

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

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

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Compounding of Contraventions under FEMA, 1999

WISHING ALL



A HAPPY NEW YEAR 2012



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To be a global leader in promoting good corporate governance

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To develop high calibre professionals facilitating good corporate governance



THE INSTITUTE OF
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From The Editor

WISHING ALL
2012
A HAPPY NEW YEAR



Dear Readers,

The success of every giant step lies in 'baby steps', the small steps traversed on the sands of time, grows in giant impressions visible, appreciated and acclaimed. Those who keep pace with the time remain agile and impressive. The key to realising a dream is to focus not on success but significance, and then even small steps and little successes along our path takes on greater meaning.

We, saw a dream to provide our readers the Chartered Secretary that benchmark with international standards. It is said that when we dream with others, it is the beginning of reality, and today our dream has become a reality in presenting you the Chartered Secretary on a multi colour international format.

A lot of thinking, articulation, wisdom and efforts go in Chartered Secretary published in July 1971 on a quarterly wisdom and efforts of the Council and undoubtedly its editor Secretary of the Institute.



taking the first step. The first issue of basis, was a tiny step and result of collective Mr. T P Subbaraman, the then Assistant



1986

We treaded softly but steadily on the sands of time that resulted in making this journal of repute, a monthly journal in the very next year of its publication. Over a period of time, we nurtured it with passion and support of all of you, to bring in its ambit larger print area, value added new sections, new colour schemes and an international shape.



1991

This issue of Chartered Secretary in its new 'Avtar' international look and design retains the magic of its oriented articles, and all standard columns, you are smooth, interesting and enriching.



2012

with multi colour printing, innovative ideas, quality and authenticity of information, application accustomed to read. I am sure you will find reading

Innovation being a process in continuum, I invite our esteemed readers to enrich our thinking process by sending considered suggestions, to enable your own Chartered Secretary serve you better.

May this New Year bring opportunities to explore new ways of acquiring knowledge to help you turning all your dreams into great achievement.

Wishing you A Very Happy and Prosperous New Year 2012.

With kind regards,

Yours Sincerely,

(N K Jain)
Editor

01

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Articles (A 1-46)

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Corporation, Community and Development : An Integrated Approach to Corporate Responsibility

p- 22

Om Prakash Dani & M.S. Srinivasan

The concept and practice of Corporate Social Responsibility has to progress beyond charitable or philanthropic activities towards a strategic integration with community development. This article explores such a developmental approach to CSR.

Clamour for Gifts at AGMs of Companies Needs to be Prohibited by Legislation

p- 29

T. N. Pandey

The author, in this article, has examined the widely prevalent practice of demands of gifts and sumptuous entertainment by shareholders at the AGMs of the companies. This practice has become so rampant that it has become a law and order problem for many companies. The author, in this context, has welcomed the suggestion of the MCA to ban such gifts giving/taking practices. The proper course would be to legally ban such practices instead of through a circular. The proposal of the MCA needs wholesome support from all quarters.

Human Resource Management

p- 33

Pramod S. Shah

The employees in any organization are not to be viewed as static individuals since the quality and quantity of HR are affected by environment factors such as education, training and development, motivation etc. If human factor is properly utilized it proves to be a dynamic force for running an organization, otherwise it becomes a passive and destructive force. The overall aim of HR is to find the possibilities for adaptation for survival of organization with constantly changing scenario in an era of increasing competition. Building a world class organization is a long-term process and it would be highly impossible to realise this dream without human resource.

Think before you Marry: The Fluid Law of Joint Ventures

p- 41

Vinod Kothari & Nidhi Ladha

In business, the good old way of doing business together with combined resources or strengths was partnership. However, modern business is increasingly relying on "joint ventures". Joint ventures are become ubiquitous. As they become so common, it is important to understand the fundamental principles underlying JVs, as there is no law governing JVs. The crux of our article is courts have consistently applied partnership principles on joint ventures. However, JVs may take different shades or coming together – from just a collaboration, to co-ownership, to pooling of resources, to formation of JV companies. We examine several contentious questions such as whether JV results into joint ownership of properties, are the principles of agency, constructive trusts etc.

applicable to partnerships are applicable to JVs, etc. Many of these points presently do not have a clear answer in law. Finally, we also present an inventory of significant points that every joint venturer should agree upon before entering into a JV.

Retail Investor Concerns in the Primary Market: Is there a Need for Greater Protection?

p- 49

Parimala. V

In the context of the capital market, retail investor is an individual who is investing in smaller quantities for his/her personal purpose as opposed to Institutional investors who are institutions investing on behalf of their clients. They differ from others with respect to skills, needs, behaviour and awareness of the regulatory frame work. Their potential to save and invest is more but they shy away from the market due to reasons like lack of information, irregularities in the market etc. Many a times they are cheated because they lack the financial literacy in interpreting the true essence of the financial statements and disclosures.

Succession Planning Plan it Early

p- 54

Vivek Sadhale & Vikas Agarwal

Developing a robust succession programme is a delicate and time-consuming process and requires full support of the management and internal resources. There is a lot of human angle involved to it and cannot be taken like any other technical process. However, once implemented, it can do wonders. Not only, it helps the organization in orderly transition whenever required, but also helps in retention of the top talent.

Regulatory Requirements Governing Sweat Equity

p- 58

Rajkumar S. Adukia

Sweat Equity is a mode of share based compensation made to employees and/or directors of a company. With sweat equity employees can become part owners of the company and participate in the profits of the company apart from their salary. This article attempts to give an overview of regulatory requirements governing the issue of Sweat Equity in India by listed as well as unlisted companies. The article summarises the provisions of Companies Act, 1956, Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003, SEBI (Issue of Sweat Equity) Regulations, 2002 and Income Tax Act, 1961 as much as they apply to sweat equity. The article also deals with the procedural aspect of the issue of sweat equity and also distinguishes sweat equity and ESOP.

Enterprise Risk Management and the Board

p- 63

K.S.Ravi

The board of directors, as its primary responsibility, has to set a tone for 'Enterprise Risk Management' (ERM) policies and practices. This article is an attempt to sensitize the readers of how important it is for board to handle this issue with dexterity and care.



At a Glance

Risks that occur in business enterprises are all pervasive and probabilistic. Therefore the deliberation and full involvement of the board is without choice. Since major decisions are taken at the board level, the challenge requires that elements of risk are adequately factored in such decision making. The ERM implementation has to be a conscious and deliberate effort.

The article also deals with various nuances relating to risk strategy and risk management, to the extent that board has to be concerned about. It provides practical insights into risk perception at the business entity level and the responsibility of the boards. In real terms board has to define 'Risk Appetite' and 'Risk Tolerance' that sets the ceiling and the floor in a risk management exercise.

Legal World (LW 1-14)

p- 69

LW 01.01.2012 High Court cannot condone the delay of an appeal filed beyond the extended time limit prescribed by the FEMA.[SC]

LW 02.01.2012 Increase of promoter's shareholding due to buyback of shares of other shareholders by the company does not amount to acquisition of additional shares or voting rights. [SAT]

LW 03.01.2012 Disclosure of sale of shares by an investment company is not a price sensitive information.[SAT]

LW 04.01.2012 Securities Appellate Tribunal raps BSE for keeping quiet for long time in giving acceptance to listing of shares.[SAT]

LW 05.01.2012 When the action purchaser intentionally failed to complete the sale, he is not entitled to the refund of the down payment.[SC]

LW 06.01.2012 National Commission remands the case to district forum which failed to adjudicate on the contentious points. [NC]

LW 07.01.2012 When the transporter had compensated the consignor for the damaged pumps, the transporter is entitled to the return of the damaged pumps. [SC]

LW 08.01.2012 Delhi High Court passes permanent injunction in a design infringement case. [Del]

LW 09.01.2012 Award of LokAdalat passed in a criminal case referred to it by a criminal court can be executed by a civil court as a decree. [SC]

LW 10.01.2012 When the workers of transferred undertaking refused to work under the transferee management they are entitled to the payment of retrenchment compensation. [SC]

From the Government (GN 1- 25)

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- ◆ The Companies (Accounting Standards) (Second Amendment) Rules, 2011.
- ◆ The Companies (Accounting Standards) Amendment Rules, 2011.
- ◆ The Companies (Amendment) Regulations, 2011.

- ◆ The Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011.
- ◆ Alterations in The Schedule XIV to the Companies Act, 1956
- ◆ Green Initiatives in Corporate Governance-Further Clarification regarding participation by Shareholders or Directors in meetings under the Companies Act,1956 through electronic mode-authorization regarding e-voting.
- ◆ Company Law Settlement Scheme, 2011.
- ◆ Allotment of Director's Identification Number (DIN) under Companies Act, 1956.
- ◆ Filing of Balance Sheet and Profit and Loss Account In eXtensible Business Reporting Language (XBRL) mode.
- ◆ Cost Accounting Records and Cost Audit - clarifications regarding applicability and compliance requirements.
- ◆ Cost Accounting Records and Cost Audit - clarifications about coverage of certain sectors thereunder.
- ◆ Issue of Debt Securities - Prohibition on payment of incentives.
- ◆ Guidelines in pursuance of the SEBI KYC Registration Agency (KRA) Regulations, 2011 and for In-Person Verification (IPV).
- ◆ Establishment of Connectivity with both depositories NSDL and CDSL - Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement .
- ◆ Review of Regulatory Compliance, Periodic Reporting and Contents of Trust Deed .
- ◆ Guidelines on Outsourcing of Activities by Intermediaries
- ◆ Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011.
- ◆ Revised format of Monthly Cumulative Report (MCR) incorporating investments in Infrastructure Debt Fund.
- ◆ The Securities and Exchange Board of India (KYC Registration Agency) Regulations, 2011.
- ◆ Securities And Exchange Board Of India {KYC (Know Your Client) Registration Agency} Regulations, 2011.
- ◆ Annual System Audit .
- ◆ Exchange Traded Interest Rate Futures on 2-year and 5-year Notional Coupon Bearing Government of India Security.
- ◆ Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999.
- ◆ Qualified Foreign Investors (QFIs) Allowed to Directly Invest in Indian Equity Market.
- ◆ The Company Secretaries (Amendment) Bill, 2010.

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- ◆ Certificate of Practice Issued/Cancelled
- ◆ Licentiate ICSI Admitted
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	JAN	FEB	MAR	APR	MAY	JUN	LIST OF HOLIDAYS 2012	JUL	AUG	SEP	OCT	NOV	DEC
S	●			●			JANUARY 26th Republic Day	S	1				
M	2			3	1		FEBRUARY 5th Milad-Un-Nabi or Id-E-Milad (Birthday of Prophet Md.)	M	2		1		
T	3			4	2		MARCH 8th Holi	T	3		●	1	
W	4	1		●	3		APRIL 5th Mahavir Jayanti 6th Good Friday	W	4	1	4	1	
T	5	2	1	●	4		MAY 6th Buddha Purnima	T	5	●	5	●	
F	6	3	2	●	5	1	AUGUST 10th Janmashtami (Vaisnava)	F	6	3	6	●	3
S	7	4	3	●	6	2	15th Independence Day 20th Idu'l Fitr	S	7	4	7	3	1
S	8	●	4	●	●	3	OCTOBER 2nd Mahatma Gandhi's B'day 24th Dussehra (Vijaya Dashami)	M	8	5	2	4	2
M	9	6	5	●	7	●	27th Idu'l Zuha (Bakrid)	T	9	6	3	5	3
T	10	●	6	10	●	5	NOVEMBER 13th Diwali (Deepavali) 25th Muharram	W	10	7	4	6	4
W	11	8	●	11	9	6	28th Guru Nanak's Birthday	T	11	8	5	7	5
T	12	9	●	12	10	7	DECEMBER 25th Christmas Day	F	12	9	6	8	6
F	13	10	9	●	11	8		S	13	●	7	9	7
S	●	11	10	●	12	9		M	14	8	13	10	8
S	●	12	11	15	13	10		T	15	11	8	11	9
M	16	13	12	16	14	11		W	16	13	10	15	10
T	17	14	13	17	15	12		T	17	14	11	16	11
W	18	15	14	18	16	13		F	18	●	12	●	12
T	19	●	15	19	17	14		S	19	16	13	●	13
F	20	17	16	20	18	15		T	20	●	14	19	14
S	21	18	17	21	19	16		F	21	●	15	20	15
S	22	●	18	22	20	17		S	22	19	●	18	16
M	23	●	19	23	21	18		M	23	●	17	●	17
T	24	21	20	24	22	19		T	24	●	18	●	20
W	25	22	21	25	23	20		W	25	22	●	21	19
T	●	23	22	26	24	●		T	26	23	20	22	20
F	27	24	●	27	25	22		F	27	24	21	23	21
S	●	25	24	28	26	23		S	28	25	22	●	22
S	29	26	25	29	27	24		S	29	26	23	●	23
M	30	27	26	30	28	25		M	30	27	24	26	●
T	31	28	27		29	26		T	31	28	●	27	●
W		29	28		30	27		W		29	30	29	26
T			29		31	28		T		30	31	30	27
F			30			29		F		31			28
S			31			30		S					29

01-02 >> ICSI Foundation Day Celebration on Game Changer for Corporate India 2020 – Anil Murarka presenting a bouquet to Chief Guest R.P.N. Singh ((Hon'ble Minister of State for Corporate Affairs, Govt. of India). Sitting on the dais from Left : N.K. Jain, Anil Murarka, Chief Guest R.P.N. Singh and Nesar Ahmad.



03 >> 11th ICSI National Award for Excellence in Corporate Governance 2011 - Panel discussion preceding the award function on "Are Markets indifferent to CSR/Sustainability Initiatives and Diversity in Board Rooms" - Sitting from Left: G.V. Prasad (Vice Chairman & CEO, Dr. Reddy's Laboratories Ltd. Hyderabad), Dr. Y.R.K. Reddy (Founder & Head, Academy of Corporate Governance, Hyderabad and moderator of the discussion), April W.Y. Chan (President, CSIA) and M. Gopalkrishna, IAS (Retd.)



04-07 >> Address by the panelists - Dr.Y.R.K. Reddy, April W.Y. Chan, M. Gopalkrishna and G.V. Prasad.

08-10 >> 11th ICSI National Award for Excellence in Corporate Governance 2011 - Address by Alka Kapoor, Anil Murarka, Nesar Ahmad.

11-12 >> Address by Dr. M. Veerappa Moily (Hon'ble Union Minister of Corporate Affairs) and His Excellency E.S.L. Narasimhan (Hon'ble Governor of A.P).

13-15 >> Release of ICSI Publications titled Beyond Clause 49, Small Steps Traverse Long Distances - CG and Beyond and Board Committees.

16-18 >> Address by Dr.R.A. Mashelkar (CSIR Bhatnagar Fellow & President, Global Research Alliance, National Chemical Laboratory), Ravi Kastia (Group Executive President & Business Head, Aditya Birla Group) and N.K. Jain giving the concluding remarks.

19-21 >> Presentation of Certificate of Recognition for Excellence in Corporate Governance - Manish Anand, Company Secretary, HCL Technologies Ltd; S.S. Mundra, ED and Monika Kalra, Company Secretary, Union Bank of India; Vivek Agarwal, Company Secretary & Head, Legal and J.K. Gupta, CFO, CMC Ltd. receiving the certificates on behalf of the company.





- ▶ 22-23 » Presentation of Certificate of Recognition for Excellence in Corporate Governance – Vivek Sadhale, Company Secretary, Persistent Systems Ltd. and N.K. Sinha, Company Secretary, Oil & Natural Gas Corporation Ltd. receiving the Certificates on behalf of the company.
- ▶ 24 » B.C. Tripathi (CMD) and N.K. Nagpal (Company Secretary, GAIL) receiving the CG Award on behalf of the company.
- ▶ 25 » Dev Bajpai (ED Legal & Company Secretary, Hindustan Unilever Ltd.) receiving the CG Award on behalf of the company. (He also received the Award to Company Secretary of Awardee Company).
- ▶ 26 » N.K. Nagpal (Company Secretary GAIL) receiving the Award to Company Secretary of Awardee Company.
- ▶ 27 » ICSI Life Time Achievement Award for translating Excellence in Corporate Governance into Reality - Azim Hasham Premji (Chairman, Wipro Ltd.) receiving the award.
- ▶ 28-30 » Acceptance speech by B.C. Tripathi, Dev Bajpai and Azim Hasham Premji.
- ▶ 31 » Sutanu Sinha giving the concluding remarks of the panel discussion.
- ▶ 32 » A view of the invitees and dignitaries at the award function.
- ▶ 33 » SIRC -Mysore Chapter - Inauguration of Chapter Building Dr. M. Veerappa Moily cutting the ribbon to mark the inauguration of the building.
- ▶ 34 » Dr. M. Veerappa Moily lighting the lamp.
- ▶ 35 » Sitting on the dais from Left : Srilatha, T.G., N.K. Jain, Nesar Ahmad, Dr. M. Veerappa Moily (Hon'ble Union Minister of Corporate Affairs), Anil Murarka, R. Sridharan, Dr. B. Ravi and A.S. Anshuman.





ICSI IMAGES

- ▶ 36 >> Dr. M. Veerappa Moiley with team ICSI after unveiling the Foundation Stone.
- ▶ 37 >> Dr. M. Veerappa Moily addressing.
- ▶ 38 >> A view of the Chapter Building.
- ▶ 39 >> SIRC - Bangalore Chapter - Bhoomi Poojan Ceremony for Chapter Building - Standing from Left: N.K. Jain, Gopalakrishna Hegde, Anil Murarka, Dr. M. Veerappa Moily (Hon'ble Union Minister of Corporate Affairs), Nesar Ahmad and G.M. Ganapathi.
- ▶ 40-41 >> Bhoomi Poojan being conducted by Dr. M. Veerappa Moiley, Anil Murarka and others.
- ▶ 42 >> Hon'ble Minister after unveiling the Foundation Stone with team ICSI.
- ▶ 43 >> A view of the dignitaries & invitees.
- ▶ 44 >> NIRC-Bhilwara Chapter - Foundation Stone laying Ceremony - Team ICSI after unveiling the Foundation Stone.
- ▶ 45 >> NIRC - Rajasthan State Conference on Managing Knowledge Dynamics - Creating Professional Avenues - Sitting on the dais from Left: Nesar Ahmad, Anil Murarka, Prof. V.K. Goswami, Ranjeet Pandey and N.K. Jain.
- ▶ 46 >> A view of the invitees and delegates.
- ▶ 47 >> Meeting of ICSI delegation with Chairman, CBEC - Nesar Ahmad presenting a bouquet to S.K. Goel (Chairman, CBEC) while others look on.
- ▶ 48 >> NIRC - Seminar on Foreign Exchange Management - Emerging Issues & Recent Developments - Release of Annual Legal Compliances and Referencer 2012 - Standing on the dais from Left: Manish Gupta, Ashu Gupta, Deepak Kukreja, Ranjeet Pandey, M. Vadavalli (DGM,(Retd.) RBI), P.K. Mittal, NPS Chawla and Rajiv Bajaj.





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ICSI Congratulates the winners of 11th ICSI National Award for Excellence in Corporate Governance 2011

GAIL (INDIA) LIMITED

(Shri B C Tripathi, Chairman and Managing Director, GAIL (India) Limited receiving the award)



HINDUSTAN UNILEVER LIMITED

(Shri Dev Bajpai, Executive Director Legal & Company Secretary, Hindustan Unilever Limited receiving the award)



The ICSI Lifetime Achievement Award was conferred on SHRI AZIM HASHAM PREMJI, Chairman, Wipro Limited, for Translating Excellence in Corporate Governance into Reality. (Shri Azim Hasham Premji, Chairman, Wipro Limited receiving the award)



Certificate of Recognition for Excellence in Corporate Governance were presented to other Top Five Companies:

1. CMC Limited
2. HCL Technologies Limited
3. Oil and Natural Gas Corporation Limited
4. Persistent Systems Limited
5. Union Bank of India



Dr. R A Mashelkar, CSIR Bhatnagar Fellow & President, Global Research Alliance, National Chemical Laboratory delivered the Key Note Address.

ICSI National Award for Excellence in Corporate Governance - 2011

In pursuit of Excellence and to identify, foster and reward the culture of evolving globally acceptable standards of Corporate Governance among Indian Companies, the "ICSI National Award for Excellence in Corporate Governance" was instituted in the Year 2001.

The Award contributes to the national level efforts in creating and establishing an atmosphere of good corporate citizenry.



CS N K Nagpal, Company Secretary, GAIL (India) Limited receiving the award



CS Dev Bajpai, Executive Director Legal & Company Secretary, Hindustan Unilever Limited receiving the award

RELEASE OF ICSI PUBLICATIONS:

The following publications of the ICSI were released at the Presentation Ceremony:

- ICSI Vision 2020
- Corporate Governance : *Beyond Letters*
- Corporate Governance & Beyond : Small Steps Traverse Long Distances...
- Beyond Clause 49 : A Research Study on Corporate Practices in India
- Board Committees : A Research Study on Corporate Practices in India



H.E. Shri E.S.L. Narasimhan, Hon'ble Governor, Andhra Pradesh, the Chief Guest, while addressing the august gathering said that strong and consistent economic growth for over a decade and a half has raised the expectations and aspirations within the country. Managing these expectations and fulfilling the growing aspirations will determine the performance scorecard of all future policy and governance regimes. He also suggested to the boards of companies not to be mere rubber stamps of managements but should execute the role with complete accountability, fairness and transparency. He expressed happiness that ICSI has given special importance to integration of corporate interests and their social responsibility and woven this into its corporate governance edifice.



Dr. M Veerappa Moily, Hon'ble Union Minister for Corporate Affairs, the Guest of Honour, in his address said that, "I congratulate ICSI for successfully continuing its crusade towards imbibing the good Corporate Governance practices into the DNA of the

Indian corporate sector through the professional competence of its members who are specialist in corporate governance and playing a leadership role in promoting corporate governance practices in India." He also said that good corporate governance was a matter of intellectual honesty.

The Award Function was preceded by a Panel Discussion on – "Are Markets Indifferent to CSR/ Sustainability Initiatives & Diversity in Boardrooms." Dr. Y R K Reddy, Founder & Head, Academy of Corporate Governance, Hyderabad was the moderator of the panel discussion. The other Panelists were Ms. April W.Y. Chan, President, Corporate Secretaries International Association, Shri G V Prasad, Vice-Chairman & Chief Executive Officer, Dr. Reddy's Laboratories Limited, Shri M Gopalkrishna, IAS (Retd.).



Friday, 23rd December, 2011

Taj Krishna, Hyderabad



CS Anil Murarka, President, The ICSI in his welcome address said that "our brightest philosophical heritage, will guide good governance in the corporate world forever. But we need to look at and reinforce only the positive aspects of this heritage if we want to pass it on selflessly to the global corporate world."

CS N. K. Jain, Secretary & CEO, ICSI in his concluding remarks observed that, "The standards of policies and practices of governance are palpably going up in the Indian corporate sector. This is evident from the responses of the participating companies that respond to our questionnaires. He further added that Formal framework for evaluation of board and individual directors; Sustainability Report; Gender Diversity-Women Directors on Boards; Office of Chairperson and CEO by separate persons; Lead/ senior independent director; Separate meeting of independent directors; were identified as challenges where companies still need to walk the extra mile.



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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CHARTERED SECRETARY



January
2012

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 DEVELOPMENT

1. Asian Corporate Governance Association (ACGA) submitted its recommendations to Securities Commission Malaysia

The Securities Commission (SC) Malaysia's five-year Corporate Governance Blueprint (Blueprint) which was launched on 8 July 2011, provides the action plan to raise the standards of corporate governance in Malaysia. The recommendations in the Blueprint will be implemented over a five year period. Most of the recommendations will be applied through a corporate governance code and changes to the Listing Requirements. There are also recommendations which would involve legislative amendments. The SC had invited feedback from all interested parties and the public on the Blueprint.

On December 12, 2011, Asian Corporate Governance Association (ACGA) submitted its' response to the five-year "Corporate Governance Blueprint" published by the Securities Commission Malaysia.

ACGA analysed and made recommendations on most of the key proposals, including:

- ◆ Voting by poll;
- ◆ Appointment of proxies and corporate representatives;
- ◆ A new code and industry umbrella body for institutional investors;
- ◆ Mandating nomination committees;
- ◆ Limiting the number of directorships; and
- ◆ Independent chairman.

Details can be accessed at:

[http://www.acga-asia.org/public/files/ACGA%20Response%20to%20CG%20Blueprint%20\(final%20draft\).pdf](http://www.acga-asia.org/public/files/ACGA%20Response%20to%20CG%20Blueprint%20(final%20draft).pdf)

2. OECD Releases its report on "The Role of Institutional Investors in Promoting Good Corporate Governance"

OECD on 12th December, 2011 released its report on "The Role of Institutional Investors in Promoting Good Corporate Governance".

This report focuses on the role of institutional investors in promoting good corporate governance. It covers 26 different jurisdictions, including in-depth reviews of Australia, Chile and Germany. This report is organized in following two parts:

- ◆ a review of what is known about institutional investors and their behaviour.
- ◆ a detailed review of institutional investors in Australia, Chile and Germany.

The report presents the results of the second thematic peer review based on the OECD Principles of Corporate Governance. The OECD corporate governance peer review process is designed to facilitate effective implementation of the Principles and to assist market participants and policy makers to respond to emerging corporate governance risks.

The report is based in part on a questionnaire that was sent to all participating jurisdictions in January 2011. All countries were invited to respond to the first question so as to provide an overall context within which the review would take place. The three jurisdictions that were subject to the in-depth review were invited to complete all questions.

The report first reviews what is known about the institutional investor landscape including the behavioural codes and legal framework. It then describes what is known about the incentives that condition their actions before considering the record of engagement and voting. The second part comprises the three country reviews.

Copy of the Report can be accessed at:

<http://www.oecd.org/dataoecd/33/17/49081553.pdf>

GREEN CORNER



GREEN IDEA

- If:**
- ◆ You care about the environment.
 - ◆ You want to save earth.
 - ◆ You want to shop green.

Use Your Own Canvas/ Reusable Shopping Bags:

Helping to preserve the environment when shopping is something that everyone can attempt. Cloth/Canvas bags are a good option, as these bags are light weight, durable and reusable.

Interesting facts:

- ◆ One canvas bag will eliminate the use of approximate 1000 plastic bags in its lifetime.
 - ◆ Hundreds of thousands of animals are killed by plastic bags EVERY YEAR.
 - ◆ A plastic bag is used for an average of 12 minutes but takes hundreds of years to decompose in landfill.
- If you do have to take a bag, ask for a paper bag instead of a plastic one. Paper is easier to recycle and therefore an eco friendly option.

Something good:

A MICROSOLUTION AGAINST GLOBAL WARMING & CLIMATE CHANGE



The 'Boond' an NGO has developed its Solar Lamp, a special effort to reduce global warming and provide light in every rural household specially the poor one. These lamps are robust and rugged in design, made with the rural setting in mind.

The solar lamps not only take light to the remote reaches of the country but are also environment friendly and help drastically in green house gas reduction as they substitute the use of kerosene lamps.

QUOTE OF THE MONTH

“Organisations need to practice qualitative corporate governance rather than quantitative governance thereby ensuring it is properly run.”

- Mervyn King (*Chairman: King Report*)

FORTHCOMING EVENTS

CSR Asia Forum on Asian Sustainability 2012, Tokyo

The CSR Asia Forum on Asian Sustainability 2012 will be held on 18th January, 2012 at Akihabara UDX Conference, Tokyo. It is a one-day business conference discussing key aspects of issues about sustainability in Asia, with a special emphasis on emerging markets. Issues associated with power shortages following the Northeastern Japan Earthquake, growing supply chain risks and challenges associated with doing business in Asian emerging markets have increased awareness amongst companies in the region. The Forum will discuss the emerging business and sustainability agenda in Asia. For both, Japanese and non-Japanese corporations, this Forum presents an ideal opportunity to obtain the latest information on exploring the implications for corporate social responsibility and sustainability in emerging markets in Asia.

The details can be accessed at: http://csr-asia.com/course_detail.php?id=121

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



It's no longer about the big beating the small; its about the fast beating the slow.

Dear Professional Colleagues,

Each new day is a blank page in the diary of our life. The secret of success is in turning that diary into the best story we possibly can. I wish you all a **Happy and Prosperous New Year-2012** and a diary full of best stories ever written in your life. Through this column, I would like to update you about the recent activities and the initiatives undertaken during the one year period. The month of December has witnessed varied activities. Let me first share with you the activities which took place in last month of this Calendar year.

Companies Bill 2011

The Institute welcomes the Companies Bill, 2011 which was introduced in the Lok Sabha on December 14, 2011. We are confident that the growth oriented Companies Bill will usher in a new era of stricter corporate governance regime and greater shareholder democracy, with enhanced accountability on the part of companies. The self regulation, good corporate governance, minority protection, disclosures through electronic mode, time bound disposal of winding up and liquidation proceedings, class action suit and provision for

mediation and conciliation are some of the highlights which benchmark the proposed company's legislation with global standards. This Bill, once translated into Act will offer lot of opportunities for we professionals especially the Company Secretaries, simultaneously making us more accountable and calling for strict adherence to professional ethics and Code of Conduct.

Company Secretaries (Amendment) Bill 2010

As you are aware that the Company Secretaries (Amendment) Bill, 2010 has been passed by the Parliament to allow Company Secretaries to form Limited Liability Partnerships. With this amendment, the expressions "firm", "partner", "partnership" and "sole proprietorship" have been defined.

Core Group on Strengthening Infrastructure

The Council of the ICSI has accepted the recommendations of the Core Group on Strengthening Infrastructure constituted under the Chairmanship of Mr. Vikas Y Khare which will be implemented w.e.f. April 1, 2012 to strengthen the Infrastructure and Manpower requirements at Regional and Chapter offices.

ICSI Foundation Day Celebration

The Institute celebrated its Foundation Day at New Delhi. Mr. R P N Singh, Hon'ble Minister of State for Corporate Affairs was the Chief Guest and appreciated the role of Company Secretaries while delivering the Foundation Day Lecture on "Game Changer for Corporate India 2020".

ICSI VISION 2020

I mentioned in my earlier communications that value addition and stakeholders' wealth maximization will be the key 'mantras' to sustain the growth momentum and the Multi-tasking and versatile knowledge would be the required skill sets for our profession to reach the pinnacle. Therefore, a new orientation in our thinking, perception and actioning is a call we have to take today to place our profession on the highest pedestal.

I am pleased to inform you that ICSI Vision 2020 was released at the gracious hands of H.E. Mr. E S L Narasimhan, Governor of Andhra Pradesh at the Presentation Ceremony for 11th ICSI National Award for Excellence in Corporate Governance on December 23, 2011 at Hyderabad. I would urge each one of you to take full ownership of the Vision and Mission enunciated below and extend all possible support in realizing our vision.



Vision : "To be a Global Leader in Promoting Good Corporate Governance."

Mission : "To Develop High Caliber Professionals Facilitating Good Corporate Governance."

At this moment, I am reminded of what somebody has rightly said - "Cherish your Vision and Dreams as they are the Children of your Soul, the Blueprints of your ultimate Achievements"

It will help us to reposition our Profession.

11th ICSI National Award for Excellence in Corporate Governance

Awards do not only acknowledge success, they also recognize many other qualities such as ability, struggle, efforts and above all excellence and sustainability. The same goes with the ICSI National Award for Excellence in Corporate Governance which was instituted in the year 2001 to promote good Corporate Governance practices amongst the Corporates and to recognize those companies worthy of being exemplified.

I am pleased to inform you that the Presentation Ceremony for the 11th ICSI National Award for Excellence in Corporate Governance was organized on December 23, 2011 at Hyderabad. His Excellency Mr. E.S.L. Narasimhan, Governor of Andhra Pradesh was the Chief Guest and Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs was Guest of Honour. Dr. R A Mashelkar, CSIR Bhatnagar Fellow & President, Global Research Alliance, National Chemical Laboratory was the Key-note Speaker.

His Excellency Mr. E S L Narasimhan presented 11th ICSI National Award for Excellence in Corporate Governance to the following two companies (in alphabetical order):

1. Gail (India) Limited
2. Hindustan Unilever Limited

The Company Secretary of these Companies were also presented the Award for their excellent efforts in putting in place good corporate governance practices.

Certificate of Recognition were presented to other top Five companies (in alphabetical order) as under:

1. CMC Ltd.
2. HCL Technologies Ltd.
3. Oil and Natural Gas Corporation Ltd.
4. Persistent Systems Ltd.
5. Union Bank of India

ICSI Life Time Achievement Award was presented to Mr. Azim Hasham Premji, Chairman, Wipro Limited for Translating Excellence in Corporate Governance into Reality.

Five publications of the Institute were also released at the

Presentation Ceremony.

The Pre Award events and Post Award events were adequately covered by print and electronic media.

Panel Discussion

The Award Function was preceded by a Panel Discussion on - "Are Markets Indifferent to CSR/Sustainability Initiatives & Diversity in Boardrooms." Dr. Y R K Reddy, Founder & Head, Academy of Corporate Governance, Hyderabad was the moderator of the panel discussion. Ms. April W.Y. Chan, President, CSIA, The Hong Kong Institute of Chartered Secretaries, Mr. G V Prasad, Vice-Chairman & Chief Executive Officer, Dr. Reddy's Laboratories Limited and Mr. M Gopalkrishna, IAS (Retd.), were the panelists.

The Institute arranged the webcast of the Panel Discussion and Presentation Ceremony to enable the members and students to view the programme online.

Strengthening of Infrastructure

Strengthening of infrastructure at Regional and Chapter offices received focused attention in terms of one of the important Goal, which we at the Council have decided to pursue. I am glad to share with you that -

- ◆ *Foundation Stone of our own Premises at Bhilwara in the State of Rajasthan was laid on December 10, 2011.*
- ◆ *Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs inaugurated our new office premises at Mysore in the State of Karnataka, on December 17, 2011.*
- ◆ *Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs also laid the foundation stone for our own office premises at Bangalore in the State of Karnataka, on December 24, 2011.*
- ◆ *Foundation stone for our own premises at Guwahati in the State of Assam will be laid on January 13, 2012.*

OECD Policy Dialogue Workshop

Myself alongwith Mr. N K Jain, Secretary & CEO, the ICSI attended a Policy Dialogue Workshop on "Minority Shareholders Protection: Related Party Transactions" on December 14-15, 2011 at SEBI Bhawan, Mumbai, jointly organized by the OECD and SEBI. The Workshop was addressed by representatives from OECD, MCA, SEBI, and Stock Exchanges. I was invited to briefly dwell upon the provisions of Companies Bill, 2011.

Institute of Actuaries of India

I addressed the participants, as the Chief Guest, at the Fellowship Development Programme of the Institute of Actuaries of India at Mumbai on December 15, 2011 on the topic "Ethics, Code & Discipline in Profession".



From the President

Seminar on Emerging Regulatory Challenges and CS

The ICSI - EIRC is organizing a Seminar on "Emerging Regulatory Challenges and CS" on January 14, 2012 at Golden Park, Kolkata. Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs will be the Chief Guest at the Seminar. I invite all of you to attend and participate in the Seminar in large numbers. The Seminar will dwell upon topics like LLP, Competition Law and XBRL.

E-MSOP

MSOP is the one of the most important training programme for which presence of the participant is required for full 15 days. It has been observed that there are many candidates at very senior positions who are unable to spare 15 days at a stretch and hence could not complete the MSOP due to which they are not able to get the membership of the Institute.

To enable such candidates to undergo the training at their ease without coming to the training venue, the Council has decided to introduce E-MSOP - a Web-based training (WBT). A candidate can attend and complete the programme through Virtual Class from any place with the help of PC, Internet Connection, speaker and web-camera. The candidates who have passed their final examination before September 01, 2006 are eligible to register for E-MSOP. The first batch of E-MSOP has commenced from January 1, 2012 at ICSI-CCGRT, Navi Mumbai.

THE YEAR 2011 - AN OVERVIEW

I will be laying down the august office of the President with a sense of satisfaction and an enduring desire to serve the profession with even more enthusiasm and devotion. It will be my last communication as the President of this Institute. I distinctly remember the agenda which we at the Council had set for ourselves when I took over as the President. It was to create visibility and acceptance of our Profession not only in India but across the national borders. It may appear that a certain moment is over but let me give you another perspective that together we have created some of the best moments of the pride for the profession as well as for the Institute. The task by no means was a simple one. Yet all through the year, I enjoyed putting in time and energy, in rendering onerous responsibilities and I deem it appropriate to highlight major developments that took place during the year and the initiatives taken by the Institute in an effort to raising our Profession to further heights.

HIGHLIGHTS - 2011

Stakeholders' Interface

During the year, the Institute continued its interface with various dignitaries, Government, both Centre and States, Regulatory

authorities and Sectoral regulators, and the delegation of the Institute met and discussed the matters of professional interest. The dignitaries with whom the ICSI delegation met and also those who graced various events organised by the Institute were as under :

- ◆ His Excellency Mr. B L Joshi, Governor of Uttar Pradesh.
- ◆ His Excellency Mr. E S L Narasimhan, Governor of Andhra Pradesh.
- ◆ Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs.
- ◆ Mr. R P N Singh, Hon'ble Minister of State for Corporate Affairs.
- ◆ Mr. Murli Deora, the then Hon'ble Union Minister of Corporate Affairs.
- ◆ Mr. Arun Jaitely, leader of opposition in Rajya Sabha.
- ◆ Mrs. Sheila Dikshit, Hon'ble Chief Minister of Delhi.
- ◆ Mr. V S Achuthanandan, the then Hon'ble Chief Minister of Kerala.
- ◆ Mr. Dilip Raosaheb Deshmukh, Hon'ble Chairman of Company Law Board.
- ◆ Dr. Vimla Yadav, Member, Company Law Board.
- ◆ Mr. Sushil Kumar Modi, Hon'ble Deputy Chief Minister of Bihar.
- ◆ Hon'ble Labour Minister of Bihar.
- ◆ Hon'ble Finance Minister of Chhattisgarh.
- ◆ Hon'ble Education Minister of Kerala.
- ◆ Mr. Naved Masood, Secretary, MCA.
- ◆ Mr. D K Mittal, the then Secretary, MCA.
- ◆ Mr. R Bandyopadhyay, the then Secretary, MCA.
- ◆ Mr. U K Sinha, Chairman and other officials of SEBI.
- ◆ Mr. Ravi Narain, Managing Director of National Stock Exchange.
- ◆ Mr. Hari Narayan J, Chairman, IRDA.
- ◆ Chairman and Managing Director of various Banks including Co-operative Banks.
- ◆ Finance Secretary of State of Karnataka and Chhattisgarh.
- ◆ Chairman, Central Board of Excise and Customs.
- ◆ Vice Chancellor of Universities.
- ◆ Office bearers of various Chambers of Commerce.
- ◆ Managing Director of IIBF and officials of IMI.
- ◆ Chairman, Singapore Institute of Directors.
- ◆ Head, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs - OECD.
- ◆ Interactive Meeting with ICSI Members in Singapore.

Our Successful Endeavor

- ◆ 12th National Conference of PCS at Ooty in July 2011.
- ◆ 1st Corporate Governance week and Corporate Governance Conclave in August 2011.
- ◆ 39th National Convention of Company Secretaries at Agra in September 2011.
- ◆ 11th ICSI National Award for Excellence in Corporate Governance at Hyderabad in December 2011 preceded by Panel Discussion.
- ◆ 12th All India Students Conference to be organized at Howrah (WB) on January 12, 2012.



Besides this, Regional Councils and Chapters all over the country have organized number of Conferences/ Seminars/ Workshops/ Study Circles on various topics of professional interest, during the year.

Goals of the Council

The Council of the Institute has adopted following top Ten Goals to be achieved during the year 2011-14 after intense discussion amongst the Council Members.

1. Develop a Cadre of Competent Professionals;
2. Improve Infrastructure with Special Attention on Regional Offices and Chapters;
3. Make ICSI the Best Institute to Deal with;
4. Provide Best Training to the Students;
5. Continuous Interaction with Regulators and Industry;
6. Enhance Placement Opportunities;
7. Improve the Visibility of the Profession;
8. Increase Membership Strength;
9. Enhance Financial Resources; and
10. Provide Leadership Globally.

Trade Mark

The word 'Chartered Secretary' has been registered under the Trade Marks Act, 1999.

Chartered Secretary

Our monthly journal is getting new look from this edition.

Networking & Collaborations: National Initiatives

- ◆ ICSI was associated as Supporting Partner in organisation of Global M&A Strategy Conclave at Mumbai.
- ◆ ICSI was associated as 'Academic Partner' in the 6th Annual Summit of ASSOCHAM on "Capital Markets" at New Delhi.
- ◆ ICSI jointly with Federation of Indian Export Organisations (FIEO) organized chain workshops on Limited Liability Partnership for Small and Medium Enterprises.
- ◆ ICSI jointly with MCA organized number of Webinars on XBRL.
- ◆ ICSI organized joint chain programmes with ICRA on Corporate Governance, Capital Market and Credit Rating.
- ◆ ICSI organized 426 Investor Awareness Programmes.
- ◆ ICSI is the Knowledge Partner in the International Conference of "Corporate Registers Forum (CRF-2012)" being organized by MCA on February 13-17, 2012 at New Delhi.

Global Developments

- ◆ I was elected as Vice-President, CSIA and elevated to the position of President w.e.f. January 1, 2012, at the Council Meeting of CSIA at Sanghai in September' 2011.
- ◆ During the year 2011, CSIA has taken following initiatives:
 - ◆ CSIA to develop Company Secretaries Toolkit.
 - ◆ CSIA has taken up the matter with WTO for introduction of separate Sectoral Services Classification for the profession.
 - ◆ 1st International Corporate Governance Conference

by CSIA on the theme "Sustainable Corporate Governance, Towards a Global Model" held at Sanghai (China), which was attended by team of ICSI led by me.

- ◆ ICSI was represented at the Asian Roundtable on Corporate Governance 2011 in Bali, Indonesia.
- ◆ Annual Conference of the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) was attended by delegates of ICSI led by me.
- ◆ At the 15th International Conference of Institute of Certified Public Secretaries of Kenya at Mombasa (Kenya), I delivered the Key Note Address on "CS Profession in India" and ICSI made a presentation on "Enhancing Governance through E-business".
- ◆ ICSI has joined Global Reporting Initiative (GRI) as an Organizational Stakeholder.
- ◆ 6th International Professional Development Fellowship Programme and International Conference was organised in Australia during November 18 - 27, 2011.
- ◆ ICSI representative invited on the Advisory Group of GRI Focal Point India and also on GRI-XBRL Taxonomy Review Team.

Recognition by Universities for Ph. D.

More than 50 Universities have so far recognized Company Secretaryship qualification for pursuing Ph.D. During the year, the University of Jammu; Shri Mata Vaishno Devi University and Aligarh Muslim University have recognised CS qualification for the purpose.

Students

- ◆ Reciprocal Exemption Scheme for Foundation Examination with ICWAI.
- ◆ Approval for the introduction of new system of examination i.e. OMR based System for conduct of examination for Foundation Programme under new syllabus from December, 2012.
- ◆ Study material on website
- ◆ E-MSOP
- ◆ Training in the various offices of MCA

Practising Company Secretaries

- ◆ Increase in the number of Management Trainees subject to maximum of 20 (twenty) trainees.
- ◆ Recognition of PCS by MCA for verification of Company Information in case of Winding - up of Companies.

