop cum Interaction Session on Companies (Name Availability) Rules, 2011 at Sarat Sadan Hall, Howrah Maidan.

Debashis Bandopadhyay, Registrar of Companies (West Bengal) deliberated all the guidelines to adhere to while applying for approving the proposed name of the companies in detail. It was indeed a great experience for the delegates to understand the details of Name Availability guidelines from the ROC himself. After the interaction session was over, the CS students presented an enthralling cultural programme to mark the 4th anniversary of foundation of Hooghly Chapter of EIRC of the ICSI. CS Manisha Saraf, Chapter Secretary coordinated the programme. More than 140 delegates were present at the programme.

Seminar on Union Budget 2012

On 18.03.2012 the Chapter organized a seminar on Union Budget 2012 at Rishra.

CS Gautam Dugar, Chairman- Hooghly Chapter in his welcome address said that the Union Budget 2012 has some bitter pills for the common man and in general there is an increase in excise duty.

Rajendra Kumar Vyas, practicing Chartered Accountant and



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senior partner of M/s VPC & Associates deliberated on the impact of budgetary provisions on Direct Taxes whereas Suresh Bhutra an eminent service tax consultant deliberated on the impact of Budget on Indirect Taxes. The programme also had an interactive session at the end where the delegates got their doubts cleared from the guest speakers on various topics related to the Budget.

Full Day Workshop on ESOP and Buy-back of Securities

On 25.03.2012 the Chapter organized a Full Day Workshop on Employee Stock Option Plan and Buy Back of Securities (under SEBI guidelines). The programme was organized at the Hooghly Chapter Conference Hall at Rishra. CS Ashok Purohit, Immediate past Chairman of the Chapter in his welcome address said that Employee stock options are mostly offered to management as part of their executive compensation package. CS Anup Kumar Sharma, Vice President, V. C. Corporate Advisors Pvt. Ltd, a SEBI registered Merchant Banking Company was the Guest Speaker on the subject. He said that Employee stock options (ESOs) are non-standardized calls that are issued as a private contract between the employer and the employee. Over the course of employment, a company generally issues ESOs to an employee which can be exercised at a particular price set on the grant day, generally the company's current stock price. The workshop was attended by more than 50 delegates.

NORTH EASTERN CHAPTER Study Circle Meeting on the Impact of Intellectual Property Rights on an increasingly Globalised and liberalized India

On 9.2.2012 the Chapter organized a study circle meeting on the above topic at Guwahati. Dr. Manoranjan Bezboruah, Member of the U.S. Supreme Court was the guest speaker. The programme was attended by around 50 members and students.

Directors - Role, Responsibilities, Liabilities and Challenges with special Emphasis on Independent Directors

On 29.2.2012 the Chapter organized a study circle meeting on Directors - Role, Responsibilities, Liabilities and Challenges with special Emphasis on Independent Directors at Guwahati. Cs Biman Debnath, PCS was the guest speaker. Around 60 members and students attended the programme.

Sports Week

On 11 and 12.2.2012 the Chapter organised a sports week for

the members and students of the Chapter. The sports week was a huge success and the events covered therein were chess, carom and badminton. The winners of various events were as under: Chess - winner Pranjal Saikia, Runners up Abhishek Jain; Carrom - Male - Winner CS Narayan Sharma, Runners up Plaban Roy; Female Punita Agarwal and Runners up CS Jyoti Jain. Badminton - Winner Male - Surajit Sharma and Runners up Gokul Haloi, Female winner Sheetal Agarwal and Runners up Swati Sureka. Gulab Chand Yadav, ROC, Shillong was the chief guest on the occasion.

Debate on Union Budget 2012-2013 on a leading TV Channel of North-East

On 16.3.2012 after the presentation of the Union Budget 2012-13 Raj Kumar Sharma, Chapter Chairman of NE Chapter was invited by "Frontier TV" a renowned TV Channel of the North Eastern Region for a debate on the Union Budget 2012-2013. The debate was aired live on the TV Channel on 16.3.2012 from 2.00 to 3.00 P.M. Sharma shared the debate platform along with other delegates from various political parties and organizations like Assam Chamber of Commerce. The comments and opinions of Raj Kumar Sharma were appreciated by all in the debate discussion as well as his deliberation in the news segment. This was an on the spot decision of the channel and Sharma was the only delegate covering the news segment along with the channel representatives.

Full Day Workshop

On 18.3.2012 the North Eastern Chapter of EIRC of the ICSI, organized a Full-Day Workshop on Discussion on Revised Schedule VI, Life Skills, Let's Brush Up! and Critical analysis on Union Budget at Guwahati. CA Purshotam Gaggar, past Chairman of NE Chapter explained the gathering about Schedule VI. He then discussed in details about 'Revised Schedule VI'. He apprised the gathering about every aspect of Revised Schedule VI. CA Ravi Patwa made a Critical analysis on Union Budget 2012. He explained every aspect of Union Budget 2012. CS Neha Qureshi, Company Secretary from Guwahati and Secretary, NE Chapter of ICSI discussed the various Life Skills and its importance, and also the ways and means to motivate ourselves so that Success can be achieved. The workshop was presided over by CS Raj Kumar Sharma, Chairman, NE Chapter of ICSI. The seminar was attended by various professionals like Company Secretaries and Chartered Accountants and students of ICSI from Guwahati and various parts of Assam as well as North East. International Women's Day was also observed during the programme.

Holi-Ri-Dhamaal

On 4.3.2012 the NE Chapter organised a Holi Meet for the members and students of the Institute titled Holi-Ri- Dhamaal at Guwahati. Raj Kumar Sharma, Chairman and Neha Qureshi, Secretary, ICSI, NE Chapter invited the senior members for the



traditional "tilak". The members and students participated in the programme with full excitement and enthusiasm. They played Holi with full spirit of the festival and the beautiful colours bestowed happiness. The brotherhood amongst them was very much evident. The Recreation Committee did a commendable job in organising the programme. •

Northern India Regional Council

Meeting of Company Secretaries in Practice on Postal Ballot - Role of Scrutiniser

On 13.2.2012 a programme on Company Secretaries in Practice on Postal Ballot - Role of Scrutiniser was held. CS Ranjeet Pandey was the speaker.

Puja Ceremony on Renovation of ICSI-NIRC Building

On 14.2.2012 the Regional Council organised Puja Ceremony on Renovation of ICSI-NIRC Building.

Study Circle Meeting to Discuss Recent Supreme Court Judgement on International Taxation (Vodafone Case Study)

On 17.2.2012 a Study Circle Meeting on the above topic was organized by the Regional Council. CA Manan Agarwal was the speaker.

West Zone Study Group Meeting on an Overview of IFRS

On 19.2.2012 the West Zone Study Group Meeting discussed the topic an Overview of IFRS. Ravindra Vadali was the speaker.

East Zone Study Group Meeting on Corporate Restructuring

On 25.2.2012 the East Zone Study Group discussed the topic Corporate Restructuring. Hemant Sharma of Dhir & Dhir Advocates was the speaker.

Study Circle Meeting at Vaishali

On 22.2.2012 a Study Circle Meeting was held at Vaishali wherein

CS Ranjeet Pandey and CS Manish Gupta were the speakers.

South Zone Study Group Meeting on an Overview of New RBI Guidelines on ECB and Role of Banks in Compliance

On 24.2.2012 South Zone Study Group Meeting discussed the above topic. Manish Tyagi, Sr. Manager, Tax & Regulatory (Deloitte Touche Tohmatsu India Private Limited) and Hari Bhaskar, Vice President, HSS CTLA Sales NI & EI (The Hong Kong & Shanghai Banking Corporation Ltd.) was the speaker.

One Day Seminar on Value Creation Through Corporate Restructuring

On 25.2.2012, NIRC of the ICSI organised a one day seminar on Value Creation through Corporate Restructuring at Hotel Eros, Nehru Place, New Delhi. Justice Manmohan, Hon'ble Company Judge, Delhi High Court was the Chief Guest and Nesar Ahmad, President, The ICSI was the Guest of Honour. CS Rajiv Bajaj, Chairman NIRC discussed his agenda for the year, 2012 and informed about the annual sponsorship scheme and corporate mentorship scheme launched by NIRC. He requested the members to join these schemes.

Nesar Ahmad in his address spoke about the potential of youth available in the country. He said that no activity can be undertaken without the help of professionals. He spoke about the success of MCA, XBRL online Filing within a short span of time. He said that Government has recognised the profession of company secretaries in the new Companies Bill. The importance of secretarial audit and competition law have been recognised in the Bill. He also spoke about the advantages and challenges in corporate restructuring.

Justice Manmohan addressing the participants said that corporate restructuring be looked for the economy as a whole and not only from the point of view of shareholders. He said that the term corporate restructuring encompasses three distinct, but related, groups of activities; expansions - including mergers, consolidations, tender offers, joint ventures and acquisitions; contraction - including sell offs, spin offs, equity carve outs, abandonment of assets, and liquidation; and ownership and control - including the market for corporate control, stock repurchases program, exchange offers and going private (whether by leveraged buyout or other means), Mergers and acquisitions (M&A) and corporate restructuring are a big part of the corporate finance world. The key principle behind corporate restructuring is to create shareholders value. There always remain strategic synergies as well as financial synergies for undertaking corporate restructuring exercise. Synergy is the



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magic force that allows for enhanced cost efficiencies of business. Synergy takes form of revenue enhancement and cost savings. By merging, the companies hope to benefit from the following: cost reductions, economies of scale, acquiring new technology, improved market reach and industry visibility, diversification - entry into new market/product segment, acquiring a competence or capability. Other major reasons for corporate restructuring include opening up of Indian economy, attract overseas investment, to leverage core competencies, divestiture and networking, to provide proactive leadership, empowerment of employees and reengineering process. He said that government also recognises and gives much value to the companies after their restructuring.