Infrastructure Development in Continuum

- ◆ During the year, Renovation of ICSI Headquarters Building was completed.
- ◆ Besides this, following proposals were approved during the year:
 - Renovation of ICSI Office at WIRO and Patna
 - Construction of our own premises at Faridabad
 - Additional Floor at ICSI - Noida Building
 - A plot of land measuring 12,000 sq. ft. has been



From the President

allotted to ICSI for Udaipur Chapter by Urban Improvement Trust.

Peer Review Board

- ◆ Peer Review Board was constituted
- ◆ Guidelines for Peer Review of Attestation Services by Practising Company Secretary have been notified in the Gazette of India.
- ◆ Process of Empanelment of Peer Reviewers has commenced.
- ◆ Training for Peer Reviewers is being organized.
- ◆ PCS Firms are being identified for Peer Review.

PMQ Courses

The Government accorded its approval for amendments in The Company Secretaries Regulations, 1982 relating to following two new PMQ courses:

- ◆ Corporate Restructuring & Insolvency
- ◆ Competition Law

Referencer on Certifications

In order to facilitate Practising Members to discharge their professional responsibilities efficiently, the Institute has prepared referencer on e-form No. 2; e-form No. 5; e-form No. 18; e-form No. 23; e-form No. 23; AC & 23ACA; e-form No. 32; and e-form No.66.

Programme Credit Hours

- ◆ During the year, the Council of the ICSI approved the enhancement in number of Programme Credit Hours (PCH) to be obtained by a member in practice.
- ◆ The Council also made the PCH mandatory for those members in employment in whose name Form 32 has been filed, for the new block of three years effective from April 1, 2011.
- ◆ Members in practice are required to obtain 15 PCH in each year or 50 PCH in a block of three years. Members in employment are required to obtain 10 PCH in each year or 35 PCH in a block of three years.

Status of Various Committee/ Core Group of Council

The Council of the ICSI constituted various Committees / Core Groups such as

- ◆ Election Reforms Committee, Regulations Committee, Placement Committee, Syllabus Review Committee, and
- ◆ Core Groups on Infrastructure, GST, DTC, IFRS etc.

Committees and Core Groups are working and I am sure the reports will be submitted shortly.

CS Benevolent Fund

I once again reemphasize the fact that CS Benevolent Fund is a collective effort towards extending much needed financial support for our members in times of distress. CSBF provides

financial assistance of Rs. 3 lakhs to the nominee of the member up to the age of 60 years, which will be increased to Rs. 5 lakhs w.e.f. April 1, 2012. I appeal to all members who have not become the member of the CSBF to be the member by paying a fee of Rs. 5,000. In this regard, I wish to inform you that the membership fee for CSBF has been revised to Rs. 7,500 w.e.f. April 1, 2012.

Visit to Chapters

During the year, I got an opportunity to visit Chapters of ICSI. The focus was to visit the Small Chapters besides Regional Councils and to meet the Members, Students. During the visit to Chapters, I also met CMD of Banks, office bearers of Chamber of Commerce, Ministers and officers of various Ministries of State Government. I visited ●Aurangabad ●Bangalore ●Bhilwara ●Bhopal ●Bhubaneswar ●Chennai ●Guwahati ●Hooghly ●Hyderabad ●Indore ●Kolkata ●Mysore ●New Delhi ●Nasik ●Pune ●Raipur ●Trivandrum.

Earth Day Celebrations

As part of Go Green Initiatives, the ICSI celebrated "Earth Day" and to mark the occasion, the Institute collected e-waste from its employees, and handed over the same to a licensed E-waste management company for recycling. In tune with the pledge to reduce paper consumption, every Wednesday is being observed as "Zero Print Day".

E-Initiatives

During the year, as part of e-initiatives, the Institute started issuing

- ◆ e-admit card and e-mark sheet to the students.
- ◆ Annual Audited Accounts and Report of the Council and the Questionnaire for CG Award were also sent electronically. It helped us to save substantive quantity of paper.

MOUs Executed / Renewed

The ICSI executed /renewed MOU with following institutions/organisations:

- ◆ Malaysian Institute of Chartered Secretaries and Administrators.
- ◆ Chartered Institute of Securities and Investment.
- ◆ Central Board of Excise and Customs.
- ◆ Corporation Bank.
- ◆ United Stock Exchange of India Ltd.

New Publications

The following new publications were released during the Year 2011 :

- ◆ Referencer on XBRL
- ◆ Referencer on Peer Review
- ◆ Referencer on e-forms
- ◆ SS-2 on General Meetings (Revised)
- ◆ Guidance Note on Non-Financial Disclosures (Revised)
- ◆ Book on Delisting of Equity Shares
- ◆ Guidance Note on Code of Conduct for Company

From the President



- Secretaries (Third Edition)
- ◆ 40 Years of Chartered Secretary on CD ROM
 - ◆ CG-Insights
 - ◆ Corporate Governance- Beyond Letters
 - ◆ Corporate Governance & Beyond: Small Steps Traverse Long Distances
 - ◆ Board Committees- A Research Study on Corporate Practices in India
 - ◆ Beyond Clause 49 - A Research Study on Corporate Practices in India.

TASK AHEAD

We have covered a lot of distance during the year, still we have to travel a long way. Decisions have been taken on several other matters which I am sure will be implemented during 2012, particularly in respect of -

- ◆ Practising Company Secretary to act as Investment Advisor
- ◆ Compliance Certificate on IPO/ FPO
- ◆ Role of PCS in MSME

ACKNOWLEDGEMENTS

No one walks alone and when one is walking on the journey of life just where do you start thank those who joined you, walked beside you and helped you along the way.

I wish to express my sincere gratitude to Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs for his blessings and support. I feel motivated and encouraged every time I meet him.

I sincerely thank Mr. R. P. N. Singh, Hon'ble Minister of State for Corporate Affairs for his blessings. I am quite impressed with his kind words about our Profession on the occasion of celebration of Foundation Day of our Institute.

I take immense pleasure in thanking Mr. Naved Masood, Secretary, Ministry of Corporate Affairs, Mr. U K Sinha, Chairman, SEBI, Mr. Sudhir Mital, Additional Secretary, Mrs. Renuka Kumar, Mr. Avinash Kumar Srivastava and Mr. Manoj Kumar, Joint Secretaries, MCA. for their guidance and support in the growth and development of the profession.

I wish to thank various Ministries and Offices of the Central Government, particularly the Ministry of Corporate Affairs, Ministry of Finance, Ministry of Commerce and Industry and SEBI, Stock Exchanges, RBI, and other regulatory authorities for their help, guidance and support in development of the profession and encouraging the activities of the Institute during the year.

I place on record my thanks to various State Governments, Financial/ Industrial/ Investment Institutions/ Corporate Sector, various Chambers of Commerce, Trade Associations and other agencies in general in availing the services of members of the

Institute and in recognizing their expertise.

I would like to gratefully acknowledge the support and guidance of Mr. Salman Khurshid and Mr. Murli Deora, the then Union Ministers of Corporate Affairs, Government of India and Mr. D.K. Mittal, the then Secretary, MCA and Mr. R. Bandyopadhyay, former Secretary, MCA, Government of India.

My thanks to Jury Members of the ICSI National Award for Excellence in Corporate Governance led by Hon'ble Justice Mr. R C Lahoti, former Chief Justice of India, for sparing their valuable time in adjudging the awardee companies.

I would like to thank my Central Council Colleagues for their help, co - operation in the growth and development of Profession. I am also thankful to my Colleagues in Regional Councils and Chapters for extending their whole hearted support and cooperation.

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Last but not the least, I wish to avail myself of this opportunity to express a sense of gratitude and love to my professional colleagues especially from Eastern Region to make me professionally relevant.

I express my heartfelt thanks to my beloved father and late mother for their blessings, my friends and relatives for their help and good wishes. I am grateful to my wife Nisha, daughter Anshu and son Aayush, who inspired, encouraged and fully supported me to discharge my responsibilities as a President of this great Institute. ■

I wish you all **"A Very Happy & Prosperous Future"**.

"The mind is not a vessel to be filled, but a fire to be ignited"

Yours sincerely,

Kolkata
January 4, 2012

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Corporation, Community and Development An Integrated Approach to Corporate Responsibility



The concept and practice of corporate social responsibility has to progress beyond charitable or philanthropic activities towards a strategic integration with community development. This article explores such a developmental approach to CSR.

Corporate Social Responsibility (CSR) can no longer remain in the fringes of corporate life, as a decorative show-piece or public relations exercise or a feel-good factor. CSR has to become an integral part of corporate strategy and an effective instrument for a creative integration of the corporation with the community and the surrounding environment.

The corporate world has to understand the mutual interdependence between the corporation and the community and has to integrate itself with the society in which it functions in a mutually beneficial relationship. However this relationship should not be merely practical with a predominant focus on the long-term or "enlightened self-interest" of the organisation in the bottom-line but also developmental. A business organisation has

the resources and expertise to provide a helping hand to the human development process in the community. This article examines the relationship between business and society and the corporation and the community in a strategic, developmental perspective.

CORPORATION AND THE COMMUNITY

A business organization is not merely an economic entity; it is also a social organism, a human community. One of the higher aims of a business organization is to integrate or harmonise its communal life with the communal life of the surrounding environment. This must be the next step in the evolution of the corporate social responsibility (CSR) movement; it has to progress beyond some adhoc or isolated charitable projects to embrace the surrounding community as a whole. In other words, there must be an integration of CSR with the totality of the community development process. There is a natural process of human development in a community which can be accelerated by appropriate, creative intervention. Business has the competence to provide some of the most efficient and effective interventions acting as a catalyst for community development.

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There is a concentration of resources, knowledge, competence and skill in a business organization, which it can share with the community of which it is a part. Among business leaders, J.R.D. Tata had a clear perception of this responsibility and also the potentiality of business for community development. He said "Every company has a special continuing responsibility towards the people of the area in which it is located. The company should spare its engineers, doctors, managers to advise the people, of the villages and supervise new developments undertaken by cooperative effort between them and the company."⁽¹⁾ We must note here that JRD's conception of corporate responsibility goes far beyond charity or sharing of wealth towards sharing of capabilities. Thus, social responsibility should not remain on the fringe of the organization, as a decorative showpiece or a public relation exercise; it must become an integral part of the strategic objectives of the organization and a continual effort towards improving the quality of life of the surrounding environment.

As the redoubtable doyen of management, Peter Drucker, points out: "Because our society is rapidly becoming a society of organization, all institutions including business, will have to hold themselves accountable for the quality of life of the society and will have to make fulfillment of basic social values, beliefs and purposes a major objective of their continuing normal activities rather than a social responsibility that restrains or that lie outside of their main function."⁽²⁾

But how to achieve this integration? Let us begin our exploration with some of the latest and most thoughtful perspectives on the subject.

CREATING SHARED VALUE: STRATEGIC CSR

The first step towards this integration is a clear perception and recognition of the interdependence of business and society. Here comes the importance of the concept of shared value and strategic CSR presented by Michael Porter and Mark Kramer. In two perceptive articles in Harvard Business Review, Porter and Kramer make the following points which provide a pragmatic framework for forging a strategic link between corporation and the community.

- ◆ At the very basic level, the competitiveness of a company and the health of the communities around it are closely interlinked. A business needs a successful community, not only to create demand for its products but also to provide critical public assets and a supportive environment. A community needs successful business to provide jobs and wealth creation opportunities for its citizens.
- ◆ This mutual dependence of corporations and society implies that both business decisions and social policies must follow the principle of shared value. That is choices must benefit both sides. If either a business or society that pursues policies that benefits its interest at the expense of the other, it will find itself on a dangerous path. A temporary gain to one will undermine the long-term prosperity of the other.
- ◆ To implement these broad principles the corporation has to practice strategic CSR which means identify social opportunities which while benefitting society also enhances the long-term competitiveness and effectiveness of the organizations.
- ◆ Each company can identify the particular set of societal problem that it is best equipped to help resolve and from which it can gain the greatest competitive benefit. When well-run business applies its vast resources, expertises and management talent to problems that it understands and in which it has a stake it can have a greater impact than any charity or philanthropy.⁽³⁾

Microsoft's Working Connections Partnership with the American Association of Community Colleges is a good example of shared value/strategic CSR concept. The poverty of information technology workers is a significant constraint on Microsoft's growth; currently, there are more than 450,000 unfilled IT positions in the United States alone. Community colleges, with an enrollment of 11.6 million students, representing 45% of all U.S. undergraduates, could be a major solution. Microsoft recognizes, however, that community colleges face special challenges: IT curricula are not standardized, technology used in classrooms is often outdated, and there are no systematic professional development programs to keep faculty up to date.

1. R.M. Lala (1993), Beyond the Blue Mountain: A Life of J.R. D. Tata, Penguin Books, New Delhi, p. 286.
2. Drucker, Peter, (1995), 'Management and the Quality of Life', GENESIS, Journal of Alacrity Foundation, p.9

3. Michael Porter, and Mark Kramer, (2011) 'The Big Idea: Creating Shared Value', Harvard Business Review, June 01, 2011, p.2-12



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Microsoft's \$50 million five-year initiative was aimed at all three problems. In addition to contributing money and products, Microsoft sent employee volunteers to colleges to assess needs, contribute to curriculum development, and create faculty development institutes. Note that in this case, volunteers and assigned staff were able to use their core professional skills to address a social need, a far cry from typical volunteer programs. Microsoft has achieved results that have benefited many communities while having a direct-and potentially significant-impact on the company.⁽⁴⁾

This vision of shared value and strategic CSR provides a very practical and down-to-earth approach for choosing and implementing CSR projects. However, the concept of strategic CSR can perhaps be viewed as part of a broader developmental vision.

THE DEVELOPMENTAL PERSPECTIVE

A promising feature of the shared-value perspective, which we have discussed earlier, is that it views CSR not merely as a charitable activity oriented towards poverty-alleviation but as a positive contribution to the creation of a healthy, progressive and successful society. So shared-value approach to CSR is more positively developmental than that of the charitable perspective focused on eliminating poverty. This developmental approach is gaining increasing recognition in the emerging trends in CSR. For example, a book on CSR published by Tata group, containing cases studies on CSR initiatives of many companies, states in an editorial note:

"In recent times social responsibility of business towards people is under sharp focus. An increasing number of companies all over the world gear up to meet this increasing expectation, there is a realization that corporate social

responsibility is not just about addressing images of despair. Corporate Social Responsibility is more about a whole developmental process of planned change, aimed at lasting improvement in the quality of life at large."⁽⁵⁾

However it must be noted here that developmental perspective does not ignore or underestimate the enormous importance of poverty and inequality which are some of the major millennial problems of humanity. Business as a creator of wealth for the society has a vital responsibility for the equitable distribution of wealth in the society. So elimination of poverty has to be a major agenda of CSR. However, this problem of poverty can perhaps be tackled more effectively in the long-term if it is viewed not as an isolated problem but as part of a larger developmental process. But, most of the modern thought on development is predominantly external, oriented towards the economic and social development of the outer life. But a more integral approach to development has to include the inner as well outer development of the individual and collectivity. The inner development means the mental, moral, aesthetic and spiritual development of the individual and communal consciousness.

Here comes some of the limitations of the strategic CSR concept of Kramer and Porter. Strategic CSR is based on mutual self-interest but moral and spiritual growth of an individual or collectivity requires transcendence of self-interest and giving without expecting anything in return. Kramer and Porter tend to dismiss the moral attitude to CSR as something ineffective. But according to the deeper perspective of the Indian thought a moral act or contribution to the larger life of society or humanity brings two results. First it leads to the moral and spiritual growth of the organisation. Secondly it releases a moral and spiritual force which has its ultimate material results. The first factor cannot be proved empirically. But some of the latest research in management is supportive of the second. Patricia Aburdene, in her book on "Conscious Capitalism" cites many research studies to show that there is a correlation between "Money and Morals" and companies which are more ethically and socially responsible are also more financially viable.⁽⁶⁾ The strategic CSR based on mutual self-interest has a compelling validity for small firms with limited resources and operating in an environment of fierce competition. But for bigger companies which can deploy sufficient resources and expertise without much adverse impact on its competitiveness or bottom line, the CSR strategy can be based on maximum contribution to the well-being and progress of the community rather than on mutual self-interest. This brings us to the question how to implement this developmental approach to CSR?

This requires an integration of the corporate strategy with the development needs and aims of the community. The first step in this task is to have a clear understanding of the different stages of community development in an integral perspective.

4. Michael, Porter, and Mark Kramer, (2006), 'Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility', Harvard Business Review, Dec 01, 2006, p. 10-20

5. Tikli Basu (2003), 'A Mandate for Corporate Social Responsibility,' The Light House Stories', Tata Group, 2003, Mumbai, p. 32.

6. Patricia Aburdene, Megatrend 2010, The Rise of Conscious Capitalism, Hampton Roads, Charlottesville, p. 29



HUMAN DEVELOPMENT PROCESS IN A COMMUNITY

A total human development process, which leads to this integral development of the human potential in a community, is made of three stages. These stages can be pursued simultaneously, but with a predominant emphasis on some aspects or dimensions of development at each stage.

The first stage involves fulfillment of the basic needs of the population; creation of employment opportunities and development of employable, productive and entrepreneurial skills in people; satisfaction of the desire for a better enjoyment of life and also better utilization of the opportunities of life; and finally creation of all other factors which lead to an overall material and economic well being of the community like for example health, hygiene, nutrition and ecology. The second stage is the realization of the social, cultural and political well-being, which involves the actualization of the triple values of French revolution, liberty, equality and fraternity in the outer life and preservation of all that is valuable in the local culture. Liberty means not merely individual rights but a free participation of the people in their own development, especially in decision making, with maximum freedom to grow from within through a self-directed development and minimum of external rules or compulsion. Equality means equitable distribution of or access to wealth, power, knowledge, resources, opportunities and an equal, full and joyous participation of each individual in the communal life. Fraternity means social cohesion, solidarity, harmony and comradeship. The third stage is the mental, moral, aesthetic and spiritual development of the community.

In a more psychological perspective, the first stage is the fulfillment of the needs of the physical being or the body. The second stage is the satisfactions of the needs of the vital, emotional and sensational being for wealth, power, enjoyment, status, recognition, harmonious relationship, achievement, expansion, autonomy and mastery. The third stage is the quest of our higher mental, moral and spiritual nature for knowledge, understanding, values, ideals and reconnects our souls with the spiritual source of our own being and the universe, which

A business needs a successful community, not only to create demand for its products but also to provide critical public assets and a supportive environment. A community needs successful business to provide jobs and wealth creation opportunities for its citizens.

is the highest aim of religion.

To implement this vision of development requires an integral approach with a balanced emphasis on the inner development of people as well as the outer development of the economic, social, political and ecological environment. An example of such an integral approach to development put into practice is the SARVAM project of Sri Aurobindo Society, Puducherry, India.

Sri Aurobindo Rural Village Action and Movement (SARVAM), is the Rural Development wing of Sri Aurobindo Society. The SARVAM can be considered as an experimental "action-research" in integral community development. The programme of action is four-fold, covering the following areas:

- ◆ Physical and economic development using available local materials and technology.
- ◆ Development of the family and community, particularly empowerment of women, skills enhancement and entrepreneurship.
- ◆ Psychological and cultural development through education and training.
- ◆ Spiritual development through the right understanding of religion, spirituality and Yoga, and their role in life.

To ensure that all the required measures are carried out effectively, the people of the village are to be helped to understand the fundamental need for a change in attitude and consciousness. Thus the creation of dedicated village action groups is one of the first conditions for proper development in villages. This group initiates and urges the people of the village to take up cultivation of lands in terms of improving the existing methods, tools and the general condition in the villages. In every village is formed a group of active people who will turn their attention to the development of every field of life, such as basic education for all, technical training for local works, organic farming, commerce, health, sanitation etc. SARVAM's role will primarily be as a catalyst, support and coordinating group, motivating them to work for and take up the responsibilities for such a change. The main activities of SARVAM revolve around the following areas of community development.

1. Education
2. Health and Sanitation
3. Environment
4. Housing
5. Youth Activities
6. Economic Growth
7. Empowerment of Women
8. Welfare of the Vulnerable and Marginalised

The most unique feature of SARVAM is its emphasis on inner growth which is an integral part of the education programmes at SARVAM. In SARVAM's integral approach to development, external growth in the economic and social life is only one



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aspect of development. The other aspect is the inner growth of the individual and the community in the psychological and spiritual realms of consciousness. The popular conceptions of spirituality equate it with traditional religion. But SARVAM's approach to spiritual growth is more secular and psychological than religious. The methodology of spiritual development followed in SARVAM aims at the mental, moral, aesthetic and psychological development of the individual, which leads to an opening or receptivity in the consciousness of the individual to the spiritual self or divinity within him or her. Here are some of the principles and practices of inner growth adopted in SARVAM:

- ◆ Living example of leaders and organisers who practice spirituality in their lives.
- ◆ Cultivating punctuality, harmony, order, beauty in habits, behaviour, action and organization of the outer life.
- ◆ Awakening to the urge for progress and perfection in work and action.
- ◆ Importance of concentration on the work to be done.
- ◆ Meaning of true prayer.
- ◆ Need for truth in thought and speech and action.
- ◆ Practice of inner silence.
- ◆ Learning through dialogue, discussion, questioning and action.

CORPORATE INTERVENTIONS FOR COMMUNITY DEVELOPMENT

What is the role of business in this vision of community development? The task of business is two fold: First is to provide products and services which correspond to the progressive and evolving human needs, and in the process earn profit for itself, create wealth for the society and help the community to grow. The intrinsic function or dharma of business is to fulfill the material and economic needs of the

community and strive for a constant and continuous improvement in the quality and wellbeing of the material and economic life of the group. However, as the community evolves and progresses beyond the initial stages of economic development to the higher stages of social, cultural and psychological development, business has to adopt itself to this growth and has to provide products and services which correspond to the needs of these higher stages of growth.

The second task of business is to provide the financial support, technical expertise and managerial competence for executing and implementing the vision. In this task, business is much better equipped than other organs of the society and therefore can make a crucial contribution for accelerating the development process. Here again, the nature of intervention may differ at each stage of growth. In the first stage when the need and nature of growth are predominantly material and economic, the developmental needs of the community more or less correspond to the core competence of a business organisation.

However as the community grows beyond this first stage to higher stages, the developmental needs of the community may not exactly correspond to the core competence of a commercial organisation. But this need not be a big obstacle because one of the core competences of a business organisation is the ability to organise, which includes the ability to hire, bring in and organise the expertise which it doesn't have to achieve the desired objective. For example, environmental engineering or management is not a part of the core-competence of McDonald, but the company hires or cooperates with NGO's which have the environmental expertise to achieve its sustainability objectives.

A total human development process, which leads to integral development of the human potential in a community, is made of three stages. These stages can be pursued simultaneously, but with a predominant emphasis

However, the best way for an organisation to provide effective intervention for the higher evolution of a community is to make a conscious effort to achieve this evolution within itself and transfer the experience, learning and expertise gained to the community. Most of the business organizations pursue growth in the techno-economic level. But as we have indicated earlier, a business organisation is not only an economic organism but also a social, political and cultural organism made of its relationship, power-structures and value-systems. Similarly, an organisation is made of its people



who are psychological and spiritual being with immense potentialities of growth in this inner realms of consciousness. When an organisation has achieved a certain level growth and mastery in the techno-economic and commercial levels, it has to shift its growth more and more towards these higher realms of life, which means focusing on the following tasks:

1. Building a harmonious and empowered community governed by the values of liberty, equality and fraternity.
2. Helping people to grow inwardly in the mental, moral, aesthetic and spiritual realms and express this inner growth in the outer life.
3. Creating an organizational environment and culture which encourages and fosters these higher growths.

An organization which pursues this higher growth can impart this growth to the community around it by transferring its learning to the community.

This brings us to the next question as to: how to choose the right social interventions? For a smaller company, the first step is to have a clear assessment of the expertise and resources it can spare for developmental work without any adverse impact on its competitiveness and bottom line. Second task is to identify a developmental need which matches this expertise and resources. It is all the more better if these needs are entirely "strategic" which means it is also a market or customer need and brings greater profit to the company. If we are embarking on a new venture or a new project in our company, we can try to build a profitable business model around the fulfillment of a developmental need. Here is an example from the small scale sector. Sandra Berg is a US entrepreneur who runs two small family-owned businesses. First is a manufacturing concern making paints and solvents. The other is a service related business for recycling hazardous paints and solvent waste. As Sandra Berg explains how she was able to make the strategic link between a developmental need with a profitable market opportunity:



The task of business is two fold: First is to provide products and services which correspond to the progressive and evolving human needs, and in the process earn profit for itself, create wealth for the society and help the community to grow.

"Now mind you, we did not base our business decisions on concepts of externalities or sustainability. Over the last 30 years we've simply recognized a market need - that our customers have environmental challenges to solve - and concluded that we could help them do that. For example, in 1979 (well in advance of hazardous waste laws) we developed a system to recycle our customers' paint-related waste. In the mid 1980s, we developed low-polluting products to keep our paint customers compliant with air quality rules and regulations. All along, we've been careful to respect our local community. In the early 1990s, for example, we needed an EPA permit to continue our recycling business. In applying for it, we chose to involve - rather than alienate - our activist East Los Angeles community and created an open dialog to discuss, understand, and resolve community concerns. This has been a mindset started by my father and passed on to me: we have a responsibility to our customers, employees, and local community. If we pay attention to these responsibilities, profits will follow."⁽⁷⁾

For such smaller companies, industry associations can play an effective role in helping firms to implement their CSR projects. Smaller companies can do better CSR work if they can cluster together and pool their resources and expertise through industry association. These associations in the small and medium sector can act as coordinators, consultants, felicitators of CSR for their members. For example, they can conduct or sponsor research for identifying the developmental needs of community. They can help each company to identify a developmental project which corresponds to or match its available resources or expertise. There are many such possibilities for cooperative action which can be explored.

Bigger companies with much more resources and expertise can make a more systematic and planned effort on a larger scale with a greater emphasis on the wellbeing and progress of the community than corporate self-interest. A great example which can be a role model for other corporates is the Hosur project of Titan Watches, a company of the Tata group in India.

The watchmaker Titan, a joint venture between the Tata group and the Government of Tamil Nadu, opened its first

7. Sandra Berg, 'A Small Business Approach to CSR', Harvard Business Review, May 21, 2010, p. 2.



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factory in the small and rather remote south Indian city of Hosur in 1987. The area around Hosur was very poor, with some families barely above subsistence level, and agriculture was almost the only industry. As there was no skilled labour available locally, the company at first intended to hire professional engineers from the city of Bangalore to staff the factory.

But then managing director of Tita Xerxes Desai changed his mind. 'This area and its people are our responsibility,' he declared. He saw that despite the poverty, the local education system was sound and was producing plenty of well-educated boys and girls who would have little or no chance to make good on their education. 'We are going to recruit sixteen-year-olds from the villages around Hosur,' Desai declared, 'and we are going to train them to be world-class horologists.'

After a heated discussion in the boardroom, Desai got his way. Four hundred young people, the best of recent graduates from nearby village schools, were recruited and brought to Hosur. Most had never seen a city before, or lived in anything but a simple hut. Many had no money. Titan built accommodation for the young people and provided 'foster parents' who lived with them and taught them the life skills necessary for living in a city. Meanwhile at the factory, trainers and engineers brought in from Bangalore and elsewhere taught the young workers how to use precision machinery.

Once the factory was up and running, Titan also provided sports and cultural activities, and the facilities to help its workers study for degrees and even take postgraduate courses after work hours.

When an organisation has achieved a certain level of growth and mastery in the techno-economic and commercial levels, it has to shift its growth more and more towards higher realms of life

The wages paid to its workers and the education they have received have transformed not just their own lives, but the lives of their families too. Remittances sent home to their families have enabled others to escape the poverty trap. Workers spoke of siblings who were able to go to university, the first in their families to do so, thanks to these remittances. Others left Titan and used their training to set up businesses, creating further employment. Titan measures its impact in terms of the number of 'lives transformed'.

The results? Titan is now a highly successful enterprise employing thousands of people in Tamil Nadu-it has three factories in Hosur alone with nearly all the workers coming

The second task of business is to provide the financial support, technical expertise and managerial competence for executing and implementing the vision.

from the surrounding villages-and provides employment indirectly to thousands more in firms making watch straps, casings and other components. In 2001, Titan was voted India's most admired brand.⁽⁸⁾

Another example which is less grand in scale but worth emulating is the CSR initiatives of Gujarat Ambuja Cements Ltd, cement manufacturers with many plants all over India. The company has a General Manager in charge of community development and set up an NGO, Ambuja Cement Foundation (ACF) with its own board of directors for planning, funding and implementation of its development projects. Since many of Ambuja's plants are in rural areas of India, in every state where the company has a presence, a team of experts is set up in order to identify the needs of the local people. The projects and priorities are identified according to the unique needs of each state or community. For example, while water conservation was of prime importance in Gujarat, laying roads were the priority in Himachal Pradesh. The company sets aside an account each year for the foundation and projects are undertaken in partnership with other agencies or the government. For example in the case of National Water Development Project, a government project at Amreli, ACF has been designated as the project implementing agency by the Government of India.⁽⁹⁾

And finally, what are the possibilities for a company which wants to contribute to the higher stages of evolution of the community beyond the economic aims? We have already indicated briefly some of the possibilities. The best approach is to make a conscious effort to achieve this higher evolution within its own people and transfer the learning to the community. In this task, the company can take the help of other organisations spiritual, cultural, social or educational which have some expertise in steering this higher evolution in the individual or the collectivity. The company can also network with such organizations all over the world, which are experimenting with this higher evolution and share experiences and best practices with them. The other possibility is to provide financial support to educational or community building experiments or projects which aim at this inner or higher evolution in the individual or community, like for example SARVAM project, which we have discussed earlier, is funded mainly by Cadburys.

8. Morgan Wetzel, TATA: The Evolution of a Corporate Brand, Penguin Books India Pvt Ltd, New Delhi, p. 122-23
9. Tikli Basu (2003), 'Gujarat Ambuja Cement, Cementing Ties', 'The Light House Stories,' Tata Group, Mumbai, p. 110-11



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Clamour for Gifts at AGMs of Companies Needs to be Prohibited by Legislation

The Ministry of Corporate Affairs sometime back invited views on its proposal to prohibit companies from distributing gifts to shareholders at AGMs. The Secretarial Standard issued by the ICSI too contains similar view. This article calls for amendment of the Company Law to prohibit distribution of such gifts.



Among the prevalent forms of businesses, joint stock companies (companies for short) form the cynosure of all minds in the corporate world. Because of various advantages, companies today are the ultimate forms for big businesses.

A company is an artificial person, created by law (in India by the Companies Act, 1956), having a separate identity, perpetual succession, limited liability and a common seal. It has no physical shape of its own but possesses right to own property and right to sue in its own and be sued. The ultimate owners of a company are shareholders, who have contributed to its capital through subscribing to the same. Since it is a legal person, having no mind of its own, it acts through its Board of Directors, which is comprised of elected representatives generally chosen by shareholders because being scattered over various places in the country, it is not possible for them to meet very often for the conduct of the business of the company. Hence, the day-to-day affairs of a company are managed through its executives under the guidance and superintendence of the Board of Directors.

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Disturbances, once in a while in AGMs because of unexpected situations developing, may be exceptions, but creating disorders and commotions at almost all AGMs merely to get some monetary benefits by way of gifts or cash vouchers, disregarding the very purpose for which such meetings are convened, can only be considered as most irresponsible and unwholesome conduct from the side of the shareholders, defying the very purpose, for which AGMs are held.

ANNUAL GENERAL MEETINGS

Since the ultimate owners of a company are its shareholders, it is necessary that they should also have an opportunity to see and review the working of the company, where they invest their money. Otherwise also, it is fair to provide an opportunity to the shareholders to come together and review the working of the company. This is done in the meetings of the shareholders of the company such as statutory meeting, annual general meeting and extraordinary general meeting. The Companies Act, 1956 (Act) provides opportunities for this through the Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs), when necessary. The Companies Act also provides for exercise of powers by the shareholders through their approvals.

AGM IS A STATUTORY REQUIREMENT

The AGM is a statutory need and must be called whether the annual accounts are ready for consideration or not. If the annual accounts are not ready for being laid before the meeting, as required under section 210(1), the proper course would be to hold the meeting within the prescribed period and then adjourn it to a suitable date for considering the accounts.

The general powers of the management of the company are vested in the Board of directors. To consider all such major issues as specified in section 293 of the Act and other matters specifically provided in other sections, the approval of shareholders is to be obtained in the general meeting.

Though the management of a company's business is necessarily left to the discretion of the directors, the ultimate control of the actions of the board is vested in the members and from time-to-time the members must meet to ratify or express their concern and approval or disapproval on directors past conduct and to consider their future plans. Thus, shortly after obtaining the certificate to commence business, a public company must hold its first meeting of the company. Then in each calendar year an AGM is required to be held. In this meeting, various matters relating to the report of the directors, accounts, reports of the auditors and declaration of dividend, etc., are considered. In addition, there may be occasions when it is necessary to consult the members for some urgent and immediate matters, which justify the summoning of an extraordinary general meeting.

SECTION 166 OF THE COMPANIES ACT

Section 166 of the Companies Act provides that every company must hold each year (calendar year), in addition to any other meeting in that year, a general meeting of the shareholders as its AGM. The notice for calling the meeting has to specify that the meeting is the AGM. There cannot be an interval of more than 15 months between the dates of one AGM and the next. Two limited exceptions are, however, permitted in this regard. First, the first AGM of a company may be held within a period of 18 months from the date of its incorporation and if the meeting is held during this prescribed period, it will not then be necessary to hold another AGM in that year of incorporation or in the following year. Secondly, the Registrar may for special reasons extend the time for holding such meeting by a period not exceeding three months. But there is no provision for grant of such extension in the





case of the first AGM. It is to be noted that the calendar year is the period of time to be calculated from 1st January and ending on 31st December and not the 12 months from the date of incorporation of the company.

BUSINESS AT THE AGMS

The AGM of the company is a very important meeting of the shareholders, in which shareholders can exercise control over the affairs of a company. The shareholders also get an opportunity to discuss the affairs and review the working of the company. They can also take necessary steps for the protection of their interests. They may refuse to re-elect a director, whose actions and policy they disapprove. In accordance with the provision of section 173 of the Act, consideration of the accounts, reports of the board of directors and auditors, declaration of dividend, appointment of directors in the places of those retiring and appointment of and the fixing of the remuneration of the auditors are the ordinary businesses to be discussed and approved at AGM notwithstanding any other provisions of the Act.

EXTRAORDINARY GENERAL MEETING

In normal circumstances, a company convenes one general meeting every year, which is called the AGM. But, sometimes an exigency may arise in matters of administration or in respect of the company's financial position in between two AGMs. In such circumstances, an EGM is called. In other words, an EGM is one, which is neither a statutory meeting nor an AGM of a company. It is convened to consider matters, which, due to their urgency, cannot conveniently be kept postponed till the next AGM. It can be called at any time when the necessity arises, and where the emergent matter cannot be kept pending till the

next AGM in the interest of a company, at the instance of the board such meeting may be called. In case it is not possible to hold a valid board meeting, and if at any time, there are not within India directors capable of acting, who are sufficient in number, to form a quorum, any director or two members of the company may call an EGM in the same manner, as nearly as possible, as that in which such meeting can be called by the board (Regulation 48, Table-A, Schedule-I). Any business transacted at an EGM is deemed to be special business.

DISTURBANCES AT THE AGM

The foregoing account regarding the AGMs shows that the AGMs are important parts in the working of the companies, which are artificial legal persons, having no minds of their own and provide one occasion in a year for the stakeholders of the company to oversee the working of a company, how its chosen representatives - the Board of Directors - are functioning in the best interest of the company and give useful suggestions to bring improvement in their working. But, regretfully, instead of fulfilling such functions, such meetings have gradually degenerated into disorderly assemblies, where shareholders, who attend the meetings, clamour for petty personal gains by way of gifts, cash vouchers, sumptuous entertainment by way of sweets, snacks, beverages, etc. In many such meetings, there are no discussions about the functioning of the companies and how their working can be improved. The stress is on bargaining about the gifts, to be given. Threats are given that Resolutions will not be passed if fabulous gifts are not given/promised. In some situations, even law and order problems may arise. Some years back, in the AGM of a public sector bank at Kolkata, so much disorder was created for gifts that Police had to be called to restore order. Similar reports come from other centres of the country.

Regretfully, some managerial personnel in the company are occasionally party to such disorders in the AGMs. They collude with the shareholders. They wish to get the shareholders involved in gift demands/grabbing and in the turmoil and disorder, get the inconvenient and favourable to management resolutions passed by voice votes without the same being examined rationally.

Disturbances, once in a while in AGMs because of unexpected situations developing, may be exceptions, but creating disorders and commotions at almost all AGMs merely to get some monetary benefits by way of gifts or cash vouchers, disregarding the very purpose for which such meetings are convened, can only be considered as most irresponsible and unwholesome conduct from the side of the shareholders, defying the very purpose, for which AGMs are held.

Government's Concern

The problem has been engaging the attention of the Ministry





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Clamour for Gifts at AGMs of Companies Needs to be Prohibited by Legislation



of Corporate Affairs (MCA) since quite some time, but nothing concrete could be done to remedy the malady. In one of the Bills for amendments of the Companies Act, a clause was proposed to check this menace by legislation, but then somehow the proposal got dropped and the problem in this regard is continuing unabated. It is still a nightmare for some Boards to hold their AGMs because of disorderly conduct of shareholders/their proxies at such meetings. Some of the companies have been forced to shift their registered offices to some obscure places so that disorderly elements may not reach such places. By doing this, the companies are frustrating the very objectives, for which such meetings are held.

LATEST MOVE OF THE GOI TO CHECK THIS MENACE

To check such malpractices at AGMs, the MCA proposes to issue a Circular, whose draft has been circulated for eliciting opinion of the stakeholders and others. This reads as under:-

" Section 166 - Meetings & Proceedings - AGM - Providing Gifts to the shareholders during AGM of the company [Draft Circular [F.No.17/218/2011 CL.V dated July 2011].

1. The Ministry of Corporate Affairs has been receiving representations from various stakeholders that it has become general practice in the country to give gifts to the

shareholders while they attend any AGM in addition to the dividend recommended by the Board of Directors.

2. It has also been brought to the notice of the Ministry that the companies offer gifts, extravagant food and other charms to shareholders, who attend AGM, to divert the attention of the shareholders from the main purpose of AGM and their right of key role in the management of the company through AGM. In addition, shareholders are made busy to collect gifts, gift coupons, packet of snacks, etc., in the duration of meeting while corporates manage to pass certain resolutions without any debate on the same.
3. The Secretarial Standards on General Meeting issued by the Institute of Company Secretaries of India has also specifically mentioned that no gifts, gifts coupons or cash in lieu of gifts should be distributed to the members at or in connection with the meeting.
4. Keeping the principle of good corporate governance in view, it has been decided that no company shall offer any other thing except tea, coffee, soft drinks and snacks, etc., in the AGM. As a courtesy to the shareholders, the same may be made available before the start of the meeting. Any other gifts, food coupons or gift coupons and other enticement shall be treated as misconduct on the part of board of directors of the company. The directors of such companies shall be liable to pay back the cost of such expenses to the company and shall also be liable for the penal action as provided under section 168 of the Act for not convening the AGM properly as required under section 166 of the Act.
5. All the stakeholders are requested to consider and examine the above proposal of the Ministry and furnish their views/comments/recommendations to the Ministry by 14.08.11 on following e-mail addresses:-
kamna.sharma@mca.gov.in/monika.gupta@mca.gov.in

The proposal needs whole-hearted support from every quarter."

CONCLUDING COMMENTS

The proposal is welcome, but it would be more effective if the scheme contained in the draft circular is incorporated in the Act itself. That will give teeth to the proposal and it would be more easy to initiate legal proceedings against the persons, who demand gifts at the AGMs, persons, who are parties to the giving of gifts and takers of the gifts. Doing so would bring to an end to the pernicious practices that have, unfortunately, developed in the governance of the companies. This is a long overdue reform, which should be implemented forthwith without any further loss of time.



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Human Resource Management

Human Resource Management (HRM) is seen by practitioners in the field as a more innovative view of workplace management than the traditional approach. Its techniques force the managers of an enterprise to express their goals with specificity so that they can be understood and undertaken by the workforce and to provide the resources needed for them to successfully accomplish their assignments. As such, HRM techniques, when properly practiced, are expressive of the goals and operating practices of the enterprise overall. HRM is also seen by many to have a key role in risk reduction within organizations.

Human resource management (HRM, HR) is the management of an organization's employees. While human resource management is sometimes referred to as a "soft" management skill, effective practice within an organisation requires a strategic focus to ensure that human resources can facilitate the achievement of organisational goals. Effective human resource management also contains an element of risk management for an organisation which, as a minimum, ensures legislative compliance.



ORIGINS

Human resource management is sometimes referred to as:

- ◆ Organisational Management
- ◆ Personnel Administration
- ◆ Manpower Management
- ◆ Human Capital Management
- ◆ Industrial Management

But these traditional expressions are becoming less common for the theoretical discipline.

Sometimes even employee and industrial relations are confusingly listed as synonyms, although these more accurately relate to employment conditions and often have a legislative focus.

At a very basic level, the theoretical discipline of human resource management is based primarily on the assumption



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that employees are individuals with varying goals and needs, and as such should not be thought of as basic business resources, such as trucks and filing cabinets.

ACADEMIC THEORY

Research in the area of HRM has much to contribute to the organizational practice of HRM. For the last 20 years, empirical work has paid particular attention to the link between the practice of HRM and organizational performance, evident in improved employee commitment, lower levels of absenteeism and turnover, higher levels of skills and therefore higher productivity, enhanced quality and efficiency. This area of work is sometimes referred to as 'Strategic HRM' or SHRM. Within SHRM three strands of work can be observed: Best practice, Best Fit and the Resource Based View (RBV).

The basic premise of the academic theory of HRM is that humans are not machines; therefore we need to have an interdisciplinary examination of people in the workplace.

BUSINESS PRACTICE

Human resources management involves several processes. Together they are supposed to achieve the above mentioned goal. These processes can be performed in an HR Department, but some tasks can also be outsourced or performed by line-managers or other departments. When effectively integrated they provide significant economic benefit to the company.

Work Force Planning

Workforce Planning is the business process for ensuring that an organization has suitable access to talent to ensure future business success. Access to talent includes considering all potential access sources (employment, contracting out, partnerships, changing business activities to modify the types of talent required, etc.). By talent is meant the skills, knowledge, predisposition and ability to undertake required activities including decisions making. Strategic Planning considers the business risks concerning insufficient, disrupted, mis-deployed talent on the organization's business priorities. Workforce planning is considered an iterative discipline.

The cycle of workforce planning includes filling resource requests, analyzing resource utilization, forecasting capacity, managing and identifying the resources (human) to fill that capacity, and then re-starting the cycle.

Strategic Workforce Planning is broader and a long term one than operational workforce planning. Strategic workforce planning is the framework applied for workforce planning and workforce development, where the links between corporate and strategic objectives and their associated workforce implications are demonstrated. Strategic workforce planning should take into account the projected loss of knowledge through employee exits and the projected knowledge requirements for sustaining and progressing the business. Knowledge requirements may include technology, new skills, new roles, documentation of key workforce intelligence or new business demands.