CS Ranjeet Pandey, immediate past Chairman conducted the proceedings of the programme and also introduced the theme of the seminar.

Technical Sessions: The technical sessions were addressed by Prashant Kapoor, Director, Mergers and Acquisitions - Tax Practice, KPMG on the topic Structuring the Restructuring and CS U. K. Chaudhary, Past President, the ICSI & Senior Advocate on Critical aspect of Drafting of Scheme & Court Process. Vikas Vig, Managing Partner, Mohinder Puri & Co., chaired the session and Puneeta Kundra, Principal Associate, Vaish Associates spoke on Tax Consideration & Restructuring. Manish Khanna, Chartered Accountant spoke on Valuation of Restructuring Transaction. G.R. Bhatia, Partner, Luthra & Luthra spoke on Competition Law vis-à-vis Corporate Restructuring and CS Satwinder Singh, Partner, Vaish Associates spoke on Stamp Duty Implications.

North Zone Study Group Meeting on Regulation of Combinations

On 26.2.2012 at the North Zone Study Group Meeting on Regulation of Combinations CS Atul Mittal, Council Member, the ICSI & Director, Deloitte Touche and Tohmatsu Pvt. Ltd. was the speaker.

Chapters' Chairmen Meet

On 26.2.2012 the Regional Council organized Chapters' Chairmen Meet with CS Nesar Ahmad, President, the ICSI.

Orientation Programme for Regional Council Members and Chapters' Chairmen of NIRC

On 26.2.2012 at the Orientation Programme for Regional Council Members and Chapters' Chairmen of NIRC, Suneel Keswani, Corporate Trainer was the speaker.

Investor Awareness Programmes

On 9.2.2012 an Investor Awareness Programme on "Understanding the Capital Market" was held at Shyma Lal College (Eve.) Shahdara, Delhi. Dr. G.P. Agarwal, Principal, Shyam Lal College (Eve.) CS J K Bareja, Associate Professor, University of Delhi, CS Anupam Jha and CS Sudhir Jain were the speakers.

On 14.2.2012 another Investor Awareness Programme on 'Investment Opportunities in Capital Market' was held at Bhai Parmanand Institute of Business Studies, Delhi. Dr. Amita Dev, Principal, Bhai Parmanand Institute of Business Studies, CS Suman Kumar (Head & Legal & CS, SMC) and CS Kapil Marwah, Asst. manager, NSE were the speakers.

Programme on Union Budget 2012-13

On 17.3.2012 at the programme on Union Budget 2012-13 Dr. Girish Ahuja, Eminent Tax Expert, Ashok Batra, Chartered Accountant, P.N. Vijay, P.N. Vijay Financial Services Ltd., and CS Bimal Jain were the speakers.

GURGAON CHAPTER

Career Awareness Programmes

Gurgaon Chapter of NIRC of the ICSI organized various career awareness programmes in Gurgaon. On 13.2.2012 two programmes were organized, one each at Dronacharya College and PG Commerce College. Again two programmes were organized on 14.2.12 & 15.2.12 in Govt. High School and Dronacharya College. In the aforesaid career awareness programmes the students were apprised about the mode of registration in the course, syllabus, structure and opportunities available to the profession both in employment and in practice. ICSI Teacher Kits, Brochures, Pamphlets, posters received from the institute were distributed at all these programmes. During these programmes the queries raised by the students were replied by Animesh Srivastava, Executive Officer along with CS Santosh Sharma, Secretary, Gurgaon Chapter and CS Dhananjay Shukla, NIRC Member. Around 1000 students taken together attended the programmes. The speakers explained in detail the course offered by the Institute and the eligibility criteria for the course, examinations, requirements of training etc. the role of Company Secretary and importance of the profession of Company Secretary in changing economic scenario. They then highlighted the opportunities available to those who complete the Company Secretary ship course. Further they enumerated the emerging areas of practice and the changing role of Company Secretary. They also focused on what would be the mindset and preparation required from a student who wanted to pursue the Company Secretary ship Course. Brochures containing brief details of the Company Secretary ship Course were distributed to the students and the film on Career as a Company Secretary was also screened during the programme. Gurgaon Chapter initiated one more step for branding of CS profession and CS course by inviting various print and electronic media representatives, who also attended the programmes. The details of the programmes were



widely covered in major newspapers like Dainik Bhaskar, Punjab Kesari, Dainik Jagran etc.

Study Circle Meeting on Vodafone Case and its Impact

On 17.2.2012, the Gurgaon Chapter of NIRC-ICSI organized a Study Circle meeting on 'Impact of Vodafone Ruling'. CS Gautam Chopra, from Vaish Associates, spoke on various aspects of the landmark Supreme Court decision. He explained the reasoning adopted by the Supreme Court in holding that Vodafone was not liable to withhold tax in India on payments made outside India to a non-resident company. He also pointed out that the Supreme Court observed that current provisions of the Income Tax Act, 1961 did not provide for taxing transactions which happen outside India between two foreign companies and which involved transfer of shares of a foreign company. The next part of his presentation emphasized that the Supreme Court observed that every strategic foreign investment coming into India should be looked at in a holistic manner, bearing in mind factors such as: the concept of participation in investment, the duration of time during which the holding structure exists; the period of business operations in India; the generation of taxable revenues in India; the timing of the exit; and the continuity of business on such exit. Therefore, he pointed out "substance over form" principle or "piercing the corporate veil" test could only be applied after it established on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant. Before conclusion a brief question-answer session was held among members and the speaker.

Study Circle Meeting on Professional Code of Conduct & Ethics: CS

On 29.2.2012 the Gurgaon Chapter of NIRC-ICSI organized a Study Circle meeting on Professional Code of Conduct & Ethics: CS. The programme was addressed by CS S Kumar, Principal Director (Retd.), the ICSI. NIRC Member CS Dhananjay Shukla in his inaugural address said that with the increasing complexity of Company Laws and the continued rationalization of business into larger groups of companies, the position of the company secretary in relation to the affairs of the company has evolved from being a mere servant to a much more important person in a company. He is now, a recognized officer of the company with greater responsibility and authority which demands ethical conduct among company secretary at all times.

CS S Kumar informed members that under section 9 of the Company Secretaries Act, 1980, the Council of the Institute is mandated to manage the affairs of the Institute and discharge the functions assigned to it under the Act. The Council has authority to exercise disciplinary powers by instituting inquiry into cases where it is prima facie of the opinion that a member

is guilty of professional or other misconduct. The Code of Ethics is formulated to raise the standard of corporate governance and to inculcate good corporate behaviour to achieve the objectives of inculcating professionalism among company secretaries within the tenets of morality, efficiency and administrative effectiveness and to uphold the spirit of social responsibilities and accountability in line with the legislations, regulations and guidelines governing a company. Explaining the professional misconduct further he said that section 22 of the Act deems any act or omission specified in the Schedules to the Act to be misconduct. It categorically provides that the Council's power to enquire into the conduct of any member under any circumstances is in no way limited or abridged. At the end a query session also took place among the members present.

Holi Sneh Milan and Get Together

On 5.3.2012 Gurgaon Chapter of NIRC of ICSI organized a 'Holi Sneh Milan Samaroh' at the Chapter premises. At this function Members and students greeted each other for the festival by putting 'chandan tilak'. A good number of Chapter members were present on the occasion.

Investor Awareness Programme

On 5.3.2012 the Chapter of NIRC organized an investor awareness programme in association with NSE, New Delhi at Chapter premises. The programme was attended by students, retired persons, general investors and members etc. Sandeep Dandapat, Chief Manager, NSE was the main speaker of the programme. A beginner's guide and Investor related information were distributed amongst the participants. Feedback about the programme was also collected from each of the participants. Before conclusion a question - answer session was organised where several queries on the capital markets, investor related grievances were raised which were clarified by the speaker. The participants expressed their happiness about the programme organised by Gurgaon Chapter and also praised the efforts of the ICSI for its awareness campaign.

Study Circle Meeting on Controlling Professional Life through Science & Spirituality

On 05.3.2012 the Gurgaon Chapter of NIRC-ICSI organized a Study Circle meeting on Controlling Professional Life through Science & Spirituality. The presentation was given by CS Deepak Jain, GM & Company Secretary, Unitech Limited and Past Chairman of the Chapter and also Punit Handa, Chapter Chairman. It was attended by a gathering of about 50 members. The speaker dealt with various aspects of life and



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stressed that harmonization of mind, body and soul improves the quality of life. All the above aspects of life can be nourished through proper food and exercise. He emphasized the importance of laughter & taught meditation techniques for relaxation and energetic life.

Gurgaon Ki Awaz

On 7.3.2012 community radio of Gurgaon Gurgaon Ki Awaz channel in its career guidance programme "Hum Honge Kamyab" broadcast detailed information about CS course as a career option and other services provided for students and members at Gurgaon Chapter which was recorded at Gurgaon Chapter having interview of CS Punit Handa, Chapter Chairman, CS Santosh Sharma, Chapter Secretary, CS NPS Chawla, Treasurer of NIRC of ICSI, Animesh Srivastava, Executive Officer of Gurgaon Chapter and Students of the Chapter. The programme is another step from Gurgaon Chapter for brand building and awareness of CS profession. In the broadcast Punit Handa, elaborated the students in detail about the C.S. Course and the procedure, its scope, enrolment criteria, examination procedure, future prospects of the profession and other allied issues. Frequently asked queries such as how to take admission in Foundation Programme as well Executive Programme, the procedure for getting admission to the oral classes conducted by the Chapter, about the new training programmes etc. were very well informed by Animesh Srivastava. CS Santosh Sharma informed that Gurgaon Chapter has its own Placement Cell which assists students and members for suitable employment opportunities. NPS Chawla informed the vision & mission of ICSI and said that ICSI strive to produce corporate governance professionals. Students registered from Chapter also talked about their experience as CS students and said that they are very much satisfied by their career choice. The programme was very much appreciated by the listeners.