Operational Workforce Planning is narrower in context and shorter in term than strategic workforce planning. Operational workforce planning involves the systems and processes adopted and evolved to enable strategic workforce planning through the production of the evidence required for executive decision-making on workforce matters. Operational workforce planning should initially be process based and focused on building understanding and capabilities in Workforce Planning, supported by simple tools, templates and techniques. Once established and practiced, these tools, templates and techniques can become more sophisticated and linked to existing or new IT systems to enable workforce planning to be integrated into normal business practice.

One of the more restrictive and potentially dangerous assumptions is that strategic planning is only about talent in the form of employees. Hiring is a strategy for accessing talent and will often be the superior one. However, the use of employees to meet talent needs carries with it unique risks that can be mitigated using alternative access sourcing arrangements. Regardless of the access source used, insightful assessment of the strategy's attendant business risk is prudent.

Recruitment

Recruitment refers to the process of attracting, screening, and selecting qualified people for a job. For some components of



the recruitment process, mid- and large-size organizations often retain professional or outsource some of the process to recruitment agencies.

The stages in recruitment include sourcing candidates by advertising or other methods, screening potential candidates using tests and/or interviews, selecting candidates based on the results of the tests and/or interviews, and on-boarding to ensure the candidate is able to fulfill their new role effectively.

PROCESS

Job analysis

The proper start to a recruitment effort is to perform a job analysis, to document the actual or intended requirement of the job to be performed. This information is captured in a job description and provides the recruitment effort with the boundaries and objectives of the search. Starting recruitment with an accurate job analysis and job description ensures the recruitment effort starts off on a proper track for success.

Sourcing

Sourcing involves 1) advertising, a common part of the recruiting process, often encompassing multiple media, such as the Internet, general newspapers, job ad newspapers, professional publications, window advertisements, job centers, and campus graduate recruitment programs; and 2) recruiting research, which is the proactive identification of relevant talent who may not respond to job postings and other recruitment advertising methods.

Strategic Workforce Planning is broader and a long term one than operational workforce planning. Strategic workforce planning is the framework applied for workforce planning and workforce development, where the links between corporate and strategic objectives and their associated workforce implications are demonstrated.

Screening and selection

Suitability for a job is typically assessed by looking for skills, e.g. communication, computer skills, etc.. Qualifications may be shown through resume, job applications, interviews, educational or professional experience, the testimony of references, or in-house testing, such as for software knowledge, typing skills, numeracy and literacy, through psychological tests or employment testing. Other resume screening criteria may include length of service, job titles and length of time at a job. In some countries, employers are legally mandated to provide equal opportunity in hiring. Business management software is used by many recruitment agencies to automate the testing process. Many recruiters and agencies are using an applicant tracking system to perform many of the filtering tasks, along with software tools for psychometric testing.

Onboarding

"On boarding" is a term which describes the process of helping new employees to become productive members of an organization. A well-planned introduction helps new employees to become fully operational quickly and is often integrated with a new company and environment. Onboarding is included in the recruitment process for retention purposes. Many companies have on boarding campaigns in hopes to retain top talent that is new to the company; campaigns may last anywhere from 1 week to 6 months.

INDUCTION ORIENTATION AND ONBOARDING

Induction

The introduction of a clergyman into a benefice or of an official into a office, with appropriate acts or ceremonies; the giving actual possession of an ecclesiastical living or its temporalities.

Orientation

A course introducing a new situation or environment

Skills Management

The skills involved can be defined by the organization concerned, or by third party institutions. They are usually defined in terms of a skills framework, also known as a competency framework or skills matrix. This consists of a list of skills, and a grading system, with a definition of what it means to be at particular level for a given skill.



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To be most useful, skills management needs to be conducted as an ongoing process, with individuals assessing and updating their recorded skill sets regularly. These updates should occur at least as frequently as employees' regular line manager reviews, and certainly when their skill sets have changed.

Skills management systems record the results of this process in a database, and allow analysis of the data. In order to perform the functions of management and to assume multiple roles, managers must be skilled.

Robert Katz identified three managerial skills that are essential to successful management: technical, human, and conceptual.

Technical skill involves process or technique knowledge and proficiency. Managers use the processes, techniques and tools of a specific area. Human skill involves the ability to interact effectively with people. Managers interact and cooperate with employees. Conceptual skill involves the formulation of ideas. Managers understand abstract relationships, develop ideas, and solve problems creatively. Thus, technical skill deals with things, human skill concerns people, and conceptual skill has to do with ideas.

A manager's level in the organization determines the relative importance of possessing technical, human, and conceptual skills. Top level managers need conceptual skills in order to view the organization as a whole. Conceptual skills are used in planning and dealing with ideas and abstractions. Supervisors need technical skills to manage their area of specialty. All levels of management need human skills in order to interact and communicate with other people successfully.

Training and Development

In the field of human resource management, training and development is the field which is concerned with organizational activity aimed at bettering the performance of individuals and groups in organizational settings. It has been known by several names, including employee development, human resource development, and learning and development.

A well-planned introduction helps new employees to become fully operational quickly and is often integrated with a new company and environment. Onboarding is included in the recruitment process for retention purposes.

Training and development encompasses three main activities: training, education, and development.

- ◆ **Training:** This activity is both focused upon, and evaluated against, the job that an individual currently holds.
- ◆ **Education:** This activity focuses upon the jobs that an individual may potentially hold in the future, and is evaluated against those jobs.
- ◆ **Development:** This activity focuses upon the activities that the organization employing the individual, or that the individual is part of, may partake in the future, and is almost impossible to evaluate.

Time Management

Time management is the act or process of exercising conscious control over the amount of time spent on specific activities, especially to increase efficiency or productivity. Time management may be aided by a range of skills, tools, and techniques used to manage time when accomplishing specific tasks, projects and goals. This set encompasses a wide scope of activities, and these include planning, allocating, setting goals, delegation, analysis of time spent, monitoring, organizing, scheduling, and prioritizing.

Payroll

In a company, payroll is the sum of all financial records of salaries for an employee, wages, bonuses and deductions. In accounting, payroll refers to the amount paid to employees for services they provided during a certain period of time. Payroll plays a major role in a company for several reasons.

Employee Benefits Administration

Employee benefits and benefits in kind (also called fringe benefits/perquisites) are various non-wage compensations provided to employees in addition to their normal wages or salaries.

The term perquisites is often used colloquially to refer to those benefits of a more discretionary nature. Often, perks are given to employees who are doing notably well and/or have seniority. Common perks are take-home vehicles, hotel stays, free refreshments, leisure activities on work time (golf, etc.), stationery, allowances for lunch, and-when multiple choices exist-first choice of such things as job assignments and vacation scheduling. They may also be given first chance at job promotions when vacancies exist.

Performance Appraisal

A performance appraisal, employee appraisal, performance review, or (career) development discussion is a method by which the job performance of an employee is evaluated (generally in terms of quality, quantity, cost, and time) typically by the corresponding manager or supervisor. A performance



appraisal is a part of guiding and managing career development. It is the process of obtaining, analyzing, and recording information about the relative worth of an employee to the organization. Performance appraisal is an analysis of an employee's recent successes and failures, personal strengths and weaknesses, and suitability for promotion or further training. It is also the judgment of an employee's performance in a job based on considerations other than productivity alone.

LABOR RELATIONS

A labor relation is the study and practice of managing unionized employment situations. In academia, labor relations is frequently a subarea within industrial relations, though scholars from many disciplines - including economics, sociology, history, law, and political science - also study labor unions and labor movements. In practice, a labor relation is frequently a subarea within human resource management. Courses in labor relations typically cover labor history, labor law, union organizing, bargaining, contract administration, and important contemporary topics.

In India, labor relations in the corporate is regulated by the Labor Laws.

HRM STRATEGY

An HRM strategy pertains to the means as to how to implement the specific functions of human resource management. An organization's HR function may possess recruitment and selection policies, disciplinary procedures, reward/recognition policies, an HR plan, or learning and development policies, however all of these functional areas of HRM need to be aligned and correlated, in order to correspond with the overall business strategy. An HRM

strategy thus is an overall plan, concerning the implementation of specific HRM functional areas.

An HRM strategy typically consists of the following factors:-

- ◆ "Best fit" and "best practice" - meaning that there is correlation between the HRM strategy and the overall corporate strategy. As HRM as a field seeks to manage human resources in order to achieve properly organizational goals, an organization's HRM strategy seeks to accomplish such management by applying a firm's personnel needs with the goals/objectives of the organisation. As an example, a firm selling cars could have a corporate strategy of increasing car sales by 10% over a five year period. Accordingly, the HRM strategy would seek to facilitate how exactly to manage personnel in order to achieve the 10% figure. Specific HRM functions, such as recruitment and selection, reward/recognition, an HR plan, or learning and development policies, would be tailored to achieve the corporate objectives.
- ◆ Close co-operation (at least in theory) between HR and the top/senior management, in the development of the corporate strategy. Theoretically, a senior HR representative should be present when an organization's corporate objectives are devised. This is so, since it is a firm's personnel who actually construct a good, or provide a service. The personnel's proper management is vital in the firm being successful, or even existing as a going concern. Thus, HR can be seen as one of the critical departments within the functional area of an organization.
- ◆ Continual monitoring of the strategy, via employee feedback, surveys, etc.

The implementation of an HR strategy is not always required, and may depend on a number of factors, namely the size of the firm, the organizational culture within the firm or the industry that the firm operates in and also the people in the firm.

An HRM strategy can be divided, in general, into two facets - the people strategy and the HR functional strategy. The people strategy pertains to the point listed in the first paragraph, namely the careful correlation of HRM policies/actions to attain the goals laid down in the corporate strategy. The HR functional strategy relates to the policies employed within the HR functional area itself, regarding the management of persons internal to it, to ensure its own departmental goals are met.

FUNCTIONS

The human resources management (HRM) function includes a variety of activities, and key among them is deciding the staffing needs of an organization and whether to use independent contractors or hire employees to fill these needs,



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recruiting and training the best employees, ensuring they are high performers, dealing with performance issues, and ensuring your personnel and management practices conform to various regulations. Activities also include managing your approach to employee benefits and compensation, employee records and personnel policies. Note that some people distinguish a difference between HRM (a major management activity) and HRD (Human Resource Development, a profession). Those people might include HRM in HRD, explaining that HRD includes the broader range of activities to develop personnel inside of organizations, including, e.g., career development, training, organization development, etc. There is a long-standing argument about where HR-related functions should be organized into large organizations, e.g., "should HR be in the Organization Development Department or the other way around?"

More recently, organizations consider the "HR Department" as playing an important role in staffing, training and helping to manage people so that people and the organization are performing at maximum capability in a highly fulfilling manner.

STRATEGIC HUMAN RESOURCE MANAGEMENT

In this management system, human resource is given due importance while planning goals and long term strategies. The skills that are necessary to meet the organizational goals are developed in employees. This point is considered during the planning phase and included in the policies devised for meeting goals.

Nowadays, the human resource department does much more than just recruiting employees for the company. Using the human resource effectively in order to give the company a competitive advantage and completing the set targets, are some of the priorities.

The mission statements reflect the strategies, goals and the overall approach of companies. The values inherited and the policies devised by firms are based on the mission statements; which are the driving force that motivate the employees to move ahead.

Advantages of Strategic Human Resource Management

There are many advantages and benefits that strategic human resource management offers.

- ◆ It helps to analyze the opportunities and threats that are crucial, from the point of view of the company.
- ◆ It is possible to develop strategies and have a vision for the future.
- ◆ The need for competitive intelligence, which is of utmost



importance in strategic planning, is fulfilled by means of implementing strategic human resource management.

- ◆ The attrition rate can be reduced, if strategic HRM is implemented properly. It also performs the important task of motivating employees.
- ◆ Development and maintenance of competency among employees, is the most important benefit offered by strategic HRM.
- ◆ It helps determine the weaknesses and strengths of the company, thereby enabling the management to take appropriate measures.
- ◆ It helps to keep a check whether the expectations of employees are addressed properly.
- ◆ Business surplus is achieved by making the employees competent enough to deliver the goods.

Limitations of Strategic Human Resource Management

The process of strategic HRM is a complicated one and barriers in the growth of employees and in turn the company, are created if strategic HRM is not implemented properly. Following are some commonly observed problems.

- ◆ Resistance to change from the bottom line workers.
- ◆ Inability of the management in communicating the vision and mission of the company clearly to the employees.
- ◆ Interdepartmental conflict and lack of vision among the senior management in implementing the HR policies.
- ◆ Diversity of workforce that makes it difficult for the management to handle them accordingly.
- ◆ Conflict among the employees over the issue of authority and the related fear of victimization.
- ◆ The resistance from institutions such as the labor unions.
- ◆ Changes that take place in the organizational structure.
- ◆ The changing market scenario which in turn creates



pressure on the effective implementation of strategic HRM. If implemented efficiently, strategic human resource management helps in improving the productivity of employees and utilizes their expertise in meeting the company goals.

BUILDING WORLD CLASS ORGANIZATION THROUGH HR

There is sea change in HR during the last few decades. Earlier its role was restricted to recruitment, selection and training and development. Gradually it was realized by organization that human resource is the backbone and people started giving due importance to it. Today we all want to see our company in the fortune 500 companies list but have we ever thought that it would be impossible to do it if we don't have bona fide staff with bona fide intentions. The organization is successful if an individual goals matches with the organization goal. Both have to go hand in hand. It is the Human Resource Department's responsibility to see that synchronization is there as well as maintained between individual and organization goal. HR expects that all employees must work hard for their self-development. In the process, organization achieves its growth and quality excellence. HR provides all avenues for Employee Development. The definition of HR has changed from seeing employees as cost center to profit center. To be world class, HR mission and vision should be the subset of organization mission and vision statement.

It's true that nothing is permanent in this world except change. Hence it is HR's responsibility to understand the current business environment and bring in, the required change smoothly and effectively. HR foundation should be strong and its policies should be crystal clear, flexible, precise, uniform and easy to understand.

If we analyze the functions of HR it revolves around the upliftment of employee moral and bringing in the best practices followed in the industry and reinforcing them. The general HR functions comprise of recruitment, selection, training & development, counseling, mentoring, wage & salary fixation, career development plans, succession planning, performance appraisal etc. The first foundation stone for HR person is to encourage the atmosphere of teamwork and bring transparency in work culture. Consensus approach in each work should be the philosophy of the organization, of course, individual performance will always be given due recognition. HR should make the atmosphere to use the word "WE" rather than "I"

One of the prime job of HR is to induct people who have the capacity to take the organization in the future direction but before this a proper manpower planning is to be done. Manpower Planning is essential for the following reasons :

- a) Reduce Excess manpower
- b) Develop multi-skills
- c) Job enrichment

- d) Right people for right job
- e) Budgeting for fund allocation
- f) Succession Planning

One of the major challenges which the HR faces is retention of the talented employees. Today the attrition rate is high due to brain drain as well better package and lucrative designation offered by other organization. Keeping in view stiff competition, rapid technology development and customer's demands, we have to retain right type of employees to give efficient service and improve productivity and quality. Unless HR plans retention programs, it is very difficult in retaining the good personnel and running the business. These days HR has not only have to think for the employees but also for their family members. HR should incorporate some welfare measures for their employees and their family members like:

- a) Annual meet for all employees and family members.
- b) Picnic
- c) Medical Care
- d) Vocational guidance classes
- e) Education assistance
- f) Superannuation Scheme
- g) Uniforms
- h) Canteen
- i) Club
- j) Magazines
- k) Safety measures etc.

Motivating staff towards their profession helps to bring zero defects and minimum re-work and reducing customer's complaint. HR's role is to bring out extra-ordinary qualities from ordinary people. To take your organization to international standards the basic work of HR should be familiarize all the members with the environment, utilize every opportunity of praise, suggest better ways of doing things after appreciating employees efforts.

Prerequisite for Successful HR

- ◆ Support from top and middle management.
- ◆ Open and transparent atmosphere with trust
- ◆ Create an environment for growth and development
- ◆ Investment in time, program, money, energy etc..

Rationale of HRD

- ◆ Upgrading your systems/processes/ services
- ◆ For growth
- ◆ Self renewal
- ◆ Leadership

When a person joins any organization he is raw for that organization. It is the HR's duty to give him the inputs or provide the means to know how the process takes place. The ultimate goal of every organization is customer satisfaction.



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Organizations have to ensure customer satisfaction and the level of satisfaction must go higher and higher. This is not possible unless the employees are not satisfied and it is the role of HR to keep their employees motivated and charged up for whatever comes. HR should follow the following steps to make it employees self aware about themselves so that they give their 100% output to their department as well as to the organization:

- a) Boost the confidence of employees: Make them aware that they are the asset to the organization.
- b) Respect Employees feeling: Value their feelings and suggestions and try to have empathy for them.
- c) Reach out to them: Extend your help physically or morally whenever required and understand them.
- d) Open communication: Provide an atmosphere where employees can share their views and have trust in HR.

Three important things that HR department should do to keep abreast with the changing scenario are:

- a) Training & Development: Identify the needs of employees and provide training to them in the respective areas which would lead to increase in quality output bring in self discipline and increase safety awareness. It should be remembered that investment made to bring in change in skill, attitude and knowledge by training should be always more than the cost per trainee.
- b) Ask for Suggestions: Employees working in the shop floor level are much more aware of the root cause of problems and they have sometimes much better solution than the top management can think of. The aim of the suggestion scheme is mainly to tap the hidden resources and evolve a participative having participate

approach and innovative ideas among employees. Also the esteem level of employees will increase and complex problems will get reduced. If useful suggestion gets implemented, concerned employee will feel that the management recognizes his resource.

- c) Exit Interview: When an employee leaves the organization he gives the valuable input that must be taken into account and preventive measures must be taken so that others are not affected by the problem. This is the forum where the employee could vent out his feelings and make the employer aware of the issues that would affect the smooth functioning of the organization.

Unless all employees have passion and dedication for their work it will be too difficult to achieve the organization goal. Environment plays a major role and how to create an environment for that is the sole responsibility of HR. There is internal and external environment, which have the impact on the working atmosphere for example the political env., trade unions, economic environment, geographical area, Social environment, culture, technology etc. Unless both sides are balanced it will be difficult to increase the productivity of employees. Porters' model speaks of Bargaining Power of Suppliers, Bargaining Power of Customers, Threat of New Entrants, Threat of substitutes. All our effort should be to balance these situations and make a concrete plan to be stable.

To come at par with the world class level we have to follow the OCTAPACE CULTURE. Culture is the set of norms, beliefs, values system that an employee has to follow in an organization. OCTAPACE is an acronym that stands for:

O = OPENESS
 C = COLLABORATION
 T = TRUST & TRUST WORTHINESS
 A = AUTHENCITY
 P = PROACTIVENESS
 A = AUTHORITY
 C = CONFRONTATION
 E = EXPERIMENTATION

The physical and mental attributes of HR should be highly pertinent to the organization's performance and productivity. The employees in any organization are not to be viewed as static individuals since the quality and quantity of HR are affected by environment factors such as education, training and development, motivation etc. If human factor is properly utilized it proves to be a dynamic force for running an organization; otherwise it becomes a passive and destructive force. The overall aim of HR is to find the possibilities for adaptation for survival of organization with constantly changing scenario in an era of increasing competition. Building a world class organization is a long-term process and it would be highly impossible to see this dream without human resource.



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Think before you Marry: The Fluid Law of Joint Ventures

Courts have consistently applied the partnership principles to joint ventures. However joint ventures may take different shades from just a collaboration to co-ownership or pooling of resources or formation of companies. In the backdrop of the fluid law relating to joint ventures, this article critically examines several contentious issues relating to joint ventures.

INTRODUCTION

Isn't it paradoxical that while life is getting more and more personalized, dependence on relationships is, in fact, increasing? There is ever-increasing inter-dependence - hence, there is an illusion of increasing significance of relationships. However, if one scratches the surface, one notices that relationships are, in fact, diminishing.

The way our society is moving, relationships are getting replaced by transactions. Transactions mean *coming together*; relations mean *staying together*. The world is moving more and more towards transactions, and moving away from relationships. This is true everywhere - in business and in life.

In business, the good old *modus* of doing business together with combined resources or strengths was partnership. Partnerships are quite old fashioned now - except in case of family businesses; partnerships are quickly getting replaced by joint ventures. The idea of a joint venture signifies doing a venture - a



business, a transaction, a deal, with combined resources, with the understanding that this coming together is limited to the venture in hand. There is no pre-supposition of continuity.

Hence, a joint venture (JV) is a contractual agreement or a



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A question that quite often arises is whether a joint venture is nothing but an ad-hoc or temporal partnership? This question assumes significance because most countries have legislations defining rights/obligations of partners in a partnership; however, there do not exist laws dealing with joint ventures.

business relationship between two or more persons for the purpose of executing a particular business undertaking or contract. The parties, commonly called joint venturers, or JV partners agree to bring defined resources, defined capital, and share in the profits and losses of the enterprise in an agreed manner. They agree to manage the joint venture in accordance with the terms and conditions as agreed upon by the partners in the JV agreement. The nature of JV agreement and the extent of detailing required therein will depend on the form, the tenure and the scale of the JV.

There are numerous reasons why business world is increasingly going for JVs. It is trite to say that in the age of scalar economies and specialization, it makes good sense for entities to combine their strengths. However, there are certain sectors of business where getting into JVs has almost become commonplace. In bidding for contracts, parties enter into JVs to post combined turnover, experience and capital. This is commonplace for construction contracts or government contracts. In bidding for consulting assignments, particularly for multilateral agencies, it is quite a common practice for several entities to pool their experience and therefore bid under a JV. JVs are the most convenient way of entering cross border markets.

FORMS OF JOINT VENTURES

Most joint ventures, being temporary in nature, may remain just unincorporated entities. As the purpose and tenure of the JV is limited, it may be unnecessary to create a new entity. These unincorporated entities may be called *associations of persons (AOPs)*. Most JVs take the form of AOPs. The association is not a legal personality - it is just a collective name for the JV partners.

However, if the business is to be carried over a long-term, the parties may think of creating a separate entity. The entity commonly takes the form of a *joint venture company*. In the generic sense of pooling of resources, all companies are joint

ventures, but the meaning of a joint venture company is that the company is nothing but a joint venture between the JV partners, and therefore, the ownership and management of the company will be driven by joint venture principles.

International Accounting Standard 31 reforms to three broad types of joint ventures namely jointly controlled operations, jointly controlled assets and jointly controlled entities. In the first type of JVs, the operation involves the use of the assets and other resources of the venturers individually rather than the establishment of a separate entity or joint ownership of assets. Only the pooling of interests takes place. In JVs where assets are jointly controlled, there is a joint ownership of resources but no separate entity is formed. The venturers have joint ownership of the assets acquired for the JV. In jointly controlled form of JVs, a separate entity is incorporated and the contractual arrangement between the venturers establishes joint control over the economic activities of the entity formed.

JV AGREEMENT

Joint venture Agreement

If the JV in question is a simple coming-together for an ad hoc, temporary opportunity, parties may define their role and responsibilities in a simple joint venture agreement. However, if parties are forming a joint venture company, the joint venture agreement takes the form of a *shareholders' agreement*, commonly known as SHA. In case of joint venture companies, the SHA becomes very important because shares in companies are, by definition, transferable. Hence, JV partners may like to control, besides how the business in joint venture is to be run, important issues like maintenance of shareholding, transfer of shares, tag-along and drag-along rights, etc. In short, the SHA becomes a far more critical document than a simple JV agreement (JVA).

KEY INDICATORS OF EXISTENCE OF JV

The concept of 'joint venture' involves several essential elements such as

- ◆ Contribution by the parties of money, effort, knowledge and other assets to common undertaking
- ◆ Joint property interests in the subject matter of the venture
- ◆ Right of mutual control of management of the enterprise
- ◆ Expectation of profit
- ◆ Right to participate in the profits
- ◆ Limitation of the objective to a single undertaking.

In brief an informal partnership between two or more persons to take up a common enterprise on one time basis is a 'joint venture'.

In *New Horizons Ltd v Union of India* (1995 SCC (1) 478), dealing with the question as to whether a particular company is a joint venture or not, the Supreme Court pointed out that



where an Indian group of companies and the foreign company have pooled together their resources and all the constituents of the company have thus contributed to its resources which shows that the Indian company and the foreign based company is an association of companies jointly undertaking a commercial enterprise wherein they will all contribute assets and will share risks and have a community of interest, it would be a joint venture company. As evident, in this ruling, sharing of risks, community of interests, contribution to assets and the intent to jointly run an undertaking were taken as indicators of a joint venture.

JOINT VENTURE AND PARTNERSHIP

A question that quite often arises is whether a joint venture is nothing but an ad-hoc or temporal partnership? This question assumes significance because most countries have legislations defining rights/obligations of partners in a partnership; however, there do not exist laws dealing with joint ventures.

A partnership is a contractual arrangement between the partners mutually agreeing to undertake a business venture as co-owners with intent to make profit. JVs may be seen as analogous to general partnerships formed for executing a single business activity combining the money, skill, knowledge and property of the partners. Section 8 of Partnership Act, 1932 provides for a limited period partnership. The section says;

"A person may become a partner with another person in particular adventures or undertakings."



The Act provides for a particular partnership to be valid for a particular assignment or business. JVs are formed on the same concept of "particular partnership". The rights, duties and liabilities between the parties to the JV are quite similar to that of partners of a partnership and depend on the terms of the JV agreement.

JVs and the partnerships have some common characteristics pooling of resources and common management. However, the key distinction between a joint venture and a partnership concern is that while a partnership concerns ongoing business in all regards, a joint venture concerns only a single project or a related series of transactions. A joint venture generally terminates on completion of the project for which it was formed. But a partnership is generally a continuing relationship and comes to an end either on the death of any partner or with mutual decision to revoke. Partnership is governed by the Partnership Act; JVs do not have any specific Act applicable to them, but in several cases in India and abroad, partnership principles have been applied to JVs. Partnerships are not separate legal entities; however, in the eyes of the commercial world, a partnership is seen as a continuing business relationship and it is common for partners to distinguish themselves from the partnership. Hence, it is common for partners to give loans to the partnership, charge interest on the loans, draw remuneration from the partnership, and so on. If partnership was the same as the partners, the question of any remuneration, loans or interest would not arise. In case of joint ventures, the separation of personality, even in commercial sense, does not exist - hence, in case of a JV, the JV partners are not entitled to any remuneration for the service provided unless specifically provided by the JV agreement. (*Rohda v Boen*, 45 Wn.2d 553 (Wash. 1954))

As held in the case of *Asia Foundation & Construction Ltd.* (AIR 1986 Guj 185) "the Courts do not treat a joint adventure as identical with a partnership though it is so similar in nature and in the contractual relationship created by such adventures that the rights as between them are governed practically by the rules that govern the partnership. This relationship has been defined to be a combination of persons undertaking jointly some specific adventure for profit without any actual partnership. It is also described as a commercial or a maritime enterprise undertaken by several persons jointly a limited partnership not limited in the statutory sense as to the liabilities of partners but as to its scope and duration. Generally speaking the distinction between a joint adventure and a partnership is that the former relates to a single transaction 'though it may comprehend a business to be continued over several years' while the latter relates to a joint business of a particular kind."

The rights, duties and liabilities of joint ventures are similar or analogous to those which govern the corresponding rights,



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duties and liabilities of the partners. As in the case of partners, joint ventures may be jointly and severally liable to third parties for the debts of the venture. (American Jurisprudence, Second Ed. Vol. 46)

The definition of 'joint venture' appearing in American Jurisprudence [2nd Edition, Vol.46 pages 19, 22 and 23] clearly describes some of the basic features of a joint venture, but these features are also the well-known features of partnerships, except, of course, the continuity of relationship.

“A joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. More specifically, it is an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business venture for joint profit, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a corporation or other business entity, pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and that each joint venturer must stand in the relation of principal, as well as agent, as to each of the other co-venturers within the general scope of the enterprise.”

“Joint ventures are, in general, governed by the same rules as partnerships. The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts

freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships.”

In Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. & Anr [(2008) 10 SCC 345], the Supreme Court cited the above passage from American Jurisprudence, and also extracts from Corpus Juris Secundum and Black’s Law Dictionary. The Apex court went into the question as to whether a JV existed in the case of a builder’s construction contract with the land-owner. A clause in the development agreement stated that the agreement shall not be deemed to create a partnership between the parties. The land owner was specifically excluded from the management of the construction contract. Since the land-owner was completely absent from the management of the construction contract, the court held that the contract in question was not a joint venture. From this significant ruling, the existence of common management, and the near-partnership relation between the JV partners may be said to be the test for existence of a JV. In other words, if a so-called JV partner is merely bringing resources such as land, or capital, it cannot be said to bring into existence a JV.

JOINT VENTURE AND COLLABORATION/ STRATEGIC ALLIANCES

Strategic alliance is an agreement between two or more independent entities who work together for a common objective using each other’s resources and skills. Unlike JVs, in the case of a strategic alliance, generally, a new entity is not formed and the parties collaborate for the achievement of the goal remaining apart and distinct. Strategic partnerships are quite common for developing and promoting software products as the product may exist but needs market channels through an established vendor in the new market. The collaboration/strategic alliance is a wider term and may take any form including contractual arrangements (such as license agreements, marketing agreements, and development agreements), minority equity investments, and joint ventures that are operated as separate legal entities. "Collaboration" in layman’s terms means the coming together of two or more parties for the purpose of brainstorming and sharing of expertise.

JOINT VENTURE PRINCIPLES

Fiduciary Duties

Joint venturers share more than a mere contractual relationship. The relationship between them is fiduciary in nature for the matters covered by the JV agreement. They



have a duty to share full and honest disclosure of everything affecting the business relationship. (*Wah Chang Smelting & Ref. Co. of Am. v. Cleveland Tungsten*, 1996 Del. Ch. LEXIS 102 (Del. Ch. Aug. 19, 1996).

In *Farah Constructions Pty Ltd v. Say-Dee Pty Ltd* (2007), HCA 22, (81 ALJR 1107), the High Court of Australia held that the parties were in a fiduciary relationship even though the relationship had been agreed as a joint venture and not as a partnership.

Jacobson J in *Australian Securities and Investments Commission v. Citigroup Global Markets Australia Pty Ltd* [2007] FCA 963 concluded that the entire relationship between the two contracting parties is based on the contract between them and if the contract specifically excludes the application of fiduciary duties, the parties may not owe the fiduciary obligation to another.

As stated in Law Commission Consultation Paper at para 3.3.13 and Report 236 (1995) at paras 2.11 and 7.3 of Law Commission U.K, *Fiduciary Duties and Regulatory Rules*, "a fiduciary cannot exclude liability for fraud but beyond that there appears to be no restriction in the law to prevent a fiduciary from contracting out of, or modifying, his or her fiduciary duties, particularly where no prior fiduciary relationship existed and the contract defines the rights and duties of the parties". The Consultation Paper also says at para 3.3.12 that it is open to the parties to a contract to exclude or modify the operation of fiduciary duties. These views are also supported both by Australian and English authority. (*Chan v. Zacharia* (1984) 154 CLR 178; *Woolworths Limited v. Kelly* (1991) 22 NSWLR 189; *Kelly v. Cooper* [1993] AC 205; *Henderson v. Merrett Syndicates Limited* [1995] 2 AC 145)

Gummow J in Breen v. Williams (1996) 186 CLR 71 observed that the contractual and fiduciary relationship may co-exist, however, the fiduciary relationship must conform to the terms of the contract. He also pointed out that contractual term may be so precise in its regulation of what a party may do that there is no scope for the creation of a fiduciary duty.

William D. Duncan in his book *Joint Venture law in Australia* at

pg 295 (para 6.3.1) has stated, "Because of the nature of a joint venture agreement as having a dual existence in contract and in equity, the latter, depending upon the form of the joint venture and the content of the obligations, the relationship between the parties may assume a fiduciary character. [*United Dominions Corporation Ltd v. Brian Pty Ltd* (1985) 157 CLR 1]. In more recent times in Australia, in the absence of finding the existence of a fiduciary relationship, it has been argued that in particular classes of commercial contracts, there may be an implied term of good faith and reasonableness in the performance of the contracting parties' obligation. Of course, the joint venture may specifically state this requirement and the extent of the obligation would be a matter of the construction. (*Noranda Australia Ltd v. Lachlan Resources NL* (1988) 14 NSWLR). However, it is proposed to examine, in this context, the possibility of an implied term evidencing a duty to co-operate within these times may be characterized as unreasonable delay.

It cannot be assumed that a joint venture will necessarily be treated as different from that of a partnership and the JV partners may also be found to owe one another the fiduciary duties depending upon the terms of the JV agreement. In order to avoid the fiduciary relationship, the agreement should specifically exclude the joint and several liabilities of the partners and the ability one partner to bind all the other partners.

Law of Agency

The principle of a JV is also based on the law of agency by virtue of which every JV partner is a principal for himself and an agent for the other partners for achieving the common objective of a JV. (*County of Monroe v. Raytheon Co.*, 156 Misc. 2d 445 (N.Y. Sup. Ct. 1991). However, different from partnership, when one party of the JV commits an intentional fraud against third parties without the knowledge of other party, the other joint venturers need not indemnify the committing the fraud when the third parties recover damages.

Constructive Trust

An offshoot of the existence of fiduciary relation between the JV partners is the position of a constructive trust, that is, one JV partner acting as a constructive trustee for the others. This would be particularly so if one JV partner comes to acquire any property which, as per terms of the JV agreement, is to belong to the JV. In *Yeoman's Row Management Ltd v. Cobbe*, 2008 UKHL 55, the court held "If two or more persons agree to embark on a joint venture which involves the acquisition of an identified piece of land and a subsequent exploitation of, or dealing with, the land for the purposes of the joint venture, and one of the joint

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venturers, with the agreement of the others who believe him to be acting for their joint purposes, makes the acquisition in his own name but subsequently seeks to retain the land for his own benefit, the court will regard him as holding the land on trust for the joint venturers. This would be either an implied trust or a constructive trust arising from the circumstances and if, as would be likely from the facts as described, the joint venturers have not agreed and cannot agree about what is to be done with the land, the land would have to be re-sold and, after discharging the expenses of its purchase and any other necessary expenses of the abortive joint venture, the net proceeds of sale divided equally between the joint venturers."

Ownership and Control of JV Properties

A complicated question that quite often arises, in case of unincorporated JVs is :- Are the JV partners joint owners of the property or assets of the joint venture? The answer to the question should appreciably come from the JV agreement. If the JV agreement is silent, then whether a joint venture leads to joint ownership of assets, particularly in case of assets acquired out of the profits or proceeds of the venture, would depend on the purpose for which the question is being answered.

Section 45 of Transfer of Property Act, 1882 with regard to joint transfer of property says:

"Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced."

"In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be

presumed to be equally interested in the property. The above principle is applicable to immovable properties but in general, the analogous rule may also be applied to other properties.

The JV partners share profits from the property owned by a JV and it does not make the venturers joint owner of the property brought by the venture partners individually for the JV. The title in the property will be governed by the JV agreement. Applying the above principle of TP Act, if the property is purchased with the funds of the joint venture or with profits derived from those funds, the property belongs to all the joint venturers for the purposes of the enterprise so long as it exists and has the ownership control in the ratio as determined by the SHA or in case nothing is mentioned in the SHA, in the profit sharing ratio. When the title of the property is in the name of a joint venturer and the property is under the ownership of the joint venture, the rights of other venturers will not be impaired. The title holder will act as a trustee of the property.

The Supreme Court while discussing co-ownership in a partnership in *Addanki Narayanappa v. Bhaskara Krishnappa*, AIR [1966] SC 1300, laid down

"The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership."

In other words, the property acquired out of a joint venture would make the JV partners co-owners of the property. The meaning of co-owner is that each co-owner becomes *pari-passu* or infinitesimal owner of the property. None of them are clear owners of a part of the property. Co-ownership is also discussed in section 44 of the Transfer of Property Act. However, the issue whether a joint venture results into creation of joint ownership still needs more clarity.

KEY POINTS FOR JV PARTNERS TO AGREE

As it is a transaction and not a relation, it is important that the JV partners have clarity on their understanding. Most litigation, particularly in case of JV companies, arises because of lack of clarity on significant principles of mutuality, or loose language in the drafting of the JVA or the SHA. Some significant points in a joint venture agreement are listed hereunder.



Basis of The Association

This may not be so much be a part of the legal documentation, but may be the fulcrum of the JV itself. Both parties may need to understand and convince themselves as to the basis of the JV itself - why are we coming together, what is it that each party is bringing to the table, and so on.

The role and responsibility of either party may be listed out clearly in the JVA - it is impossible to list out all that parties would do; nor does it do a good to the spirit of the JV to earmark isolated lists of what either JV partner would do. The spirit of JV is in mutuality. However indicative areas for either party may be listed.

Capital Contribution And Maintenance Of Control

The single most important point for every JV is the maintenance of common control. This is particularly important in case of JV companies, as corporate shares are transferable instrument. *Prima facie*, a company form is not ideal for a joint venture, because the essence of the company form is transferability of shares, whereas the

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essence of a JV is mutuality. In case of companies, the ownership and management of the company are distinct in the case of JVs, the JV partners are owners as well as managers. Hence, drafting constitutional documents in case of JV companies is quite intricate - it is important to ensure that though the constitution of the JV is in form of a company, it is, in fact, an incorporated partnership. Hence, partnership principles have to be superimposed on the company form. Some of the key points for attention are :

It is important to incorporate the provisions of the SHA in the constitutional documents (for example, Articles of the company) In the absence of an express provision in the articles, the SHA is simply an agreement between the JV partners and does not bind the company at all. The Articles, on the other hand, are an agreement between the company and the members, and members *inter se* and will be binding on the company. In case of any conflict between the Articles and the SHA, the former will always prevail. (*Union of India v. Kishori Lal Gupta* (AIR 1959 SC 1363), *V.B. Rangaraj v. V.B. Gopalakrishnan And Others* (AIR 1992 SC 453) Hence, in order to bind the company with the restrictive clauses of SHA, the articles must be amended or drafted with reference to the SHA).

CONTROL

Some important provisions to be incorporated in the SHA regarding maintenance of control are that voting power in the JV company shall always be held in the proportion decided in the JV agreement, and that no action, whether by issue of capital, or by issue of any other contingent capital instrument, the balance of voting power in the JV company will be disturbed.

It is common for companies to issue further capital. First of all, it is appropriate to mention that any resolution for increase of capital (or issue of any contingent capital instrument such as share warrant, convertible debenture, option instrument, preference shares, etc.) will have to have positive asset of each of the JV partners. Thus, having resolved to increase capital, if one JV partner subscribes to the additional capital, and the other one does not, then the non-defaulting JV partner contributed the capital originally intended for the defaulting JV partner, and the SHA may provide that this shall be treated as a financial accommodation of the defaulting JV partner by the non-defaulting one, which may be rectified within a certain time by the defaulting partner repaying the money (with interest) to the non-defaulting JV partner.

The balance of voting power also gets disturbed if one of the JV partners wants to transfer his shareholding. In this regard, there are several significant points; Usually, there is a lock-in period during which neither party can transfer his



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shareholding. After the lock-in period, if one of the JV partners wants to transfer holdings, it is logical to provide a right of pre-emption to the existing partners. This obviously leads to the question of valuation. There is no uniform rule on valuation and the JV partners have to frame their own view on this. No matter what is the method of valuation, the JV agreement must provide that the transfer of shares in the JV company by a partner to an outsider must not be on terms more beneficial than these at which such shares are offered to the existing JV partners, and the incumbent would anyway sign a deed of adherence to adhere to the JV agreement with the existing JV partners.

It is commonplace to put tag-along and drag along rights. Tag along means if one of the JV partners wants to transfer his holdings to a third party, the other JV partner(s) may also mandatorily require its holdings to be tagged along, that is, transferred along with the holdings of the transferring JV partner. Likewise, if one JV partner wants to transfer his/its holdings, he/it may also force other JV partners to transfer their holdings along with those of the transferring JV partner. Tag along and drag along rights are intended to serve specific purpose and must be put only with due discretion.

The next question is balance of management control. If it is a company, an important provision is to ensure equality of board control in the joint venture company. Significant points in this regard are :

As regards proportion of board members, it would be important to give the power of nomination to a JV partner and to provide that such a nominee will be appointed and removed at the discretion of the JV partner.

Corporate law may have provisions whereby the office of a director may fall vacant, or a director may be removed from office. As far as removal is concerned, there may be an entrenchment provision whereby a director nominated by a JV partner may not be removed at all by any member(s) of the

company. On automatic statutory vacation of office, being a statutory provision, the same would remain valid - however, right to fill a vacancy may be given to JV partner in question.

Board meetings usually have a casting vote of the Chairman. In JV companies, the casting vote is not advisable.

LIST OF RESERVED MATTERS

Since corporate decisions may be taken using the methodology prescribed in corporate laws, it is important to ensure that certain matters that may have an impact on the interests of JV partners are not decided either at board meetings or at general meetings without the consent of each JV partner. Partners must be very careful about this list, as it is quite possible that at a particular board meeting, one of JV partners may not be present, and something that seriously affects the business interests of that JV partner gets transacted. Likewise, in the general meetings also, companies are run on the principle of majority - hence, taking advantage of the absence of a JV partner, matters which are contrary to the interests of one of the parties may be decided.

The list of reserved matters must be carefully drawn - it should be not too restrictive so that the business of the JV may be deadlocked on petty issues; at the same time, it must fully entrench the nature of the JV company as a partnership.

EXIT CLAUSES

It is important to lay down clear provisions on exit. Exit may also happen at the time of a public offer.

Careful consideration must be given to the term of the JV agreement - as to whether the agreement shall be binding only as long as the parties continue to hold their shares in a particular ratio, or there would be parts of the agreement that would continue to prevail even after the change of the shareholding ratio.

As regards maintenance of statutory records, in practice, it is noted that parties lay considerable stress on the physical keeping of documents, and somehow, there is a feeling that the one who has statutory records has upper hand. There is no reason for this to be so, but at times, access to statutory records does give negotiating advantage.

Another important aspect is borrowings. Modes and terms of funds to be raised, if required, particularly borrowings from related parties.

Dispute resolution and arbitration clause is a significant clause since corporate litigation may be very costly and it may be helpful to seek alternative dispute resolution devices.

If it is a JV with a cross border joint venturer, then foreign exchange control issues are also involved. For example, if an Indian entity collaborates with a foreign entity for a joint venture in India, the contribution of capital by the overseas entity is governed by FDI norms. Likewise, if an Indian entity wants to enter into a JV with an overseas entity, the same is governed by ODI norms.



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Retail Investor Concerns in the Primary Market Is there a Need for Greater Protection?

While there is no doubt that the retail investors require more protection, it should be admitted that they should have a long term perspective and should not look for immediate results. Investing in an issue ought to be viewed as investment in the concerned company as owners. While tracing the profile of the retail investor this article calls for change in law for affording realistic protection to them.

A healthy capital market is an indicator of the growth of the economy. A market is considered healthy if it is characterised by growing investor participation and confidence. Investor participation in turn is influenced by the level of protection that is guaranteed to an investor against market irregularities. Protection of

investors is of utmost importance as it is his faith in the stock market that is the foundation stone of further growth of capital market. Investor sentiment translates into investor confidence or the lack of it and acts as a proxy for collective investor behavior and affects the stock market. (Sanjay Sehgal, G.S Sood and Namita Rajput).