JAIPUR CHAPTER

Holi Sneh Milan & CSBF Cultural Evening

On 18.03.2012 The Chapter celebrated Holi Sneh Milan. The Programme began with Tilak Holi and was followed by the Rajasthani Folk Music. In the programme Nesar Ahmad, President and N K Jain, Secretary and CEO, the ICSI, Managing Committee members of the Chapter and other members participated. During the programme Office Bearers of Managing Committee of the Chapter requested the Members to become a member of CSBF for the noble cause and a total of 23 new members consented to become member of CSBF.

Seminar on Budget - 2012 and Contemporary Corporate Challenges

On 18.03.2012 the Jaipur Chapter of ICSI organized a seminar on Budget - 2012 and Contemporary Corporate Challenges at Hotel Four Points, Jaipur. Nesar Ahmad, President, was the Chief Guest and N K Jain, Secretary & CEO, was the Guest of Honour for the programme.

Inaugural Session: Nesar Ahmed, President, the ICSI and N K Jain, Secretary & CEO, the ICSI, Vimal Gupta, Chairman-Jaipur Chapter, Anshul Jain, Vice-Chairman-Jaipur Chapter, Dr. Girish Goyal, Secretary & Treasurer-Jaipur Chapter, Shyam Agarwal, Secretary-NIRC of ICSI and other managing committee members inaugurated the programme. Vimal Gupta in his address informed about the various new initiatives taken by Jaipur Chapter. He also brief about achievement of the Chapter during the year 2011. During the programme Managing Committee of the Chapter honoured Nesar Ahmed and N.K. Jain by offering Safa.

First Technical Session: The First technical session was chaired by Sanjay Jain, CS Nesar Ahmad and CS NK Jain were the key speakers for the session. CS Nesar Ahmad, President, the ICSI discussed Institute's vision 2020. The Vision 2020 is the biggest Document and it is the Gita and the Bible for all of us. He requested all the members to go through the vision 2020 document as it requires further deliberation. He mentioned that the current Council of the Institute has set up ten Goals for itself which are in line with the vision of the Institute. He mentioned that the first goal of the Council is to create a cadre of the competent professional. In order to achieve this objective a methodology has been devised. He also mentioned that the Institute is launching very soon various Certification Courses, joint programmes with other institutions, PMQ Courses, etc. He informed that Insurance and banking sectors will also be opening for the CS professions. He also appealed to the members to venture into those areas recognized by the statutes like the CCI. He also stressed on the various core values viz. integrity, ethics, reliability, and stakeholders satisfactions. At the end he mentioned that in the year 2012 there will be complete technology transformation in the Institute.

CS N K Jain, Secretary & CEO, the ICSI mentioned that in the year 2008 Council of the Institute thought that what should be the ICSI in the year 2020. He then informed that a core group of ICSI was formed consisting of the distinguished members who worked on this and also the institute conducted a nationwide survey on vision 2020, interviewed lot of people across the country and after analyzing all the things the Institute came out with a document called Vision 2020 of the ICSI and that talks about the way forward of profession. He also mentioned that the strategy is clear and other things are very



well defined in the document. He informed that the focus area for investment of the ICSI resources is Information Technology, Strengthening of the Regional Councils and the Chapters and also the Training and Development of the people etc. He also mentioned that the Company Secretaries should be seen as the Governance Professional. It is the Governance of the Corporate which is the future and for that we all have to build our skills. He also informed about the Launch of new syllabus of Foundation Programme.

Second Technical Session: The key speakers for Second Technical Session were Sunil Goyal and Pankaj Malik. Sunil Goyal focused Direct Taxation part of Union Budget - 2012 and described the impact of Union Budget - 2012 on direct taxes. Pankaj Malik focused on Indirect Taxation part of Union Budget - 2012 and described the impact of Union Budget - 2012 on Indirect Taxes.

Third Technical Session: The key speaker for third technical session was CA Rajeev Sogani. CA Rajeev Sogani briefed about the revised Schedule VI. In his presentation he highlighted the relevant provision under schedule VI of the Companies Act, 1956 and relevant circulars, notifications and accounting standards. He also dealt with in detail the format of the Balance Sheet with focus on equity, assets, current liabilities; he also detailed in brief the additional disclosures required under the revised schedule VI.

JODHPUR CHAPTER

Half Day Seminar on the Profession of Company Secretaries - Challenges & Opportunities - Way Forward

On 25.2.2012 a half day seminar was organised. Opening the Seminar on Investor Awareness, National Stock Exchange official Ashu Agarwal gave a very interesting lecture on investing tips, cares and cautions. Said Ashu "Investing is an art but due care must be taken, all investors do have rights and the brokers and the intermediaries also do have the obligations to the investors." He explained the evolution of National Stock Exchange and also laid emphasis on the much needed Investor Awareness.

Said Dr Akhil Prasad, Director, Fidelity India, Gurgaon "The profession of Company Secretary is complete in itself. Learning should never stop. Rather a Professional must adapt to new challenges".

Guided Anupam Malik, Joint Labour Commissioner, Govt of Haryana "The learning of various labour laws is hidden in the intention to execute them. The cumbersome laws are in any way so easy to understand."

The Chief Guest CS Hitender Mehta, Past Chairman of NIRC-ICSI, Partner, Vaish Associates, Gurgaon said "The CS Profession itself is a complete venture and much needed pride

is just to be added to it. Out of box thinking must be done by each one of us and the way forward is clear".

The Seminar was also addressed by CS G P Madaan, Past Chairman, NIRC ICSI, New Delhi who said "the CS Profession is a coveted one and learning should never stop anywhere." CS Mukesh Bansal, Chairman said "Way Forward is full of opportunities and a Company Secretary must use it definitely to his/her favour."

The Seminar was attended by professionals of the city, public and students. The Press and Media covered it well.

International Women's Day - Save Girl Child - Save Generations

Unique way of celebrating the International Women's Day was decided upon by the dynamic Divisional Commissioner of Jodhpur R K Jain where India's Leading Public Sector Oil Company Bharat Petroleum Corporation Ltd (BPCL), Global Talent Development Corporation's Jodhpur centre NIIT, leading commerce institutions of India's Jodhpur Chapter of the Institute of Company Secretaries of India (ICSI) made way forward to create awareness in the Sun city. A function was held in Aishwarya college of Jodhpur where huge gathering was administered the oath "Save the Girl Child" a message and commitment undertaken by some odd 150 participants in the International Women's Day 2012 celebrations. During the celebration, select Women of Sun city were honoured which included personalities from Academics, IT, Social Services, Medicine etc. Hundreds of students present in the celebration were all moved by the revolutionary initiative taken by Jodhpur Plus in community awareness about the cause of Girl Child.

Setting the theme, senior academician, Centre Director, NIIT CS Mukesh Bansal, Chairman, ICSI Jodhpur Chapter said "Women empowerment is the requirement of present time. We talk lot about empowerment, but when it comes to reality, major missings are there and hence, some real ground work has to be done by each one of us in the Society." He explained that in certain countries, International Women's Day is now being observed holiday for women and is now being recognised and valued as much as Mother's day status.

R K Jain, IAS, Divisional Commissioner in his address said "Whether you are a woman or man, you must know that International Women's Day celebrates your emancipation. Had it not been for women's emancipation, free thinking would be impossible. An educated woman can raise intelligent children, which in turn creates a self-reliant society."

Mukesh Bansal said "International Women's Day is not about asserting the superiority of one gender over the other. It is not about petty quarrels about who gets to do the dishes after dinner. The United Nations instituted International Women's



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Day to commemorate the contribution of women in the socio-political sphere as well as in global peace and security."

KANPUR CHAPTER

Study Circle Meeting on Union Budget 2012-13

On 18.03.2012, The Chapter organized a Study Circle Meeting on UNION BUDGET 2012-13 at its premises. The Meeting was inaugurated by CS Bharat Kumar Sajnani, Company Secretary, Ganesha Ecosphere Ltd., Kanpur & Chapter Chairman. While introducing the topic he emphasized the importance of the topic for the members. In the course of discussion CS Adesh Tandon, Practicing Company Secretary, Kanpur elaborated on the removal of cascading effect of Dividend Distribution Tax, CS Pushpraj Singh threw light on the New Equity Scheme for Retail Investors, CS Nitin Mehrotra added his views and comments on Alternate Minimum Tax while CS S.K. Nemani contributed his valuable views upon the new Service Tax Regulations. The Meeting continued for a span of three hours and apart from the above topics, valuable discussions were on the tax slab rates, negative list of Service Tax, white paper on black money, chargeability of service tax on interest free loans and advances, exemption of Senior citizen from payment of Advance Tax, purchase of jewelry above Rs. 2 Lakhs in a year, exemption of service tax from cinema houses and public transport and others were also discussed. The members were granted 2 Programme Credit Hours. ●

Southern India Regional Council

BANGALORE CHAPTER

Career Awareness Programmes

The Bangalore Chapter of the ICSI conducted three Career Awareness Programmes during the month of February, 2012. The details are as under:

On 21.2.2012 the Career Awareness Programme on "Career as a Company Secretary" was held for all the three year B.Com & BBM Students of Sindhi College, Bangalore. Sangeetha Flora, Assistant Director, Bangalore Chapter of the ICSI was the speaker. 200 students participated. On 29.2.2012 the Career Awareness Programme was held for the students of Jagadguru Thontadacharya College (KLE Group of

institutions) and HCES Arts & Science College, Gadag. CS Manjunatha Reddy, Vice-Chairman, Bangalore Chapter of the ICSI and CS Naman Joshi, Practicing Company Secretary were the speakers. A total of 550 students participated in the programme. The speakers explained in detail the course offered by the Institute and eligibility criteria 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. They then highlighted the opportunities available to those who complete the Company Secretary ship course. Further they enumerated the emerging areas of practice and the changing role of Company Secretary. They also focused on what would be the mindset and preparation required from a student who wanted to pursue the Company Secretary ship Course. Brochures containing brief details of the Company Secretary ship Course were distributed to the students and the film on Career as a Company Secretary was also screened during the programmes.

India Corporate and Investor Meet

On 10.2.2012 the Bangalore Chapter participated in the India Corporate and Investor Meet at Hotel Leela Palace, Bangalore. CS Gopalakrishna Hegde, Council Member -The ICSI, Director - Finance, Legal & Company Secretary, Trident Power Craft Private Limited was one of the panelists in the 3rd Technical Session on Enlightening the investor for Competitive Advantage: Investor Communication, Reporting & Disclosure Trends. In his address Hegde gave some avenues and suggestions on how Investor Communication can be improved and also that Companies that are following methods of Good Communication with Investors should be recognized/rewarded for their good work. The Programme was well attended by 84 Members of the ICSI from Bangalore. The Chapter had also set up a stall at the venue where Institute's publications were displayed and made available for sale to the participants and standee banner of the ICSI was also displayed.

KOCHI CHAPTER

International Women's day - Programme on Women on Top Seats

The perception of the public about professionals like Company Secretaries is that they are preoccupied with their professional obligations and thus hardly find time for any social commitments or extra-curricular activities. However, this is proving itself to be a delusion. On 8.3.2012 the Chapter organized a presentation titled "Women on top Seats" by Bindu S Nair on the International Women's Day. Bindu S Nair is a well experienced HR Manager in addition to being a renowned social activist. The 100-minute session was a treat to listen to in the real sense of the word. The orator threw light on the sad reality that Women's potential happens to be the most underutilized resource in the world. The



statistics disclosed by her were astounding. The various issues hindering women from coming to the forefront and the initiatives that could be the catalysts for the attainment of the optimum upshot were spoken of. The speaker was backed by a keen and responsive audience, comprising practicing and employed company secretaries as well as students, who kept contributing valuable inputs, thus rendering the session vibrant and alive. The presentation ended with motivating life stories of women role models who had cemented a position for themselves in their own arena of work. The presentation was unarguably enlightening and is sure to have motivated all listeners to do everything possible for the happening of the indispensable revolution. The programme concluded after rendition of the National Anthem.

Seminar on Foreign Credits and MCA Updates

On 23.2.2012 the Kochi Chapter of ICSI organized a full day programme on Foreign Credits and MCA Updates. The programme was inaugurated by K.G. Joseph Jackson, Registrar of Companies, Kerala who in his address stressed upon the importance of being vigilant in our role as professionals. He also gave detailed working of ROC offices and emphasized the duty of professionals in investor protection and awareness. CS Baiju Ramachandran, Secretary, Southern India Regional Council in his special address extended his whole-hearted support and co-operation in encouraging the activities initiated by Kochi Chapter.

The speaker of the First Technical Session, CS. Bijoy P Pulipra, Director and Chief Consultant of M/s Artis Management Consultancy Private Limited, Kochi, began the session on "Foreign Credits" to a full packed house. The session covered various foreign credit options available to Indian corporate bodies like ECB, FCEB, etc. He also covered the technical and procedural aspects for raising credit funds through foreign markets. There was an interactive session with the speaker, where queries on the procedural and accounting aspects of raising credit funds were put forth and clarified.

The post lunch session started with the Chapter Chairman welcoming the special guest, V.E. Jose Kutty, the Deputy Registrar of Companies, Kerala. In his address Jose Kutty briefed about various initiatives taken by Ministry of Corporate Affairs. On the occasion he was also honoured by the Chapter on his elevation to Deputy Registrar of Companies. The honours were done by CS. Krishnakumar, Chairman, Thrissur Chapter of ICSI. CS Krishnamoorthy, Practicing Company Secretary, in his address spoke about the approachability and efficiency of the Deputy RoC.

The speaker of the afternoon session, Yogindunath.S, Promoter Director, M/s Directus Consultants Private Limited, began the session on latest MCA amendments. During the session the detailed changes to procedures and rules as a result of the amendments were covered. The session ended

after an interactive session with the speaker. The seminar was highly interactive and the speakers made every effort to clear all the queries put forth by members and students. The programme was warmly welcomed and was very well attended by over 100 delegates.

MANGALORE CHAPTER

Investor Awareness Programme

On 7.2.2012 the Mangalore Chapter of SIRC of the ICSI organized an investor awareness programme on the eve of India corporate and investor meet under the leadership of the Chairman Ullas Kumar Melinamogaru, at J. B. Pinto Memorial Hall, Bejai, Mangalore. CS Y V Balachandra, Company Secretary & Deputy General Manager, The Karnataka Bank Ltd was invited as the chief guest and guest speaker to present the topic Corporate Governance and Investor Protection. More than 100 investors attended the programme.

CS Ullas Kumar Melinamogaru in his welcome address spoke about the need to educate the investors on topics like corporate governance and how investors can protect themselves from fraudulent activities taking place in the stock markets.

In his address CS Y V Balachandra briefed about corporate governance. He said that for survival the growth should be sustainable. Companies should meet the aspirations of various stakeholders. If practices are not morally justified then society will not approve those companies. Presently only few sections of the society are reaping the benefit of growth. He also thanked the IEPF and the ICSI for taking such an active role in investor education and for affording him an opportunity to be of help in this behalf. In his formal presentation, he started with the history of corporate governance. He said that unlike in other parts of the world, the Corporate Governance initiatives in India were not triggered by any serious large scale financial, banking and economic frauds. The move in India was initially started by Confederation of Indian Industry (CII). CII set up a task force to design a voluntary code of Corporate Governance in December 1995. In April 1998, Desirable Corporate Governance: A Code was released. Between 1998 and 2000 over 25 leading companies including Bajaj Auto, Hindalco, Infosys, Dr Reddy's Lab, Nicholas Piramal, Bharath Forge, HDFC & ICICI voluntarily adopted the code. SEBI constituted a Committee under the Chairmanship of Kumar Mangalam Birla to design a code for listed entities. The Committee submitted its report in December 2000. Corporate governance became mandatory for listed entities under Clause 49 of the Listing Agreement in a phased manner, last phase of implementation for companies having paid up capital of more than Rs 3 crores was in the year 2002-03. Further fine tuning of the Code was made through N R Narayana Murthy Committee (2003) recommendations.



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Corporate Governance in simple terms is the manner of running a corporation, achieving its objectives, transparency of its operations, accountability & reporting etc. to achieve best organizational goals. The Fundamental objective of corporate governance is the enhancement of the long term shareholder value while at the same time protecting the interest of other stakeholders. Corporate Governance and Listing agreement: Clause 49 of the Listing agreement deals with Corporate Governance. Clause 49 essentially deals with Board of Directors, Disclosures, CEO/CFO certification, Report on Corporate Governance, Compliance. Corporate governance and economic development are intrinsically linked. Effective corporate governance systems promote the development of strong financial systems, enhance access to external financing companies leading to greater investment, and provide higher growth and increased employment opportunities. Effective corporate governance reduces the cost of capital by reducing risk and creates higher valuation for companies. Good corporate governance can significantly reduce the risk of nationwide financial crises. Good corporate governance can remove mistrust between different stakeholders, reduce legal costs and improve social and labour relationships and external economies like environment protection. Prior to Liberalization, Privatization and Globalization (LPG) Indian Corporates mainly concentrated on the domestic market. With the opening of the economy, domestic companies started looking at overseas acquisition as a strategy for growth in preference to having subsidiary companies abroad to face competition from global players. Some of the major acquisitions to date are: Tata Tea acquired Tetley for US \$ 407 million in the year 2000. Tata Motors acquired luxury car brand Jaguar and Land Rover from Ford Motors for US \$ 2.3 billion. Tata Steel acquired Corus Anglo-Dutch steelmaker Corus for \$7.6 billion. Fortis Healthcare (India) acquired Singapore-based Fortis Healthcare International for US\$ 665 million. Investor Protection: Investors need to be protected at 2 stages: Protecting Investors when Raising Capital by Securities through Primary market transactions and Protecting Investors in subsequent dealings in Securities through Secondary market transactions. The following are a number of regulations intended to protect investors. Private Companies: A private company cannot sell its shares on the stock Exchange or advertise them to the public. It can only issue shares by rights issue, private placing, offering to existing shareholders and employees' share scheme. Public Companies: Public company may offer shares to the public by direct offer to the public, Offer for sale, Rights issue, preferential issue, QIP and ADR/GDR. In offering securities to the public a public company shall get the shares listed on the Stock Exchange. Listing makes the shares freely marketable. To be on the Official List of the Stock Exchange the company must comply with the provisions of the Listing Agreement entered

into with the Stock Exchanges. Insider Dealing: No insider shall either on his own behalf or on behalf of any other person deal in securities of company listed on any stock exchange when in possession of any unpublished price sensitive information or communicate or counsel or procure directly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities. Price sensitive information means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of the securities of company. Disclosure requirements: Any person who holds more than 5% shares or voting rights in any listed company shall disclose the number of shares or voting rights within 2 days of receipt of intimation of allotment of share acquisition of shares or voting rights. Any person who is a director or officer of a listed company shall disclose the number of shares or voting rights held position taken in derivatives by such person and his dependents within working days of becoming a director or officer of the company. Also there are some Continuous disclosures which are mandatory. Prohibition of insider trading: The moral reason - It is unfair on the person who deals with the insider. The legal reason - On account of potential conflict of interest between the insider (employee, officer, director etc.) and the company. Prohibition of Fraudulent and Unfair Trade Practices: No person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner. Use or employ (in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange) any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under. Engage in any act or practice which in the ordinary course of business would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder. In case the companies resort to fraudulent trading SEBI will: Suspend the trading of the securities found to be or prima-facie found to be involved in fraudulent and unfair trade practice in a recognized stock exchange; restrain the persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities; impound and retain the proceeds or securities in respect of any transaction which is in violation or prima facie in violation of these regulations; direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction; suspension or cancellation of registration. In conclusion, he stated that Good Corporate governance is the need of the day. When a company follows good corporate governance practices and protects the interest of its investors then it will survive in the long run. There was an active interaction with the audience who raised many queries which were satisfactorily replied by the guest speaker. ●



Western India Regional Council

Seminar on Insider Trading Regulations, New Takeover Code & Issue of Preference Shares

On 18.2.2012 the ICSI-WIRC organized a Seminar on Insider Trading Regulations, New Takeover Code & Issue of Preference Shares at Goregoan Mumbai. Ananta Barua, Executive Director SEBI, J J Bhatt, Advocate, Rinku, Capital Market Consultant, Prachi Pamde, Advocate, Rama Subramanian, Ex GM, RBI were the speakers. In a buoyant capital market in India, the effectiveness of regulation in regard to Insider Trading Regulations and New Takeover Code were addressed in an insightful manner as well as from practical perspective. The intricacies for the issue of preference shares, particularly to foreign capital were highlighted by Rama Subramanian, Ex GM RBI. There were 146 delegates.