The J.J Irani Committee working on the Draft Companies Bill, 2009 recommended that effective measures be initiated for protecting the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices. An underlying theme of the recommendations is that an increasing stress is sought to be laid on shareholders' democracy.

Investors are a heterogeneous group; they may be large or small, rich or poor, expert or lay man and not all investors need equal degree of protection (Mayya, 1996). We have Institutional investors, who in public issues are categorized as Qualified Institutional buyers, High Net worth Individuals and retail individual investors. Amongst these, retail investors are in the weakest segment in the capital market. The reason being they are gullible, easily swayed by the promises of post listing gains and quick market appreciation. Their





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A retail investor has three objectives while investing his money, namely safety of invested money, liquidity of invested money and return on investment. To-day household savings have increased manifold and if these savings can be channelized to the capital market, it will boost the economic progress.

understanding of the capital market mechanism is rather poor. They also come last in the information chain as they are not well informed like an Institutional investor. A retail investor invests his/her hard earned money with a financial goal of meeting her/his future needs. But for the institutional investor it is business and they navigate between their investments very swiftly. An institutional investor can afford a huge loss on its investment but for retail investor it is very difficult to absorb the loss.

PROFILE OF A RETAIL INVESTOR

In order to understand the concerns of retail investors it is essential to look at the profile of a retail investor. 'retail' as the term indicates is something sold in smaller quantities.

(In the context of the capital market, retail investor is an individual who is investing in smaller quantities for his/her personal purpose as opposed to Institutional investors who are institutions investing on behalf of their clients. They differ from others with respect to skills, needs, behavior and awareness of the regulatory frame work. Their potential to save and invest is more but they shy away from the market due to reasons like lack of information, irregularities in the market etc. Many a times they are cheated because they lack the financial literacy in interpreting the true essence of the financial statements and disclosures):

When compared to an institutional investor retail investor has the following features.

- ◆ They buy in smaller quantities and trade less frequently.
- ◆ They are averse to risk and exert lesser influence over corporate decisions than larger institutional investors.
- ◆ They come last in the information chain owing to lobbying between institutional investors and the Company.

- ◆ ¹They have modest portfolios, a lesser degree of investment acumen and less individualized attention from professional advisors.

²A retail investor has three objectives while investing his money, namely safety of invested money, liquidity of invested money and return on investment. To-day household savings have increased manifold and if these savings can be channelized to the capital market, it will boost the economic progress.

The definition of a retail investor has undergone considerable changes keeping in tune with the needs of the investors and the economic climate.

SEBI (Issue of Capital Disclosure Requirements) Guidelines 2009 define a retail investor as 'an individual investor who applies for shares up to Rs. 2,00,000 in any issue. This investment limit for a retail investor has seen a gradual increase. In 2005, the limit for retail investors was raised from Rs. 50,000 to Rs.1,00,000 in public issues. The revised definition means that people investing upto Rs. 2 Lakhs in an IPO would be treated as "retail investors", and would be eligible for allocation under the retail quota. ³As most of the applications in the retail category received during issues were in the range of Rs. 80,000 - Rs. 1 lakh it shows that the investment capacity of the retail investor has increased and it could be tapped by increasing the investment limit.⁴In an IPO with strong fundamentals there is a lot of demand from institutional investors and high net worth individuals (HNI). Since the allocation is on a proportional basis in case of over-subscription, these people would get the maximum allocation. Hence presently retail investors also has a quota of 35% in the net offer to the public.

IMPLICATIONS OF THE CHANGE IN THE INVESTMENT LIMIT

The enhancement in the investment limits for retail investment has many implications. The following are some of them:

- ◆ The direct outcome of this is the ability of the small investors to bid for more securities in good IPOs has received a boost.
- ◆ However as the available percentage out of the net issue to the retail investors (35%) remains the same, this will create more competition with more money being invested in the retail category leading to reduced allocation.
- ◆ The increase in the investment limit takes care of the rise in

1 Barbara Black "Are Retail Investors Better Off Today?" BROOK. J. CORP. FIN. & COM. L. (Vol. 2) p303

2 Gurunathan K. Balanaga "An Investor's requirements in Indian securities market" Delhi Business Review

3 www.sebi.gov.in Discussion Paper for proposed changes to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 - Enhancement of limit for defining Retail Individual Investors in public issues

4 <http://www.raagvamdatt.com/SEBI-doubles-retail-investment-limit-in-IPO-IPOs-to-Rs-2-Lakhs>



inflation because as per present market valuations one lac investment does not fetch many securities.

- ◆ There might be a reduction in the multiple Demat accounts which used to be opened by many investors for increasing the chances of getting allotment.

RETAIL INVESTOR PARTICIPATION IN PRIMARY ISSUES

Initial public offerings are an excellent opportunity for the companies to raise huge amounts of capital for their requirements. Traditionally IPOs have always been a favorite investment option for retail investors. This is because they offer attractive listing gains. However when we compare the participation of retail investor in the primary market it has not been encouraging. Uncertainty in terms of market price and rate of return, uncertainty relating to the allotment in case of oversubscribed issues are some of the reasons for this. The other prominent factors for low participation of retail investors are compulsory delisting, scams and reduction of shares earmarked for them in the IPOs. These issues act as barriers for many investors to enter into the stock market operations. The investors fear that there is no protection for their investments and immediate return as dividend.

In spite of legislative measures, there are fraudulent companies which are cheating the investors. Whenever a retail investor faces an institutional failure he or she has to accept it as his/her bad luck. With the recent frauds and irregularities that the capital market has witnessed the time has come to rethink the standards of protection given to small investors.

SEBI INITIATIVES FOR ENCOURAGING RETAIL INVESTORS

Arising out of the prime objectives for which it has been set up,



protection of the small investor by creating a level playing field between small and Institutional investors has been the prime focus of SEBI. The following are some of the initiatives taken by the regulator to encourage more retail investment.

1. ⁵ SEBI (Disclosure and Investor Protection) Guidelines, 2000, have been amended to reflect processing of draft offer documents, mandatory grading of IPOs and the introduction of fast tract issues.
2. Provision permitting companies making public issues to issue securities to retail investors/ retail individual investors at discounted price was introduced.
3. In addition, amendments were also made for mandatory quotation of PAN to check fictitious demat accounts and monitoring of issue proceeds etc.
4. Merchant Bankers were instructed not to refuse acceptance of applications without copy of PAN card. They were further advised to respond directly to complaints/ comments received on offer documents filed with SEBI, provide adequate disclosure and inform SEBI in case of complaints pointing out inadequate disclosure. They were also instructed to confirm/clarify in reply to SEBI that the replies by the issuer company to Merchant Banker are satisfactory and all relevant disclosures have been made.
5. Based on the recommendations of the Wadhwa Committee on IPO irregularities, disbursement of the disgorged money recovered from those charged with manipulating the market to investors was initiated.

RECENT MEASURES IN FAVOUR OF RETAIL INVESTORS

Apart from enhancing the retail investment limit there are many measures introduced keeping retail investors in mind. The following are some of them:

- ◆ ⁶ Retail investors get an extra day for bidding in IPOs. As typically retail investors follow what institutional investors do, this has given them more time to analyse the institutional demand and then make investment decisions.
- ◆ Applications supported by blocked amounts (ASBA) facility have done away with the hassles of refunding the money to the unsuccessful applicants. As the money remains in the blocked amount till allotment the investors also get to enjoy the interest on it. The overall IPO time frame reduced from 21 days to 12 days is also a welcome step.
- ◆ Mobile trading gets the go ahead. It is anticipated that this

⁵ [http://www.sebi.gov.in/annualreport 2007-08 partsix chronology of major initiatives undertaken by SEBI.](http://www.sebi.gov.in/annualreport%202007-08%20partsix%20chronology%20of%20major%20initiatives%20undertaken%20by%20SEBI)

⁶ Business Standard December 28, 2010 'Focus on higher retail investors' participation' by Ashish Rukhaiyar



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Retail Investor Concerns in the Primary Market Is there a Need for Greater Protection?

will revolutionize the trading activity as till now investors could only view their portfolios and receive updates but not trade. This measure will increase participation as mobile connectivity is wider across the country.

- ◆ Creating a level playing field between institutional investors and retail investors by increasing the margin requirement of institutional investors from 10% to 100%.

Though a series of laudable measures have emerged from the regulator in the recent past a lot of ground still has to be covered.

NEED FOR MORE PROTECTION

The term investor protection is a wide term encompassing various measures designed to protect the investors from malpractices of companies, merchant bankers, depository participants and other intermediaries. India's investor population has plummeted from 20 million in the 1990s to eight million (according to the Swarup Committee report of 2009). When we see the investing strategy of retail investors, most of them consider investment in Bank deposits a safer investment option. Equity has always been regarded as a risky investment due to many irregularities in the market that erode the investments of the small investor. Companies that have come out with an IPO have not been able to give good returns. The book 'Wealth Creation and Destruction through Initial Public Offerings (IPOs) in India 2001 to 2009', by Virendra Jain reveals that one out of every two IPOs of private companies resulted in wealth destruction and three out of 10 quoted at less than half their issue price.

Although there are reservations in the public issue up to 35% yet the participation of the retail investor in the capital market is not encouraging. Even in case of issues that are oversubscribed in the retail category the extent of oversubscription is relatively less. ⁷In India, retail participation as a percentage of population is just 1.3%, whereas in the US, China and Australia, it is 27.7%, 10.5% and 41%, respectively. This can be attributed to the fact that investor's confidence is dwindling. According to the Indian Equity Investors Survey 2010 conducted by MCX-SX 'the Indian equity market is illiquid and is concentrated in the hands of a few individuals in a few centres.' The survey also points out to the lack of penetration as nearly 84% of the trading comes from only top 5 cities in 2009-10.

The process of entry into the market is also cumbersome and daunting involving a lot of documentation. Due to lack of financial knowledge most small investors are comfortable in putting their savings in alternative investments than in the equity market.



Compensation and empowerment of investors in the event of loss due to fraud, unfair trade practices, insider trading is needed. Procedures right from opening demat accounts to KYC norms need to be made more simple and investor friendly.

REASONS WHERE LAWS ARE LACKING

Some of the problems present in the capital market which are obstructing retail investor's entry are the following:

1. One major problem is of vanishing companies, where companies vanished after raising public funds, leaving investors high and dry. There is a need for monitoring such companies by Stock Exchanges as a preventive measure.
2. "Investor beware" is a caveat that is repeated many a time. However, mere exercising caution does not guarantee protection. Disclosers and disclaimers could result in an information overload to the investors deterring them further. The offer documents are technical and difficult to comprehend. This coupled with limited decision making capacity of such investors' results in bad investment decisions.
3. The Pricing of IPOs by corporates has shown that the price is not sustainable in the long run, with the securities

⁷ Moneylife Digital Team 'Manifesto for retail investors and senior citizens' March 10, 2011 08:05 PM



quoting much below their offer price.

4. Brokers continue to remain the one point interaction between the issuer and the investor. ⁸ All brokerage firms insist on investors signing a Power of Attorney (PoA) giving them the right to move investors shares/money in and out of the designated bank and depository accounts. Just like any intermediary they may be more interested in earning brokerage commissions than giving them wise advice.

SUGGESTIONS

- ◆ Presently only 10% of the entire public issue is open to public. Out of this 35% is reserved or retail investors. Increase in the minimum securities offered in IPOs would lead to an increase in the liquidity, curb price manipulation and enhance efficiency of the price discovery mechanism. Minimum offer to be made to the public be increased from the existing 10% of the post-issue.
- ◆ Compensation and empowerment of investors in the event of loss due to fraud, unfair trade practices, insider trading is needed. Procedures right from opening demat accounts to KYC norms need to be made more simple and investor friendly.
- ◆ Investor awareness should not be treated as promotional campaign as is usually done by intermediaries. The statutory warning that "investments are subject to market risks" should not be aired for pure compliance. Its essence should sink into the investor's minds.
- ◆ Strengthening the process of disposing of objections in the

draft prospectus received by SEBI prior to opening of the issue and the final decision to be put on the SEBI website, which would enhance the confidence of investors in the system.

- ◆ Monitoring the end-use of funds should be done by the authority to ensure that funds are used for the purpose as stated in the prospectus. Monitoring share prices after listing and allotments, monitoring companies after listing will keep the focus of the regulator on the companies.

CONCLUSION

It is a question of confidence, policies, processes and investor education. All efforts in this direction should lead to more efficient capital markets that are reliable and trustworthy in the eyes of investors. Along with better protection what is also needed is a change of mindset of the retail investor. Retail investors need to have a long term perspective. Looking for immediate results is akin to gambling and is risky. Investing in any issue has to be looked at as an investment in a company which means ownership.

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Succession Planning Plan it Early

With increase in business uncertainty, organizations face a daunting task to find a replacement for critical positions. Many organizations relate Succession Planning to only replacing the person. Is it not too narrow approach? Is Succession Planning that simple? Is it a one day/ one week / one month activity?

WHAT EXACTLY IS SUCCESSION PLANNING?

Succession Planning is a process of preparing for the future of the organisation. Succession Planning is not only replacing the person - but it involves transitioning a right person at right time and at right level by adequate planning. Succession Planning is developing and implementing a system and following on a recurring basis, such that when an employee leaves, the system naturally refills the position with the most suitable candidate from within or outside the organization.

Important aspects of succession planning could be summarized as:

- ◆ There needs to be a system in place

- ◆ It needs to be practiced on recurring basis. It is not one time or sporadic activity.
- ◆ Replacement from suitable candidate within or outside the organization

SUCCESSION PLANNING TO BE MADE PART OF COMPANY'S STRATEGIC PLANNING

There is a misconception that succession planning is required only for family owned or very large organizations. In today's dynamic vibrant corporate environment, no company - big or small - can be an exception for putting in place a strategic plan for Succession Planning.

Every organization prepares plan for deployment and utilization of its resources - both human and material. However, planning for utilization of human resources in general and key resources in particular must be looked in specific terms. The organization must prepare a plan for developing, retaining and promoting key resources within the organization and should be made a part of Company's strategic planning. There is a need for the involvement of the top management including Board of Directors in the succession planning. Considerable time and effort should be

* The views expressed in this article are the personal views of the authors.



devoted by the Board and the top management to discuss organization's needs and current capabilities and what is required for the future considering the growth plans of the organisation.

SUCCESSION PLANNING PROCESS / POLICY

For every company which is looking for succession planning, it needs to have a formal written policy blessed by the Board. Obviously, this process must be periodically discussed to ensure it is current to the needs of the organization.

It is necessary for every organization to determine in advance, the training / grooming required for internal resource to occupy the key position, whenever occasion arises. The training should involve making probable successor face with the actual working environment at the level for which he is being considered, solve business problems, provide his inputs and get involved in decision making process. This highlights the important aspect that succession planning cannot be started when the organization is faced with the situation to replace the position. Succession planning must be planned years in advance for the expected needs. To have a candidate ready to take on the key responsibility, it is necessary that the successor is exposed to the full spectrum of opportunities within the organization.

It is important to note that all organizations need not follow the same path for Succession Planning in the overall situation or even for each individual. Organizations will not have the same level of key positions which demand succession planning. It will vary from company to company and from industry to industry.

While it is not necessary to have a succession plan for every position, the organization needs to identify the key areas of responsibility which must be included while formulating the process for succession planning. The organization is required to analyze the situation in terms of its need as well as expectations of its internal resources. It is necessary that while laying down process for succession planning, atleast two tiers should be identified. The successor and potential back-ups should be designated early in the process. This will help take care of the softer issues within the organization as it will clearly communicate internally about the possible successors for the key positions which will avoid disappointment among the team members. Additionally, it will help the possible successors to stay with the organization which they may not be if they have not been informed they are being considered for higher positions.

Selection of right person for succession planning is the next important prerequisite step for the success of the system. If unqualified or unmotivated employee is included in the succession plan, the whole process may hamper the effectiveness of the succession planning.

To develop an effective succession planning process, the organization needs to consider the following important



aspects:

- ◆ What are the key areas of the organisation?
- ◆ Who are the key employees of the organization not holding key areas?
- ◆ Whether the organization has capable resources internally who can be developed and groomed to make them capable to hold key areas?
- ◆ What has been the job profile of senior management?
- ◆ How often senior management has been changing jobs in the past?

SUCCESSION PLANNING - FOR WHOM?

This is another important question which Board / Management must ask before they start the process for succession planning. Many organization concentrate only on having succession planning for its Directors and CEO. Is this not restricted scope of succession planning?

While it is true that succession planning for Directors and CEO is of utmost necessity since these are very important positions, there is need to expand the horizon for succession planning to all the key positions, which are necessary for the growth and stability of the organization. If key positions are not included as part of succession planning, it would be difficult to develop and nurture key people for the future and then successfully promote them to take over the position being vacated.



Articles

Succession Planning Plan it Early

The constitution of Nomination Committee is made mandatory in some countries. However in some countries this is still recommendatory. In few countries, there is no provision to constitute Nomination Committee either mandatory or recommendatory, at all.

NOMINATION COMMITTEE AND SUCCESSION PLANNING

Wikipedia explains the meaning of Nomination Committee as a group formed usually from inside the membership of an organization for the purpose of nominating candidates for office within the organization. It works similarly to an electoral college, the main difference being that the available candidates, either nominated or "written in" outside of the committee's choices, are then voted into office by all of the members. The system is a part of governance methods often employed by corporate bodies, business entities, and social and sporting groups - especially clubs. The intention is that they be made up of qualified and knowledgeable people representing the best interests of the membership. In the case of business entities, their directors will often be brought in from outside, and receive a benefit for their expertise.

Investopedia explains the meaning of Nomination Committee [as a committee that acts under the corporate governance area of an organization. A nomination committee is focused on evaluating the board of directors of its respective firm and on examining the skills and characteristics that are needed in board candidates. Nomination committees may also have other duties, which vary from company to company.

It further explains the role of Nomination Committee as a committee which will often identify suitable candidates for various director positions. Other responsibilities may include reviewing and changing corporate governance policies. The committee is often comprised of the chairman of the board, the deputy chairman, and the chief executive officer. The exact number of members on each committee tends to differ depending on the organization.

The constitution of Nomination Committee is made mandatory in some countries. However in few countries this is still recommendatory. In few countries, there is no provision to constitute Nomination Committee either mandatory or recommendatory, at all.

1. **Australia:** Best Practice Recommendations (BPR) which

applies to all listed companies proposes that the Committee should have a minimum of three members, the majority being independent directors. The Chairman of the Committee should be independent director. The role of Nomination Committee has been prescribed to ensure that there is an effective mechanism for board selection and appointment practices.

2. **Canada:** The Canadian Securities Administrators Governance Policy recommends that the Board should appoint a nomination committee with all independent directors as its members. The role of nomination committee is prescribed for identifying individual who can become board members.
3. **France:** While there is no requirement to constitute a separate Nomination Committee, the role may be performed by the Compensation Committee. The Committee should constitute majority of independent directors. In terms of the charter, the Committee is responsible for drawing up the criteria and procedures for appointment of board members and for planning for succession of corporate officers. There was no requirement for senior management succession planning being part of the charter of Nomination Committee.
4. **India:** Constitution of Nomination Committee is not mandatory under Clause 49 of the Listing Agreement or under the Companies Act, 1956.
5. **Netherlands:** The Dutch Corporate Governance Code makes it mandatory to appoint Nomination Committee in case the supervisory board has more than three committees. The Nomination Committee is entrusted with the task of formulating criteria and procedure for appointment of supervisory and management boards.
6. **Singapore:** Singapore Code of Corporate Governance mandates setting up a Nomination Committee with atleast three directors with majority independent directors. The term of reference of Nomination Committee is to make recommendations to the board on all board appointments.
7. **United Kingdom:** The Combined Code of Corporate Governance makes it mandatory for constitution of Nomination Committee with majority of independent directors. The term of reference of Nomination Committee was to lead the process for appointments to the board.
8. **United States of America:** The constitution of Nomination Committee is mandatory under NYSE Rules. The committee is required to be composed of independent directors. In terms of charter prescribed under NYSE Rules, the Nomination Committee is responsible for identifying individuals qualified to become board members. The Committee is also responsible for developing a set of corporate governance principles for the company and for overseeing the evaluation of the board and management succession.

It is thus clear that constitution of Nomination Committee is compulsory in most of the countries. While most of the countries have cast a responsibility on the Nomination



Committee in laying down the process for identifying and selecting the candidate for the member of the Board, few countries have cast additional responsibility on Nomination Committee to do Succession Planning for senior management. Nomination Committee, which is formed mostly of independent directors, has a very important role in the Succession Planning for an organization involving key and senior positions.

HR AND SUCCESSION PLANNING

HR no doubt, is an important constituent in the Succession Planning.

Once the management in principle accepts the need for a succession program, there is a need to create a formal planning document. HR frames such a policy by interacting with the Senior Management, Heads of the Department and identifies which are the key positions for which Succession Planning is necessary and desirable considering organisation's needs.

The management should ask itself the question - Whether there would be any hiccups in the functioning of the Department and in turn the organization, if a particular person leaves the organization? This will help management to identify key positions and key people for which Succession Planning is required. Further, the analysis would clarify the priorities for the position to address and will help in identifying the roles and what expertise is required for that role.

Developing an effective Promotion and Rotation Policy is vital. The policy should provide an opportunity to personnel to grow within the organization and should motivate them to take higher and challenging responsibilities.

SUCCESSION PLANNING - NO QUICK FIX SOLUTION

Succession planning consumes lot of band-width of the top management, leave aside the other functions of the organization particularly the HR. Succession Planning is a long drawn process and takes time. The results appear over a period of time, and may not be seen immediate. The organization should be ready to digest the fact that there could be resentment amongst fellow colleagues who do not get selected when only few individuals are selected to be groomed as successors for key positions. The organization may lose such disgruntled employees.

CONCLUSION

Skillfully done with in-depth involvement of Board and top management and with well laid down process, succession planning can bring huge success to an organization. The management can have peace of mind with not being bothered about the future leadership and can concentrate fully for the growth of the organization.



Many organizations strive to establish succession planning process, However, in most cases they do not get required internal support, which is a necessary ingredient. Employees feel insecure that their position might be at risk if they choose their successor. To overcome this, it is necessary to motivate employees to think about the organization as a whole and find out what would happen to the organization if people at particular position could not perform his / her function.

Having robust succession planning does not guarantee the organization that it would be able to fill up the key position whenever require. The organization may face a situation of a resignation of CEO abruptly. Replacing a CEO takes time and cannot be replaced immediately, unless succession planning is done atleast a year in advance. If a new person occupies a position of CEO who is not groomed properly or does not have a complete knowledge about the functioning of an organization, he may not be able to do justice to his job. There may be a situation that inspite of having effective Succession Planning process to groom the next generation of leaders, they do not actually emerge as a leader when position demands.

Developing a robust succession program is a delicate and time-consuming process and requires full support of the management and internal resources. There is lot of human angle involved to it and cannot be taken like any other technical process. However, once implemented, it can do wonders. Not only, it helps the organization in orderly transition whenever required, but also helps in retention of the top talent.

Jack Welch, ex Chairman and CEO of GE, when took over as CEO of GE had made a comment: "My most important and challenging job from today is to find a suitable replacement for me". That's what is planning!!



Articles

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Regulatory Requirements Governing Sweat Equity

Sweat Equity is a mode of share based compensation made to employees and/or directors of a company. With sweat equity employees can become part owners of the company and participate in the profits of the company apart from their salary. This article attempts to give an overview of regulatory requirements governing the issue of Sweat Equity in India by listed as well as unlisted companies.

INTRODUCTION

Sweat equity shares mean equity shares issued by the company to its directors and/or employees at a discount or for consideration other than cash for providing know how or making available the rights in the nature of intellectual property rights or value additions. In other words, it refers to equity shares given to the company's employees on favourable terms, in recognition of their work. It is one of the modes of making share based payments to employees of the company.

The issue of sweat equity allows the company to retain the employees by rewarding them for their services. Sweat equity rewards the beneficiaries by giving them incentives in lieu of their contribution towards the development of the company. Further, it enables greater employee

stake and interest in the growth of an organization as it encourages the employees to contribute more towards the company in which they feel they have a stake.

REGULATIONS GOVERNING SWEAT EQUITY

Sweat equity and Companies Act, 1956

Issue of sweat equity shares is governed by the provisions of section 79A of the Companies Act. Explanation II to the said Section defines the expression 'sweat equity shares' to mean equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing the know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. It is, therefore, necessary for the issue of sweat equity shares that the concerned employee either provides the know-how, intellectual property rights or other value additions to the company.

In terms of the said section, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are satisfied:

- ◆ such issue is authorised by a special resolution of the company in the general meeting;



- ◆ such resolution specifies the number of shares, current market price, consideration, if any, and the class or classes of the directors or employees to whom such shares are to be issued;
- ◆ such issue is after expiry of one year from the date on which the company was entitled to commence business; and
- ◆ in the case of an unlisted company, such shares are issued in accordance with the prescribed guidelines. (discussed in next paragraph)

In Companies Bill 2009, similar provisions are contained in clause 48.

Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003

The guidelines referred to in section 79A are the Rules issued by the Central Government, which need to be followed by unlisted companies. The Rules *inter alia* provide the procedure to be followed by a company issuing sweat equity shares for consideration other than cash.

Rule 9 of the Rules provides that where a company proposes to issue sweat equity shares for consideration other than cash, it shall comply with the following :

- (a) the valuation of the intellectual property or of the know-how provided or other value addition to consideration at which sweat equity capital is issued, shall be carried out by a valuer;
- (b) the valuer shall consult such experts, as he may deem fit, having regard to the nature of the industry and the nature of the property or the value addition;
- (c) the valuer shall submit a valuation report to the company giving justification for the valuation;
- (d) a copy of the valuation report of the valuer must be sent to

- (e) the company shall give justification for issue of sweat equity shares for consideration other than cash, which shall form part of the notice sent for the general meeting; and
- (f) The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of section 198, section 309, section 310, section 311 and section 387 of the Act, if the following conditions are fulfilled namely

- (i) The sweat equity shares are issued to any director or manager and (ii) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company, in accordance with the relevant accounting standards.

Rule 8 of the Rules prescribes that the issue of sweat equity shares to employees and directors shall be at a fair price calculated by an independent valuer.

Rule 2(v) of the Rules defines the expression 'value addition'. Thus "(v) 'value addition' means anticipated economic benefits derived by the enterprise from an expert and/or professional for providing the know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is issued for which the consideration is not paid or included in : the normal remuneration payable under the contract of employment, in the case of an employee, and/or monetary consideration payable under any other contract, in the case of non-employee."

The term 'know-how' is not restricted to technical know-how but can extend to practical knowledge, skill and expertise. Hence, imparting practical knowledge to the company would be considered as value addition.

QUANTUM OF SWEAT EQUITY

Rule 6 of the Rules restricts the issue of sweat equity shares in a year to 15% of the total paid-up equity share capital or shares of a value up to Rs.5,00,00,000/- (Rupees five crores only), whichever is higher. If this limit is to be exceeded, the same is required to be done with the prior approval of the Central Government.

PROCEDURE FOR ISSUE OF SWEAT EQUITY

For issue of sweat equity shares, the following broad procedure needs to be followed :

- (i) Convene and hold a board meeting to consider the proposal of issue of sweat equity shares and to fix up the date, time, place and agenda for general meeting and to





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pass a special resolution for the same. As per clause 4(2) approval of shareholders by way of separate resolution in the general meeting should also be obtained by the company in case of grant of shares to identified employees and promoters, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversion) of the company at the time of grant of the sweat equity shares.

- (ii) Issue notices in writing for general meeting with suitable explanatory statement containing the particulars required as per Rule 4 of the Rules. The explanatory statement to be annexed to the notice for the general meeting pursuant to section 173 of the said Act must contain particulars as specified below.
 - ◆ The date of the meeting at which the proposal for issue of sweat equity shares was approved by the Board of Directors of the company;
 - ◆ The reasons/justification for the issue;
 - ◆ The number of shares, consideration for such shares and the class or classes of persons to whom such equity shares are to be issued;
 - ◆ the value of the sweat equity shares alongwith valuation report/ basis of valuation and the price at which the sweat equity shares will be issued;
 - ◆ the names of persons to whom the equity will be issued and the person's relationship with the company;
 - ◆ ceiling on managerial remuneration, if any, which will be affected by issuance of such equity;
 - ◆ a statement to the effect that the company shall conform to the accounting policies specified by the Central Government; and
 - ◆ diluted earning per share pursuant to the issue of securities to be calculated in accordance with the Accounting Standards specified by the Institute of Chartered Accountants of India.
- (iii) Pass a special resolution
- (iv) Allot sweat equity shares.

DISCLOSURE IN THE DIRECTORS' REPORT

The Board of Directors should disclose either in the Directors' Report or in the annexure to the Directors' Report, the following details of issue of sweat equity shares:-

- (a) Number of shares to be issued to the employees or the directors;
- (b) Conditions for issue of sweat equity shares;
- (c) The pricing formula;
- (d) The total number of shares arising as a result of issue of sweat equity shares;
- (e) money realised or benefit accrued to the company from the issue of sweat equity shares;



- (f) diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

OTHER REQUIREMENTS

- ◆ Sweat equity shares issued to employees or directors shall be locked in for a period of three years from the date of allotment.
- ◆ In the case of every company that has allotted shares under these Rules, the Board of Directors should at each annual general meeting place before the shareholders a certificate from the auditors of the company/ practising company secretary that sweat equity shares have been allotted in accordance with the resolution of the company in the general meeting and these Rules :

SEBI (Issue of Sweat Equity) Regulations, 2002

The Companies whose shares are listed in any of the recognised Stock Exchanges in India must follow the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002 over and above the requirements of the Companies Act, 1956. The important provisions of the said regulation are discussed below.

Procedure for Issuance of Sweat Equity

The Act specifies a limitation for the issue of sweat equity. A listed company which is a public company can commence business only after the Registrar of Companies issues a certificate to commence business and sweat equity can be issued only after one year from the date of commencement of business.

Eligible Employees

Sweat equity can be issued to either an employee or a director



of the company. Employee means a permanent employee of the company working in India or abroad or a director of the company whether a whole-time director or not. Therefore, the definition of the employee does not change even if he relocates to a foreign country. Further, director means any person holding the post of director, by whatever name called.

Issue of Sweat Equity at Discount

If the issue is at a discounted price, there is no need to seek recourse to the other provisions of the Act. This saves the company from taking approvals from the Central Government and the company can initiate the process on its own. The company can give discount of any amount as it deems fit.

Shareholders Approval

The sweat equity can be issued pursuant to a special resolution passed by the company in a shareholders meeting, either an Annual General meeting (AGM) or an Extraordinary General Meeting (EGM). Before the shareholders meeting the board of directors should approve the proposal for the issuance of sweat equity. The board should send a notice to the shareholders in regard to conducting the AGM/EGM. An explanatory statement must be annexed to the notice which should clearly specify all the material facts concerning items, in respect of which the AGM/EGM has been called. The special resolution passed in the AGM/EGM should specify the following:

- ◆ The number of the equity shares to be issued,
- ◆ Current market price,
- ◆ Consideration, if any; payable by the allottee and
- ◆ The class of the employees or directors or employees to whom the shares are proposed to be issued.

After the special resolution is passed the company can proceed with the process of issuing the sweat equity.

Issue of Sweat Equity to Promoters

The Regulations prescribe different procedures for the issue of the sweat equity in case of promoters may be because the promoters with their relatives, associates hold majority of shares. If the issue is in favor of the promoters then an ordinary resolution of the shareholders in the AGM/EGM is sufficient. In order to pass the resolution, voting by postal ballot is required which is governed by the (Passing of the resolution by Postal Ballot) Rules, 2001 ("the Postal Rules"). The postal ballot includes voting by postal or electronic mode instead of voting personally. The notice for postal ballot can be by:

- ◆ a registered post acknowledgement due; or
- ◆ certificate of posting and with an advertisement stating that the ballot papers are dispatched,
- ◆ published in a leading English newspaper and in one

vernacular newspaper circulated in the state in which the registered office of the company is situated.

The procedure for the passing of resolution by postal ballot for the issue of sweat equity involves the following:

- ◆ The company should make a note below the notice of general meeting of the shareholders for the understanding of the members that the transaction requires the consent of the shareholders through postal ballot.
- ◆ The board of directors should appoint a scrutinizer who, in the opinion of the board, could conduct the postal ballot process in a fair and transparent manner.
- ◆ The scrutinizer is required to submit its report after the last date of the receipt of the postal ballot.
- ◆ The scrutinizer should be willing to be appointed and should be available at the registered office of the company for the purpose of ascertaining the requisite majority.
- ◆ The scrutinizer is duty-bound to maintain a register to record the consent of the shareholders.
- ◆ The postal ballot and all other papers should be under its safe custody till the chairman of the company considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related registers to the company so as to preserve such papers till the resolution is given effect.
- ◆ If the shareholders do not vote within 30 days of the issue of notice, the law considers that the shareholder has acquiesced.
- ◆ The promoter is not allowed to vote in the resolution for the issue of sweat equity to him.

Besides Regulation 6 Requires that

- ◆ Each transaction of issue of Sweat Equity shall be voted by a separate resolution.
- ◆ The resolution for issue of Sweat Equity shall be valid for a period of not more than twelve months from the date of passing of the resolution.
- ◆ For the purposes of passing the resolution, the explanatory statement shall contain the disclosures as specified in the Schedule.

Pricing

The price of the sweat equity offered to the employee or the manager should not be less than average of the weekly high and low of the closing prices of the related equity shares during the last six months preceding the relevant date or higher than the average of weekly high and low of the equity shares during the two weeks preceding the relevant date. "Relevant date" for this purpose means the date which is thirty days prior to the date on which the meeting of the General Body of the shareholders is convened in terms of clause (a) of



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Regulatory Requirements Governing Sweat Equity

After the allotment of the sweat equity shares, the Board of Directors is obliged to place in the annual general meeting the auditor's certificate stating that the issue of the sweat equity has been made in accordance with the Regulations and the shareholders resolution.

sub section (1) of section 79A of the Companies Act. If the shares are listed on more than one stock exchange, but quoted only on one stock exchange on given date, then the price on the stock exchange shall be considered and if the share price is quoted on more than one stock exchange, then the stock exchange where there is highest trading volume during that date shall be considered.

However, if the shares are not quoted on the given date, then the share price on the next trading day shall be considered.

Lock in Period

The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.

Post Issue Compliances

After the allotment of the sweat equity shares, the Board of Directors are obliged to place in the annual general meeting the auditor's certificate stating that the issue of the sweat equity has been made in accordance with the Regulations and the shareholders resolution. The company is required to send a statement to the stock exchange disclosing the following:

- ◆ The number and price of issued sweat equity shares;
- ◆ The total amount invested in sweat equity;
- ◆ Details of the person to whom the sweat equity is issued;
- ◆ The consequent change in the capital structure and the shareholding pattern after and before the issue of the sweat equity.

Non-Cash Consideration

The condition precedent to issue sweat equity for non-cash consideration is that an employee must provide know-how or make available intellectual property rights.

In case of allotment for non-cash consideration, the important issue which arises is the valuation of the consideration. The Regulations prescribe that the value of the intellectual property rights or of know-how is to be carried out by the

merchant banker who must consult experts and valuers who the merchant banker consider fit for the purpose. The merchant banker is under an obligation to provide a certificate from an independent Chartered Accountant confirming that the valuation is in accordance with the relevant accounting standards. After the valuation is complete, attention must be paid to the accounting treatment of the non-cash consideration. If the non-cash consideration takes the form of a depreciable asset it is carried to the balance sheet of the company. However, if it does not take the form of depreciable asset then it must be expensed as provided by the relevant accounting standards. If non-cash consideration takes the form of an asset, which cannot be transferred to the balance sheet then it is treated as managerial remuneration. However, for this purpose the issue of sweat equity must be made in favour of the director or manager.

Penalties

The Securities and Exchange Board of India ("SEBI") has the authority to conduct an investigation or to inspect the books or accounts of the company in respect of any contravention of the provisions of the Regulations. SEBI is also authorized to initiate criminal prosecution by filing a complaint in writing in a court. If it is found that the company has contravened the provisions in regard to the issuance of sweat equity, it can be restrained from issuing further sweat equity. SEBI also has the authority to ask the person to whom the sweat equity is issued to be divested of it.

Income Tax Act, 1961

With the abolition of Fringe Benefit Tax from 2009-2010, FBT on Sweat equity has been abolished and once again Sweat Equity has been included within the purview of Perquisites under Section 17(2). The value of the Sweat Equity determined on the date of exercise, as the difference between the fair market value of the shares as on the date of exercise and the exercise price, would be taxable as a perquisite in the hands of the employees.

ESOP versus SWEAT EQUITY

Some of the significant differences between the two are:

- ◆ Sweat Equity is grant of shares at discount or without monetary considerations whereas ESOP/ESOS is grant of option to purchase share at predetermined price given to employees.
- ◆ Sweat Equity can be issued to the promoters of the company whereas ESOS/ESOP cannot be issued to the promoters or promoter group.

Minimum lock in period of 3 years for Sweat Equity whereas no such lock in period for ESOP and lock in period of 1 year for ESOS.



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Enterprise Risk Management And the Board

This article deals with various nuances relating to risk strategy and risk management, to the extent that board has to be concerned about. It provides practical insights into risk perception at the business entity level and the responsibility of the boards. In real terms board has to define 'Risk Appetite' and 'Risk Tolerance' that sets the ceiling and the floor in a risk management exercise.

INTRODUCTION

Businesses often face risk some of which are inherent and others surface up based on business dynamics. As the trajectory of the business scales up, risk too precipitates for being tamed to the satisfaction of the business managers. Hence, the involvement of the board of directors, on risks associated with strategic issues, becomes all the more important.

Financial crisis in the corporate world has thrown businesses out of gear and has sent signals of caution indicating that running enterprises has never been a merry go round for its managers. It is all encompassing and pervasive and therefore requires intensive involvement of various players in the enterprise to shoulder responsibility of enterprise risk management and more so, it has a demand on the board's time to have a proper oversight function in this respect.

Unless such management is backed by a corporate tone and board's involvement, the task of risk management will only remain on paper, as merely a lip service, and will not contribute for its effective implementation in the enterprise.



ENTERPRISE RISK FACTORS FOR CONSIDERATION

Enterprises often are aware of the type of risks that they have to face in a business environment. To overcome all or any of those risks completely is a Herculean task, but the inevitable has to be harnessed to the best advantage of the enterprise. Some of the obvious risk factors include



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A process for risk management cannot be initiated unless there is a perception and knowledge of risk surrounding the business. Businesses evolve and are exposed to changing dynamics of the external environment. Hence it is important to have the oversight function, as one of the areas of responsibility of the board of directors of any enterprise.

- ◆ Advancement in technology;
- ◆ Aspects of liberalization and globalization;
- ◆ Pace with which products are becoming redundant in the market;
- ◆ Complexity and pace with which transactions are being handled in the globalized world;
- ◆ Stiff environmental requirements to sustain and save life on earth;
- ◆ Inflation.

The list can go on from such broad issues to the very rudimentary ones, causing irksome situations in business that may turn out to have a long term impact on the enterprise.

On account of the perceivable disasters in the corporate world both during the financial crisis and otherwise, the role of board of directors is being subject to scrutiny by shareholders, government and the public. While any deliberate efforts by employees to sabotage the affairs of the enterprise has its own individual consequence, but any consequence where the board has ignored to take measures to thwart the risk factors associated with the enterprise's business has often put the directors in awkward situations.

It is high time that the board inculcates the habit of an oversight function and consciously designs processes to combat the risk elements associated with the business enterprise.

EFFECTIVENESS OF CORPORATE GOVERNANCE AS A PART OF RISK MANAGEMENT PROCESS

Governance demands that the affairs of the companies are so carried out as to ensure that the interests of the stakeholders are protected to the best of management's ability. A number of reports and code of responsibility have been published so far, which adds to the responsibility of the board. Clause 49 of the listing agreement has to be implemented by companies

that are registered with SEBI. World over, various regulations have created an environment where the board has to take original responsibility in protecting the interest of the shareholders through corporate governance measures. Audit Committees have to delve deep into the risks that the enterprise is likely to be exposed to, and the policies that are to be carved out to manage such risks as a part of the enterprise strategy. The board of directors has to augment the proposals of the audit committee so as to build in robust risk management policies for the company as a whole.

The directors and other management personnel's compensation-package too shall have a bearing on the ability to shoulder risk responsibility and managing them all along the growth trajectory of the company. This then would become the yardstick for determining and justifying the compensation-package of the top personnel. It also provides a platform for the board's oversight and public insight into the risk management process and the associated compensation.

PERCEPTION OF RISK AND ITS OVERSIGHT

A process for risk management cannot be initiated unless there is a perception and knowledge of risk surrounding the business. Businesses evolve and are exposed to change dynamics of the external environment. Hence it is important to have the oversight function, as one of the areas of responsibility of the board of directors of any enterprise. Is it enough to have this as a function of the board or is it necessary to form a separate committee to support the board function. This would obviously depend on the complexities of the business enterprise and the complexities associated with its transactions and events. It would also depend on the size and extent of delegation of responsibilities by the board of directors.

While one understands that risk is all pervasive, risk management should however be voiced from the top and the tone should indicate a serious approach by the top management. The board shall have to identify the extent and type of risks it can take in ensuring growth for the benefit of





all the stakeholders. Therefore, it has to define a risk philosophy and the extent to which it is willing to digest any consequence by taking risks in its day to day functioning. The directors have to essentially analyze the stakeholder's willingness and appetite for taking risks, based on which the directors derive their risk philosophy and risk profile of the organization. In fact, the directors have to necessarily seek the approval of the shareholders when they perceive a grave business risk and have to present a course of action which is acceptable and palatable to them. Thereafter the board has an oversight function as per the dictates of the shareholders.

COSO'S ENTERPRISE RISK MANAGEMENT - INTEGRATED FRAMEWORK

The Committee of Sponsoring Organizations (COSO) of Treadway Commission highlights four areas that contribute to board oversight with regard to Enterprise Risk Management.

- ◆ Understanding the entity's risk philosophy and concur with entity's risk appetite;
- ◆ Know the extent to which management has established effective enterprise risk management of the organization;
- ◆ Review the entity's portfolio of risk and consider it against the entity's risk appetite;
- ◆ Be apprised of the most significant risks and whether management is responding appropriately.

RISK PHILOSOPHY OF AN ENTERPRISE

It is often observed that companies do not express risk related philosophical statements. Unless the board of directors has the belief and perception in risk related issues, and is serious in mitigating those matters, it will be difficult for it to make a broad outline that is essential for risk management in an enterprise. There are standards, tools and processes being practiced by professionals more so by the insurance sector as a part of its legacy. The philosophy that we are talking of, for other organizations other than the insurance sector, is more an attitude that acts as guiding principles for others to behave. It is important from the view point of understanding risk, establishing controls and ensuring compliance.

If risks cannot be anticipated then need for establishing controls would not arise. Unanticipated risks are only a small subset of the whole. Anticipated risks, and that which are predictable, forms the greater part of the risk domain and therefore requires to be harnessed by laying down well structured policies to mitigate them. The perception of the board is more important as they are in a position to understand and have a bird's eye-view of the affairs of the enterprise as a whole, being as pervasive as the risk itself. Hence the involvement of the board in laying down the philosophy and having an oversight function for its compliance cannot be undermined.

The risk appetite and therefore the risk philosophy can be communicated through written documents or it can be imbibed as a culture within the organization. Whatever may be the mode of communication and practice, it is important that it is understood at each layer of the organization. Hence, the board has to actively pursue to oversee its implementation and gauge its effectiveness that risk perception, risk appetite, mitigation measures and management, are catered to with commitment and consistency. Without the board's involvement risk related practices will dissipate to such an extent that on a hazardous day the whole system is in for a surprise.

BOARD'S INVOLVEMENT IN DEFINING RISK APPETITE

It is not difficult to broadly lay down a philosophy for understanding and managing risk. But to articulate risk appetite for an organization is a tremendous job. Risk appetite and risk philosophy cannot be segregated as both have to go hand in hand. Risk appetite provides a bench mark for stretching resources of an entity to meet the external challenges and at the same time ensuring that sustainability is not put into question.

Individual components in an enterprise that are willing to face challenges and threats from the external environment, often have to beat a retreat on account of restricted allocation of scarce resources. It is only the board that can come to the rescue of the components looking at the overall risk appetite of the enterprise. Hence, proposals of expansion, vertical or horizontal integration, backward integration, product alternatives, adoption of technology, vying for market leadership, etc., all have a bearing on risk appetite and the board has to vet proposals keeping in view of risk strategies and risk appetite that an enterprise can take.

Challenges are ever changing and the board has to sensitize itself to all that happens in the commercial world. Unless the board is able to clearly articulate and design the risk appetite it can take, it would be difficult for the components to function and face challenges that emerge on a day to day basis. Returns from any effort or investment are proportionate to the risks one is willing to take. Board has to therefore define what risks it is willing to take when specific returns are being expected. Market too perceives the value it can place on company's capital, based on what risks the board is willing to take and how often it has achieved success in spite of such associated risks.

ELEMENTS OF RISK APPETITE

COSO has effectively brought out in its document 'Strengthening Enterprise Risk Management for Strategic Advantage', as to how risk appetite has to be determined. It



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looks at four elements such as, existing risk profile, risk capacity, risk tolerance and desired level of risk.

Existing Risk Profile

Unless a base-line effort is made to understand the existing risk profile it would be difficult to chart one's way into the future. Existing strengths and weaknesses across various categories of risk has to be analyzed. The risk exposure and assessment will focus on operational risk, financial risk, market risk and reputation risk. The board has to involve itself in defining its position with respect to each one of them. It is no additional task as the board has to deliberate on these issues from time to time as a part of its responsibility.

Risk Capacity

This defines the limit up to which an entity is willing to take risk, and while taking such risks it is aware that any adverse consequence will still retain and sustain its solvency position for carrying on normal activities. Board can take this decision only if it has enough buffer at its disposal to take on the challenges emanating from the external environment. The board may have to often deliberate on this, as the capacity to take risk is a dynamic issue and may often change both due to internal and external factors.

Risk Tolerance

More than the risk capacity it is the risk tolerance that has

to be measured and balanced on a timely basis. While objectives are defined for various processes and functions, risk tolerance defines the levels of variation an entity is willing to accept around each of the individual objectives. If a process or function is critical to an organization, may be the tolerance level will be defined to accept higher amplitude and frequency of variation. This is essential as less critical functions have to yield to more critical functions and resources are garnered to meet the needs of activities delivering better results. The board therefore has to decide upon allocation of scarce resources and to allow for greater risk tolerance to activities having a higher return.

Desired Level of Risk

The board has to deliberate on the opportunities available to the company in the market. It has also to determine the resources available and the resources it can raise to exploit the market opportunity. Even if the market can offer great opportunities, there is a level beyond which it would not be possible to take unlimited risks on account of resource constraints. The available opportunities and existing resources have to be matched to arrive at the desired level of risk.

While all or any of the above factors depend again on the profitability and status of monopoly of the enterprise, willingness of the public to participate in its equity, operating cash flows and liquidity position, public perception of the quality of management of the enterprise, ethical standards and behavior of its employees, market commitment, quality of its service and products, etc. being crucial to company's survival and growth requires boards intervention and due deliberations.

IMPORTANCE OF BOARD'S RISK OVERSIGHT IN AN ENTITY'S MANAGEMENT

The financial crisis and its aftermath have caused managements to seriously introspect the risk handling capabilities or the lack of it. Many questions are being asked regarding the abilities of managers to handle crisis and whether they have remained complacent in the crisis-free years. Whether management schools are capable of providing managers to anticipate risks and are able to behave equally well in the times of economic turmoil. How are risk related activities being monitored and what really contributes to a good risk mitigation strategy. The boards across the world

More than the risk capacity it is the risk tolerance that has to be measured and balanced on a timely basis.



Individual components in an enterprise that are willing to face challenges and threats from the external environment, often have to beat a retreat on account of restricted allocation of scarce resources.

have had to answer many roving enquires as it was felt that the compensation drawn by top executives was not commensurate with their risk taking and risk managing abilities.

It is important that the compensation package to top executives have to match with their ability to perform in risky environment. This requires qualitative and quantitative factors supporting board's oversight and supervision. A defined risk management process and achievements against the limitations placed by the board, have a base for qualitatively assessing the performance of the individual executive and the division in which he functions. Through a process of implied and explicit practices board may effectively perform its risk oversight function to the advantage of the enterprise and consequently to the advantage of the stakeholders.

A PEEP INTO THE RISK PERCEPTION OF AN MFI

The author had the occasion of attending a board meeting of an upcoming MFI, which deliberated on various risk factors affecting the industry and how it affected the growth of the company in particular. It had successfully raised resources at a premium in spite of the present microfinance turmoil and restrictive debt financing. In order to sensitize the directors on the board about the risk factors and to take strategic positions to mitigate such factors, an elaborate deliberation was attempted at the meeting. Many of the issues discussed had a bearing on the growth and development of the organization and required strategic remedial action in a crisis situation. Broadly, the discussion veered round the following areas of concerns :

- ◆ RBI's policy regarding flow of debt from banks to microfinance sector;
- ◆ Customer's behaviour towards repayment of micro loans resulting in a restrictive market;
- ◆ Location Risks such as weather natural calamities, diseases, etc., that effects the micro lending portfolio;
- ◆ Poor lending practices leading to loss in credibility of the sector;
- ◆ Entry of banks into micro lending sector;

- ◆ Regulatory U-turns including withdrawal of Priority Sector Lending status;
- ◆ Multiple and over-lending situations leading to debt-trap.

The above being the macro concerns of the industry, the board went into deliberations of how such issues need to be tackled at every level in the organization. It continued to lay down norms for ethical practices whereby not only would the customers feel the need of such institutions but there would be huge following from the investor world and lending institutions to support a noble cause. It went to the extent of justifying that micro finance institutions is the need of the hour when government is looking in for financial inclusion of poverty ridden remote villages. The pessimistic situation had a silver lining after the board attempted to define threats and opportunities in the sector in which it was working. Unless such broad and sincere attempts are made at the board level to perceive risk and take steps to mitigate them, the roles and responsibilities of the bottom layers cannot be clearly defined. This being a live example of one of the sectors in the economic environment, there are all other sectors which has to handle the pangs of risk relevant to its own environment. No industry is an exception to adverse situations and they may have to face threats at any or at all points of time. Hence, the tone at the top will have a pervasive effect for others in the organization to act in times of crisis.

CONCLUSION

The discussion in this article goes to demonstrate how important it is for the board of directors to deliberate on issues relating to enterprise risk management and its practices. Just as ethics has an important place in the growth and development of an entity, so also enterprise risk management at the board level have many beneficial effects in this complex commercial world. Deliberations at the board level as an oversight function may gradually lead to the development of good models, both offensive and defensive, in times of organizational crisis.

Such deliberations and practices have beneficial effects of steering entities out of complacent situations and have the effect of keeping its employees on their toes. Each growth factor will leave behind robust practices and mechanisms, defined by the board, for it to fall back in crises and re-emerge as soon as the crisis period is over.

It acts as a cushion providing a permanent culture in the organization both for the directors as well as the employees. It is this matured approach which sustains an organization both during rainy as well as sunny days in this ever changing complex world. Efforts of the board is a prerequisite in reaching sustainable levels of growth through risk perception and its management. ■



Corporate Laws



LW 01.01.2012

KETAN V. PAREKH & ORS v. SPECIAL DIRECTOR, DIRECTORATE OF ENFORCEMENT & ANR [SC]

Civil Appeal No. 10301 of 2011 (Arising out of SLP(C) No.13932 of 2011) With Civil Appeal No. 10302 of 2011 (Arising out of SLP(C) No.13984 of 2011) & Civil Appeal No.10303 of 2011 (Arising out of SLP(C) No.13988 of 2011)

G.S. Singhvi & Sudhansu Jyoti
Mukhopadhyaya, JJ.

[Decided on 29/11/2011]

Foreign Exchange Management Act, 1999-Section 35-1056 days' delay in filing appeal before the High Court- High Court refused to condone the delay - Whether correct- Held, Yes.

Brief facts

The Respondent held the Appellants guilty of violating the provisions of FEMA and imposed penalty on them. The

Appellants challenged the penalty before the Appellate Tribunal for Foreign Exchange and prayed for dispensing with the requirement of pre-deposit of the amount of penalty. Appellate Tribunal directed the Appellants to deposit 50% of the amount of penalty with a stipulation that if they fail to do so, the appeals will be dismissed.

The Appellants challenged the above order, by way of filing writ petitions, before the Delhi High Court which dismissed the writ petitions. Thereafter, the Appellants filed appeals under Section 35 of the Act before the Bombay High Court. They also filed applications for condonation of 1056 days' delay. The Division Bench of the Bombay High Court dismissed the applications for condonation of delay by observing that it does not have the power to entertain an appeal filed beyond 120 days and even though in terms of the liberty given by the Delhi High Court, the Appellants could have filed appeals within 30 days, but they failed to do so and, therefore, delay in filing the appeals cannot be condoned.

Decision: Appeal dismissed.

Reason

A careful reading of the averments shows that there was not even a whisper in the applications filed by the Appellants that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court. This shows that the Appellants were seeking to invoke Section 5 of the Limitation Act, which, as mentioned above, cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by this Court.

There is another reason why the benefit of Section 14 of the Limitation Act cannot be extended to the Appellants. All of them are well conversant with various statutory provisions including FEMA. One of them was declared a notified person under Section 3(2) of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and several civil and criminal cases are pending against him. The very fact that they had engaged a group of eminent Advocates to present their cause before the Delhi and the Bombay High Courts shows that they have the assistance of legal experts and this seems to be the reason why they invoked the jurisdiction of the Delhi High Court and not of the Bombay High Court despite the fact that they are residents of Bombay and have been contesting other matters including the proceedings pending before the Special Court at Bombay. It also appears that the Appellants were sure that keeping in view their past conduct, the Bombay High Court may not interfere with the order of the Appellate Tribunal. Therefore,



they took a chance before the Delhi High Court and succeeded in persuading learned Single Judge of the Court to entertain their prayer for stay of further proceedings before the Appellate Tribunal. The promptness with which the learned senior counsel appearing for Appellant -- Kartik K. Parekh made a statement before the Delhi High Court on 7.11.2007 that the writ petition may be converted into an appeal and considered on merits is a clear indication of the Appellant's unwillingness to avail remedy before the High Court, i.e. the Bombay High Court which had the exclusive jurisdiction to entertain an appeal under Section 35 of the Act. It is not possible to believe that as on 7.11.2007, the Appellants and their Advocates were not aware of the judgment of this Court in *Ambica Industries v. Commissioner of Central Excise* (2007) 6 SCC 769 whereby dismissal of the writ petition by the Delhi High Court on the ground of lack of territorial jurisdiction was confirmed and it was observed that the parties cannot be allowed to indulge in forum shopping. It has not at all surprised us that after having made a prayer that the writ petitions filed by them be treated as appeals under Section 35, two of the Appellants filed applications for recall of that order. No doubt, the learned Single Judge accepted their prayer and the Division Bench confirmed the order of the learned Single Judge but the manner in which the Appellants prosecuted the writ petitions before the Delhi High Court leaves no room for doubt that they had done so with the sole object of delaying compliance of the direction given by the Appellate Tribunal and, by no stretch of imagination, it can be said that they were bona fide prosecuting remedy before a wrong forum. Rather, there was total absence of good faith, which is *sine qua non* for invoking Section 14 of the Limitation Act.

The issue deserves to be considered from another angle. By taking advantage of the liberty given by the learned Single Judge of the Delhi High Court, the Appellants invoked the jurisdiction of the Bombay High Court under Section 35 of the Act. However, while doing so, they violated the time limit specified in order dated 26.7.2010 which, in turn, is based on paragraph 45 of the judgment of this Court in *Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement*

Indeed, it is not even the case of the Appellants that they had filed appeals under Section 35 of the Act within 30 days computed from 26.7.2010. Therefore, the Division Bench of the Bombay High Court rightly observed that even though the issue relating to jurisdiction of the Delhi High Court to grant time to the Appellants to file appeals is highly debatable, the time specified in the order passed by the Delhi High Court cannot be extended.

In view of the above discussion, we hold that the impugned order does not suffer from any legal infirmity.

LW 02.01.2012

RAGHU HARI DALMIA & ORS v. SEBI [SAT] APPEAL NO.134 OF 2011

N. K. Sodhi (PO), P.K. Malhotra &
S.S.N. Moorthy (M)

[Decided on 21/11/2011]

Section 77A of the Companies Act, 1956 read with Regulations 11(1), 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 - Buyback of shares by company - Promoters did not participate in the buyback scheme - Promoter groups shareholding increased from 63% to 75 % post buyback-Whether this constitutes acquisition of shares by the promoter group within the meaning of takeover regulations - Held, No.

Brief facts

The Appellants herein are the promoters/members of promoter group of a listed company OCL India Ltd ("Company"). The company announced a scheme to buy back its equity shares up to a maximum of 11, 83,708 fully paid up shares. The letter of offer issued in this regard specifically states that the promoters would not participate in the buy back. The buyback was successful and the company bought back 11, 83,708 equity shares as a result whereof the percentage shareholding of the Appellants in the company increased from 62.56 per cent to 75 per cent of the total paid up capital. The Securities and Exchange Board of India (for short the Board) did not receive any complaint against the buy back or against the consequent increase in the percentage of shareholding of the Appellants nor did it raise on its own any objections while processing the buyback offer document of the company.

One on October 9, 2006 a writ petition in the Delhi High Court against the company stating that due to the increase in the percentage shareholding of the promoters/Appellants from 62.56 per cent to 75 per cent pursuant to the buyback offer, the promoters/Appellants had triggered regulations 11(1) and 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers)



Regulations, 1997 (hereinafter referred to as the takeover code) and that they were required to make a public announcement to acquire shares in accordance with the takeover code. The Delhi High Court directed the Board to treat the same as a representation on behalf of the petitioner therein and deal with it in accordance with law.

It was thereafter the Board issued to the Appellants a show cause notice alleging that they had to make a public announcement to acquire shares from the shareholders of the company and not having made a public offer, they violated regulation 11(1) of the takeover code. The Appellants were called upon to show cause as to why they should not be directed to make an offer to the shareholders for acquiring shares in accordance with the takeover code. The Appellants filed their detailed reply denying that they had violated regulation 11(1) of the takeover code and took the plea that they had not acquired any additional share or voting right in the company and, therefore, regulation 11(1) of the takeover code was not attracted.

After affording an opportunity of hearing to the Appellants, the Board found the Appellants to be guilty. Feeling aggrieved by the aforesaid order, the Appellants filed an Appeal before the Tribunal.

Decision: Appeal allowed.

Reason

It is the case of the Appellants that regulation 11(1) of the takeover code did not get triggered in the instant case as the Appellants had made no acquisition of shares or voting rights and that it was only as a consequence of the buyback that their voting rights increased. It was also argued on behalf of the Appellants that the whole time member was in error in holding that the Board had no power to grant exemption from the provisions of the takeover code after the acquisition. According to the Board, regulation 11(1) was applicable to the facts of the present case and that the Appellants had violated the same since they did not come out with a public announcement to acquire shares in accordance with the takeover code. The learned counsel for the Board also relied upon the words "proposed acquisition" appearing in regulation 4(2) of the takeover code and argued that an application seeking exemption could be filed only before acquiring the voting rights.

On a consideration of the aforesaid provisions we are in agreement with the learned senior counsel for the Appellants that regulation 11(1) of the takeover code was not attracted to the facts of the present case and that they were not required to come out with a public announcement. Regulation 11(1) is applicable to an acquirer who acquires additional shares or voting rights in a company by himself or through or with persons acting in concert with him. The word "acquire" as used in regulation 11(1) is a verb and according to Black's Law Dictionary (Sixth Edition) it means "To gain by any

means, usually by one's own exertion; to get as one's own; to obtain by search, endeavour investment, practice or purchase".

In this context the word "acquire" implies acquisition of voting rights through a positive act of the acquirer with a view to gain control over the voting rights. In the case before us, it is the admitted position of the parties that the Appellants (promoters of the company) did not participate in the buy back and that there was no change in their shareholding. The percentage increase in their voting rights was not by reason of any act of theirs but was incidental to the buyback of shares of other shareholders by the company. Such a passive increase in the proportion of the voting rights of the promoters of the company will not attract regulation 11(1) of the takeover code. The argument of the learned counsel for the Board that merely because there is increase in the voting rights of the Appellants, regulation 11(1) gets triggered cannot be accepted. He also referred to the definition of "acquirer" in regulation 2(b) of the takeover code and strenuously contended that a passive acquisition of the kind we are dealing with is indirect acquisition and, therefore, the provisions of regulation 11(1) are attracted. We have no hesitation in rejecting this argument outright. The words "directly" and "indirectly" in the definition of "acquirer" go with the person who has to acquire voting rights by his positive act and if such acquisition comes within the limits prescribed by regulation 11(1) it would only then get attracted. Passive acquisition as in the present case cannot be regarded as indirect acquisition as was sought to be contended on behalf of the Board. If the argument of the learned counsel for the Board were to be accepted that mere increase in the voting rights would attract regulation 11(1), it would not only lead to absurd results but would make the provisions of the takeover code unworkable. We may illustrate. The provisions of the takeover code apply to both promoters and non-promoters of a company. Regulation 14(1) of the takeover code requires the merchant banker of the acquirer to make a public announcement within four working days of "an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights." An increase in percentage shareholding of a non-promoter pursuant to a buy back scheme or forfeiture of shares of other shareholders would lead to a situation where a non-promoter may not know as to when the takeover code gets triggered as non-promoters have no access to the records of a company regarding the number of shares tendered from time to time. This would make it impossible for such a person to make a public announcement within four working days of the takeover code getting triggered. Again, a non-promoter shareholder may increase his percentage of shareholding without participating in the buy back over which he has no control. In such an event he would be burdened with an onerous liability to make a public



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announcement. It is well settled principle of law that a provision ought not to be interpreted in a manner which may impose upon a person an obligation which may be highly onerous or require him to do something which is impossible for no action of his. In this view of the matter, we are of the firm opinion that passive acquisition does not attract the provisions of regulations 11(1) of the takeover code.

LW 03.01.2012

GUJARAT NRE MINERAL RESOURCES LTD v. SEBI [SAT]

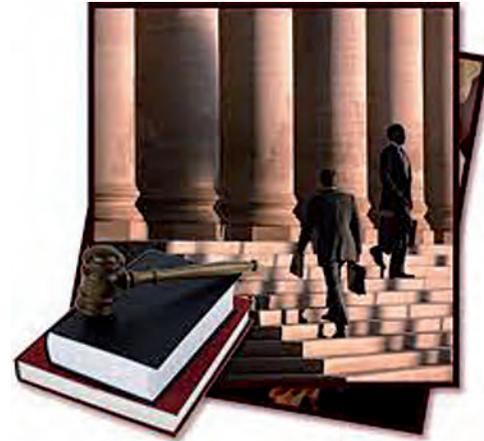
Appeal No. 207 -10 of 2010 N.K. Sodhi (PO),
P. K. Malhotra & S.S.N. Moorthy (M).

[Decided on 18/11/2011]

Schedule II to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 - Code of Corporate Disclosure Practices - Investment company decided to sell its shares in order to fund a joint venture abroad - Two companies, in which directors of the investment company were also directors, purchased shares of the investment company - whether this constitutes disclosure of price sensitive information - Held, No.

Brief facts

FCGL Industries Ltd (FCGL) is a listed public limited company. It is a core investment company having more than ninety per cent of its assets as investment in associated or group companies. As on June 30, 2005, it was holding 1, 67, 09,824 shares of Gujarat NRE Coke Ltd. (for short the Coke company) constituting 17.716 per cent of its total paid-up equity capital. The board of directors of FCGL in their meeting decided to acquire coal mining leases in the Australia through a special purpose vehicle in the name and style of "Gujarat NRE FCGL Pty Ltd" as a joint venture of FCGL and the Coke Company. FCGL needed substantial funds for the new acquisition and its board of directors discussed various options to raise funds for the purpose and finally decided to dispose of a part of its investment in the Coke Company in order to arrange the requisite funds. It was decided to sell the shares of Coke company at suitable time(s) and the funds so raised could be parked in short term avenues, if so required. Matangi Traders and Investors Limited and Marley Foods Private Limited (hereinafter referred to as Matangi and Marley, respectively), had bought the shares of FCGL. Shri G. L. Jagatramka and Shri A. K. Jagatramka were directors in FCGL as well as in Matangi and Marley. SEBI initiated adjudication proceedings against Matangi, Marley, G. L. Jagatramka and A.



K. Jagatramka alleging that Matangi and Marley had violated regulations 3 and 4 of the regulations and held that the two Jagatramkas had violated clause 2.1 of Schedule II to the regulations in addition to violating regulations 3 and 4.

Decision : Appeal allowed.

Reason

Whether the decision taken by a listed investment company to dispose of a part of its investment is "price sensitive information" requiring mandatory disclosure to the stock exchange(s) under clause 2.1 of the Code of Corporate Disclosure Practices as specified in Schedule II to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter called the regulations) is the sole question that arises for our consideration in these four Appeals no. 207 to 210 of 2010.

The answer to this question depends upon the interpretation of the term "price sensitive information" as given in the regulations. Regulation 3, among others, prohibits an insider either on his own behalf or on behalf of any other person from dealing in securities of a company listed on any stock exchange when he is in possession of any unpublished price sensitive information and any person who deals in securities in contravention of regulation 3 is said to be guilty of insider trading.

In the case before us, it is not in dispute that FCGL in its board meeting had decided to sell a part of its investment in the Coke company and actually sold 84,79,709 shares of the Coke company to raise funds for the aforesaid acquisition. It is also the admitted case of the parties that both Shri G. L. Jagatramka and Shri A. K. Jagatramka attended the board meeting. These two directors of FCGL are also the directors of Matangi and Marley who traded in the scrip of FCGL during the quarter ending September, 2005. The fact that FCGL had decided to dispose of its investment in the Coke Company had not been intimated to BSE and therefore this information remained unpublished and the two Jagatramkas being



common directors made Matangi and Marley insiders which traded in the scrip of FCGL. In other words, Matangi and Marley when in possession of unpublished information traded in the scrip.

Regulation 3 of the regulations would stand violated only if the unpublished information was price sensitive in nature. A reading of the definition of "price sensitive information" as reproduced above would make it clear that the information which relates to a company and which when published is likely to materially affect the price of its securities would be price sensitive. FCGL is an investment company whose business is only to make investments in the securities of other companies. It earns income by buying and selling securities held by it as investments. This being the normal activity of an investment company, every decision by it to buy or sell its investments would have no effect, much less material, on the price of its own securities. If that were so then no investment company would be able to function because every time it would buy or sell securities held as investments, it would have to make disclosures to the stock exchange(s) where its securities are listed. Such decisions of an investment company, in our opinion, do not affect the price of its securities. The explanation to the definition has seven clauses and information in regard to all those matters is treated as price sensitive. The adjudicating officer has placed strong reliance on clause (vi) thereof which deals with "disposal of the whole or substantial part of the undertaking". These words would mean when a company decides to dispose of the whole or substantial part of its business activity or project in which it is engaged.

The word "undertaking" cannot possibly mean investments held by an investment company which are its stock-in-trade. To illustrate, if a manufacturing company were to dispose of the whole or a substantial part of its manufacturing unit, it would be an event which would materially affect the price of its securities and according to the explanation it would be price sensitive requiring the company to make the necessary disclosures at the earliest.

On the other hand, if a manufacturing company were to sell its products or buy raw materials, it would be a part of its normal business activity which would not be price sensitive and not required to be disclosed. In our opinion, the adjudicating officer has completely misdirected himself in placing reliance on clause (vi) of the explanation to hold that the decision of FCGL to dispose of a part of its investment in the Coke company was price sensitive in nature. We have, therefore, no hesitation in holding that the decision taken by FCGL in the board meeting on July 4, 2005 regarding the disposal of its investment in the Coke Company to raise funds for acquiring coal mines in Australia was not price sensitive information within the meaning of the regulations. We are in agreement with the learned senior counsel for the Appellants that the non-disclosure in the press release was only in regard to the source of funds through which FCGL was to acquire the coal mines and the decision meant only switching of investments

which is a part of normal business activity of an investment company. Interestingly, the adjudicating officer in para 34 of the impugned order has himself observed that the method of funding a project is not *per se* price sensitive information but nevertheless goes on to hold that since the price of the scrip of FCGL had gone up, the decision of FCGL to dispose of the investment in the Coke company was price sensitive. The adjudicating officer has missed the real point. The price of the scrip of FCGL had gone up not because it decided to dispose of its investment in the Coke Company but because of the fact that it acquired coal mines in Australia which information was price sensitive and had been disclosed to the market. We cannot, therefore, uphold the findings of the adjudicating officer.

In the result, the appeals are allowed and the impugned order set aside leaving the parties to bear their own costs.

LW 04.01.2012

KALPENA PLASTIKS LIMITED v. BOMBAY STOCK EXCHANGE LTD [SAT]

Appeal No. 78 of 2011

N. K. Sodhi (PO), P. K. Malhotra & S. S. N. Moorthy (M).

[Decided on 09/11/2011]

Regulations 10, 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulations 76(2), 76(3) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 - Listed company - Trading suspended till 2009 - Preferential allotment of shares in 2009 - BSE not according approval for listing the shares - Company allotted the shares in 2010 - BSE found fault with allotment - Whether correct - Held, No.

Brief facts

With a view to raise its resources, the Appellant decided to issue equity shares on preferential basis to the promoters of the company. A resolution was passed to this effect in the extra ordinary general meeting of the shareholders held on September 5, 2009 and it was also intimated to all the three stock exchanges vide letter of the same date. The allotment of the shares on preferential basis also triggered the open offer under Regulations 10 and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code). The allottees made a public announcement under the takeover code and also submitted the draft letter of offer to the



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Securities and Exchange Board of India (for short the Board) on August 25, 2009. The open offer was closed on December 14, 2009. Simultaneously, the Appellant also filed an application with BSE on August 27, 2009 for "in-principle" approval as per clause 24(a) of the listing agreement for listing of shares.

It is the case of the Appellant that it kept on pursuing the matter with BSE for the said approval but there was no response. The Appellant was in dire need to infuse funds which were delayed and the proposed allottees were reluctant to block their funds any further. Therefore, the Appellant, vide its letter dated December 28, 2009, intimated the BSE that the Appellant would proceed with the preferential allotment of shares under the presumption that the BSE has no objection for the said issuance of shares on preferential allotment basis. As there was no response from the BSE, the Appellant allotted equity shares on preferential basis to the promoters on January 6, 2010. Thereafter, vide its letter dated January 19, 2010, the Appellant requested BSE for listing of the said shares on the stock exchange.

It is at this stage that, for the first time, BSE responded to the Appellant, vide its e-mail dated January 27, 2010, calling for some further information and asking for an undertaking from the company that it will recompute the issue price of shares on completion of six months of scrip being listed on the exchange and accordingly collect the difference, if any, from the allottees. Being aggrieved by the said direction of BSE, the Appellant has preferred this appeal for setting aside the said decision.

Decision: Appeal allowed.

Reason

We have heard learned counsel for the parties who have taken us through the records. During the course of hearing, though learned counsel on both sides made submissions on issues like the Appellant going ahead with allotment of preferential shares without first obtaining in-principle approval under clause 24(a) of the listing agreement, we are of the considered view that it is not necessary for us to go into these issues for deciding the appeal. It is common case of the parties that scrip of the company, though listed on the stock exchanges since 1992, its trading remained suspended till October 9, 2009 and no pricing data of the scrip was available. The pricing of the equity shares of the company cannot be worked out as per formula as prescribed under Regulation 76(1) of the Regulations due to non-availability of pricing data. Therefore, BSE, relying on the minutes of the meeting held on May 8, 2008 between the Board, BSE and NSE and based on the decision taken in that meeting, asked the

company to give an undertaking to recompute the price of preferential equity shares at the end of six months of listing.

The short question that has to be decided by us is whether BSE was right in asking the Appellant to furnish an undertaking for revising price of preferential shares after six months on the basis of the aforesaid minutes. We are of the considered view that, in the facts and circumstances of the case, the answer to the issue has to be in the negative. Admittedly, the decision was taken in the meeting held by the Board but no action has been taken in furtherance of this decision either by issuing the rules, order or circular making such decision known to the public. The minutes are specifically marked as for "private circulation only". There is no doubt that the Board is empowered to take any decision to protect the interest of the investors in securities and to promote the development of securities market. However, such decision has to be made known to the public through some communication. A decision taken in the closed doors of the Board room which has not been made known to the investors, intermediaries or other players of the market cannot place any obligation on the market players. Such decision, to be binding, must be made known to the public in the form of rules, regulations, orders or circulars.

The decision relied upon by BSE in issuing the impugned letter was taken way back on May 8, 2008. The Appellant approached BSE for in-principle approval on August 27, 2009 and it did not respond to Appellants repeated requests till January 27, 2010. Even thereafter, it took BSE ten months to convey its decision, that too, based on the minutes of meeting held on May 8, 2008 which were not made public. Since the Board had not issued any order/circular making its decision public, it was not competent for BSE to base its decision on such minutes.

Further, the allotment of the shares under preferential allotment triggered the open offer under Regulations 10 and 12 of the takeover code and the allottees submitted the draft letter of offer with the Board on August 25, 2009. The Board gave its observations on the letter of offer and did not raise any issue on the price as offered by the proposed allottees. In the absence of any provision for computation of price of preferential shares in respect of scrip which is listed on the stock exchange but whose trading is suspended and the price, as offered by the proposed allottees, having been accepted by the Board in the draft offer letter, we are of the considered view that the BSE erred in asking the Appellants to furnish an undertaking to revise the price of preferential shares, if necessary, after six months of its listing on the stock exchange on the basis of minutes of the meeting held on May 8, 2008 which were not made public.

In the result, the appeal is allowed and the impugned order is set aside. The Respondent is directed to list the subject shares on its exchange. There is no order as to costs.



LW 05.01.2012

INDUSTRIAL PROMOTION AND INVESTMENT CORPORATION OF ORISSA LIMITED v. TUOBRO FURGUSON STEELS PRIVATE LIMITED & OTHERS [SC]

Civil Appeal No.1850 of 2007

Aftab Alam, J.

[Decided on 05/12/2011]

State Financial Corporation Act, 1951 - Section 29 - Appellant Corporation took over the Unit of a defaulter and sold the same to the Respondents for Rs.40 lakhs - Respondent paid the down payment of Rs.8 lakhs and intentionally failed to complete the sale - Appellant corporation resold the Unit to another buyer - meanwhile the Respondents obtained an order from the High Court which directed the Appellant to refund Rs.8 lakhs to the Respondent- Whether correct-Held, No.

Brief facts

A Foundry Unit along with land, building, plant and machineries was taken over by the Corporation, as its original promoters defaulted in payment of its dues. The taken-over Unit was put to sale on "as is where is" basis vide advertisement. In response to the advertisement the Respondents made an offer to purchase the Unit for a total consideration of Rs.40,00,000/- with down payment of Rs.8,00,000/-. The offer made by the Respondents was considered by the Advisory and Disposal Committee of the Corporation, and in acceptance of the offer, the Corporation issued the sale letter.

In furtherance of the sale, Respondents made payment of Rs. 8,00,000/- to the Appellant and following the payment, possession of the Unit was made over to Respondents. After taking possession of the Unit, the Respondents did not take any step to complete the documentation with IPICOL and Orissa State Financial Corporation as required in clause 7 of the sale letter. The Appellant then wrote a number of letters asking the Respondents to execute the documents/loan agreement with the Corporation and with the Orissa State Financial Corporation. The Respondents, however, went on temporising in the matter. The Respondents did not make any payment nor did they take any step to complete the documentation. Instead, they asked the Appellant to take back the Unit.

On February 17, 2003, the Respondents went to the High Court challenging the taking over of the assets by the Appellant and the High court passed a stay order against the Appellants. On June 17, 2004, the Appellant decided to sell the Unit along with its assets to Sun Agro Foods & Exports for a consideration of Rs.17,00,000/- but could not hand over possession to the new buyer in view of the interim order passed by the High Court in

the Writ Petition filed by the Respondents. Finally, by the impugned order, the High Court allowed the Writ Petition filed by the Respondents and directed the Corporation to refund to the Respondents Rs.8,00,000/- along with interest at the prevailing bank rate that was received by it as part of the sale consideration, which is under challenge before the Supreme Court.

Decision: Appeal allowed.

Reason: We are unable to appreciate the order of the High Court and we see no basis on which such an order could have been passed. The case of the Respondents, as noted by the High Court was untenable on its face. Even according to the Respondents it was only after having taken possession of the Unit that they found that some vital parts of the machineries were missing and there were huge arrears of electricity dues and that the recommendation for the industrial policy resolution was not forthcoming. In those circumstances, the Respondents realised that the Unit was not worth Rs.40,00,000/-

The Respondents went to the High Court seeking refund of the part consideration money Rs.8,00,000/- paid by them as if the antecedent acts of the parties, namely, the issuance of the advertisement, the offer made by the Respondents followed by negotiations between the parties and the issuance of the sale letter by the Corporation, the payment of Rs.8,00,000/- by the Respondents in pursuance of the sale letter followed by their taking over the possession of the Unit meant nothing and did not create any rights or obligations in the parties. Strangely, the High Court did not even refer to the sale advertisement, the stipulations made in the sale letter and the correspondences between the parties.

The High Court completely overlooked that the parties, with their eyes widely open, had entered into the contract for sale of the Unit which was subject to the terms and conditions clearly spelled out in the advertisement and in the sale letter; that in furtherance of the contract, payment was made and possession of the Unit changed hands. In other words, both sides had acted on the basis of the contract, changing their respective positions and assuming rights and obligations against each other. The contract having been acted upon, it could not be unilaterally abrogated on the sweet will of any of the two sides. In terms of the contract the Respondents were obliged to pay the balance consideration amount of Rs.32, 00,000/- along with interest as provided in the sale letter. In default of payment it was the statutory right of the Appellant- Corporation to take possession of the Unit under Section 29 of the Financial Corporation Act.

In the aforesaid facts and circumstances, there was no ground for the High Court, to interfere in favour of the Respondents, much less to direct for refund of the part consideration money paid by the Respondents to the Appellant. ■



Consumer Laws

LW 06.01.2012

LAFARGE AGGREGATES & CONCRETE INDIA PVT LTD v. K.C. BHARDWAJ [NATIONAL COMMISSION]

Revision Petition No. 2522 of 2011 (From the order dated 06.05.2011 of the Chhattisgarh State Consumer Disputes Redressal Commission in Appeal No. 710 of 2010)
Anupam Dasgupta, Presiding Member.

[Decided on 01/12/2011]

Consumer Protection Act, 1986 - Complaint alleging defective goods and deficiency in service - District Forum awarded compensation without appreciating the defence of the Petitioner - Appeal filed with 1 month delay - State Commission refused to condone the delay - whether proper - Held, No.

Brief facts

The Respondent filed a consumer complaint before the District Forum against the petitioner, alleging supply of defective concrete and deficiency in service. It was specifically pleaded in the complaint that the petitioner did not supply the ready mix concrete on 28.06.2008 by 10 a.m. despite having agreed to it. The labour engaged by the complainant had to sit idle on that date but had to be paid wages. He also alleged specifically that the cement concrete supplied by the petitioner was of inferior quality and less in quantity. For these reasons he sought an award of Rs.91,400/-, including Rs.12,000/- as labour charges for 28th and 29th June 2008, labour charges of Rs.10,000/- for dismantling and re-laying the roof on account of defective cement concrete supplied by the petitioner, Rs.32,400/- towards the cost of 180 bags of cement, Rs.6,000/- towards 800 cubic feet of sand and Rs.25,000/- towards compensation for mental agony and physical harassment.

The defence of the petitioner before the District Forum was that the Respondent/complainant had placed an order on

24.06.2008 with the petitioner for supply of 24 cubic metres (cum) of ready mix concrete to be delivered on 28.06.2008 at the site of his construction and issued a cheque for Rs.74,400/- in favour of the petitioner towards the cost of the concrete. Denying each of the allegations in its written version, the petitioner stated that its concrete mixing plant at Raipur suddenly broke down on 26.06.2008. As a result, the petitioner informed the Respondent and suggested delivery on 29.06.2008, which was accepted by the latter. Moreover, the quantity of the ready mix concrete was reduced from 24 to 21 cum by mutual agreement. The concrete was delivered in three batches on 29.06.2008 and accepted and used by the Respondent. The petitioner accordingly issued an invoice dated 30.06.2008. However, when the cheque for payment was presented, the bank returned the cheque with the remarks "Payment stopped by drawer". Thereafter, the petitioner wrote two letters dated 29.08.2008 and 07.10.2008 to the Respondent but to no avail. This led the petitioner to issue a legal notice dated 17.12.2008. However, the Respondent did not make the payment, as a result of which the petitioner filed a case under section 138 of the Negotiable Instruments Act against the Respondent before the competent court. The petitioner/opposite party specifically averred that the complainant purchased the ready mix concrete for commercial purpose, viz. construction of a hotel owned by him.

After consideration of the pleadings, evidence and documents brought on record, the District Forum passed the above-mentioned order, partly allowing the complaint. The appeal filed by the petitioner against the said order was with a delay of about 1 month. Though the petitioner filed an application seeking condonation of the delay, the State Commission did not find the reasons cited therein sufficient to warrant condonation, which was the only ground on which the appeal was dismissed.

Decision

Petition allowed and case remanded to district forum for fresh adjudication.

Reason

A few points stand out clearly in this case. First, the order of the District Forum does not go into the question whether the cement concrete supplied by the petitioner/OP was indeed defective. Secondly, in its order the District Forum has also not discussed at all whether the complainant could qualify as a "consumer" under section 2 (1) (d) of the Consumer Protection Act, 1986 (hereafter, "the Act") though it was specifically urged by the OP/petitioner in its written version as well as evidence affidavit that the purchase was for a "commercial" purpose, i.e., construction of a hotel. The documents like the receipts, etc., produced by the complainant before the District Forum do not seem to have been verified by the representatives of the parties who issued them. Further, there was no rejoinder from the complainant to any of the averments made by the OP in its



written version/evidence affidavit. Finally, though the OP specifically claimed that the complainant stopped payment of the cheque he issued towards the price of the ready mix cement, no cognisance of this issue seems to have been taken by the District Forum. In this context, it is also of some interest that the Respondent/complainant later sought to deposit the invoiced cost of the ready-made cement concrete with the District Forum. In other words, adjudication of the dispute by the District Forum cannot be held to be in accordance with even the bare principles of natural justice, leave alone the relevant provisions of the Act.

Further, the State Commission may have been justified in taking a *prima facie* adverse view of the petitioner's delay in filing the appeal against the District Forum's order. However, the delay was not so ruinous and the grounds cited in the petitioner's application for condonation of delay not so utterly devoid of substance that the delay could not have been condoned at all on some appropriate terms because even a quick perusal of the order of the District Forum *vis a vis* the pleadings, evidence and documents brought on record ought to have led the State Commission to some serious questions on the sustainability of the findings and award of the District Forum.

In view of the foregoing, I am inclined to allow this revision petition, set aside the orders of the Fora below and remand the matter back to the District Forum for *de novo* adjudication of the complaint filed by the Respondent/complainant in accordance with law, after allowing each party to adduce additional evidence, if any, in support of their respective cases.

LW 07.01.2012

NAGPUR GOLDEN TRANSPORT COMPANY (REGD.) v. M/S NATH TRADERS & ORS.[SC]

Civil Appeal No. 3546 of 2006

P. Sathasivam & A. K. Patnaik, JJ.

[Decided on 07/12/2011]

Consumer Protection Act, 1986 - Damage caused in transit to 198 monoblock pumps- Transporter directed to pay the cost of damaged pumps by the District Forum- Transporter paid the damages and claimed the return of damaged pumps-whether tenable-Held, Yes.

Brief facts

The Respondent No.3 booked a consignment of monoblock pumps with the Appellant for transportation from Coimbatore to Respondents No.1 and 2 at Gwalior in March, 1997. While the Appellant was transporting the consignment in a truck, there was an accident and the monoblock pumps were damaged. The Respondents No.1 and 2, therefore, did not

take delivery of the 198 damaged monoblock pumps at Gwalior. In the circumstances, the Appellant returned the 198 damaged monoblock pumps to the Respondent No.3.

The Respondents No.1 and 2 then filed a complaint before the District Forum, Gwalior alleging that they had paid the price of the consignment to Respondent No.3 and were entitled to Rs.3, 61,131/- towards the price of the monoblock pumps and damages of Rs.70, 000/-, loss of profit Rs.14, 000/- as well as cost of Rs.5, 000/- and interest @ 18% per annum on the amount claimed by them. The District Forum held that the Appellant as a common carrier was the insurer of the goods in transit and if the goods have been damaged, the Appellant was liable to Respondents No.1 and 2 for negligence and awarded a sum of Rs.3, 60,131/- along with interest @ 18% per annum. Aggrieved, the Appellant filed appeal before the State Commission, which held that there was no legal infirmity in the order of the District Forum, but directed the Appellant to pay interest @ 12% per annum on the amount of Rs.3,60,131/-.The Appellant filed a revision but by the impugned order the National Commission dismissed the revision. Appellant appealed to the Supreme Court raising a question of law whether the Appellant was entitled to receive 198 monoblock pumps from Respondent No.3 when he is held to be liable to pay the price of the monoblock pumps to Respondents No.1 and 2.

Decision: Appeal allowed.

Reason

At the hearing of the appeal, learned counsel for the Appellant submitted that the District Consumer Disputes Redressal Forum should have directed the Respondent No.3 to return the 198 monoblock pumps to the Appellant when the Appellant has been held liable for the price of the monoblock pumps to the Respondents No.1 and 2, who had paid for the same to Respondent No.3. He submitted that the Appellant cannot be held liable to pay the price of the monoblock pumps to Respondents No.1 and 2 and at the same time not entitled to the return of the 198 monoblock pumps from Respondent No.3.