Seminar on Cross Border Transactions

On 25.2.2012 ICSI-WIRC organized a Seminar on Cross Border Transactions at Ramee Guest Line in Dadar. Following were the speakers: Sudha Bhushan, CA & CS, R Sontakke, Manager - RBI, Shailshree Bhaskar, Ex SEBI, Dwarko Khilnani, Ex. AGM of RBI & Author of Book on FEMA. The seminar highlighted recent trends for the quest for corporate control and the legal entanglements and ramifications of cross border deals. There were around 30 delegates.

Study Circle Meeting on Insider Trading

WIRC organized a Study Circle Meeting on Insider Trading in Sardar Vallabhbhai Engineering. CS Barnali Mukherjee, General Manager- Securities and Exchange Board of India and Suresh Thakur Desai, Past Chairman, WIRC-ICSI were the speakers. Barnali Mukherjee outlined the regulatory perspective of SEBI in light of recent development. There were 103 delegates.

Seminar on Secretarial Audit & Peer Review Aspects

On 3.3.2012 ICSI-WIRC organized a Seminar on Secretarial Audit & Peer Review Aspects in WIRC. D.A Kamat, N.L.Bhatia, Prakash Pandya, Dr. S.K. Jain, and Ajay Kumar, Practicing Company Secretaries addressed on the recent issues. There were 56 members present.

Two-day Workshop on Understanding Financial Statements & Important Aspects of Annual Report Preparation

On 9 & 10.3.2012 a two days' Workshop on Understanding Financial Statements & Important Aspects of Annual Report Preparation was organized by ICSI-WIRC. The speakers were Rajkumar Adukia, CS & CA; Y. M. Desai, CA; Tanuj Agarwal; Anand Bathiya, CA; Mayur Chokshi, CA; and Abhay Agarwal, CA. Being conducted on the eve of closure of financial year of 2011-12, the seminar addressed critical issues in preparation of financial statement and annual report, including CARO, GAPP & IFRS, Creation of XML file for XBRL filing, as mandated by MCA and revised schedule VI. There were 41 members present.

Ladies Special Programme

On 10.3.2012 ICSI-WIRC organised a Ladies Special Programme at Bajaj Bhavan. Those who addressed on the occasion were Aparna Agrawal, Human Development Professional; Savitha Kanan, Corporate Trainer; CS Vilma Mathias Gangahar, Morgan Stanley India Capital Private Limited; CS Neena Jindal, BSE Limited; CS Hemanti Wadhwa, BNP Paribas Asset Management India Pvt Ltd.; CS Dipti Neelakantan, JM Financial Limited. There were 70 lady delegates present on the occasion.

Study Circle Meeting on High Court Procedure in Scheme of Arrangement

On 11.3.2012 WIRC organized a Study Circle Meeting on High Court Procedure in Scheme of Arrangement. Sharad Abhyankar, Partner, Khaitan & Co made an insightful presentation on the theme. There were 98 delegates for the programme.

Study Circle Meeting on Buy Back of Shares

On 16.3.2012 WIRC organized a Study Circle Meeting on Buy Back of Shares at Smt P.N. Doshi College, Ghatkopar. Yogesh Chande, CS & Advocate addressed the participants on the theme. There were 83 delegates.

Seminar on Due Diligence

On 17.3.2012 ICSI-WIRC organized a Seminar on Due Diligence at MACCIA in Fort Mumbai. MV Phadke, Chief General Manager, Legal, IDBI; Krishna Chaturvedi, Senior Director M & A, Deloitte India; Neeta Phatarphekar, Associate Director, PWC; Harshul Shah, Solicitor were the speakers. The



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seminar brought out various nuances of due diligence, be it legal due diligence, documentations, or accounting & financial due diligence. Krishna Chaturvedi also made an interactive and participative presentation on a thought provoking case study. There were 110 delegates.

Study Circle Public Meeting on Union Budget 2012-2013

On 18.3.2012 ICSI-WIRC Jointly with CA Study Circle of Ghatkopar organised a Study Circle on Public Meeting on The Union Budget 2012-2013 at K J Somaiya Institute of Management Studies & Research, Vidya Vihar, Mumbai. The speakers were Chandrashekar Vaze, Chartered Accountant who dealt with Economic Aspects; Neena P. Kapasi, Chartered Accountant who dealt with Direct Tax and Rajiv Luthia, Chartered Accountant who dealt with Indirect Tax. The discussions were informative and insightful. A good number of members of the Institute was present.

INDORE CHAPTER

Full Day Seminar

On 4.3.2012 the Indore Chapter of WIRC of the ICSI organized a Full day seminar on Role of Legal Advisor & Merchant Banker in IPO and Private Equity Investment at Indore.

First Speaker of the day Dhanya Menon, Partner, ALMT Legal, Advocates & Solicitors, Bangalore, briefly described the evolution of private equity/venture capital investment in the country. She touched upon various aspects of PE investment, its advantages, disadvantages & practical aspects involved in due diligence process for a private equity investment. She described role of legal advisor in drafting of various agreements, representations, warranties, various terminologies involved & role of legal advisor from the point of view of Company & Private equity investor.

Second speaker Rajat Bopaiah, Partner, ALMT Legal, Advocates & Solicitors, Bangalore, spoke on the practical aspects of legal due diligence carried out by Legal Advisors in an IPO, drafting of Draft Red Herring Prospectus, Red Herring Prospectus and Prospectus. He explained role & responsibilities of a legal advisor in a Public Issue.

Finally Prashanth Kumar, MD & CEO of BOB Capital Markets Ltd, explained evolution of merchant banker's role in capital market. Role of merchant banker as a principle coordinator with SEBI, Registrar & other intermediaries was also discussed. He further emphasized on prudent role & practices to be adopted by Merchant Banker. Recent initiatives taken by SEBI towards transparency in capital market were also discussed.

All the above speakers also stressed on importance of Company Secretary, as he has to coordinate with various other departments including finance, accounts, insurance, excise,

legal, statutory auditors, chartered engineers etc. for getting necessary certifications, back up etc. for legal due diligence and for merchant banker. There was also an open house session for solving the queries of participants. The programme was conducted by D.K. Sharma, GM-Corporate Affairs & Company Secretary of Flexituff International Limited. The seminar received an overwhelming response from more than 150 members and students of the ICSI. Wide coverage of the programme was given by leading newspapers viz. Dainik Bhaskar, Nai Dunia, Patrika, Pipules Samachar, BPN Times, Agniban, Prabhat Kiran, Free Press, and the local T.V. news channel BTV and DIG Cable.

PUNE CHAPTER

Two Days Residential Workshop

On 17 and 18.2.2012 the Pune Chapter of WIRC of the ICSI organized a two Day Residential Workshop on Critical issues in Corporate Laws, wherein professionals from different cities, like, Mumbai, Pune, Kolhapur, etc. came together and discussed various critical issues. The workshop was coordinated and conducted by Dr. K. R. Chandratre, Past President, the ICSI and a Practicing Company Secretary, from Pune. CS Pawan Chandak, Chapter Chairman welcomed Dr. K R Chandratre and all the delegates. CS Omkar Deosthale helped in compilation of the posers in critical issues. CS Rohit Gokhale and CS Harshal Joshi helped in compilation of the discussions held during the workshop. This year also, the workshop was conducted with the enthusiastic response from the members numbering around 60. Eight Credit Hours were allotted to the Members.

Study Circle Meeting

On 25.2.2012 Sanjeev Deshpande, General Manager - Brisk Electronics, conducted a session on Business Communication. He briefed the audience about the phenomenon of the term business communication and its relevance in the business & corporate world especially in the area of development of positive attitude, interpersonal relations, public speaking, better employability, selling skills, interview skills, art of negotiating, media planning etc. He emphasized that the language should not become a barrier of communication but the listening & understanding skills, positive attitude and behaviour of the colleagues make the communication more effective. The session was very interactive followed by question-answers by the participants. The SCM was attended by more than 70 participants comprising members and students. One credit hour was allotted to the members of the ICSI.

Full Day Seminar

On 3.3.2012 Pune Chapter of WIRC of the ICSI organized a Joint Programme with the Institute of Cost Accountants of India (ICAI). CS Pawan Chandak, Chairman Pune Chapter ICSI introduced the theme of the Programme. CMA Dhananjay Joshi,



Former President of ICAI delivered the Inauguration address and CS Vivek Sadhale, Company Secretary & Head Legal & investor Relations, Persistent Systems Limited delivered the Key Note address. There after the full day seminar was conducted having 4 Technical sessions as below. Cost Accounting Record Rules - Applicability by CMA Sanjay Bhargave; Cost Compliance Report by CMA Amit Apte; Applicability of Cost Audit & Cost Audit Orders by CMA Harshad Deshpande; CAS & GACAP and Cost Audit Report - Form I & II by CMA Neeraj Joshi; Performance Appraisal Report by CMA Milind Date; Cost Audit Report para 1 to 7 by CMA N.M. Vechalekar; Cost Audit Report Para 8 to 10 by CMA Milind Date; Cost Audit Report Para 11 by CMA Harshad Deshpande and Panel discussion by All the faculty members present.

A total of around 125 participants comprising Members and students from the ICSI and ICAI attended the programme. Four programme credit hours were allotted to the members of the ICSI.

Full Day Seminar jointly with the Kolhapur Chapter of ICSI

On 10.3.2012 the Chapter organized a Full Day Seminar jointly with the Kolhapur Chapter of the ICSI at Sangli. CS B G Kulkarni, Company Secretary, The Ugar Sugar Works Limited, Sangli was a Chief Guest for the Programme. The Programme started with the Inaugural function which was coordinated by CS Shilpa Dixit, Secretary Pune Chapter of the ICSI. CS B. G. Kulkarni delivered the Key Note address. There after the full day seminar was conducted having in all 2 Technical Sessions as below: Revised Schedule VI by CA Abhay Athavale; Cost Audit & Rules by CMA Harshad Deshpande

The seminar concluded with the remarks of CS Prasad Joshi, Secretary of Kolhapur Chapter of the ICSI. Around 100 participants consisting of members, students in and around Sangli, Satara, Kolhapur, Belgaum attended the programme. Four credit hours were allotted to the members of the ICSI.

Study Circle Meeting

On 10.3.2012 Sudhakar Kulkarni, Certified Financial Planner conducted a session on Capital Market and its recent trends. Initially he briefed the audience about the concept of capital market and took an overview of the terminologies like Price Band, Book Building, Anchor Investor, ASBA, green shoe option, safety net, syndicate member, block deal, bulk deal etc. He also focused on the recent changes in SEBI guidelines, stock exchange & DIP guidelines, offer document, red herring of prospectus, listing and de-listing of securities etc. The presentation was followed by question-answer session. The SCM was attended by more than 80 participants comprising of members and students. CS Anant Palande, Chairman PCS committee co-ordinated the study circle meeting. One Credit Hour was allotted to the members of the ICSI.

RAIPUR CHAPTER

Workshop on Stress Management & Health Regime

On 26.02.2012 Raipur Chapter of WIRC of the ICSI organized a Workshop on Stress Management and Health Regime. Dr. Vivek Bhartiya was the trainer. He started his session with the explanation of Stress, its kinds and its effect in our life. He conveyed several ways to manage stress, in which he covered proper quantity of sleep, intake of nutritional diet and water, regular workout, meditation, fasting etc. In his explanation he elaborated a story and with the help of which, he compelled participants to think about their daily routine and stress. Trainer taught some easy Asanas which can be used for Stress Management. Participants practiced the Asanas and found them very helpful. There was lively interaction throughout the programme attended by around 20 participants.

Study Circle Meeting on Income Tax Assessment Procedure

On 11.03.2012 Raipur Chapter organized a Study Circle Meeting on Income Tax Assessment Procedure, which was addressed by CA Dolly Keswani, Chartered Accountant in Practice. She explained in detail the provisions relating to filing of Returns by Individuals, HUFs, firms and Companies, Self-Assessment, Regular/Scrutiny Assessment, Best Judge Assessment and Reassessment of Income escaping Assessment, penalties and consequences of non filing of returns and non inclusion of incomes, etc. At the end of the session she also addressed the queries and doubts raised by the participants. Around 35 members and students were present in the meeting.

Reconstituted Examination Committee of the Council of the Institute for the year 2012-13

Nesar Ahmad	Chairman
S N Ananthasubramanian	Member
Ashok Kumar Pareek	Member
Atul H Mehta	Member
B Narasimhan	Member
Umesh H Ved	Member
Arun Balakrishnan	Member*

* Govt. Nominee

Online Services available to Members



Attention Members !

Members of the Institute are informed that online services are already available to members for making applications/requests for Membership and other related issues. The process of ACS/FCS admissions/Issue of Certificate of Practice have since been made online and the members can generate their letter of admission of ACS/FCS/issue of certificate of practice on their own through Institute's portal www.icsi.in. The details of the same are given below:

A) Facility for making Online applications/requests on the following through Institute's portal www.icsi.in:

- ◆ Admission as an ACS/FCS
- ◆ Issue of Certificate of Practice
- ◆ Change of Address
- ◆ Duplicate I-Card for Members
- ◆ Request of Issue of Chartered Secretary
- ◆ 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 Transcripts

B) Facility for acceptance of payment online from the Members is available through Institute's portal www.icsi.in

- ◆ Annual Membership fee
- ◆ Certificate of Practice fee
- ◆ Restoration fee and Entrance Fee
- ◆ CSBF subscription.

C) Online change of address by the members on their own through Institute's portal www.icsi.in

The members can change their professional/residential address/contact details through Institute's portal www.icsi.in by following the steps given below:

- i. Login to portal www.icsi.in
- ii. Login to self profile by entering the membership number and password
- iii. Once logged in, the member has to click on the Link 'Change of Address'
- iv. A window will be displayed with the buttons 'Professional' and 'Residential'
- v. Click on the relevant Button i.e. Professional or Residential and change the details and click on 'go' button
- vi. A screen will be displayed with the options 'Existing details as per records' and 'Enter change details'
- vii. Change the details as required and press on 'submit' button
- viii. The details will be automatically updated once authenticated by Membership Section

D) Automation of ACS/ FCS Admission letters and Issue of Certificate of Practice letters

The newly admitted ACS/FCS members and Certificate of Practice Holders can generate their letter of admission confirming their ACS/FCS number and date of admission and letter confirming their Certificate of Practice number and date of issue by creating/resetting their password at Institute's portal www.icsi.in by following the steps given below:

- i. Login to portal www.icsi.in
- ii. Login to your profile by entering the membership number and password
- iii. Once logged in, the member has to click on the Link 'Letters'
- iv. A window will be displayed with the dropdown list 'ACS/FCS Letter/Issue of Certificate of Practice Letter'
- v. Click on the relevant option i.e. 'ACS/FCS Letter/Issue of Certificate of Practice Letter' and press on 'Submit' button
- vi. Letter in PDF format will be displayed (Make sure that pop up blocker is not on in Internet Explorer Browser)

Members are requested to utilize the aforesaid online services available on Institute's portal www.icsi.in for availing realtime services and provide their feedback on the same to Mrs. Meenakshi Gupta, Joint Director at email id meenakshi.gupta@icsi.edu or Mr. Santosh kumar Jha, Programmer at email id santosh.jha@icsi.edu. In case of any difficulty in availing the online services, please contact the said officials on telephone numbers 011-45341048/62/24636467.

Panel of Paper Setters/Examiners for CS Exams.

INVITATION OF APPLICATIONS FOR PANEL OF PAPER SETTERS AND EXAMINERS FOR THE COMPANY SECRETARIES EXAMINATIONS

The Institute is inviting applications for preparing a panel of Paper Setters and Examiners from qualified, competent and experienced persons in the following subjects of company secretaries examinations:

I	LEGAL DISCIPLINE SUBJECTS:	
	(a) Law:	
	(i) General and Commercial Laws	Executive Programme
	(ii) Tax Laws	Executive Programme
	(iii) Company Law	Executive Programme
	(iv) Economic and Labour Laws	Executive Programme
	(v) Securities Laws and Compliances	Executive Programme
	(b) Law and Practice:	
	(i) Company Secretarial Practice	Professional Programme
	(ii) Drafting, Appearances and Pleadings	Professional Programme
	(iii) Corporate Restructuring and Insolvency	Professional Programme
	(iv) Advanced Tax Laws and Practice	Professional Programme
	(c) Law and Management:	
	(i) Elements of Business Laws and Management	Foundation Programme
	(ii) Due Diligence and Corporate Compliance Management	Professional Programme
II	MANAGEMENT, BUSINESS COMMUNICATION, ETHICS AND SUSTAINABILITY DISCIPLINE SUBJECTS:	
	(i) English and Business Communication	Foundation Programme
	(ii) Strategic Management, Alliances and International Trade	Professional Programme
	(iii) Governance, Business Ethics and Sustainability	Professional Programme
III	ECONOMICS DISCIPLINE SUBJECT:	
	(i) Economics and Statistics	Foundation Programme
IV	ACCOUNTING AND FINANCE DISCIPLINE SUBJECTS:	
	(i) Financial Accounting	Foundation Programme
	(ii) Company Accounts, Cost and Management Accounting	Executive Programme
	(iii) Financial, Treasury and Forex Management	Professional Programme

SCALE OF HONORARIUM		
Stage of Examination	For Paper Setting	For Evaluation of Answer Books
Foundation Programme	₹ 5,000/- per paper	₹ 40.00 per answer book
Executive Programme	₹ 6,000/- per paper	₹ 50.00 per answer book
Professional Programme	₹ 7,000/- per paper	₹ 60.00 per answer book

QUALIFICATIONS:

A person applying for empanelment of his/her name as a Paper Setter/Examiner should be holding professional qualification as member of the Institute of Company Secretaries of India/Institute of Cost Accountants of India/Institute of Chartered Accountants of India at least for five years and/or a Doctorate Degree/Postgraduate Qualification with at least second class in the disciplines of Law, Management, Finance, Accounting, International Trade, Economics, English, etc., with five years experience either in an academic position or in practice or in employment in the concerned field/discipline having relevance to the subjects of examinations.