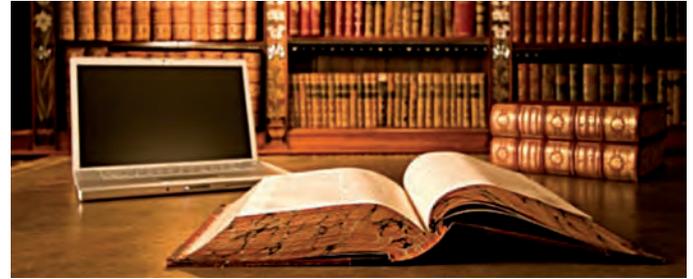
Learned counsel for Respondent No.3 relied on the counter affidavit filed on behalf of the Respondent No.3 in this Court in which it is stated that the 198 damaged monoblock pumps had no value and the same have been kept in the godown of the Respondent No.3 under the watch and ward of extra staff engaged by the Respondent No.3 and that due to delay the monoblock pumps have become useless and have no value at all. We have considered the submissions of learned counsel for the Appellant and the Respondent No.3 and we are of the considered opinion that if the District Forum directed the Appellant to pay Rs.3, 60,131/- to Respondents No.1 and 2 and this sum covered the price of the monoblock pumps and this



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price of the monoblock pumps had also received by Respondent No.3 from the Respondents No.1 and 2, the Appellant was entitled to the return of the damaged 198 monoblock pumps from Respondent No.1. We are also of the view that in case the Respondent No.3 has disposed of the 198 monoblock pumps in the meanwhile, the Appellant was entitled to the value of the 198 damaged monoblock pumps realized by the Respondent No.3. We are also of the considered opinion that the Respondent No.3 was not entitled to any charges towards watch and ward etc. as Respondent No.3 should not have retained the damaged monoblock pumps having received the full price of the pumps.

We, therefore, remand the matter to the District Forum, with the direction to issue notice to the parties and after taking evidence, if necessary, order the return of the 198 damaged monoblock pumps by Respondent No.3 to the Appellant and if the 198 damaged monoblock pumps are not available with Respondent No.3, to find out the value of the 198 damaged monoblock pumps realized by the Respondent No.3 and direct the Respondent No.3 to pay the said value to the Appellant. ■



companies deal in a large number of products, including coffee, which they sell under the name NESCAFE . The plaintiffs are selling coffee using a distinctive Red Mug Device on its packaging of the coffee since the year 1978. In the year 1999, the plaintiff introduced Red Mug device, with a Golden Line running around the Mug, in India. The aforesaid device is stated to be extremely distinctive of the plaintiff being used on all packages, wrappers/labels, publicity materials etc. in respect of coffee being sold by the plaintiffs. It is alleged that a mere look of the aforesaid device establishes a connection with NESCAFE Coffee of the plaintiffs and, therefore, the device has acquired a secondary meaning and mark identification of the plaintiffs. The plaintiffs claim to be selling the NESCAFE Instant Coffee since 1983. The plaintiffs also claim to be using the Red Mug as a standalone brand for the coffee.

The defendant is engaged in the business of marketing of coffee. The defendant is selling coffee under the brand name MR, using a label/device, depicting a red mug full of black coffee. The packaging being used by the defendant to sell coffee is alleged to be infringing copyright of the plaintiff company since; (i) wrapper/label of the defendants bears a Red Mug Device, (ii) the Golden Line on the Red Mug Device of the plaintiff is also being used by the defendants on its Red Mug (iii) 100% pure instant granulated coffee against a red background is also being used in their packaging, (iv) black coffee is shown poured in the device of both the parties and (v) there is froth shown on the coffee, in both the devices.

The plaintiffs have sought injunction restraining the defendant infringing his copyrights in the aforesaid work. They have also sought injunction restraining the defendants from passing off their goods as those of the plaintiffs, indulging in unfair competition and diluting the mark of the plaintiffs. The plaintiffs have also sought damages amounting to Rs.20, 51,000/-, besides delivery of the infringing materials.

Decision : Permanent injunction granted.

Reason: I see no reason to disbelieve the testimony of Ms Venita Gabriel and the documents filed by the plaintiffs which show that the red label device being used by the plaintiffs was created by Mr Wolf-rudi von der Emden in the year 1990. Though the defendant claims to be using the mug shown in its

General Laws

LW 08.01.2012

SOCIETE DES PRODUITS NESTLE & ANR v. CONTINENTAL COFFEE LTD [DEL] CS (OS) 2071/2003,V.K. Jain, J.

[Decided on 07/12/2011]

Copyright Act - Section 14 - Trademarks Act, 1999 - Sections 29(1) and (2)-Infringement of copy right and trademark- defendant fails to justify the use of the design- whether Permanent injunction to be granted-Held,yes.

Brief facts

The plaintiff No.1 is a company registered in Switzerland, whereas, the plaintiff No.2 is its Indian subsidiary. The plaintiff



packaging since the year 1975, there is absolutely no evidence to prove that the aforesaid label is being used by the defendant since prior to 1990 when Mr Wolf-rudi von der Emden claims to have created this work.

A perusal of the Copyright Registration obtained by the defendant vide registration No. A 63376/2003 in respect of packaging being used by it would show that the defendant applied for registration only on 19th March, 2002 though it claimed first publication in the year 1975 in India. Since there is no evidence of the aforesaid work having been used in India, at any point of time, prior to 1990 and the defendant has not come forward to establish that it was using the aforesaid label since the year 1975, no reliance can be placed on the copyright registration in favour of the defendant as regards the date since which this packaging is being used by the defendant.

Though the defendant has claimed that since no artistic work is involved in this device, which only uses a mug and red colour, I am unable to accept this contention. No one can claim an exclusive right to use red colour or a mug, as a part of his artistic work. But, a mug can be designed and depicted in numerous ways and, therefore, it is difficult to dispute that hard work and labour is involved in designing a mug in a particular way. Copyright is available not in use of a red mug, but, in the manner the mug is depicted in the artistic work of the author. It is not as if the plaintiff has used the photograph of some cup available in the market. Here, the mug was designed by Mr Wolf-rudi von der Emden in a unique shape. Putting a golden line around the mug also involves some artistic work since it involves imagination and thought on the part of the author/owner to use the golden line on the mug in such a manner so as to create a new design by his work. Since, a mug can be designed and depicted in a number of ways, whenever it is designed and depicted in a unique manner in which it is not already available in the market, it is difficult to dispute that this would qualify as an artistic work within the meaning of Section 2(c) of Copyrights Act. In fact, the definition of artistic work given in Section 2(c) of Copyrights Act makes it evident that a drawing would be an artistic work irrespective of whether the work possesses any artistic quality or not. Therefore, drawing and depicting a cup in a particular manner would be covered in the definition of artistic work.

In order to constitute infringement of a copyright in a work, it is not necessary that the impugned work should be *verbatim* re-production of the work of the plaintiff. It would be sufficient to constitute infringement if a substantial or core part of work of the plaintiff is re-produced by the defendant. The defendant has every right to use the basic idea involved in the work of the plaintiff, but, he is not permitted to express that idea in the same form and the same manner in which it has been done by the plaintiff. What has to be seen in such a case is as to whether the defendant has merely made a fair use of the idea or has substantially appropriated the manner in which that idea has been depicted or expressed by the plaintiff. If the Courts insist on the work used by the defendant being an

absolute replica of the work in which copyright is claimed by the plaintiff, any person seeking to make a dishonest use of the work of the plaintiff would make some changes here and there while copying the work of the plaintiff, so that in the event of being questioned, he may claim that the work being used by him not being an exact copy of the work of the plaintiff does not constitute infringement of the copyright of the plaintiff. The test to be applied by the Court, wherever infringement of copyright is alleged, is to ascertain not as to whether the work of the defendant is an exact re-production of the work of the plaintiff, but, whether a person who comes across the work of the defendant would form an opinion that it was the work of the plaintiffs or not. There is no test laid down to decide as to what constitute re-production of a substantial part of the work. The test which the Courts have been applying in such cases is as to the effect produced on the mind of the person who has seen the work of the plaintiff and also comes across the work of the defendant. The degree of resemblance between two works must be such that it suggests an impression, in the mind of the observer, that the work of the defendant is, in fact, the work of the plaintiff. The Courts, therefore, are required to apply the test called the lay observer test and find out whether the object of the defendant appears to be the object of the plaintiff.

A comparison of the packaging being used by the defendant which is Ex.PW-1/19 with the packaging being used by the plaintiffs would show that there are a number of striking similarities; firstly, there is a golden ring around the mug in the device being used by the plaintiff as well as in the device being used by the defendant; secondly, the red colour being used in the two devices is almost identical; thirdly, boiling black coffee is shown in the device of the plaintiff as well as in the device of the defendant and; lastly, there is froth on the coffee in the two devices. To my mind, the device being used by the defendant is, therefore, a re-production at least of a substantial portion of the work which Mr Wolf-rudi von der Emden had created and later assigned to the plaintiffs. Since it is the plaintiff-company which have been using the aforesaid device before the defendant started using it, the copyright of the plaintiff-company in the aforesaid work has been clearly infringed by the defendant.

It would also been important to note there that the defendant has not come forward to explain why it chose to use a device which besides a red mug also has a golden line around the mug, black coffee in the mug and a froth on the coffee poured in the mug. The obvious inference, therefore, is, that the defendant by use of the impugned device wants to create confusion in the mind of the customer that the product being sold by it has some kind of an association with the plaintiff-company and, thereby encash upon the reputation which the trademark of the plaintiff-company enjoys in a large number of countries, including India. In my view, mere registration under Copyright Act does not authorize the defendant to use the



trademark of the plaintiff if it is found that the mark being used by him is identical or similar to the registered trademark of the plaintiff or it is proved that use of the impugned mark by him on identical goods is likely to cause confusion or create an impression of association with the registered trademark of the plaintiff. Registration under Copyright Act, in such a situation would be no defence to the charge of infringement and would not take the case out of the purview of Section 29(1) and (2) of Trademarks Act, 1999.

For the reasons given in the preceding paragraphs, I am of the considered view that use of the impugned mark by the defendant constitutes infringement not only of the copyright, but also of the trademark of the plaintiff and consequently, the plaintiff is entitled to injunction against use of the aforesaid mark of the defendant in any manner.

LW 09.01.2012

K.N. GOVINDAN KUTTY MENON v. C.D. SHAJI [SC]

Civil Appeal No. 10209 of 2011
(Arising out of SLP (C) No.2798 of 2010)
P. Sathasivam & J. Chelameswar, JJ.

[Decided on 28/11/2011]

Section 21 of the Legal Services Authorities Act, 1987 read with section 138 of the Negotiable Instruments Act, 1881 and Order XXVII Rule 22 of the Code of Civil Procedure, 1908 - Criminal Court referred the complaint to be settled by LokAdalat - Respondent failed to comply with the award passed by the LokAdalat- Appellant filed an Execution Suit before the Civil Court for executing the award - Whether the civil court can execute the award - Held, Yes.

Brief facts

This appeal raises an important question as to the interpretation of Section 21 of the Legal Services Authorities Act, 1987 (in short "the Act"). The question posed for consideration is that when a criminal case filed under Section 138 of the Negotiable Instruments Act, 1881 referred to by the Magistrate Court to LokAdalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable?

The Appellant herein filed a complaint before the Judicial Ist Class Magistrate against the Respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short "the N.I. Act"). The Magistrate referred the said complaint to the Ernakulam District Legal Service Authority for trying the

case for settlement between the parties in the LokAdalat.

Accordingly, both parties appeared before the LokAdalat and the matter was settled and an award was passed on the same day. As per the award, out of Rs. 6,000/-, the Respondent herein paid Rs.500/- on the same day and agreed to pay the balance amount of Rs.5,500/- in five equal instalments of Rs.1,100/- per month on or before the 10th day of every month starting from June, 2009 and, in case of default, the Appellant herein can recover the balance amount due from the Respondent in lump sum.

As the Respondent did not pay any of the instalments as per the settlement, the Appellant filed Execution Petition in the Court of Principal Munsiff, Ernakulum for seeking the execution of the award. The Principal Munsiff Judge dismissed the petition holding that the award passed by the LokAdalat on reference from the Magistrate Court cannot be construed as a "decree" executable by the civil court. Aggrieved by the said order, the Appellant filed writ petition before the High Court of Kerala, which dismissed the writ petition. Against the said order, the Appellant filed the above appeal by way of special leave before this Court.

Decision: Appeal allowed.

Reason

Section 21 of the Act, as extracted, reads as under:

"Award of LokAdalat.- (1) Every award of LokAdalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a LokAdalat in a case referred to it under sub-section (1) of section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-Fee Act, 1870 (7 of 1870)."

Section 21 of the Act, which we have extracted above, contemplates a deeming provision, hence, it is a legal fiction that the "award" of the LokAdalat is a decree of a civil court. In the case on hand, the question posed for consideration before the High Court was that "when a criminal case referred to by the Magistrate to a LokAdalat is settled by the parties and award is passed recording the settlement, can it be considered as a decree of civil court and thus executable by that court?" After highlighting the relevant provisions, namely, Section 21 of the Act, it was contended before the High Court that every award passed by the LokAdalat has to be deemed to be a decree of a civil court and as such executable by that court. Unfortunately, the said argument was not acceptable by the High Court. On the other hand, the High Court has concluded that when a criminal case is referred to the LokAdalat and it is settled at the LokAdalat, the award passed has to be treated only as an order of that criminal court and it cannot be executed as a decree of the civil court. After saying so, the High Court finally concluded "an award passed by the LokAdalat on reference of a criminal case by the criminal court as already concluded can only be construed as an order



by the criminal court and it is not a decree passed by a civil court" and confirmed the order of the Principal Munsiff who declined the request of the petitioner therein to execute the award passed by the LokAdalat on reference of a complaint by the criminal court. On going through the Statement of Objects and Reasons, definition of "Court", "legal service" as well as Section 21 of the Act, in addition to the reasons given hereunder, we are of the view that the interpretation adopted by the Kerala High Court in the impugned order is erroneous. In view of the unambiguous language of Section 21 of the Act, every award of the LokAdalat shall be deemed to be a decree of a civil court and as such it is executable by that Court. The Act does not make out any such distinction between the reference made by a civil court and criminal court. There is no restriction on the power of the LokAdalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the LokAdalat based on a compromise has to be treated as a decree capable of execution by a civil court. ■

Brief facts

It is the specific case of the Appellants-workmen that when the Company (Phillips India Ltd) informed the workmen about the transfer of ownership of Consumer Electronics Factory at Salt Lake City, to Kitchen Appliances India Ltd., the said move was not acceptable by the Appellants-workers and they refused to give their consent.

According to the materials placed on record, on 16.11.1998, the Workers' Union filed an application under Section 10(2) of the Act for referring the dispute to Court of Enquiry/Labour Court/Tribunal and on 22.12.1999, the undertaking of the Respondent-Management was transferred to Kitchen Appliances India Ltd. Pursuant to the said transfer, 311 employees joined the transferee company and 35 did not agree to join the new employer. On 29.12.1999, on behalf of the declined employees, their Union raised a dispute regarding transfer of ownership of the Company without their consent as illegal. Even on 13.12.2000, Labour Department, Government of West Bengal declined the reference. On 06.03.2001, the workers asked for VRS from Philips India Ltd. alleging that they do not wish to join the new employer and when the same request was turned down by the Company on the ground that the VRS lapsed even in October, 1998, challenging the refusal to refer and seeking direction for payment of VRS, the workers

Industrial Laws

LW 10.01.2012

SUNIL KR. GHOSH & ORS v. K. RAM CHANDRAN & ORS [SC]

Civil Appeal Nos. 9921-9922 of 2011
(Arising out of SLP (C) Nos. 11115-11116 of 2009)
P. Sathasivam & J. Chelameswar, JJ.

[Decided on 18/11/2011]

Industrial Disputes Act, 1947 - Sections 10(2), 12(4) or 12(5) - Transfer of undertaking - Workers refusing to work under the new management - Company refusing to allow VRS - HC grants retrenchment compensation to such workers - whether correct - Held, Yes.





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filed petition being Writ Petition No. 12125 of 2001 before the High Court.

On 08.10.2001, the learned single Judge of the High Court disposed of the writ petition with a direction to the Respondent-Management for payment of retirement and retrenchment benefits to the workers. Inasmuch as the workers very much relied on the order of the learned single Judge dated 08.10.2001, it is useful to refer to the directions made therein. While declining to interfere with the order of rejection made for reference, the learned single Judge of the High Court issued the following directions:

"However, the petitioners shall be entitled to all retirement benefits with effect from the date of approval of the undertaking to Kitchen Appliances Ltd. and Philips India Limited shall pay all such retirement benefits payable to the employees within six months from this date. Such benefits will be given as per normal Rules and conditions of service including the retrenchment benefit. Such benefits shall be available to the employees upto the date of approval. With the aforesaid observations, this writ application is disposed of."

The point for consideration in these appeals is whether the workmen are entitled to the benefit of the order dated 08.10.2001 passed by the learned single Judge of the High Court, particularly, in the absence of any appeal or challenge before the higher forum by the Management?

Decision : Appeal allowed.

Reason

It is not in dispute that the order was passed by the learned single Judge on 08.10.2001 after hearing the counsel for the petitioners therein (Workers) and the Respondent therein (Management) including the Government counsel. It is also not in dispute that the said order has become final since neither the Management nor the Government challenged the same before the Division Bench of the High Court or in this Court.

Now, let us consider whether the said order dated 08.10.2001 is acceptable or not. Inasmuch as while rejecting the challenge made to refer the matter for adjudication before the Labour Court/Tribunal, the learned single Judge, in order to protect and safeguard the interests of the workmen, issued such directions taking note of various aspects including several safeguards provided in the Act and also the payment of compensation in case of transfer of an undertaking. No doubt, the Management raised an objection that these workmen neither availed the VRS within the stipulated time nor retired/retrenched from the service due to the transfer of ownership of the Company. It is true that the Appellants-workers did not avail both the conditions. But at the same time, it is not in dispute and it cannot be disputed

that these workmen resorted to several remedies such as filing a suit, making representation to the Management as well as to the officers of the Labour Department for consultation and consideration and finally to the Government for referring the matter to the Labour Court/Tribunal for adjudication. After several attempts, these workmen filed Writ Petition before the High Court.

The learned single Judge of the High Court has taken note of proposal for transfer between Philips India Ltd. and Workers" Union and all other subsequent events including the fact that the Company launched VRS to its employees who did not opt to Kitchen Appliances India Ltd. After noting that the dispute was sought to be raised but the appropriate government declined to refer the same, the learned single Judge, after considering the rival contentions of the workmen and the Management, declined to interfere with the impugned order therein and dismissed the same. However, the learned single Judge, taking note of the fact that the workmen did not give their consent for change of management, issued a positive direction about the settlement of retirement benefits with effect from the date of approval of the undertaking to Kitchen Appliances Ltd. and directed the Company to pay all such retirement benefits payable to the employees as per normal rules and conditions of service including the retrenchment benefits within six months. We have already referred to the admitted fact that the said order was passed as early as on 08.10.2001 and has become final.

It is settled law that without consent, workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment compensation in terms of the Act. In view of the same, we are of the view that the workmen are entitled to the benefit of such direction and it is the obligation on the part of the Management- Philips India Ltd to comply with the same. We are also satisfied that the learned single Judge was conscious of the fact that these workmen failed to avail the VRS within the stipulated time and also did not retire from the service. However, taking note of the fact that the workmen cannot be compelled to join the transferee company against their wish and without their consent and all along fighting for their cause in various forums such as Civil Court, Labour Court, the Government and the High Court and even in this Court, we are of the view that the learned single Judge was fully justified in passing such order.

In view of the above, we are satisfied that the Appellants-workmen have made out a case for interference by this Court. Accordingly, we direct the Respondent-Philips India Ltd. to comply with the directions made by the learned single Judge vide order dated 08.10.2001, which we have quoted in earlier paragraphs, within a period of three months from the date of the receipt of this judgment. ■



Corporate Laws



01 The Companies (Accounting Standards) (Second Amendment) Rules, 2011.

Issued by the Ministry of Corporate Affairs vide F.No.17/133/2008-CL.V Dated 29.12.2011]

In exercise of the Powers conferred by clause (a) of sub-section (1) of section 642 read with sub-section (1) of section 210A and sub-section (3C) of section 211 of the Companies Act, 1956 (1 of 1956), the Central Government in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following amendments in the Companies (Accounting Standards) Rules, 2006, namely :

1. 1) These rules may be called the Companies (Accounting Standards) (Second Amendment) Rules, 2011.
- 2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Accounting Standards) Rules, 2006, (hereinafter referred to as the said rules), in the Annexure, Under the heading "B. ACCOUNTING STANDARDS", in the sub-heading Accounting Standard (AS) 11" relating to "The Effects of Changes in Foreign Exchange Rates", after paragraph 46, the following paragraph shall be inserted, namely,-
"46A.(1) In respect of accounting periods commencing on or after the 1st April, 2011, for an enterprise which had earlier exercised the option under paragraph 46 and at the

option of any other enterprise (such option to be irrevocable and to be applied to all such foreign currency monetary items), the exchange differences arising on reporting of long-term foreign currency monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, in so far as they relate to the acquisition of a depreciable capital asset, can be added to or deducted from the cost of the asset and shall be depreciated over the balance life of the asset, and in other cases, can be accumulated in a "Foreign Currency Monetary Item Translation Difference Account" in the enterprise's financial statements and amortized over the balance period of such long term asset or liability, by recognition as income or expense in each of such periods, with the exception of exchange differences dealt with in accordance with the provisions of paragraph 15 of the said rules.

- (2) To exercise the option referred to in sub-paragraph (1), an asset or liability shall be designated as a long term foreign currency monetary item, if the asset or liability is expressed in a foreign currency and has a term of twelve months or more at the date of origination of the asset or the liability:

Provided that the option exercised by the enterprise shall disclose the fact of such option and of the amount remaining to be amortized in the financial statements of the period in which such option is exercised and in every subsequent period so long as any exchange difference remains unamortized."

Renuka Kumar

Joint Secretary to the Government of India

02 The Companies (Accounting Standards) Amendment Rules, 2011.

Issued by the Ministry of Corporate Affairs vide F.No. 17/133/2008-CL.V Dated 29.12.2011]

In exercise of the powers conferred by clause (a) of sub-section (1) of Section 642 read with sub-section (1) of Section 210A and sub-section (3C) of Section 211 of the Companies Act, 1956 (1 of 1956), the Central Government in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following amendment in the Companies (Accounting Standards) Rules, 2006, hereinafter called the said rules, namely:

1. 1) These rules may be called the Companies (Accounting Standards) Amendment Rules, 2011.
- 2) They shall come into force on the date of their



From the Government

publication in the Official Gazette.

2. In the said rules, in the annexure under the heading "B. Accounting Standard", in the sub - heading "Accounting Standard (AS) 11" relating to "The Effects of Changes in Foreign Exchange Rates", in paragraph 46, for the words and figures "46. In respect of accounting periods commencing on or after 7th December, 2006 and ending on or before 31st March, 2012", the following shall be substituted, namely:- "46. In respect of accounting periods commencing on or after 7th December, 2006 and ending on or before 31st March, 2020."

Renuka Kumar
Joint Secretary to the Government of India

(iv) Regional Director	Southern Region Directorate Headquarter at Chennai	States of Tamil Nadu, Kerala and Union Territory of Puducherry. Union Territory of Andaman and Nicobar Islands and Union Territory of Lakshadweep
(v) Regional Director	Eastern and North Eastern Region Directorate Headquarter at Kolkata	States of West Bengal, Bihar Jharkhand, Orissa, Meghalaya, Assam, Arunachal Pradesh, Nagaland, Mizoram, Manipur and Tripura.
(vi) Regional Director	South East Region Directorate Head quarter at Hyderabad	States of Karnataka and Andhra Pradesh

U C Nahta
Director (Investigation and Inspection).

03 The Companies (Amendment) Regulations, 2011

Issued by the Ministry of Corporate Affairs vide F. No. F. No.5/18/2005-CL-V Dated 16.12.2011]

In exercise of the powers conferred by sub-sections (1), (2), (5) and (8) of section 25 and sub-section (2) of section 609 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following regulations further to amend the Companies Regulations, 1956, namely:

1. 1) These regulations may be called the Companies (Amendment) Regulations, 2011.
 (2) They shall come into force with effect from 18.12.2011.
- 2) In the Companies Regulations, 1956, in regulation 2, for clause (d), the following clause shall be substituted, namely:
 "(d) 'Regional Director' means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director for the respective regions as under:

(1)	(2)	(3)
(i) Regional Director	North Region Directorate Headquarter at Noida (Gautam Budh Nagar)	States of Haryana, Punjab, Jammu and Kashmir, Himachal Pradesh, Uttar Pradesh, Uttarakh and Union Territory of Chandigarh and National Capital Territory of Delhi
(ii) Regional Director	North Western Region Directorate Headquarter at Ahmedabad	States of Rajasthan, Gujarat, Madhya Pradesh, Chattisgarh and Union Territory of Dadra and Nagar Haveli
(iii) Regional Director	Western Region Directorate Headquarter at Mumbai	States of Maharashtra, Goa and Union Territory of Daman and Diu.

04 The Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011

Issued by the Ministry of Corporate Affairs vide No. F. 2/ 21/ 2011-CL V Dated 14.12.2011]

In exercise of the power conferred by sub-section (1A) of section 81, read with section 642, of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules to amend the Unlisted Public Companies (Preferential Allotment) Rules, 2003, namely:

1. 1) These rules may be called the Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011.
 2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Unlisted Public Companies (Preferential Allotment) Rules, 2003 (hereinafter referred to as the said rules), in rule 3, for clause (1), the following shall be substituted, namely:

'(1) "preferential allotment" means allotment of shares or any other instrument convertible into shares including hybrid instruments convertible into shares on preferential basis made pursuant to the provisions of sub-section (1A) of section 81 of the Companies Act, 1956;

Provided that the name, father's name, address and occupation of persons to whom such allotment is proposed to be made shall be mentioned in the resolution passed by the members under that sub-section:

Provided further that persons to whom such offer is proposed, shall not be more than forty-nine as per the first proviso to sub-section (3) of section 67 of the Companies Act, 1956; '

3. For rule 4 of the said rules, the following shall be substituted, namely:

"4 . Special Resolution:

- (1) No issue of Shares or any other instruments



convertible into shares including hybrids convertible into shares on a preferential basis can be made by a company unless authorised by its articles of association and unless a special resolution passed by the member in a general meeting authorising the Board of Directors to make such issue.

(2) The special resolution referred to in sub-rule (1) shall be acted upon within a period of twelve months.” .

4. After rule 7 of the said rules, the following rule shall be inserted, namely:

“8 . Invitation and allotment of securities.-

- 1) No fresh offer or invitation shall be made unless the allotment with respect to any offer or invitation made earlier have been completed in terms of sub-section (9) of section 60B of the Companies Act, 1956.
- 2) Any offer or invitation not in compliance with sub-section (1A) of Section 81 read with sub-section (3) of section 67 of the said Act, shall be treated as a public offer and the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be complied with.
- 3) All monies payable on subscription of securities shall be paid through cheque or demand draft or other banking channels but not by cash.
- 4) Any allotment of securities shall be completed within sixty days from the receipt of application money and in case the company is not able to allot the securities within the said period of sixty days, it shall repay the application money within fifteen days thereafter, failing which it will be required to be re-paid with interest at the rate of twelve percent per annum:

Provided that the monies received on such application shall be kept in a separate bank account and shall not be utilised for any purpose other than:

- (i) for adjustment against allotment of securities; or
 - (ii) for the repayment of monies where the company is unable to allot securities.
- (5) No company offering securities shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

Renuka Kumar

Joint Secretary to the Government of India

05 Alterations in The Schedule XIV to the Companies Act, 1956

Issued by the Ministry of Corporate Affairs vide F.No.: 2/6/2008 CL-V Dated 14.12.2011 Published in the Gazette of India, Part - II, Section 3 (i) Dated 14.12.2011]

In exercise of the powers conferred by sub-section (1) of

section 641 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following alterations in the Schedule XIV of the said Act namely :

In Schedule XIV to the Companies Act, 1956, under the heading “II PLANT AND MACHINERY”, under item (ii) relating to special rates, in sub-item B.7, for the entries, the following entries shall respectively be substituted, namely :

Schedule XIV Rates of depreciation

Name of assets	Single Shift		Double Shift		Triple Shift	
	W.D.V.	S.L.M.	W.D.V.	S.L.M.	W.D.V.	S.L.M.
1	2	3	4	5	6	7
"7. Mineral oil Concerns Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc. (NESD)	30 percent.	11.31 percent.	--	--	--	--
7A. Rigs (NESD)	10 percent.	3.34 percent.	--	--	--	-- "

(U C Nahta)

Director (Inspection & Investigation)

06 Green Initiatives in Corporate Governance - Further Clarification regarding participation by Shareholders or Directors in meetings under the companies Act, 1956 through electronic mode - authorization regarding e-voting.

Issued by the Ministry of Corporate Affairs vide General Circular No. 72/2011 Dated 27.12.2011]

Reference Ministry's Circular No. 35/2011 dated 06.06.2011, Para (ii) of which inter-alia provides, as under - "In respect of shareholders meetings to be held during the financial year 2011-12, video conferencing facility for shareholders is optional. Thereafter, it is mandatory for all listed companies."

2. Further, Para (v) of the circular provides as under in case of e-voting in general meetings.

"In the case of e-voting in general meetings, the Ministry of Corporate Affairs are presently authorizing only National Security Depository Ltd and Central Depository Services (India) Ltd as agencies for providing and supervising electronic platforms for electronic voting



From the Government

subject to the condition that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi."

3. It has been brought to the notice of the Ministry that the aforesaid mandatory requirement is in variance with the Companies Act, 1956 as also the relevant provisions proposed in the Companies Bill, 2011. On re-examination of the matter, it has accordingly been decided that the mandatory requirement for holding shareholders meetings through video conferencing shall continue to be optional for listed companies for the subsequent years too.
4. It is further stated that Para (v) of the above circular be replaced as under. "For e-voting in general meetings, any agency providing electronic platform for e-voting is required to obtain certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi."

It is clarified that this Ministry shall not authorize any agency for the purpose of providing video conferencing facilities by the corporate sector.

(U. C. Nahta)

Director (Investigation & Inspection)

07 Company Law Settlement Scheme, 2011

Issued by the Ministry of Corporate Affairs vide General Circular No.71/2011 Dated 15.12.2011]

In continuation of the Ministry's General Circulars No. 59/2011 dated 05.08.2011, No. 60/2011 dated 10.08.2011 and No. 65/2011 dated 04.10.2011 on the subject cited above, it is stated that the said scheme has been extended upto 15th January, 2012. It is further stated that this Scheme will not be extended beyond 15.01.2012.

2. All the terms and conditions of the General Circulars No. 59/2011 dated 05.08.2011 and No. 60/2011 dated 10.08.2011 will remain the same.

(U.C. Nahata)

Director (Inspection & Investigation)

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

Issued by the Ministry of Corporate Affairs vide General Circular No. 70/2011 Dated 15.12.2011]

In continuation of General Circulars No. 32/2011 dated

31.05.2011 and No. 36/2011 dated 04.10.2011 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 29.02.2012.

(U.C. Nahata)

Director (Inspection & Investigation)

09 Filing of Balance Sheet and Profit and Loss Account In eXtensible Business Reporting Language (XBRL) mode.

Issued by the Ministry of Corporate Affairs vide General Circular No. 69/2011 Dated 30.11.2011]

In partial modification of Para 1 of the Ministry's Circular no. 57/2011 dated 28.07.2011, the last date for filing financial statements in XBRL mode without any additional fee due to delay by those Phase-1 class of companies (excluding exempted class) whose Balance Sheet date for FY 2010-11 is on or after 31.03.2011, has been extended up to 31.12.2011 or within 60 days of their due date of filing, whichever is later.

2. This issue with the approval of the Competent Authority.

(U.C. Nahta)

Director (Inspection & Investigation)

10 Cost Accounting Records and Cost Audit - clarifications regarding applicability and compliance requirements

Issued by the Ministry of Corporate Affairs vide General Circular No.68/2011 Dated 30.11.2011]

In connection with the recently issued circulars/notifications concerning cost accounting records and cost audit, following clarifications are Issued:

- (a) That the companies covered under Companies (Cost Accounting Records) Rules, 2011 shall only file a simple compliance report as per the notified Form-B (copy enclosed)* and no other details of cost records are required to be filed with the Government. If all the products/activities of a company, excluding the exempted categories, are covered under cost audit, then the company will not be required to separately file the compliance report.
- (b) That for companies coming under the purview of the Companies (Cost Accounting Records) Rules, 2011 and the Companies (Cost Audit Report) Rules, 2011 for the first time, cost records and cost details, statements,

* not reproduced here



- schedules, etc. shall be kept In good order for the next eight financial years beginning with first year of application of the said Rules.
- (c) That the term "Turnover" defined in the Companies (Cost Accounting Records) Rules, 2011 shall exclude taxes & duties. It shall have the same meaning, wherever It appears, In all other orders/rules Issued In connection with the cost accounting records and cost audit.
- (d) That for filing the cost audit reports under the Companies (Cost Audit Report) Rules, 2011, following procedure may be followed:
- (i) If only one product of a company is subject to cost audit and the company appoints more than one cost auditor, only a consolidated cost audit report [containing Inter alia the qualifications, reservations or suggestions if any given by all the cost auditors] should be prepared as per the Companies (Cost Audit Report) Rules, 2011 and signed by all the cost auditors.
For this purpose, company may designate/appoint any one of them as the principal/lead cost auditors who would be responsible for the consolidation and filing the same with the Central Government.
- (ii) If more than one products of a company are under cost audit for which it has appointed either same or separate cost auditors, then they may either submit separate cost audit report for each product group or submit only one consolidated report containing details of each product group under audit separately as per the procedure provided above.
- (e) That in the General Circular no. 15/2011 dated 11th April 2011 regarding appointment of cost auditors by companies, It was provided that the Audit Committee shall obtain a certificate from the cost auditor certifying his/its Independence and 'arm's length relationship' with the company. In order that 'arm's length relationship' Is In fact ensured, it may be noted that cost auditor(s) appointed under section 233B(2) of the Companies Act, 1956 [whether for one or all of the company's products covered under cost audit], shall not provide any other services to the company relating to (I) design and Implementation of cost accounting system; or (II) the maintenance of cost accounting records, or (iii) act as Internal auditor, whether acting Individually, or through the same firm or through other group firms where he or any partner has any common interest. It is however clarified that the cost auditors are allowed to certify the compliance report or provide any other services as may be assigned by the company, but which shall not Include any of the services mentioned above.
2. The Institute Is requested to circulate this General Circular for Information of all concerned.

(B.B. Goyal)
Adviser (Cost)

FORM-B* FORM OF COMPLIANCE REPORT
ANNEXURE TO THE COMPLIANCE REPORT *

* not reproduced here

11 Cost Accounting Records and Cost Audit- Clarifications about Coverage of certain sectors thereunder

Issued by the Ministry of Corporate Affairs vide General Circular No. 67/2011 Dated 30.11.2011]

Ministry has examined various issues raised by the companies and/or professionals in connection with the recently Issued circulars/notifications concerning cost accounting records and coverage of cost audit. To remove doubts and ambiguities, the following clarifications are Issued:

- (a) That the Companies (Cost Accounting Records) Rules, 2011 are not applicable to :
- (i) Wholesale or retail trading activities.
 - (ii) Banking, financial, leasing, Investment, Insurance, education, healthcare, tourism, travel, hospitality, recreation, transport services, business/professional consultancy, IT & IT enabled services, research & development, postal/courier services, etc. unless any of these have been specifically covered under any other Cost Accounting Records Rules.
 - (iii) Companies engaged In rendering job work operations or contracting/ sub-contracting activities, and are paid only the job work or conversion charges, such as tailoring, baking, repairing, painting, printing, constructing, servicing, etc.
 - (iv) Companies engaged In the production, processing, manufacturing or mining activities till such time they commence their commercial operations.
 - (v) Ancillary products/activities of companies incidental to their main operations (I.e. products/activities that do not constitute their main line of business) and wherein the total turnover from the sale of each such ancillary products/activities do not exceed 2% of the total turnover of the company or Rs.20 crores, whichever Is lower. However, required details of all such ancillary products/ activities may be maintained under a miscellaneous group and disclosed appropriately.
- (b) That the Cost Audit Orders [no. 52/26/CAB 2010 dated 2nd May 2011 and 30th June 2011] shall not apply to the following cases:
- (i) Generation of electricity for captive consumption. For this purpose, the term "captive Generating Plant" shall have the same meaning as assigned In Rule 3 of the Electricity Rules, 2005.
 - (ii) Own manufactured products that are consumed exclusively by the company for the sole purpose of production, processing, manufacturing, or mining of Its other products or activities that are subject to cost audit.



From the Government

- (iii) Hundred percent Export Oriented Units.
- (c) That only such Items falling under the relevant chapter(s) of the Central Excise Tariff Act, 1985 as constitute intermediate or final or allied products of the Industry mentioned In the Cost Audit Order dated 30th June 2011 shall be covered under cost audit and all other Items not related to the Industry shall be outside the purview of said orders.

For the purpose of these orders, the words "Intermediate products" mean only such products that have already undergone partial manufacturing/ production process and are used as Inputs for the production, processing, manufacturing or mining of the final products of the Industries listed in the said order; the words "articles or allied products thereof" refer to such articles or allied products that are produced either wholly or predominantly [not less than 50% by weight or volume] by using the listed products as their primary Inputs.

To explain this aspect further, the following clarifications are given as illustrations:

- (i) For Paints & Varnish endustry, all other items such as tanning or dyeing extracts, tanning & their derivatives, dyes, pigments & other colouring matters, putty & other mastics, printing Inks, etc. mentioned in Chapter 32 of the Central Excise Tariff Act, 1985 are not covered unless such Items are used as intermediates for the production of Paints & Varnishes or are produced as their allied products.
 - (ii) For Tyres & Tubes industry, all other Items such as natural or synthetic or reclaimed rubber, compounded rubber, hard rubber, rubber thread or cord, conveyer or transmission belts, articles of rubber, etc. mentioned In Chapter 40 of the Central Excise Tariff Act, 1985 are not covered unless such Items are used as Intermediates for the production of Tyres & Tubes or are produced as their allied products.
 - (iii) Examples of Intermediate products Include clinker for cement, pulp for paper, sponge Iron & pig Iron for steel, etc. Examples of articles or allied products of cement include cement bricks, sleepers, pipes; of paper Include cartons, boxes, bags, registers; and of steel include ingots, blooms, billets, slabs, beams, angles, tees, channels, pilings, ralls, bars, wire, nails, plates, pipes, tubes, coils, sheets, etc.
2. In case of any doubt, companies are requested to refer their cases to this office for clarification by giving complete details. The Institute Is requested to circulate this General Circular for information of all concerned.

(B.B. Goyal)
Adviser (Cost)

12 Issue of Debt Securities-Prohibition on payment of incentives

Issued by the Securities and Exchange Board of India vide CIR. /IMD/DF/22/2011. Dated 26.12.2011]

1. It is gathered from market participants that in public issues of debt securities, some brokers/ distributors are passing on part of their brokerage/ commission to the final investor(s) for subscription to such public issue of debt. As a result, while on one hand it is giving an unfair advantage/bargaining power to a certain set of investors and distributors, on the other hand it is adding to the cost of issuance for the company.
2. In order to curb such practices, it is advised that in respect of public issues of debt securities, no person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities:

Provided that nothing contained in this circular shall apply to fees or commission for services rendered in relation to the issue.

For the purpose of the above guideline, the expression "person connected with the issue" includes a person connected with the distribution of issue.

3. All recognized stock exchanges are advised to bring to the notice of all their members and to disseminate the same on their respective websites for information.
4. This circular is issued in exercise of powers conferred under Section 11(1) and Section 11 A of the Securities and Exchange Board of India Act, 1992 read with Regulation 31(1) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager

13 Guidelines in pursuance of the SEBI KYC Registration Agency (KRA) Regulations, 2011 and for In-Person Verification (IPV)

Issued by the Securities and Exchange Board of India vide No. MIRSD/Cir- 26 /2011. Dated 23.12.2011]

Please refer to SEBI circular no. MIRSD/Cir-23/2011 dated December 2, 2011 providing you a copy of the KRA Regulations, 2011 notified on December 2, 2011. With a view to implement the Regulations effectively, the following guidelines are being issued:

1. Guidelines for Intermediaries:

- i) After doing the initial KYC of the new clients, the



intermediary shall forthwith upload the KYC information on the system of the KRA and send the KYC documents i.e. KYC application form and supporting documents of the clients to the KRA within 10 working days from the date of execution of documents by the client and maintain the proof of dispatch.

- ii) In case a client's KYC documents sent by the intermediary to KRA are not complete, the KRA shall inform the same to the intermediary who shall forward the required information / documents promptly to KRA.
- iii) For existing clients, the KYC data may be uploaded by the intermediary provided they are in conformity with details sought in the uniform KYC form prescribed vide SEBI circular no. MIRSD/SE/Cir-21/2011 dated October 05, 2011. While uploading these clients' data the intermediary shall ensure that there is no duplication of data in the KRA system.
- iv) The intermediary shall carry out KYC when the client chooses to trade/ invest/deal through it.
- v) The intermediaries shall maintain electronic records of KYCs of clients and keeping physical records would not be necessary.
- vi) The intermediary shall promptly provide KYC related information to KRA, as and when required.
- vii) The intermediary shall have adequate internal controls to ensure the security/authenticity of data uploaded by it.

2. Guidelines for KRAS:

- i) KRA system shall provide KYC information in data and image form to the intermediary.
- ii) KRA shall send a letter to the client within 10 working days of the receipt of the initial/updated KYC documents from intermediary, confirming the details thereof and maintain the proof of dispatch.
- iii) KRA(s) shall develop systems, in co-ordination with each other, to prevent duplication of entry of KYC details of a client and to ensure uniformity in formats of uploading / modification / downloading of KYC data by the intermediary.
- iv) KRA shall maintain an audit trail of the upload / modifications / downloads made in the KYC data, by the intermediary in its system.
- v) KRA shall ensure that a comprehensive audit of its systems, controls, procedures, safeguards and security of information and documents is carried out annually by an independent auditor. The Audit Report along with the steps taken to rectify the deficiencies, if any, shall be placed before its Board of Directors. Thereafter, the KRA shall send the Action Taken Report to SEBI within 3 months.
- vi) KRA systems shall clearly indicate the status of clients falling under PAN exempt categories viz.

investors residing in the state of Sikkim, UN entities /multilateral agencies exempt from paying taxes/ filing tax returns in India.

- vii) A client can start trading / investing/ dealing with the intermediary and its group / subsidiary / holding company as soon as the initial KYC is done and other necessary information is obtained while the remaining process of KRA is in progress.

3. In-Person Verification (IPV):

With regard to the requirement of in-person' verification (IPV), SEBI has issued guidelines to the stock brokers and depository participants (DPs). However, in line with the uniformity brought out in the KYC procedure across intermediaries, the IPV requirements for all the intermediaries have now been streamlined and harmonized, as follows:

- i) It shall be mandatory for all the intermediaries addressed in this circular to carry out IPV of their clients.
- ii) The intermediary shall ensure that the details like name of the person doing IPV, his designation, organization with his signatures and date are recorded on the KYC form at the time of IPV.
- iii) The IPV carried out by one SEBI registered intermediary can be relied upon by another intermediary.
- iv) In case of Stock brokers, their sub-brokers or Authorised Persons (appointed by the stock brokers after getting approval from the concerned Stock Exchanges in terms of SEBI Circular No. MIRSD/DR-1/Cir-16/09 dated November 06, 2009) can perform the IPV.
- v) In case of Mutual Funds, their Asset Management Companies (AMCs) and the distributors who comply with the certification process of National Institute of Securities Market (NISM) or Association of Mutual Funds (AMFI) and have undergone the process of 'Know Your Distributor (KYD)', can perform the IPV.