DESIRABLE EXPERIENCE:

Persons having adequate experience of teaching and as Head Examiner/Paper Setter/Examiner in subjects of Law, Management, Finance, Accounting, International Trade, Economics, English, etc., at graduate/post-graduate level or professional examinations or in writing book(s) or study material in the relevant subject(s) or any other specialised subjects at graduate/post-graduate level with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

HOW TO APPLY:

Candidates fulfilling the above conditions and not registered as a student of the Institute may send their bio-data in the prescribed application form. The prescribed application form may be downloaded from the Institute's website <http://www.icsi.edu/webmodules/member/forms/examnew.pdf>. The blank application form can also be obtained by post from the Joint Director (Examinations), The Institute of Company Secretaries of India, C - 37, Institutional Area, Sector - 62, NOIDA - 201 309 or by sending an e-mail to: exam@icsi.edu

INVITATION OF APPLICATIONS FOR PANEL OF PAPER SETTERS AND EXAMINERS FOR THE POST MEMBERSHIP QUALIFICATION (PMQ) COURSE EXAMINATION IN "CORPORATE GOVERNANCE"

Applications are invited for preparing a panel of Paper Setters and Examiners in the following subjects of Post Membership Qualification Course (Part - I) Examination in "Corporate Governance".

Group -I

Paper - I	Conceptual Framework of Corporate Governance
Paper - II	Corporate and Board Management
Paper - III	Legal and Regulatory Framework of Corporate Governance

Group-II

Paper - IV	Board Committees and Role of Professionals
Paper - V	Corporate Governance - Codes and Practices

ABOUT THE PMQ COURSE

Post Membership Qualification (PMQ) Course in "Corporate Governance" of the Institute aims to provide its Members expert knowledge to understand, analyse and apply the principles and practices of good corporate governance in real life situation and enable them to gain acumen, insight and thorough knowledge relating to different aspects of corporate governance. The candidates are expected to acquire thorough knowledge of emerging concepts and issues, new developments, issues at national and international levels, global trends and developments, knowledge of regulatory framework, procedural, secretarial, documentation aspects, etc., relating to corporate governance so as to have an integrated view of the entire framework of corporate governance and that the candidates are fully equipped with technical and analytical skill required for corporate governance and decision making.

QUALIFICATIONS

A person applying for empanelment of his/her name as a Paper Setter or Examiner should be holding professional qualification as Member of the Institute of Company Secretaries of India/Institute of Cost Accountants of India/Institute of Chartered Accountants of India with ten years standing and/or a Doctorate Degree/Postgraduate Qualification with at least second class in the areas of Corporate Law, Management, Finance and Accounting with ten years work experience in senior managerial position or in practice or in eminent academic position in the concerned field having relevance to subjects of examinations.

DESIRABLE EXPERIENCE

Persons having adequate research/practical work experience in the corporate sector AND/OR teaching experience and having worked as Paper Setter or Examiner in subjects related to Corporate Laws, Management, Finance & Accounting discipline at post-graduate level or professional examinations OR having published research work to their credit in the relevant subject(s) OR any other specialised post-graduate/doctoral level qualification(s) with relevant work experience having direct relevance to aforesaid subject(s) of PMQ Course will be preferred.

HOW TO APPLY

Candidates fulfilling the above conditions **and not registered as a student of the Institute for pursuing Company Secretaryship and/or Post Membership Qualification (PMQ) Course** may send their bio-data in the prescribed application form. ***The prescribed application form may be downloaded from the Institute's website <http://www.icsi.edu/webmodules/member/forms/pmq.pdf>.*** The blank application form can also be obtained by post from the **Joint Director (Examinations), The Institute of Company Secretaries of India, C - 37, Institutional Area, Sector - 62, NOIDA - 201 309 or by sending an e-mail to: exam@icsi.edu**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Six PCH for
Members of ICSI

13th NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

**May 25-26, 2012
(Friday & Saturday)**

Venue: Sher-i-Kashmir International Conference Centre, Chashma Shahi, Srinagar, Kashmir (India) – 190001

THEME: EMERGING TRENDS & OPPORTUNITIES – PREPAREDNESS FOR PCS

SUB-THEMES:

- I. Mastering Secretarial Audit
- II. Peer Review – A tool for Professional Excellence
- III. Opportunities in New Taxation Regime – DTC & GST
- IV. Opportunities for Professional Services in the International Market

Key Takeaways

- Explore new opportunities in the areas of practice.
- Update and sharpen technical and professional skills.
- Share Knowledge among the peer group.
- Build professional networking.
- Interact with experienced and expert faculty.
- Enjoy the scenic beauty of Kashmir.
- Rejuvenate to achieve further heights.

Speakers: Eminent speakers with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

Participants: Company Secretaries and other Professionals in Secretarial, Legal and Management disciplines would be benefited by participating in the Conference.

Delegate Fees

Residential (including delegate fee and stay for two nights in the house boat on twin sharing basis)	Non-Residential
Members / Licentiates / Students : Rs. 7000/-	Members / Licentiates / Students : Rs. 3500/-
Non-members : Rs. 7500/-	Non-members : Rs. 4000/-
Accompanying Spouse & Children above 12 years : Rs. 6500/-	Accompanying Spouse & Children above 12 years : Rs. 3000/-
No fees for children below 12 years (upto a maximum of 2 children)	No fees for children below 12 years (upto a maximum of 2 children)

Registration fee will cover the cost of background material, tea (Friday & Saturday, May 25 & 26, 2012), lunch (Friday & Saturday, May 25 & 26, 2012) and dinner (Thursday & Friday, May 24 & 25, 2012).

Accommodation on 'first come first served' basis is being arranged at Srinagar for outstation delegates.

The delegate fee once paid shall not be refunded in any case.

Special arrangements are being made by NIRC for transportation of Delegates from Delhi to Srinagar and back by Road.

- Departure from Delhi – 23-05-2012
- Arrival at Srinagar – 24-05-2012

- Departure from Srinagar – 26-05-2012
- Arrival at Delhi – 27-05-2012

PROGRAMME DIRECTOR
CS Harish K Vaid
Council Member, The ICSI
0120-4609361/4609000/
9810188683
harish.vaid@jalindia.co.in

PROGRAMME CO-ORDINATOR
CS Rajiv Bajaj
Chairman, NIRC of The ICSI
0120-2563056/ 4024500/ 9811453353
rajiv.bajaj@in.panasonic.com

PROGRAMME FACILITATOR
CS Parvez Ahmad
Chairman, Srinagar Chapter
0194-2481927/9810302142
parvez.ahd@gmail.com

Important:

1. Delegates with chauffer driven Cars will have to pay extra charges for food arrangements of Driver during the conference. These charges have to be paid immediately on arrival.
2. Limited rooms are available on 'First Come First Served' Basis.
3. In case accommodation is not available at the house boats, the same may be booked in some other hotels subject to availability as may be decided by the organising committee.
4. The arrangement for Residential Accommodation has been made for Two Nights stay- i.e. May 24 & 25, 2012
5. Any extra stay will be charged separately by Hotel / House Boat owner directly subject to availability of rooms.
6. Any extra facilities availed by the delegate during the stay have to be paid directly to the Hotel.

Registration

The delegate registration fee is payable in advance and is not refundable for accepted nominations. The registration form duly completed along with a crossed demand draft may be sent in favour of **"The Institute of Company Secretaries of India"** payable at **New Delhi** at the following addresses:

Saurabh Jain Assistant Director The Institute of Company Secretaries of India 'ICSI HOUSE', 22, Institutional Area, Lodi Road, New Delhi - 110 003 Tel: 011-45341035 saurabh.jain@icsi.edu	T R Mehta Executive Officer NIRC of The ICSI ICSI-NIRC Building, Plot No. 4, Prasad Nagar, Institutional Area, New Delhi - 110 005 Tel: 011-49343002/49343003 tr.mehta@icsi.edu ; niro@icsi.edu	Parvez Ahmad Chairman Srinagar Chapter of The ICSI S P College Srinagar - 190 001 Tel: 0194-2481927 / 9810302142 parvez.ahd@gmail.com
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Backgrounder

It is proposed to bring out a Backgrounder containing theme articles and other relevant information. Members who wish to contribute papers for publication in the backgrounder or for circulation at the Conference are requested to send the same through email to CS Saurabh Jain, Assistant Director, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi - 110 003 at saurabh.jain@icsi.edu with one hard copy or those sending only hard copy may send the same in duplicate on or before May 10, 2012. The paper should not normally exceed 15 typed pages. Members whose papers/articles are published in the Backgrounder of the Conference would be awarded **FOUR** Programme Credit Hours. The decision of the Institute shall be final in all respects.

The Delegate Registration Form is available on the ICSI website at the link:

<http://www.icsi.edu>



CHARTERED SECRETARY Advertisement Tariff

(With Effect from 1st April 2012)

BACK COVER (COLOURED)			COVER II/III (COLOURED)		
Non - Appointment			Non - Appointment		
Per Insertion	₹ 75,000		Per Insertion	₹ 50,000	
4 Insertions	₹ 2,70,000		4 Insertions	₹ 1,80,000	
6 Insertions	₹ 3,96,000		6 Insertions	₹ 2,64,000	
12 Insertions	₹ 7,65,000		12 Insertions	₹ 5,10,000	

FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
Non-Appointment	Appointment		Non-Appointment	Appointment	
Per Insertion	₹ 40,000	₹ 10,000	Per Insertion	₹ 20,000	₹ 5,000
4 Insertions	₹ 1,44,000	₹ 36,000	4 Insertions	₹ 72,000	₹ 18,000
6 Insertions	₹ 2,11,200	₹ 52,800	6 Insertions	₹ 1,05,600	₹ 26,400
12 Insertions	₹ 4,08,000	₹ 1,02,000	12 Insertions	₹ 2,04,000	₹ 51,000

PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES	
Per Insertion	₹ 10,000	₹ 3,000	For 'Situation Wanted' ads.	₹ 50
(Subject to availability of space)			For Others	₹ 100

MECHANICAL DATA

• Full Page - 18 x 24 cm • Half Page - 9 x 24 cm or 18 x 12 cm • Quarter page - 9 x 12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor,
"CHARTERED SECRETARY",



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003
Tel: 011-45341024, 41504444. Fax: + 91-11-24626727, 24645045
Email : ak.sil@icsi.edu website : www.icsi.edu



ATTENTION MEMBERS

**PMQ COURSE IN CORPORATE
GOVERNANCE
EXAMINATION June 2012**

1. 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 Tuesday, June 5, 2012 to Saturday, June 9, 2012 at the centres where the company secretaries June 2012 examination would be held.

TIME TABLE & PROGRAMME

DATE AND DAY	GROUP	MORNING SESSION 09.00 A.M. TO 12.00 NOON
5.6.2012 Tuesday	I	Conceptual Framework of Corporate Governance
6.6.2012 Wednesday	I	Corporate and Board Management
7.6.2012 Thursday	I	Legal and Regulatory Framework of Corporate Governance
8.6.2012 Friday	II	Board Committees and Role of Professionals
9.6.2012 Saturday	II	Corporate Governance - Codes and Practices

2. Members of the Institute registered for the PMQ Course in Corporate Governance on or before November 30, 2011 are eligible for appearing in the PMQ Course in Corporate Governance Examination to be held in June 2012.
3. The last date for receipt of application forms (available in prospectus) for June 2012 examination from eligible candidates together with requisite examination fee @ ₹ 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, 2012. Examination forms complete in all respect along with fee mentioned above and with the late fee of ₹ 100/- should reach the Institute on or before 4th May, 2012.
4. For further details please contact Ms. Banu Dandona, Asst. Director (Academics) at the Institute's Head Quarters at New Delhi.

ATTENTION MEMBERS IN PRACTICE

**EMPANELMENT AS A
"REVIEWER"
(AS PER THE GUIDELINES FOR PEER
REVIEW OF ATTESTATION SERVICES
BY PRACTICING COMPANY
SECRETARIES)**

The Council of the Institute approved the Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries at its 202nd Meeting held on August 25-26, 2011 at New Delhi.

A copy of the Guidelines is available on the ICSI website(<http://www.icsi.edu/LinkClick.aspx?link=2242&tabid=2220&mid=4498>) and also published in the September, 2011 issue of the Chartered Secretary Journal.

The Guidelines have come into effect from October 1, 2011. The Peer Review exercise has already commenced from January 4, 2012. The Peer Review Board has been organising extensive training programmes for Peer Reviewers at various locations throughout the country and many more programmes have been scheduled in the month of April, 2012.

The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- a) Be a member;
- b) Possess at least ten years experience and
- c) Be currently in the practice as Company Secretary.

Members in practice are invited to empanel themselves as a Peer Reviewer under the Guidelines for Peer Review of Attestation Services by PCS if they fulfill the aforesaid qualifications for being empanelled as a Peer Reviewer.

The Proforma for Empanelment as a "Reviewer" is available on the webpage of the Peer Review Board (<http://www.icsi.edu/AppointmentReviewer/tabid/2240/Default.aspx>). The duly filled in proforma may be sent to- The Secretary, Peer Review Board, Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi 110 003 (email: sutanu.sinha@icsi.edu) in order to be eligible to attend the Peer Reviewers Training Programmes being organized by the Institute at different places.



Capital Markets Week



ICSI celebrates Capital Markets Week April 23-28, 2012

The Institute of Company Secretaries of India (ICSI) has been actively engaged in promoting the interest of investors and the orderly development of the capital market in India. The members of the ICSI have been authorised by SEBI - the capital market regulator and stock exchanges to issue various certificates and to undertake internal audit of capital market intermediaries. As part of its initiative towards investor education and good governance in Capital Markets, the ICSI has decided to observe ICSI Capital Markets Week from April 23 to 28, 2012. The Theme, Sub-themes and details of the mega programmes to be organized during the Capital Markets Week are as follows:

Theme Capital Markets - Growth Drivers Sub themes

- ◆ **Capital Markets: Challenges, Opportunities for Innovation**
- ◆ **Recent Regulatory Changes in Capital Markets**
- ◆ **SME Exchange : Empowering India's SME Sector**
- ◆ **Indian Capital Market : How to Rebuild Investor Confidence**

Mega Programmes

Day & Date	Place
Monday, April 23, 2012	Mumbai
Tuesday, April 24, 2012	Bangalore
Wednesday, April 25, 2012	Chennai
Thursday, April 26, 2012	Kolkata
Friday, April 27, 2012	Ahmedabad
Saturday, April 28, 2012	Delhi

In addition to organization of mega programmes at above six major cities, a number of activities will be undertaken during the week such as panel discussions, lectures, interactive meetings with capital market regulators/stock exchanges and investor awareness programmes by the respective Regional Councils and Chapters.

Programme Credit Hours

- ◆ Four PCH would be awarded to members for attending Mega Programmes.
- ◆ PCH for other programmes would be awarded as per the guidelines of the Institute.

All are cordially invited to attend and participate in the Capital Markets Week activities.

For details and updates regarding time, venue and faculty of the Mega Programmes and other events during the Capital Markets Week, please visit www.icsi.edu.



ATTENTION

40TH NATIONAL CONVENTION OF COMPANY SECRETARIES SUGGESTIONS ON THEME AND SUB-THEMES

The 40th National Convention of Company Secretaries is scheduled to be held in Western Region. Suggestions are invited for theme and sub-themes to be deliberated at the National Convention.

The person whose theme alongwith its sub-themes is selected shall get exemption from paying the delegate registration fee for the Convention. The decision of the Institute shall be final in all respects. Interested persons may send their suggestions so as to reach by April 25, 2012 to :

Sutanu Sinha

Senior Director (Academics)
The Institute of Company Secretaries of India
ICSI House, 22, Institutional Area
Lodi Road, New Delhi 110 003
E-mail : sudhir.dixit@icsi.edu
Fax : 011-24645045

PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2012-13

The annual membership fee and certificate of practice fee for the year 2012-13 will **become due for payment w.e.f. 1st April, 2012. The last date for payment of fee is 30th June 2012.**

The membership and Certificate of Practice fee 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.**

Mode of Remittance of Fee

The fee can be remitted by way of :

- (i) On-Line (through payment Gateway of the Institute's website (www.icsi.in)) by following the steps given below:-
 - (ii) a) Go to the portal www.icsi.in
 - b) Login into your profile by selecting the option Membership -- > Associate/Fellow
 - c) Enter your Membership number in the box provided.
 - d) Enter your password in the box provided (Click on Reset if creating for the first time)
 - e) After Logging in click on the link 'Annual membership Fee'
 - f) Click on Proceed for Payment button for payment through online payment gateway.
 - g) Keep the generated acknowledgement for future reference and record.
- (ii) Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- (iii) 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.
- (iv) 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 Mr. D.D. Garg, Desk Officer or Mrs. Vanitha Dhanesh on telephone Nos.011-45341062/64 or Mobile No.9868128682 / through e-mail ids: annualfee@icsi.edu, cp@icsi.edu



Our Members

CONGRATULATIONS

SHRI T.S.BALASUBRAMANIAN, FCS
on his being taken over as Member (Finance) of
Tariff Authority for Major Ports, Mumbai.

CORRIGENDUM

The name of
DR. JAGANNATH DHANKHAR, FCS 2130
inadvertently published in the List of Defaulters
at Sl. No. 1193 on page 1843 of December, 2011
issue of Chartered Secretary Journal be treated
as deleted.

Inconvenience caused, if any, is regretted.

CS QUIZ

Prize query

A manufacturer while selling an excisable goods recovered packing charges from the customers. Can the Revenue Department levy and collect excise duty on the packing charges by including the same in the assessable value of the goods sold?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th May , 2012.
- 3] Two prizes (a first and a second) in kind will be awarded to the best answers and the names of the contributors will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query April, 2012 Issue**' and addressed by name to :

N. K. Jain, Editor

The Institute of Company Secretaries
of India, 'ICSI House', 22, Institutional
Area, Lodi Road, New Delhi-110003.

OBITUARY

"Chartered Secretary" deeply regrets to record the sad demise of

SHRI ANAND TAMIRISA, FCS
(09.03.1958 - 12.03.2012), a Fellow
Member of the Institute from Bangalore.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed Soul rest in peace.

ICSI ANNOUNCES

7TH INTERNATIONAL PROFESSIONAL DEVELOPMENT FELLOWSHIP PROGRAMME - 2012



The Institute has decided to organise 7th International Professional Development Fellowship Programme from June 15 to June 22, 2012 for 07 nights/08 days in South Africa, tentatively covering Suncity, Johannesburg and Cape Town. International Conference will be organised at Johannesburg during the Fellowship Programme. The details are being finalised and will be available on the ICSI Website www.icsi.edu shortly.



Post Membership Qualification Course in Corporate Governance

OBJECTIVES

- To enable the members to gain acumen, insight and thorough knowledge relating to the various aspects of corporate governance.
- To provide thorough knowledge of the legal and regulatory framework in India vis-à-vis corporate governance as well as procedural, secretarial and documentation aspects.
- To provide thorough knowledge of the global trends and developments so as to have an integrated view of the entire framework for corporate governance within which the companies operate.
- To equip the candidates with the technical and analytical skills in corporate governance and decision-making.

ELIGIBILITY CRITERIA

A person who is a member of the Institute is eligible for admission to the course.

COURSE FEE

Rs. 25,000/- payable at the time of registration.

REGISTRATION

A copy of the prospectus giving the registration procedure and other details can be purchased for Rs.500.

DIPLOMA CERTIFICATE

A candidate successfully completing the Corporate Governance Course shall be awarded a Diploma Certificate and shall be entitled to use the descriptive letters "DCG (ICSI)" to indicate that he/she has been awarded "Post Membership Diploma in Corporate Governance".



For further details, please visit : www.icsi.edu

For application write to:

Secretary & CEO



**THE INSTITUTE OF
Company Secretaries of India**

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

Headquarters

ICSI House, 22 Institutional Area, Lodi Road, New Delhi - 110003

tel 011- 4534 1000, 4150 4444 fax + 91-11-2462 6727

e-mail info@icsi.edu website www.icsi.edu