However, in case of applications received by the mutual funds directly from the clients (i.e. not through any distributor), they may also rely upon the IPV performed by the scheduled commercial banks.

In view of the above provisions, the following SEBI circulars/letters pertaining to IPV stand modified accordingly:

- i) Letter No. 47/2006/ISD/SR/122539 dated April 4, 2008
- ii) Letter No. MIRSD/DPS-III/130466/2008 dated July 02, 2008
- iii) Circular No. SEBI/MIRSD/Cir. No. 02/2010 dated January 18, 2010



From the Government

iv) Circular no. CIR/MIRSD/22/2011 dated October 25, 2011

4. Applicability:

The KRA system shall be applicable for all new client accounts opened from January 1, 2012. Only for the client accounts opened between Jan 1 and Jan 31, 2012, the intermediaries may upload the KYC data on the KRA system and send the relevant KYC documents to KRA, by February 15, 2012. However, for client accounts opened from February 1, 2011, the intermediaries shall continue to follow the requirement of sending the same within 10 working days as given in para 1(i) of this circular. The existing clients can continue to trade / invest/ deal with their intermediaries as per the current practice.

5. The Stock Exchanges and Depositories are directed to:
 - i) bring the provisions of this circular to the notice of their Stock Brokers and DPs, as the case may be, and also disseminate the same on their websites;
 - ii) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another, as considered necessary;
 - iii) monitor the compliance of this circular through half-yearly internal audits and inspections; and
 - iv) communicate to SEBI, the status of the implementation of the provisions of this circular.
6. In case of mutual funds, compliance of this circular shall be monitored by the boards of Asset Management Companies and the Trustees and in case of other intermediaries by their Board of Directors.
7. The names of KRAs would be notified separately.
8. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 17 of the SEBI (KYC (Know Your Client) Registration Agency) Regulations, 2011 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

B. N. Sahoo

Deputy General Manager

14 Establishment of Connectivity with both depositories NSDL and CDSL - Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement

Issued by the Securities and Exchange Board of India vide No. CIR/MRD/DP/ 14 /2011. Dated 20.12.2011]

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
 - a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
 - b) There are no other grounds/reasons for continuation of the trading in TFTS.
3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Harini Balali

Deputy General Manager

ANNEXURE A

SR. NO.	NAME OF THE COMPANY	ISIN
1.	Towa Sokki Limited	INE311M01018
2.	Atreya Petrochem Limited	INE313M01014
3.	The Chemo-Pharma Laboratories Limited	INE320M01019
4.	Associated Fin Lease Limited	INE290M01014
5.	Hindoostan Mills Limited	INE832D01020
6.	Naisargik Agritech (India) Limited	INE360M01015
7.	Asianlak Capital And Finance Limited	INE377M01019
8.	Thyrocare Laboratories Limited	INE099M01019
9.	Moryo Industries Limited	INE346M01014
10.	Vivo Bio Tech Limited	INE380K01017
11.	Aroma Enterprises (India) Limited	INE371M01012
12.	Advance Lifestyles Limited	INE900E01015
13.	Swagruha Infrastructure Limited	INE587J01019
14.	RSC International Limited	INE015F01019
15.	Pithampur Steels Limited	INE077H01015
16.	Rahul Merchandising Limited	INE149D01011
17.	Himachal Fibres Limited	INE723D01013
18.	Monota Securities Limited	INE815H01018
19.	Nimbus Industries Limited	INE470M01012
20.	High Ground Enterprise Limited	INE361M01013
21.	Pentokey Organy (India) Limited	INE702E01015
22.	Wyn Aqua Exports Limited	INE393M01016



15 Review of Regulatory Compliance, Periodic Reporting and Contents of Trust Deed

Issued by the Securities and Exchange Board of India vide No. CIR/MIRSD/25/2011. Dated 19.12.2011]

A. Regulatory Compliance

1. Debenture Trustees (DTs) are required to furnish quarterly report in electronic form in the prescribed format in terms of SEBI Circulars No. 1(98-99) dated September 01, 1998, DT Circular No. 2(1999-2000) dated April 19, 1999, MIRSD/DPS-2/DT/Cir-2/2004 dated March 09, 2004 and Cir No. MIRSD/DPS-2/DT/Cir-14/2008 dated May 06, 2008.
2. In order to strengthen the monitoring mechanism through periodic reporting, it has been decided to review the reporting format. The revised format as given in the Annexure includes the status of regulatory compliance and investor grievances redressal.
3. The board of directors of DT shall, henceforth, review the report and record its observations on (i) the deficiencies and non-compliances, and (ii) corrective measures initiated to avoid such instances in future.
4. Accordingly, in super session of the circulars mentioned in Para 1, with effect from half year ending March 2012, the Compliance Officer of the DT shall send the report in the revised format to SEBI at dt@sebi.gov.in on half yearly basis within three months of the expiry of the half year.
5. Further, according to Circular no. MIRSD/DT/10/2011 dated June 20, 2011, DTs are required to report the changes in their status or constitution. The same information has now been incorporated in the revised format.

B. Contents of Trust Deed

6. SEBI (Debenture Trustee) Regulations, 1993, allow DTs to incorporate additional clauses in the trust deed provided that these clauses do not dilute or contravene the provisions of the clauses specified in the Schedule-IV of the said Regulations. However, it has been observed during inspections that certain clauses are included in the trust deed that limit or extinguish the obligations of DTs in relation to any rights or interests of investors or are in conflict with the provisions of the Regulations. It may be noted that such clauses in the existing or new trust deeds shall not be applicable and shall stand null and void.

This circular is 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.

The circular is available on SEBI website (www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

Ruchi Chojer
Deputy General Manager

16 Guidelines on Outsourcing of Activities by Intermediaries

Issued by the Securities and Exchange Board of India vide No. CIR/MIRSD/24/2011. Dated 15.12.2011]

1. SEBI Regulations for various intermediaries require that they shall render at all times high standards of service and exercise due diligence and ensure proper care in their operations.
2. It has been observed that often the intermediaries resort to outsourcing with a view to reduce costs, and at times, for strategic reasons.
3. Outsourcing may be defined as the use of one or more than one third party-either within or outside the group-by a registered intermediary to perform the activities associated with services which the intermediary offers.

4. Principles for Outsourcing

The risks associated with outsourcing may be operational risk, reputational risk, legal risk, country risk, strategic risk, exit-strategy risk, counter party risk, concentration and systemic risk. In order to address the concerns arising from the outsourcing of activities by intermediaries based on the principles advocated by the IOSCO and the experience of Indian markets, SEBI had prepared a concept paper on outsourcing of activities related to services offered by intermediaries. Based on the feedback received on the discussion paper and also discussion held with various intermediaries, stock exchanges and depositories, the principles for outsourcing by intermediaries have been framed (Annexure I). These principles shall be followed by all intermediaries registered with SEBI.

5. Activities that shall not be Outsourced

The intermediaries desirous of outsourcing their activities shall not, however, outsource their core business activities and compliance functions. A few examples of core business activities may be - execution of orders and monitoring of trading activities of clients in case of stock brokers; dematerialisation of securities in case of depository participants; investment related activities in case of Mutual Funds and Portfolio Managers. Regarding Know Your Client (KYC) requirements, the intermediaries shall comply with the provisions of SEBI (KYC (Know Your Client) Registration Agency) Regulations, 2011 and Guidelines issued thereunder from time to time.

6. Other Obligations

- i) Reporting To Financial Intelligence Unit (FIU) - The intermediaries shall be responsible for reporting of any suspicious transactions / reports to FIU or any other competent authority in respect of activities carried out by the third parties.



From the Government

- ii) Need for Self Assessment of existing Outsourcing Arrangements - In view of the changing business activities and complexities of various financial products, intermediaries shall conduct a self assessment of their existing outsourcing arrangements within a time bound plan, not later than six months from the date of issuance of this circular and bring them in line with the requirements of the guidelines/principles.
7. This circular is 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.
8. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Circulars".

Prasanta Mahapatra
Deputy General Manager

ANNEXURE I

1. An intermediary seeking to outsource activities shall have in place a comprehensive policy to guide the assessment of whether and how those activities can be appropriately outsourced. The Board / partners (as the case may be) {hereinafter referred to as the "the Board"} of the intermediary shall have the responsibility for the outsourcing policy and related overall responsibility for activities undertaken under that policy.

1.1 The policy shall cover activities or the nature of activities that can be outsourced, the authorities who can approve outsourcing of such activities, and the selection of third party to whom it can be outsourced. For example, an activity shall not be outsourced if it would impair the supervisory authority's right to assess, or its ability to supervise the business of the intermediary. The policy shall be based on an evaluation of risk concentrations, limits on the acceptable overall level of outsourced activities, risks arising from outsourcing multiple activities to the same entity, etc.

1.2 The Board shall mandate a regular review of outsourcing policy for such activities in the wake of changing business environment. It shall also have overall responsibility for ensuring that all ongoing outsourcing decisions taken by the intermediary and the activities undertaken by the third-party, are in keeping with its outsourcing policy.

2 The intermediary shall establish a comprehensive outsourcing risk management programme to address the outsourced activities and the relationship with the third party.

2.1 An intermediary shall make an assessment of outsourcing risk which depends on several factors, including the scope and materiality of the outsourced

activity, etc. The factors that could help in considering materiality in a risk management programme include-

- a. The impact of failure of a third party to adequately perform the activity on the financial, reputational and operational performance of the intermediary and on the investors / clients;
- b. Ability of the intermediary to cope up with the work, in case of non performance or failure by a third party by having suitable back-up arrangements;
- c. Regulatory status of the third party, including its fitness and probity status;
- d. Situations involving conflict of interest between the intermediary and the third party and the measures put in place by the intermediary to address such potential conflicts, etc.

2.2 While there shall not be any prohibition on a group entity / associate of the intermediary to act as the third party, systems shall be put in place to have an arm's length distance between the intermediary and the third party in terms of infrastructure, manpower, decision-making, record keeping, etc. for avoidance of potential conflict of interests. Necessary disclosures in this regard shall be made as part of the contractual agreement. It shall be kept in mind that the risk management practices expected to be adopted by an intermediary while outsourcing to a related party or an associate would be identical to those followed while outsourcing to an unrelated party.

2.3 The records relating to all activities outsourced shall be preserved centrally so that the same is readily accessible for review by the Board of the intermediary and / or its senior management, as and when needed. Such records shall be regularly updated and may also form part of the corporate governance review by the management of the intermediary.

2.4 Regular reviews by internal or external auditors of the outsourcing policies, risk management system and requirements of the regulator shall be mandated by the Board wherever felt necessary. The intermediary shall review the financial and operational capabilities of the third party in order to assess its ability to continue to meet its outsourcing obligations.

3 The intermediary shall ensure that outsourcing arrangements neither diminish its ability to fulfill its obligations to customers and regulators, nor impede effective supervision by the regulators.

3.1 The intermediary shall be fully liable and accountable for the activities that are being outsourced to the same extent as if the service were provided in-house.

3.2 Outsourcing arrangements shall not affect the rights of an investor or client against the intermediary in any manner. The intermediary shall be liable to the



investors for the loss incurred by them due to the failure of the third party and also be responsible for redressal of the grievances received from investors arising out of activities rendered by the third party.

3.3 The facilities / premises / data that are involved in carrying out the outsourced activity by the service provider shall be deemed to be those of the registered intermediary. The intermediary itself and Regulator or the persons authorized by it shall have the right to access the same at any point of time.

3.4 Outsourcing arrangements shall not impair the ability of SEBI/SRO or auditors to exercise its regulatory responsibilities such as supervision/inspection of the intermediary.

4 The intermediary shall conduct appropriate due diligence in selecting the third party and in monitoring of its performance.

4.1 It is important that the intermediary exercises due care, skill, and diligence in the selection of the third party to ensure that the third party has the ability and capacity to undertake the provision of the service effectively.

4.2 The due diligence undertaken by an intermediary shall include assessment of:

- a. third party's resources and capabilities, including financial soundness, to perform the outsourcing work within the timelines fixed;
- b. compatibility of the practices and systems of the third party with the intermediary's requirements and objectives;
- c. market feedback of the prospective third party's business reputation and track record of their services rendered in the past;
- d. level of concentration of the outsourced arrangements with a single third party; and
- e. the environment of the foreign country where the third party is located.

5 Outsourcing relationships shall be governed by written contracts / agreements / terms and conditions (as deemed appropriate) {hereinafter referred to as "contract"} that clearly describe all material aspects of the outsourcing arrangement, including the rights, responsibilities and expectations of the parties to the contract, client confidentiality issues, termination procedures, etc.

5.1 Outsourcing arrangements shall be governed by a clearly defined and legally binding written contract between the intermediary and each of the third parties, the nature and detail of which shall be appropriate to the materiality of the outsourced activity in relation to the ongoing business of the intermediary.

5.2 Care shall be taken to ensure that the outsourcing contract:

- a. clearly defines what activities are going to be outsourced, including appropriate service and performance levels;

b. provides for mutual rights, obligations and responsibilities of the intermediary and the third party, including indemnity by the parties;

c. provides for the liability of the third party to the intermediary for unsatisfactory performance/other breach of the contract

d. provides for the continuous monitoring and assessment by the intermediary of the third party so that any necessary corrective measures can be taken up immediately, i.e., the contract shall enable the intermediary to retain an appropriate level of control over the outsourcing and the right to intervene with appropriate measures to meet legal and regulatory obligations;

e. includes, where necessary, conditions of sub-contracting by the third-party, i.e. the contract shall enable intermediary to maintain a similar control over the risks when a third party outsources to further third parties as in the original direct outsourcing;

f. has unambiguous confidentiality clauses to ensure protection of proprietary and customer data during the tenure of the contract and also after the expiry of the contract;

g. specifies the responsibilities of the third party with respect to the IT security and contingency plans, insurance cover, business continuity and disaster recovery plans, force majeure clause, etc.;

h. provides for preservation of the documents and data by third party;

i. provides for the mechanisms to resolve disputes arising from implementation of the outsourcing contract;

j. provides for termination of the contract, termination rights, transfer of information and exit strategies;

k. addresses additional issues arising from country risks and potential obstacles in exercising oversight and management of the arrangements when intermediary outsources its activities to foreign third party. For example, the contract shall include choice-of-law provisions and agreement covenants and jurisdictional covenants that provide for adjudication of disputes between the parties under the laws of a specific jurisdiction;

l. neither prevents nor impedes the intermediary from meeting its respective regulatory obligations, nor the regulator from exercising its regulatory powers; and

m. provides for the intermediary and /or the regulator or the persons authorized by it to have the ability to inspect, access all books, records and information relevant to the outsourced activity with the third party.

6 The intermediary and its third parties shall establish and maintain contingency plans, including a plan for



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disaster recovery and periodic testing of backup facilities.

- 6.1 Specific contingency plans shall be separately developed for each outsourcing arrangement, as is done in individual business lines.
- 6.2 An intermediary shall take appropriate steps to assess and address the potential consequence of a business disruption or other problems at the third party level. Notably, it shall consider contingency plans at the third party; co-ordination of contingency plans at both the intermediary and the third party; and contingency plans of the intermediary in the event of non-performance by the third party.
- 6.3 To ensure business continuity, robust information technology security is a necessity. A breakdown in the IT capacity may impair the ability of the intermediary to fulfill its obligations to other market participants/clients/regulators and could undermine the privacy interests of its customers, harm the intermediary's reputation, and may ultimately impact on its overall operational risk profile. Intermediaries shall, therefore, seek to ensure that third party maintains appropriate IT security and robust disaster recovery capabilities.
- 6.4 Periodic tests of the critical security procedures and systems and review of the back-up facilities shall be undertaken by the intermediary to confirm the adequacy of the third party's systems.

7 The intermediary shall take appropriate steps to require that third parties protect confidential information of both the intermediary and its customers from intentional or inadvertent disclosure to unauthorised persons.

- 7.1 An intermediary that engages in outsourcing is expected to take appropriate steps to protect its proprietary and confidential customer information and ensure that it is not misused or misappropriated.
- 7.2 The intermediary shall prevail upon the third party to ensure that the employees of the third party have limited access to the data handled and only on a "need to know" basis and the third party shall have adequate checks and balances to ensure the same.
- 7.3 In cases where the third party is providing similar services to multiple entities, the intermediary shall ensure that adequate care is taken by the third party to build safeguards for data security and confidentiality.

8 Potential risks posed where the outsourced activities of multiple intermediaries are concentrated with a limited number of third parties.

In instances, where the third party acts as an outsourcing agent for multiple intermediaries, it is the duty of the third party and the intermediary to ensure that strong safeguards

are put in place so that there is no co-mingling of information/documents, records and assets.

17 Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011

Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2011-12/30/37715. Published in The Gazette of India Extraordinary Part -III - Section 4. Dated 14.12. 2011]

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 amend the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, namely:-

1. These Regulations may be called the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011.
2. They shall come into force on the date of their publication in the Official Gazette.
3. Regulation 7A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 shall be substituted with the following, namely: -
"Capital Adequacy Requirement.
7 A. The capital adequacy requirement referred to in clause (g) of regulation 6 shall not be less than the networth of two crore rupees:
Provided that a debenture trustee, who was granted a certificate of initial or permanent registration, as the case may be, under these regulations prior to the commencement of the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011, shall raise its networth to the said minimum within a period of two years from such commencement."

U. K. Sinha
Chairman

Securities And Exchange Board of India

18 Revised format of Monthly Cumulative Report (MCR) incorporating investments in Infrastructure Debt Fund

Issued by the Securities and Exchange Board of India vide Cir/ IMD/ DF/ 21 / 2011. Dated 13.12. 2011]



1. Please refer to SEBI circular SEBI/IMD/CIR No. 3/124444/08 dated April 30, 2008 prescribing the format for Monthly Cumulative Report.
2. Since the SEBI(Mutual Funds) Regulations, 1996 have been amended to enable mutual funds to launch Infrastructure Debt Fund scheme/s (IDFs) in terms of Chapter VI-B of the Regulations, the format for MCR is being modified to include IDF schemes as per Annexure A*.
3. Mutual Funds shall report data in new MCR format from the month of January, 2012.
4. 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.

Asha Shetty
Deputy General Manager

* not reproduced here

19 The Securities and Exchange Board of India (KYC Registration Agency) Regulations, 2011.

Issued by the Securities and Exchange Board of India vide MIRSD/Cir-23/2011. Dated 02.12. 2011]

1. As you are aware, SEBI simplified the account opening process for investors vide Circular No. CIR/MIRAD/16/2011 Dated August 22, 2011. Further, SEBI vide circular MIRSD/SE/Cir-21/2011 dated October 05, 2011 issued guidelines for uniform KYC requirements for investors while opening accounts with any intermediary in the securities market.
2. At present, if a client intends to open accounts with different intermediaries for the purpose of trading / investment in the securities market, he has to undergo the process of Know Your Client (KYC) again and again. Therefore, to avoid duplication of KYC process with every intermediary, a mechanism for centralization of the KYC records in the securities market has been developed.
3. An intermediary shall perform the initial KYC of its clients and upload the details on the system of the KRA. When the client approaches another intermediary, the intermediary can verify and download the client's details from the system of the KRA. As a result, once the client has done KYC with a SEBI registered intermediary,

he need not undergo the same process again with another intermediary.

4. Accordingly, SEBI has formulated the KYC Registration Agency (KRA) Regulations, which have been notified vide notification no. LAD-NRO/GN/2011-12/29/36772 dated December 2, 2011 (copy enclosed). The Regulations cover the registration of KRAs, functions and responsibilities of the KRAs and intermediaries, code of conduct, data security, etc.
5. The Stock Exchanges & Depositories are directed to:
 - a. bring the provisions of this circular to the notice of the Stock Brokers & DPs, respectively, and disseminate the same on their websites;
 - b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another;
 - c. monitor the compliance of this circular through half-yearly internal audits and inspections; and
 - d. communicate to SEBI, the status of the implementation of the provisions of this circular through Monthly Development Report of the following month.
6. This circular is 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 markets.

B. N. Sahoo
Deputy General Manager

20 Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011

Issued by the Securities and Exchange Board of India , vide LAD-NRO/GN/2011-12/29/36772. Published in The Gazette of India Extraordinary Part -III - Section 4. Dated 02.12. 2011]

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

CHAPTER I PRELIMINARY Short title & commencement

1. (1) These regulations may be called the Securities and



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Exchange Board of India {KYC (Know Your Client) REGISTRATION AGENCY} Regulations, 2011.

- (2) They shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below -
- (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (b) "Board" means the Securities and Exchange Board of India established under section 3 of the Act;
 - (c) "Certificate" means a certificate of registration granted by the Board under these regulations;
 - (d) "Client" means a person seeking to do/has done his KYC through intermediary with KRA;
 - (e) "Inspecting authority" means any one or more person appointed by the Board to exercise powers conferred under chapter IV;
 - (f) "Intermediary" means an entity associated with securities market and registered under sub-section (1A), (1B) and (1) of Section 12 of the Act; who is required to do KYC of its clients;
 - (g) "Intermediaries Regulations" means Securities and Exchange Board of India (Intermediaries) Regulations, 2008;
 - (h) "KYC Registration Agency (KRA)" is a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under these regulations which hereinafter shall be deemed to be an intermediary in terms of the provisions of the Act;
 - (i) "KYC" means the procedure prescribed by the Board for identifying and verifying the Proof of Address, Proof of Identity and compliance with rules, regulations, guidelines and circulars issued by the Board or any other authority for Prevention of Money Laundering from time to time;
 - (j) "Operating Instructions" means operating instructions made by a KRA under Regulation 15;
 - (k) "Rules" means Prevention of Money Laundering Rules, 2005;
 - (l) "Prescribed" means prescribed by a general or special order or circular issued under the Act or these regulations.
- (2) All other words and expressions used but not defined in these regulations shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, (42 of 1956) or the Companies Act, 1956 (1 of 1956), or Prevention of Money Laundering Act (PML), 2005 or the PML Rules, 2005 or

any statutory modification or re-enactment thereto, as the case may be.

CHAPTER II REGISTRATION OF KRA

Application for grant of certificate of initial registration

3. An application for the grant of a certificate of registration as a KRA shall be made to the Board in Form as specified in Schedule I and shall be accompanied by such fees and in such manner as specified in Schedule II of these regulations.

Application to conform to the requirements

4. An application, which is not complete in all respects and does not conform to the instructions prescribed in the Form and the requirements specified therein or the information, is false or misleading in any manner shall be rejected by the Board.

Provided that before rejecting any such application, the applicant shall be given, in writing, an opportunity to remove, within thirty days of the date of communication in this regard, such objections as may be indicated by the Board.

Notwithstanding anything contained in the first proviso, the Board may, on being satisfied that it is necessary, extend the time period by such further time, as it deems fit, in order to enable the applicant to remove the objections indicated by the Board.

Furnishing of information, clarification and personal representation

5. (1) The Board may require the applicant to furnish such further information or documents or clarifications as the Board considers necessary for the purpose of consideration of the application.
- (2) The applicant or his authorized representative shall, if so required, appear before the Board for personal representation in connection with the grant of certificate of registration.

Consideration of application for grant of certificate of initial registration

6. (1) The Board shall not consider an application, unless the applicant is a fit and proper person to the satisfaction of the Board and belongs to one of the following categories, namely
- (a) a wholly owned subsidiary of a recognized stock exchange, having nation-wide network of trading terminals, or;
 - (b) a wholly owned subsidiary of a depository or any other intermediary registered with the Board or;
 - (c) a wholly owned subsidiary of a Self Regulatory Organization (SRO) registered under SEBI (Self Regulatory Organization) Regulations, 2004,
- Provided that any conflict of interest does not exist between



the role of the applicant as KRA and other commercial activities of the applicant, its associates and group companies.

Provided further that the applicant shall have to satisfy to the Board about the organizational capabilities, technology and systems and safeguards for maintaining data privacy and preventing unauthorized sharing of data.

Notwithstanding the aforementioned, the Board shall have the power to examine any possible case of conflict of interest in applications.

(2) The applicant as mentioned in sub regulation (a) to (c) of regulation 6(1) above shall have a net worth of at least Rs 25 crore on a continuous basis.

Grant of certificate of initial registration

7. (1) The Board, on being satisfied that the applicant is eligible, shall send intimation to that effect to the applicant, for the grant of certificate of initial registration, and grant a certificate in the Form as specified in Schedule I.
- (2) The certificate of initial registration granted under sub-regulation (1) shall be valid for a period of five years from the date of its issue to the applicant.
- (3) The grant of certificate of initial registration shall be subject to the payment of such fees and in such manner as specified in Schedule II of these regulations.

Grant of certificate of permanent registration

8. (1) The K R A which has been granted a certificate of initial registration under regulation 7 may, three months before the expiry of the period of certificate of initial registration, make an application for grant of certificate of permanent registration in the Form as specified in Schedule I.
- (2) An application under sub-regulation (1) shall be accompanied by such fees and in such manner as specified in Schedule II of these regulations.
- (3) The application for grant of a certificate of permanent registration shall be accompanied by details of the changes that have taken place in the information that was submitted to the Board while seeking initial registration, as the case may be, and a declaration stating that no changes other than those as mentioned in such details have taken place.
- (4) The application for permanent registration made under sub-regulation (1) shall be dealt with in the same manner as if, it were a fresh application for grant of a certificate of initial registration.
- (5) The Board, on being satisfied that the applicant is eligible, shall send intimation to that effect, to the applicant and shall grant a certificate of permanent registration in the format as specified in Schedule I.
- (6) The grant of certificate of permanent registration shall be subject to payment of such fees and in such

manner as specified in Schedule II of these regulations.

Criteria for fit and proper person

9. For the purpose of determining whether an applicant is a fit and proper person, the Board may take into account the criteria specified in Schedule II of Intermediaries Regulations.

KRA to abide by code of conduct

10. The KRA holding a certificate of registration shall at all times abide by the Code of Conduct as specified in Schedule III of these regulations.

Procedure where certificate of registration is not granted

11. (1) Where an application for the grant of certificate of initial or permanent registration does not satisfy the requirements specified in regulation 6 & 9, the Board shall reject the application after giving the applicant an opportunity of being heard.
- (2) The decision of the Board to reject the application shall be communicated to the applicant in writing within thirty days of such decision, stating therein the grounds on which the application has been rejected.
- (3) Any applicant, aggrieved by the decision of the Board, may apply within a period of thirty days from the date of receipt of such intimation to the Board for reconsideration of its decision.
- (4) The Board shall reconsider an application made under sub-regulation (3) and communicate its decision thereon, as soon as possible in writing to the applicant.

Effect of refusal to grant certificate of permanent registration

12. A KRA whose application for grant of certificate of permanent registration has been refused by the Board, on and from the date of the receipt of the communication, shall cease to carry on any activity as a KRA; Provided that the Board may, in the interest of the investors of the securities market, permit KRA to carry on activities undertaken prior to the receipt of the intimation of refusal subject to such condition as the Board may specify.

Surrender of certificate of registration

13. (1) A KRA, who has been granted a certificate of registration under the Act or the regulations made there under, desirous of giving up its activity and surrender the certificate, may make a request for such surrender to the Board.
- (2) While disposing a surrender request under these regulations, the Board may require the KRA to satisfy



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the Board about the factors, as it deems fit, including but not limited to the following -

- a. the arrangements made by KRA for maintenance and preservation of records and other documents required to be maintained under these regulations;
- b. redressal of investor grievances;
- c. transfer of records of its clients;
- d. the arrangements made by it for ensuring continuity of service to the clients;
- e. defaults or pending action, if any.

(3) While accepting the surrender, the Board may impose such conditions upon the KRA, as it deems fit, for protection of the interests of investors and the securities market, and such person shall comply with such conditions.

(4) On and from the date of the surrender or cancellation of the certificate, the KRA shall-

- (a) return the certificate of registration so cancelled to the Board and shall not represent itself to be a holder of the certificate for carrying out the activity for which such certificate had been granted;
- (b) cease to carry on any activity in respect of which the certificate had been granted;
- (c) transfer its activities to another entity holding a valid certificate of registration to carry on such activity and allow its clients to withdraw any assignment given to it, without any additional cost to such client;
- (d) make provisions as regards liability incurred or assumed by it;
- (e) take such other action including the action relating to any records or documents that may be in custody or control of such person, within the time period and in the manner, as may be required under these regulations, or as may be directed by the Board.

CHAPTER III FUNCTIONS AND OBLIGATIONS OF KRA AND INTERMEDIARY

Documents to be obtained by the KRA for the purpose of KYC

14. The KRA shall obtain the KYC documents of the client from the intermediary; as prescribed by the Board and in terms of the rules, regulations, guidelines and circulars issued by the Board or any other authority for Prevention of Money Laundering, from time to time.

Functions and obligations of the KRA

15. The KRA has the following functions and obligations -
(a) KRA may prepare the Operating Instructions in co-ordination with other KRA(s) and issue the same to

implement the requirements of these regulations.

- (b) KRA(s) shall have electronic connectivity and with other KRA(s) in order to establish inter-operability among KRAs.

Explanation: Inter-operability means the ability of the KRA to determine whether the KYC documents of the client are in the custody of another KRA.

- (c) KRA shall have a secure data transmission link with other KRA(s) and with each intermediary that uploads the KYC documents on its system and relies upon its data.
- (d) KRA shall be responsible for storing, safeguarding and retrieving the KYC documents and submit to the Board or any other statutory authority as and when required.
- (e) KRA shall retain the original KYC documents of the client, in both physical and electronic form for the period specified by Rules, as well as ensuring that retrieval of KYC information is facilitated within stipulated time period.
- (f) Any information updated about a client shall be disseminated by KRA to all intermediaries that avail of the services of the KRA in respect of that client.
- (g) KRA shall ensure that the integrity of the automatic data processing systems for electronic records is maintained at all times.
- (h) KRA shall take all precautions necessary to ensure that the KYC documents/records are not lost, destroyed or tampered with and that sufficient back up of electronic records is available at all times at a different place.
- (i) KRA shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards.
- (j) KRA shall cause an audit of its controls, systems, procedures and safeguards to be carried out periodically and take corrective actions for deficiencies, if any and report to Board.
- (k) KRA shall take all reasonable measures to prevent unauthorized access to its database and have audit of its systems and procedures at regular intervals as prescribed by the Board.
- (l) KRA shall have checks built in its system so that an intermediary can access the information only for the clients who approach him.
- (m) KRA shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the Board or the Central Government and for redressal of client's grievances. The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.
- (n) KRA shall send a letter to each client after receipt of the KYC documents from the intermediary,



confirming the client's details thereof.

- (o) KRA shall take adequate steps for redressal of the grievances of the clients within one month of the date of receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints from such investors.

Functions and obligations of an Intermediary

16. The Intermediary has the following functions and obligations -

- (a) The intermediary shall perform the initial KYC/due diligence of the client, shall upload the KYC information on the system of the KRA and send the original KYC documents to KRA forthwith from the date of account opening or within the time as prescribed by the board from time to time. However, in case of mutual funds, an RTA appointed by the mutual fund may also undertake the KYC of the client and send the original documents to the mutual fund or KRA.
- (b) When the client approaches another intermediary subsequently, it will be optional for the intermediary to verify and download the client's details from the system of KRA or to take fresh KYC as per existing system. However, upon receipt of information on change in KYC details and status of the clients by the intermediary or when it comes to the knowledge of the intermediary, at any stage, the intermediary shall be responsible for uploading the updated information on the system of KRA and for sending the physical documents to KRA, wherever necessary.
- (c) An intermediary shall not use the KYC data of a client obtained from the KRA for purposes other than it is meant for; nor shall it make any commercial gain by sharing the same with any third party including its affiliates or associates.
- (d) The intermediary shall have the ultimate responsibility for the KYC of its clients, by undertaking enhanced KYC measures commensurate with the risk profile of its clients.

Power of the Board to issue clarifications

17. In order to remove any difficulties in the application or interpretation of these regulations, the Board shall have the power to issue clarifications and guidelines in the form of notes or circulars which shall be binding on the KRA and the intermediaries.

CHAPTER IV INSPECTION of KRA

Board's right to inspect

18.(1) The Board may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, records, documents,

infrastructure, systems and procedures, of a KRA, for any purpose specified in sub-regulation (2).

- (2) The Board may inspect a KRA for the following purposes:
 - (a) that the books of accounts, records and KYC documents, as prescribed by the Board, are being maintained by the KRA;
 - (b) to look into the complaints received by the KRA from clients or any other person;
 - (c) to ascertain whether the provisions of the Act and these regulations are being complied with;
 - (d) to ascertain whether the systems, procedures and safeguards being followed by a KRA are adequate;
 - (e) to ensure that privacy of clients' data is maintained and the same is not shared with any other agency/associates in violation of these regulations;
 - (f) to ensure that the affairs of a KRA are being conducted in a manner which are in the interest of the investors and securities market.

Notice before inspection

19. (1) Before undertaking an inspection under regulation 19, the Board shall give not less than 10 days notice to the KRA, for that purpose.
- (2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may, by an order in writing direct that the inspection of the affairs of the KRA be taken up without such notice.
- (3) On being empowered by the Board, the inspecting authority shall undertake inspection and the KRA against whom an inspection is being carried out shall be bound to discharge his obligations as provided under regulation 20.

Obligations upon inspection by the Board

20. (1) It shall be the duty of the KRA whose affairs are being inspected, and of every director, officer and employee thereof, to produce to the inspecting authority such books, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to its activities as a KRA, within such reasonable period as the inspecting authority may require.
- (2) The KRA shall allow the inspecting authority to have reasonable access to the premises occupied by it or by any other person on their behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the KRA or any other person on their behalf and also provide copies of the documents or other materials which, in the opinion of the inspecting authority are



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relevant for the purposes of the inspection.

- (3) The inspecting authority, in the course of inspection, shall be entitled to examine or to record the statements of any director, officer or employee of the KRA.
- (4) It shall be the duty of every director, officer or employee of the KRA to give to the inspecting authority all assistance in connection with the inspection, which the inspecting authority may reasonably require.

Submission of Report to the Board

21. The inspecting authority shall, as soon as possible, on completion of the inspection, submit a report to the Board: Provided that if directed to do so by the Board the inspecting authority shall submit interim reports.

Communication of findings, etc.

- 22. (1) The Board shall, after consideration of the inspection report, communicate the findings of the inspecting authority to the KRA, seek its comments on the same and if required, give it an opportunity of being heard.
- (2) On receipt of the reply, if any, from the KRA, the Board may call upon him to take such measures, as the Board may deem fit, in the interest of the securities market and for due compliance with the provisions of the Act, and these regulations.

Action on inspection report

23. The Board shall after consideration of the inspection report take such action as provided under Chapter V of the Intermediaries Regulations and in terms of the Act.

Appointment of Auditor

- 24. (1) The Board shall have the power to appoint a qualified independent auditor to inspect, into the books of accounts, records, documents, infrastructures, systems and procedures of a KRA.
- (2) The Board shall be entitled to recover from the KRA such expenses including fees paid to the auditors, as may be incurred by it for the purposes of inspecting the books of accounts, records, documents, infrastructures, systems and procedures of the KRA.

CHAPTER V PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of default

- 25. A KRA shall be liable for action if it -
 - (a) contravenes any of the provisions of the Act, and these regulations;
 - (b) fails to furnish any information relating to its activity

- as a KRA as required under these regulations;
- (c) does not co-operate in any inspection or investigation or enquiry conducted by the Board;
- (d) fails to comply with any direction of the Board; (e) fails to pay the requisite fees to the Board;

and shall be dealt with in the manner provided under the Chapter V of the Intermediaries Regulations.

SCHEDULE I SECURITIES AND EXCHANGE BOARD OF INDIA {KYC (KNOW YOUR CLIENT) REGISTRATION AGENCY} REGULATIONS, 2011 [Regulation 3]

FORM A Application for grant of certificate of initial/permanent registration

INSTRUCTIONS FOR FILLING UP FORM -

- 1. Applicants must submit to the Board a completed application form together with appropriate supporting documents and applicable application fees. Supporting documents should be attested as true by a notary public.
- 2. This application form should be filled in accordance with the regulations.
- 3. Application for registration will be considered, only if it is complete in all respects.
- 4. All answers must be typed.
- 5. Information which needs to be supplied in more detail may be given on separate sheets which should be attached to the application form.
- 6. All signatures on the application must be original.
- 7. Every page of the form as well as every additional sheet must be initialed by the authorised signatory of the applicant.

Part I

1. General details of the applicant and its affiliates: Management Compliance

Matrix/Structure

- 1.1. Name of the applicant:
- 1.2. Address of the registered office, address for correspondence, telephone numbers, fax numbers, e-mail, website, name and telephone number of the contact person, address of branch office, if any:
- 1.3. Date and place of incorporation/establishment and registration number given by the Registrar of Companies or any other authority:
- 1.4. Legal status of the applicant and the law, under which it is incorporated, established or registered, if any including where the applicant is a listed entity, the details of the exchanges (whether in



- India or abroad) where the applicant is listed:
- 1.5. Brief description of the principal activity of the applicant: (along with copies of the constitutional documents of the applicant)
 - 1.6. Year of commencement of such activities (if applicable):
 - 1.7. Shareholding pattern of the applicant (please set out the names of all such persons who hold whether directly or indirectly more than 5% of the shareholding or voting rights in the company):

Name of the shareholder	No. of Shares	[% of shareholding] / [% of voting rights]

Where control over the applicant is exercised by a person by way of an agreement or arrangement, details and documentation in relation to such agreement or arrangement as the case may be.

- 1.8. Details of significant affiliates of the applicant operating in India or abroad and activities carried out by them including details as regards the legal status of each such affiliates and the law, under which it is incorporated, established or registered, if any.

Legal Status and details of registration	
Name	
Address	
Telephone no	
Fax No	
E mail address	

- 1.9 The Category to which the applicant belongs in terms of Regulation 6:
- 1.10 Networth of the applicant for the past three financial years (enclose copy of balance sheet and a copy of the latest networth certified by a practicing chartered accountant)
- 1.11 Whether any disciplinary /penal action has been taken by SEBI/any other statutory authority in the last five years against the applicant or its parent company: If so, furnish details including status of the proceedings and whether the penalty has been paid

FORM B
SECURITIES AND EXCHANGE BOARD
OF INDIA
{KYC (KNOW YOUR CLIENT) REGISTRATION
AGENCY} REGULATIONS, 2011
 [Regulations 7 and 8]

Certificate of Registration

- i. In exercise of the powers conferred by sub-section (1A) of section 12 of the Securities and Exchange Board of India

Act, 1992, read with the regulations made thereunder the Board hereby grants an initial/permanent certificate of registration to as a KYC Registration Agency, subject to the conditions specified in the Act and in the regulations made thereunder.

- ii. Registration Number for the KYC Registration Agency is IN/...../...../...../.....
- iii. This certificate of registration shall be valid from..... to...../ for permanent, unless suspended or cancelled by the Board.

Date:
Place: Mumbai

By Order
For and on behalf of
Securities and Exchange Board of India
Authorised Signatory

SCHEDULE II
PAYMENT OF FEES

SECURITIES AND EXCHANGE BOARD OF INDIA (KYC
REGISTRATION AGENCY) REGULATIONS, 2011
 [Regulations 7 and 8]

PART A
APPLICATION FEES, REGISTRATION FEES AND
ANNUAL FEES

S.N		Amount in Rupees
1	Application fees (non-refundable) payable by KRA for initial and permanent registration	50000
2	Initial and permanent Registration fees payable by KRA	100000
3	Annual fees payable by KRA	100000

PART B
Manner of Payment of Application, Registration and
Annual Fees

Fees to be paid by KRA

Manner of payment - A demand draft or bankers cheque payable to the "Securities and Exchange Board of India" at Mumbai or at the respective regional office.

The application fee referred to in Part A shall be paid at the time of filing application. The registration fee referred to in Part A shall be paid by the KRA within fifteen days from the date of receipt of intimation from the Board. The Annual fee shall be paid within 30 days of the end of the financial year.



From the Government

SCHEDULE - III

**CODE OF CONDUCT
SECURITIES AND EXCHANGE BOARD OF INDIA
{KYC (KNOW YOUR CLIENT) REGISTRATION
AGENCY} REGULATIONS, 2011**
[Regulation 10]

1. A KRA shall make all efforts to protect the interest of its clients.
2. A KRA shall maintain high standards of integrity, dignity and fairness in the conduct of its business.
3. A KRA shall fulfill its obligations in a prompt, ethical and professional manner.
4. A KRA shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.
5. A KRA shall ensure that any change in registration status/any penal action taken by Board or any material change in financial position which may adversely affect the interests of clients is promptly displayed on its website.
6. A KRA shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about the clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.
7. A KRA shall not indulge in any unfair competition.
8. A KRA shall display on its website adequate and appropriate information about its business, including contact details of persons and services available to clients.
9. A KRA shall ensure that grievances of clients are redressed in a timely and appropriate manner;
10. A KRA shall make reasonable efforts to avoid misrepresentation and ensure that the information provided to the clients and intermediaries is not misleading.
11. A KRA shall abide by the provisions of the Act and the rules, regulations issued by the Government and the Board, from time to time, as may be applicable.
12. A KRA shall not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board.
13. A KRA shall ensure that the Board is promptly informed about any action, legal proceeding, etc., initiated against it in respect of any material breach or non-compliance by it, of any law, rules, regulations and directions of the Board or of any other regulatory body.
14. (a) A KRA or any of his employees shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media.
(b) A KRA shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of or retain any securities.
15. A KRA shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act, in the capacity so employed or appointed including having relevant professional training or experience.
16. A KRA shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
17. A KRA shall be responsible for the acts or omissions of its employees in respect to the conduct of its business.
18. A KRA shall provide adequate freedom and powers to its compliance officer for the effective discharge of its duties.
19. A KRA shall ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis.
20. A KRA shall ensure that good corporate policies and corporate governance are in place.
21. A KRA should have adequately trained staff and arrangements to render fair, prompt and competence services to its clients.
22. A KRA shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in the carrying out of their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests, etc.
23. A KRA shall not be party to- (a) creation of false market; (b) price rigging or manipulation; (c) passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary.
24. A KRA shall maintain proper inward and outward system for all types of mail received and dispatched in all forms.
25. A KRA shall follow maker-checker concept in its activities to ensure accuracy of data.
26. A KRA shall not indulge in manipulative, fraudulent practices in the process of identification, verification and updation of a Client's KYC information with a view to distort market equilibrium or making personal gains.

U. K. Sinha

Chairman

Securities and Exchange Board of India



21 Annual System Audit

Issued by the Securities and Exchange Board of India vide CIR/MRD/DMS/13/2011.
Dated 29.11. 2011]

Keeping in view the rapid technological developments in the Securities Markets should not overshadow the risks that these innovations pose to the efficiency and integrity of markets, SEBI vide circular no. MIRSD/DPS-III/ Cir-22 /2008 dated July 23, 2008, had mandated that exchanges shall conduct an annual system audit by a reputed independent auditor. Similar framework was also prescribed for depositories vide letter no. MIRSD/DPS-III/132833/2008 dated July 23, 2008.

Based on the discussions with stock exchanges and depositories, and recommendations of Technical Advisory Committee (TAC), the present system audit framework has been reviewed encompassing the System Audit Process, Auditor Selection Norms, Terms of Reference (TOR), and Audit Report Guidelines.

You are advised to conduct an annual System Audit as per the enclosed System Audit Framework. The Systems Audit Reports and Compliance Status should be placed before the Governing Board of the Stock Exchanges / Depositories and the system audit report along with comments of Stock Exchanges / Depositories should be communicated to SEBI. Further, along with the audit report, Stock Exchanges / Depositories are advised to submit a declaration from the MD / CEO certifying the security and integrity of their IT Systems.

In case the exchanges / depositories have commenced their Annual System Audit, they may follow existing annual system audit framework of SEBI Circular issued in 2008. Further, the exchanges / depositories who are yet to commence Annual System Audit would carry out their Annual System Audit as per the framework given in this circular.

This circular supercedes the abovementioned circular no. MIRSD/DPS-III/ Cir-22 /2008 dated July 23, 2008 and is being issued in exercise of the powers conferred by Section 11(1) of Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Manoj Kumar
General Manager

SYSTEM AUDIT FRAMEWORK

Audit Process

Following steps would be repeated annually to ensure that the process is comprehensive & effective:

1. The Audit shall be conducted according to the Norms, Terms of References (TOR) and Guidelines issued by SEBI.
2. Stock Exchange / Depository (Auditee) may negotiate and

the board of the Stock Exchange / Depository shall appoint the Auditors based on the prescribed Auditor Selection Norms and TOR. The Auditors can perform a maximum of 3 successive audits. The proposal from Auditor must be submitted to SEBI for records.

3. Audit schedule shall be submitted to SEBI at-least 2 months in advance, along with scope of current audit & previous audit.
4. The scope of the Audit may be extended by SEBI, considering the changes which have taken place during last year or post previous audit report
5. Audit has to be conducted and the Audit report be submitted to the Auditee. The report should have specific compliance / non-compliance issues, observations for minor deviations as well as qualitative comments for scope for improvement. The report should also take previous audit reports in consideration and cover any open items therein.
6. The Auditee management provides their comment about the Non-Conformities (NCs) and observations. For each NC, specific time-bound (within 3 months) corrective action must be taken and reported to SEBI. The auditor should indicate if a follow-on audit is required to review the status of NCs. The report along with Management Comments shall be submitted to SEBI, within 1 month of completion of the audit.
7. Follow-on audit, if any, has to be scheduled within 3 months of the Audit to ensure that the corrective actions have been taken.
8. If follow-on audit is not required, the Auditee management has to submit a report of actions taken and evidence of corrections to the Auditors & SEBI within 3 months. This report should include updated Issue-Log to indicate the corrective actions taken, verified by the auditors.

Auditor Selection Norms

1. Auditor must have minimum 3 years of experience in IT audit of Securities Industry participants e.g. stock exchanges, clearing houses, depositories etc. The audit experience should have covered all the Major Areas mentioned under SEBI's Audit Terms of Reference (TOR).
2. The Auditor must have experience in / direct access to experienced resources in the areas covered under TOR. It is recommended that resources employed shall have relevant industry recognized certifications e.g. CISA (Certified Information Systems Auditor) from ISACA, CISM (Certified Information Securities Manager) from ISACA, GSNA (GIAC Systems and Network Auditor), CISSP (Certified Information Systems Security Professional) from International Information Systems Security Certification Consortium, commonly known as (ISC).
3. The Auditor should have IT audit/governance frameworks



From the Government

and processes conforming to industry leading practices like CobiT.

4. The Auditor must not have any conflict of interest in conducting fair, objective and independent audit of the Exchange / Depository. It should not have been engaged over the last three years in any consulting engagement with any departments / units of the entity being audited.
5. The Auditor may not have any cases pending against its previous auditees, which fall under SEBI's jurisdiction, which point to its incompetence and/or unsuitability to perform the audit task.

Terms of Reference (ToR)

1. General Controls for Data Center Facilities - It must include
 - ◆ Application access - Segregation of duties, Database & Application access etc.
 - ◆ Maintenance access - Vendor engineers.
 - ◆ Physical access - Permissions, logging, exception reporting & alerts.
 - ◆ Environmental controls - Fire protection, AC monitoring etc.
 - ◆ Fault resolution mechanism.
 - ◆ Folder sharing and Back-up controls - Safeguard critical information on local desktops
 - ◆ Incidences of violations in last year & corrective actions taken
2. Software Change Control - It must include
 - ◆ User awareness
 - ◆ Processing of new feature request
 - ◆ Fault reporting / tracking mechanism & process for resolutions
 - ◆ Testing of New releases / Bug-fixes - Testing process (automation level)
 - ◆ Version Control - History, Change Management process etc.
 - ◆ Development / Test/ Production environment - Segregation
 - ◆ New release in Production - Promotion, Release note approvals
 - ◆ Production issues / disruptions reported during last year & corrective actions taken
3. Data communication / Network controls - It must include
 - ◆ Network Administration - Redundancy, Monitoring, breakdown resolution etc.
 - ◆ WAN Management - Connectivity provisions for business continuity.
 - ◆ Encryption - Router based as well as during transmission
 - ◆ Connection Permissions - Restriction on need to have basis
 - ◆ Fallback mechanism - Dial-up connections controls etc.
4. Security Controls - General office infrastructure - It must include
 - ◆ Hardware based Signing Process
 - ◆ Incidences of access violations in last year & corrective actions taken
4. Security Controls - General office infrastructure - It must include
 - ◆ Security Policy & quality of implementation of the same
 - ◆ LAN security control and monitoring
 - ◆ OS & Database Security controls & monitoring
 - ◆ Internet connection controls - Firewall protection, Intrusion Detection System, Access rights and privileges.
 - ◆ Virus protection - Controls to mitigate the Virus attacks / Outbreaks.
 - ◆ Secured (digitally signed) e-mail with other entities like SEBI, other partners
 - ◆ Email Archival Implementation
 - ◆ Incidences of security violations in last year & corrective actions taken
5. Access policy and controls
6. Electronic Document controls
7. General Access controls
8. Performance audit - It must include
 - ◆ Comparison of changes in transaction volumes since previous audit
 - ◆ Review of systems (hardware, software, network) performance over period
 - ◆ Review of the current volumes against the last Performance Test performed
9. Business Continuity / Disaster Recovery Facilities - It must include
 - ◆ BCP manual, including Business Impact Analysis, Risk Assessment and DR Process
 - ◆ Implementation of policies
 - ◆ Back-up procedures and recovery mechanism using back-ups.
 - ◆ Storage of Back-up (Remote site, DRS etc.)
 - ◆ Redundancy - Equipment, Network, Site etc.
 - ◆ DRS installation and Drills - Management statement on targeted resumption capability (in terms of time required & extent of loss of data)
 - ◆ Evidence of achieving the set targets during the DRS drills in event of various disaster scenarios.
 - ◆ Debrief / review of any actual event when the DR/BCP was invoked during the year
10. IT Support & IT Asset Management - It must include
 - ◆ Utilization monitoring - including report of prior year utilization
 - ◆ Capacity planning - including projection of business volumes
 - ◆ IT (S/W, H/W & N/W) Assets, Licenses & maintenance contracts
 - ◆ Insurance
 - ◆ Disposal - Equipment, Media, etc.
11. Entity Specific Software
12. Any other Item



- ◆ Electronic Waste Disposal
- ◆ Based upon previous Audit report as well as any other specific information given by SEBI

Audit Report Guidelines

The Audit report should have explicit coverage of each Major Area mentioned in the TOR, indicating any Nonconformity (NCs) or Observations (or lack of it).

For each section - auditors should also provide qualitative input about ways to improve the process, based upon the best practices observed.

The report should also include tabulated data to show NCs / Observations for each Major Area in TOR.

Fully detailed report should be submitted, along with an Executive Summary in tabulated form including following information:

Issue Log Column Heading	Description	Responsibility
Major Area	Major area/relevant clause in Terms of Reference against which compliance is being audited	Auditor
Description of Finding/ Observation	Describe the findings in sufficient detail, referencing any accompanying evidence (e.g. procedure manual, interview notes, reports etc.)	Auditor
Reference	Reference to the section in detailed report - where full background information about the findings are available	Auditor
Process/ Unit	Process or unit where the audit is conducted and the finding pertains to	Auditor
Category of Findings	Major/Minor Nonconformity, Observation, Suggestion etc.	Auditor
Audited By	Which Auditor covered the findings	Auditor
Root Cause Analysis	A detailed analysis on the cause of the nonconformity	Auditee
Remediation	The action (to be) taken to correct the nonconformity	Auditee
Target Completion Date for Remedial Action	The date by which remedial action must be/will be completed	Auditor/ Auditee
Status	Status of finding on reporting date (open/close)	Auditor/ Auditee
Verified By	Auditing personnel (upon verification that finding can be closed)	Auditor
Closing Date	Date when finding is verified and can be closed	Auditor

The Executive Summary should also include an overall comment from the Auditors to indicate if a follow-on audit is required and the time lines of respective corrective action for non conformities.

Further, along with the audit report, the Stock Exchange / Depository shall also submit a declaration from the MD / CEO certifying the integrity and security of IT Systems.

22 Exchange Traded Interest Rate Futures on 2-year and 5-year Notional Coupon Bearing Government of India Security*

Issued by the Securities And Exchange Board Of India vide CIR/DNPD/ 8/2011. Dated 30.12. 2011]

Banking Laws

23 Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999

Issued by the Reserve Bank Of India vide A.P. (DIR Series) Circular No.57. Dated 13.12. 2011]

1. Attention of all the Authorised Dealer Category - I (AD Category - I) banks and their constituents is invited to A.P. (DIR Series) Circular no. 56 dated June 28, 2010 and the Foreign Exchange (Compounding Proceedings) Rules, 2000 notified by the Government of India vide G.S.R.No.383(E) dated 3rd May 2000, as amended from time to time.
2. As a measure of customer service and in order to facilitate the operational convenience, it has been decided to delegate the powers to the Regional Offices of the Reserve Bank of India mentioned below to compound the

* Not reproduced here. This circular is available on SEBI website at www.sebi.gov.in, under the category "Derivatives- Circulars".



From the Government

contraventions of FEMA involving (i) delay in reporting of inward remittance, (ii) delay in filing of form FC-GPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (viz. paragraphs 9(1)(A), 9(1)(B) and 8, respectively, of the Schedule I 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 3rd May 2000 and as amended from time to time:

a) Paragraphs 9 (1) (A) and 9 (1) (B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000 -

Bhopal, Bhubaneshwar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji for amount of contravention below Rupees One hundred lakh only (Rs. 1,00,00,000 /-).

b) Paragraphs 9 (1) (A), 9 (1) (B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000 -

Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi for amount of contravention without any limit.

The Compounding Authorities attached to these Regional Offices of the Foreign Exchange Department have been authorised to compound such cases at their level(s) within the financial powers as per the Foreign Exchange (Compounding Proceedings) Rules, 2000. Accordingly, all applications for compounding whether received on the advice of the Regional Office concerned or suo-moto, relating to the contraventions mentioned at (a) and (b) above and up to the amount of contravention stated therein, may be submitted by the companies falling under the jurisdiction of the aforesaid Regional Offices directly to the Regional Office concerned, together with the prescribed fee and other relevant documents. All other applications may be submitted to the Compounding Authority, Cell for Effective implementation of FEMA (CEFA), Foreign Exchange Department, 5th floor, Amar Building, Sir P.M.Road, Fort, Mumbai-400001, as hitherto. The prescribed fee of Rs. 5000/- (Rupees Five thousand only) may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office where the application is being submitted and at Mumbai if the application is submitted at CEFA, Mumbai.

3. In terms of sub-rule (1) to Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000, the Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. It has been observed that there is no uniformity in submitting the required details with supporting documents along with the compounding

application. This results in avoidable correspondence between Reserve Bank and the applicant. It has, therefore been decided that along with the application in the prescribed format, the applicant may also furnish the details as per the enclosed Annexes relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the Memorandum of Association and latest audited balance sheet while applying for compounding of contraventions under FEMA, 1999.

4. Authorised Dealers 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).

(Dr. Sujatha Elizabeth Prasad)

Chief General Manager

ANNEX- FDI

Details to be furnished along with application for compounding of contravention relating to Foreign Direct Investment in India

- Name of the applicant
- Date of incorporation
- Nature of activities undertaken
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date

Table A

Sl. No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Reported to RBI on*	Delay if any
	Total				

* date of reporting to RBI and not AD

Table B

Name of Investor	Date of allotment of shares	Number of shares allotted	Amount for which shares allotted	Date of reporting to RBI*	Delay if any
	Total				



Table C

In case there is excess share application money

S.I No	Name of Remitter	Total Amount (INR)	Date of Receipt	Excess share application money	Date of refund of share application money	Amount in forex	RBI approval letter and date
		Total					

Table D

Authorised Capital

Sl. No.	Date	Authorised Capital	With Effect from	Date of Board meeting	Date of filing with ROC

A= B+C

Please give supporting documents

Table A- Copies of FIRC with date stamp of receipt at RBI

Table B- Copies of FCGPR with date stamp of receipt at RBI

Table C - letter seeking refund/ allotment of shares- approval letter from RBI A2 form

- ◆ Copies of Balance Sheet during the period of receipt of share application money and allotment of shares
- ◆ Nature of contravention and reasons for the contravention

Annex- ECB

Details to be furnished along with application for compounding of contravention relating to External Commercial Borrowing

- ◆ Name of the applicant
- ◆ Date of incorporation
- ◆ Nature of activities undertaken
- ◆ Brief particulars about the foreign lender
- ◆ Is the applicant an eligible borrower?
- ◆ Is the lender eligible lender?
- ◆ Is the lender an equity holder?
- ◆ What is the level of his holding at the time of loan agreement?

Details of ECB

- ◆ Date of Loan agreement
- ◆ Amount in Foreign Currency and Indian Rupee
- ◆ Rate of interest
- ◆ Period of loan
- ◆ Repayment particulars

	Date of draw down	Amount in Foreign Currency	Amount in INR
Details of draw down			

- ◆ Details of LRN Number- application and receipt
- ◆ Details of ECB 2 returns submitted; Period of return: Date of submission
- ◆ Details of Utilization of ECB in Foreign Currency and Indian Rupee
- ◆ Nature of contravention and reasons for the contravention
- ◆ All supporting documents may be submitted

ANNEX- ODI

Details to be furnished along with application for compounding of contravention relating to Overseas Investment

- ◆ Name of the applicant
- ◆ Date of incorporation
- ◆ Nature of activities undertaken
- ◆ Name of Overseas entity
- ◆ Date of incorporation of overseas entity
- ◆ Nature of activities undertaken by overseas entity
- ◆ Nature of entity- WOS/JV
- ◆ Details of remittance sent - Date of remittance; Amount in FCY and in INR
- ◆ Details of other financial Commitment
- ◆ Details of UIN applied and received
- ◆ Date of receipt of share certificate
- ◆ Approval of other regulators if required
- ◆ Details of APRs submitted: For the period ended; date of submission
- ◆ Nature of contravention and reasons for the contravention
- ◆ All supporting documents may be submitted

ANNEX- BRANCH OFFICE / LIAISON OFFICE

Details to be furnished along with application for compounding of contravention relating to Branch/Liaison Office in India

- ◆ Name of the applicant
- ◆ Date of incorporation
- ◆ Date of approval for opening of Liaison Office/ Branch Office
- ◆ Validity period of the approval
- ◆ Nature of activities undertaken
- ◆ income and expenditure of the LO/BO
- ◆ Dates of submission of Annual activity Certificates
- ◆ Nature of contravention and reasons for the contravention
- ◆ All supporting documents may be submitted.



Institute News



MEMBERS ADMITTED

Sl. No.	Name	Membership No.	Region
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FELLOWS*

1	Ms. Preeti Wadhawan	FCS - 6646	NIRC
2	Sh. Vivek V Divekar	FCS - 6647	WIRC
3	Ms. Chetna Dwivedi	FCS - 6648	NIRC
4	Sh. Sandip Kumar Jejani	FCS - 6649	NIRC
5	Sh. N. Sreeram	FCS - 6650	SIRC
6	Sh. M R Bothra	FCS - 6651	NIRC
7	Sh. Manoj Kumar Aggarwal	FCS - 6652	NIRC
8	Sh. R Subbiah	FCS - 6653	SIRC
9	Sh. Pradeep Kumar Debnath	FCS - 6654	NIRC
10	Sh. Lalit Kumar Mohanty	FCS - 6655	EIRC
11	Sh Vipul Seth	FCS - 6656	NIRC
12	Sh. C R Rengaswamy	FCS - 6657	SIRC
13	Sh. Alok Narayan Pandey	FCS - 6658	NIRC
14	Sh. Anand Kumar Sahoo	FCS - 6659	NIRC
15	Ms. Rukmini Das Gupta	FCS - 6660	NIRC

ASSOCIATES*

1	Ms. Shilpi Gupta	ACS -29103	EIRC
2	Ms. Dishaa Jain	ACS -29104	WIRC
3	Sh. Ashish Kumar Dhandhanya	ACS -29105	EIRC
4	Ms. Vibhuti Harsh Purshottam	ACS - 29106	WIRC
5	Mr. Mukund Dnyaneshwar Kharpude	ACS - 29107	WIRC
6	Ms. Avani Kirtikumar Gandhi	ACS - 29108	WIRC
7	Ms. Aditi Virendra Shah	ACS - 29109	WIRC
8	Ms. Bhawana Sharma	ACS - 29110	NIRC
9	Mr. Madhur Jain	ACS - 29111	NIRC
10	Mr. Rajeeb Choudhury	ACS - 29112	EIRC
11	Ms. Vipal Bharat Kumar Solanki	ACS - 29113	WIRC
12	Ms. Minakshi Bajoria	ACS - 29114	EIRC
13	Mr. Premjith S	ACS - 29115	SIRC
14	Mr. Kiran Kumar Bodla	ACS - 29116	SIRC
15	Sh. Ganesh Hanmant Ithape	ACS - 29117	WIRC
16	Mr. Vijay Kumar Gupta	ACS - 29118	NIRC
17	Mr. Damodar Prasad Dhuper	ACS - 29119	NIRC
18	Mr. Ramakrishnan Santosh R	ACS - 29120	SIRC
19	Ms. Daxa Rasik Suhagiya	ACS - 29121	WIRC
20	Mr. Rajesh V	ACS - 29122	SIRC
21	Ms. Garima Agarwal	ACS - 29123	NIRC
22	Ms. Abha Mehta	ACS - 29124	WIRC
23	Ms. Ankita Kishor Mehta	ACS - 29125	WIRC
24	Mr. Naveen Shree Pandey	ACS - 29126	NIRC
25	Mr. Parin Sanjay Shah	ACS - 29127	WIRC
26	Ms. Sipra Paul	ACS - 29128	SIRC
27	Mr. V Subramani	ACS - 29129	SIRC
28	Ms. Navneet Kaur	ACS - 29130	NIRC
29	Ms. Prabhleen Kaur	ACS - 29131	NIRC
30	Ms. Namrata Satish Dandekar	ACS - 29132	WIRC
31	Mr. Vijay Harikishanji Baheti	ACS - 29133	WIRC
32	Mr. Deepak Avadhanarayan Yadav	ACS - 29134	WIRC
33	Ms. Harvinder Kaur	ACS - 29135	NIRC
34	Ms. Swasti Tripathi	ACS - 29136	NIRC
35	Mrs. Vidhi Bhavik Badiani	ACS - 29137	WIRC
36	Ms. Geetika Keswani	ACS - 29138	NIRC
37	Ms. Sruti Gupta	ACS - 29139	EIRC
38	Mr. Deepak Pratap Singh	ACS - 29140	WIRC
39	Ms. Ritika Shraff	ACS - 29141	EIRC
40	Ms. Hiral Bharat Patel	ACS - 29142	WIRC
41	Mr. Srikanth Godavarthi	ACS - 29143	SIRC
42	Mr. Narendar Singh	ACS - 29144	EIRC
43	Mr. Sharad Pathak	ACS - 29145	NIRC
44	Ms. Vidhi Binesh Shah	ACS - 29146	WIRC
45	Mr. Raj Kiran Seetharamu Badvanahalli	ACS - 29147	SIRC
46	Ms. Anandham M	ACS - 29148	SIRC
47	Mr. Jitesh Bansal	ACS - 29149	EIRC
48	Mr. Prasad Gopal Jahagirdar	ACS - 29150	WIRC
49	Ms. Kajal Jayant Mehta	ACS - 29151	WIRC

* 21st November, 30th November and 12th December, 2011

* 21st November, 30th November and 12th December, 2011



50	Ms. Komal Narendra Singhi	ACS - 29152	WIRC
51	Ms. Monica Sarda	ACS - 29153	SIRC
52	Ms. Sneha Singhania	ACS - 29154	EIRC
53	Mr. Sandeep Dargar	ACS - 29155	EIRC
54	Mr. S Ganesh	ACS - 29156	SIRC
55	Ms. Syamali Atchyuta	ACS - 29157	SIRC
56	Mr. Raghu Jhunjunwala	ACS - 29158	EIRC
57	Mr. Ravindra Ashok Mishra	ACS - 29159	WIRC
58	Ms. Ruchika Rushik Shah	ACS - 29160	WIRC
59	Mrs. Neha Tulsyan	ACS - 29161	EIRC
60	Mr. Maulin Pankaj Salvi	ACS - 29162	WIRC
61	Mr. Manish Manwani	ACS - 29163	WIRC
62	Ms. Prerna Mundada	ACS - 29164	SIRC
63	Mr. Mukesh Thakker	ACS - 29165	WIRC
64	Ms. Rubavathy Christopher	ACS - 29166	SIRC
65	Ms. Neha	ACS - 29167	NIRC
66	Mr. Manish Madhukar Rajvaidya	ACS - 29168	WIRC
67	Mr. Gnanasambandam B	ACS - 29169	SIRC
68	Mr. Amol Bhalchandra Godbole	ACS - 29170	WIRC
69	Ms. Reena Sharma	ACS - 29171	NIRC
70	Ms. Kumud Harshal Waradkar	ACS - 29172	WIRC
71	Ms. Tuhina Dey	ACS - 29173	NIRC
72	Ms. Bindhu Kilari	ACS - 29174	SIRC
73	Mr. Sudhir Bhimashankar Hanchate	ACS - 29175	WIRC
74	Ms. Nikita Jain	ACS - 29176	NIRC
75	Ms. Dhara Anil Solanki	ACS - 29177	WIRC
76	Ms. Satabdi Sen Gupta	ACS - 29178	EIRC
77	Ms. Anshul Sharma	ACS - 29179	NIRC
78	Ms. Madhu Girish Duggal	ACS - 29180	WIRC
79	Ms. Kamini Gupta	ACS - 29181	NIRC
80	Mr. Jasbir	ACS - 29182	NIRC
81	Ms. Preeti Puri	ACS - 29183	NIRC
82	Ms. Pragya Singh	ACS - 29184	NIRC
83	Ms. Ishleen Kaur Juneja	ACS - 29185	NIRC
84	Ms. Jaya Vinay Singh	ACS - 29186	WIRC
85	Ms. Nupur Tulsian	ACS - 29187	NIRC
86	Ms. Preety Verma	ACS - 29188	EIRC
87	Mr. Sumit Kumar Srivastava	ACS - 29189	NIRC
88	Ms. Paridhi Bhargava	ACS - 29190	SIRC
89	Ms. Sonia Bajpai	ACS - 29191	NIRC
90	Ms. Sneha Suresh Dalvi	ACS - 29192	WIRC
91	Ms. Nisha Radhakishan Nawani	ACS - 29193	WIRC
92	Ms. Khushboo Bakul Gopani	ACS - 29194	WIRC
93	Mr. Rajib Kumar Das	ACS - 29195	EIRC
94	Ms. Pallavi Bhimshen Kaveri	ACS - 29196	SIRC
95	Mrs. Shweta Mishra	ACS - 29197	NIRC
96	Ms. Dhara Rameshbhai Patel	ACS - 29198	WIRC
97	Ms. Nikita Singh	ACS - 29199	NIRC
98	Sh. Ketan Madhukar Godkhindi	ACS - 29200	WIRC
99	Ms. Chaitra K	ACS - 29201	SIRC
100	Ms. Megha Kapoor	ACS - 29202	EIRC
101	Mr. Deepesh Shamji Bhanushali	ACS - 29203	WIRC
102	Ms. Uma Ramaswamy	ACS - 29204	SIRC
103	Ms. Vaishali Narendra Rathod	ACS - 29205	WIRC
104	Mr. Ankit Sharma	ACS - 29206	NIRC
105	Mr. Shekhar Chopra	ACS - 29207	NIRC
106	Mr. Hrishikesh Dutta Baruah	ACS - 29208	EIRC
107	Ms. Preeti Gupta	ACS - 29209	NIRC
108	Ms. Alfa Mustakhussain Baldiwala	ACS - 29210	WIRC
109	Mr. Chirag Agarwal	ACS - 29211	NIRC
110	Ms. Hetal Darji	ACS - 29212	WIRC
111	Mr. Sanket Tarun Bhide	ACS - 29213	WIRC
112	Ms. Jasbinder Kaur Neela	ACS - 29214	WIRC
113	Ms. Jyoti Ramkishan Prajapati	ACS - 29215	WIRC
114	Ms. Tripti Agrawal	ACS - 29216	NIRC
115	Mrs. Swati Bharat Dongare	ACS - 29217	WIRC
116	Mr. Arvind Kumar Vagadoda	ACS - 29218	WIRC
117	Ms. Kanika Gupta	ACS - 29219	NIRC
118	Mr. Saibal Chattopadhyay	ACS - 29220	EIRC
119	Ms. Ekta Singh	ACS - 29221	NIRC
120	Mr. Udit Agarwal	ACS - 29222	EIRC
121	Sh. Arun Goyal	ACS - 29223	NIRC
122	Mr. Anant Prakash	ACS - 29224	NIRC
123	Ms. Rakhi Aggarwal	ACS - 29225	NIRC
124	Ms. Nazia Rehman	ACS - 29226	NIRC
125	Ms. Anusha Soni	ACS - 29227	EIRC
126	Mr. Lavanya Sharma	ACS - 29228	NIRC
127	Ms. Adeeba Maniar	ACS - 29229	WIRC
128	Mr. Pankaj Kumar Choubey	ACS - 29230	EIRC
129	Ms. Pallvi Jindal	ACS - 29231	NIRC
130	Ms. Pooja Shyamlal Dhirwani	ACS - 29232	WIRC
131	Mr. Nilesh Babu Rao Shirke	ACS - 29233	WIRC
132	Ms. Sharon Reshma Pereira	ACS - 29234	WIRC
133	Ms. Pankhuri Mathur	ACS - 29235	NIRC
134	Ms. Neetu Aggarwal	ACS - 29236	NIRC
135	Ms. Pinky Dinesh Shethia	ACS - 29237	WIRC
136	Mr. Ajay Kumar Shukla	ACS - 29238	NIRC
137	Mr. Sushanta Pradhan	ACS - 29239	EIRC
138	Ms. Rekha Soni	ACS - 29240	WIRC
139	Ms. Sridevi Bhattacharya	ACS - 29241	EIRC
140	Mr. Bhupendra Kumar Jain	ACS - 29242	WIRC
141	Mr. Gurvinder Singh	ACS - 29243	NIRC
142	Mr. Vishal Rameshbhai Gokani	ACS - 29244	WIRC



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145	Mr. Sumit Gupta	ACS - 29247	NIRC
146	Ms. Charumathi V	ACS - 29248	SIRC
147	Sh. Haider Ali	ACS - 29249	NIRC
148	Ms. Kiran Geryani	ACS - 29250	NIRC
149	Mr. Pramod Ramsurat Yadav	ACS - 29251	WIRC
150	Ms. Padmapriya S	ACS - 29252	SIRC
151	Sh. Arjun Sunil Makhecha	ACS - 29253	SIRC
152	Ms. Mitra Kumari Gulgulia	ACS - 29254	NIRC
153	Ms. Simul Narendra Bagrecha	ACS - 29255	WIRC
154	Ms. Ritha Bang	ACS - 29256	EIRC
155	Mr. K V Sekar	ACS - 29257	SIRC
156	Ms. Amita Chandrakant	ACS - 29258	WIRC
157	Sh. Sagar Pandya	ACS - 29259	WIRC
158	Sh. Logitha Sekar	ACS - 29260	SIRC
159	Ms. Deepika Kumari	ACS - 29261	NIRC
160	Mr. Parmar Yogesh Chandulal	ACS - 29262	WIRC
161	Mr. Subhash Bharti	ACS - 29263	EIRC
162	Mr. Manmay Kiran Kalyankar	ACS - 29264	WIRC
163	Mr. Nikhil Nandakumar Chitale	ACS - 29265	WIRC
164	Ms. Tapasya Gupta	ACS - 29266	NIRC
165	Ms. Neha Bajoria	ACS - 29267	NIRC
166	Sh. Harpreet Singh Ajmani	ACS - 29268	WIRC
167	Mr. Umesh Prasad Srivastava	ACS - 29269	NIRC
168	Ms. Amrita Mistry	ACS - 29270	WIRC
169	Mr. Peeyush Agarwal	ACS - 29271	NIRC
170	Ms. Neha	ACS - 29272	NIRC
171	Mr. Nihit Srivastav	ACS - 29273	NIRC
172	Mr. Mahadevan P	ACS - 29274	SIRC
173	Mr. Satish Krishnan B	ACS - 29275	SIRC
174	Mr. Jai Kundwani	ACS - 29276	NIRC
175	Mrs. Dipali Praful Bhanushali	ACS - 29277	WIRC
176	Ms. Leena Nair	ACS - 29278	WIRC
177	Ms. Prachi Dinkar Neralkar	ACS - 29279	WIRC
178	Ms. Mansi Navinchandra Dani	ACS - 29280	WIRC
179	Ms. Yuti Nagarkar	ACS - 29281	WIRC
180	Mr. Santosh H Shah	ACS - 29282	SIRC
181	Ms. Sonal Sureshchandra Chechani	ACS - 29283	WIRC
182	Sh. Karan Bansal	ACS - 29284	EIRC
183	Mr. Abhishek Kumar Lakhotia	ACS - 29285	WIRC
184	Ms. Yogesh Sharma	ACS - 29286	NIRC
185	Ms. Anju Agarwal	ACS - 29287	SIRC
186	Ms. Anchal Agarwal	ACS - 29288	EIRC
187	Ms. Santwana Todi	ACS - 29289	NIRC
188	Sh. Aniruddha Ashok Dekhane	ACS - 29290	WIRC
189	Sh. Gaurav Rajiv Deshmukh	ACS - 29291	WIRC
190	Ms. Shrima Gaurangbhai Dave	ACS - 29292	WIRC
191	Mr. Vilas Ishwarappa Kuradikeri	ACS - 29293	SIRC
192	Mr. B Umesh	ACS - 29294	SIRC
193	Mr. Clement Dante	ACS - 29295	SIRC



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1.	Anuj Kumar Jain	ACS-21481	NIRC
2.	V K Nagpal	FCS-1318	NIRC
3.	Rakesh Dhingra	FCS-2810	NIRC
4.	Basanth Kumar Thakur	ACS-6977	NIRC
5.	Jagannath Gupta	ACS-4884	NIRC
6.	A K Sharma	ACS-9127	WIRC
7.	Ms. Anjali Jaiswal	ACS-18073	NIRC
8.	Ajay Sehgal	ACS-20038	NIRC
9.	Pankaj	ACS-24561	NIRC
10.	Arun Kumar Agarwal	FCS-3985	NIRC
11.	Bipin Agarwal	FCS-4249	NIRC
12.	Ms. Kanika Sharma	ACS-13759	NIRC
13.	Pradeep Kumar Panda	FCS-3543	NIRC
14.	Girish Kumar Buttan	FCS-4257	NIRC
15.	Yash Pal	ACS-17493	NIRC
16.	Ms. Neha Gupta	ACS-25123	NIRC
17.	Dushyant Ajit Gadgil	ACS-2186	WIRC
18.	Anil Krishnaji Kale	ACS-10272	WIRC
19.	Himanshu Agarwal	ACS-10954	NIRC
20.	Alok Malhotra	ACS-11127	NIRC
21.	Probal Kumar Roy	ACS-11676	EIRC
22.	Ranajit Kumar Mishra	ACS-11512	NIRC
23.	Pankaj Kumar	ACS-15849	EIRC
24.	Sandeep Shantilal Chordia	ACS-16167	WIRC
25.	Vivek Agarwal	ACS-17087	EIRC
26.	Naozad Kaikobad Sirwalla	ACS-17470	WIRC
27.	Pankaj Arya	ACS-18231	NIRC
28.	Sanjay Kumar Jain	ACS-18340	NIRC
29.	Dhirendra Kumar Asri	ACS-19821	NIRC
30.	Mukesh Kumar Karna	ACS-19658	NIRC

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31.	Atul Aggarwal	ACS-21353	NIRC	64.	Ravindra R Dahad	ACS-5037	WIRC
32.	Ashok Chandrakant Karnik	FCS-933	WIRC	65.	S Singhal	ACS-6378	NIRC
33.	Krishna Gopal Gupta	FCS-1230	WIRC	66.	Vipin Agarwal	ACS-8889	NIRC
34.	Ms.Divya Kumart	FCS-4611	WIRC	67.	Ganesh K Kamat	ACS-12749	WIRC
35.	Ms.Anindita Bhattacharya	ACS-18040	EIRC	68.	Abhinay Kapoor	ACS-15694	WIRC
36.	L D Rele	ACS-8823	WIRC	69.	Ms.Rachana N Ravunni	ACS-19428	WIRC
37.	Deepak Kumar	ACS-14902	WIRC	70.	Sandeep Arora	ACS-20989	NIRC
38.	K B Lal	ACS-228	NIRC	71.	Jaspreet Singh Kohli	ACS-21099	NIRC
39.	P N Ramakrishnarao	ACS-3280	NIRC	72.	V Ramanujan	ACS-21768	SIRC
40.	Pramodkumar A Shah	ACS-3663	WIRC	73.	Ms.Milita Mrityunjay Bhar	ACS-21784	WIRC
41.	K Seshadri	ACS-4500	SIRC	74.	Ms.Shikha Sharma	ACS-21854	NIRC
42.	Surender K Gupta	ACS-4577	NIRC	75.	Damodar H Sejpal	ACS-22805	WIRC
43.	Ms.Sowmithri Rajagopal	ACS-5557	SIRC	76.	Sanjit Kumar Das	ACS-26059	EIRC
44.	T R Khepar	ACS-10889	NIRC	77.	R K Khandelwal	FCS-1341	NIRC
45.	Mukund Narayan Sabale	ACS-13459	WIRC	78.	Narinder Kumar Garg	FCS-4114	NIRC
46.	Ms.Dhanashri Mayuresh Joshi	ACS-14248	WIRC	79.	Anil Kumar Chaudhry	FCS-4426	NIRC
47.	Praveen Kumar Chopra	ACS-14330	NIRC	80.	Vikas Jain	ACS-12744	NIRC
48.	P R Sudarssan	ACS-15187	WIRC	81.	Vishal Ajmal	ACS-14260	SIRC
49.	Rama Subramanian	ACS-15923	WIRC	82.	Poonam Gulati	ACS-15712	NIRC
50.	Mohan Singh	ACS-19553	NIRC	83.	Subodh Sadana	ACS-16665	NIRC
51.	Ms.Saroj Agarwal	ACS-21490	EIRC	84.	Chirag Bansilal Kothari	ACS-21063	WIRC
52.	Gurpreet Singh	ACS-24683	NIRC	85.	Richin Sangwan	ACS-21796	NIRC
53.	Ms.Medha Devadhar	ACS-26438	WIRC	86.	Dinesh Kumar	FCS-4260	NIRC
54.	Ms.Ankit Janakkumar Parikh	ACS-26565	WIRC	87.	Deepak Kapoor	FCS-4405	NIRC
55.	Inder Kumar Gupta	FCS-276	NIRC	88.	A K Juneja	FCS-1692	NIRC
56.	Laxmi Prakash Soni	FCS-2213	NIRC	89.	K N Kannan	ACS-9101	SIRC
57.	Sagarmal Agarwal	FCS-2250	SIRC	90.	Pankaj Sachdeva	ACS-12050	NIRC
58.	Ms.Sara Sancheti	FCS-2619	EIRC	91.	Satinder Singh Chugh	ACS-14158	NIRC
59.	Dr.R C Gupta	FCS-3131	WIRC	92.	Vaibhav Mangal	ACS-17993	NIRC
60.	V Sunder	FCS-4141	SIRC	93.	Ms.Karen Claude D' Souza	ACS-20283	WIRC
61.	Anil Kumar Narang	FCS-6044	NIRC	94.	N G Deshpande	FCS-734	WIRC
62.	K.Raghu	ACS-1552	SIRC	95.	Surendra Khemka	FCS-1649	WIRC
63.	P B Sampath	ACS-4475	SIRC	96.	Suwendu Sahu	FCS-4064	NIRC
				97.	S Srikanth	FCS-4306	SIRC
				98.	Ms.Anishrava Agrawal	FCS-5172	NIRC
				99.	Duli Chand Kabra	ACS-10014	NIRC
				100.	N G Vidvans	ACS-10744	WIRC
				101.	Ms.Mahadevan Malathi	ACS-13253	SIRC
				102.	Sandeep Somani	ACS-22273	SIRC
				103.	Ms. Dipali Mukesh Thakkar	ACS-227418	WIRC
				104.	B Muthusubramanian	FCS-1987	SIRC
				105.	Sakshi Maya Bhatiya	FCS-27230	WIRC
				106.	Ms.Anamika Gupta	ACS-16954	WIRC
				107.	Ms.Usha Lalchand Prajapati	ACS-21340	WIRC
				108.	Ms.Kripali Anil Javale	ACS-22187	WIRC
				109.	A. G. Mehta	FCS-1572	WIRC
				110.	Ms.Madhumati Basawraj Rajol	ACS-26175	SIRC
				111.	V Sambasiva Rao	FCS-1758	NIRC
				112.	G Narasimhan A Srinivasan	ACS-19938	WIRC
				113.	Ms- Priyanka Mahendra Bansal	ACS-25880	WIRC
				114.	Richa Kapur	ACS-19488	NIRC



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115.	Ambrish Bakaya	ACS-11288	NIRC	168.	G M Ramarao	FCS-1044	SIRC
116.	Manoj Kumar Maggon	ACS-13273	NIRC	169.	Ms. Sofia H Surana	ACS-18928	SIRC
117.	Sanjay Nagpal	ACS-17131	NIRC	170.	Ms.Lakhmi Alladi	ACS-24058	SIRC
118.	Ms.Urvashi Bansal	ACS-19070	NIRC	171.	Ms.Samatha Kondapally	ACS-26537	SIRC
119.	Ms.Dev Mani Sharma	ACS-27544	NIRC	172.	Sandeep Arora	ACS-20989	SIRC
120.	S.Sridhar	ACS-8860	NIRC	173.	M.Arпита Manikchand	ACS-17806	SIRC
121.	H S N Rao	ACS-2213	SIRC	174.	R Viswanathan	FCS-5360	SIRC
122.	Ramakant Ruliram Chokhani	ACS-3254	WIRC	175.	Krishna Kumar Akkiraju	FCS-5356	SIRC
123.	A S Narayanan	ACS-11405	WIRC	176.	Tejomurtula Ramoji	ACS-22671	SIRC
124.	Ashok Kumar Kedia	ACS-13308	EIRC	177.	Ms.Sonali N Narasimhan	ACS-12698	SIRC
125.	Ms. Kanchana B.	ACS-17426	SIRC	178.	K.E. Venkatachalapathy	ACS-6335	SIRC
126.	Phillip Trott	ACS-19750	WIRC	179.	K Suresh	ACS-9339	SIRC
127.	Ms.Meeta Kedia	ACS-20352	EIRC	180.	Ms.Sundaram Brinda	ACS-9656	SIRC
128.	Ms.Nina Kailas Wagle	ACS-24032	WIRC	181.	D Sarangapani	ACS-14297	SIRC
129.	Ramchander Rao Desharaj	ACS-23386	SIRC	182.	Ms.Priyanka Bansal	ACS-17595	NIRC
130.	Mohan R Patwardhan	ACS-3312	WIRC	183.	Ms.Sharadha G	ACS-20924	SIRC
131.	K C Sanghavi	ACS-6794	WIRC	184.	Subbarao Chintapalli	ACS-22033	SIRC
132.	Manoj Maheshwari	ACS-8042	NIRC	185.	Anil Jude Andrew Fernandes	FCS-5099	WIRC
133.	N K Modi	ACS-9280	WIRC	186.	Suhas Chandra Nanda	ACS-13703	WIRC
134.	G Thangaraj	ACS-10721	SIRC	187.	Sandeep Taneja	FCS-5323	NIRC
135.	Ms.Prajakta Milind Dhare	ACS-15845	WIRC	188.	Gaurav Malpani	ACS-21052	NIRC
136.	Ms.S Radha	ACS-18614	NIRC	189.	Sanjay Bhutani	ACS-10613	NIRC
137.	Ms.Krithika Elanjezhian	ACS-20087	SIRC	190.	Ms.Rakhi T Shah	FCS-4953	WIRC
138.	Selvaraj K	ACS-26003	SIRC	191.	Anuj Rai Bansal	FCS-5166	NIRC
139.	Ashok Kumar Gupta	ACS-27186	NIRC	192.	Sandeep Kumar Goel	ACS-12765	NIRC
140.	Ms.Tanu Ritesh Sarin	ACS-18875	NIRC	193.	Sitanshu Sekhar Dash	ACS-24299	NIRC
141.	Kishore H. Dewani	ACS-18286	NIRC	194.	Ms.Aadya Chauhan	ACS-19708	NIRC
142.	Sandeep Daga	ACS-13545	EIRC	195.	Yatin Mehta	ACS-26605	NIRC
143.	Ms.S Usha	ACS-15250	SIRC	196.	Ms.Akanksha Jain	ACS-18946	NIRC
144.	Jaiprakash Jain	ACS-12568	WIRC	197.	C. Ganesh	ACS-6121	SIRC
145.	N R Jain	FCS-1852	WIRC	198.	A James Chandramohan	FCS-2590	SIRC
146.	Kaushik C Khona	FCS-3989	WIRC	199.	T P Udaya Kumar	ACS-20481	SIRC
147.	S.Sundaram	ACS-3642	SIRC	200.	Ajay Khandelwal	ACS-9704	NIRC
148.	T K Swaminathan	ACS-10542	SIRC	201.	Vikash Agarwal	ACS-25919	NIRC
149.	M S I Lakdawala	FCS-945.	WIRC	202.	S. Sridhar	ACS-13399	SIRC
150.	Chira Ranjan Guharoy	ACS-3393	NIRC	203.	Kanhaiya Gupta	ACS-16108	EIRC
151.	Ms.Disha Narendra Tekwani	ACS-26128	WIRC	204.	Manoj Kumar Baheti	ACS-15471	EIRC
152.	Ms.Harpal Kaur	ACS-19170	NIRC	205.	Nathmal Agarwal	ACS-6764	EIRC
153.	Hemant Sultanian	ACS-21017	NIRC	206.	Sanjay Kansal	ACS-17966	EIRC
154.	Suresh Krishnan	FCS-3142	SIRC	207.	Sushil Kumar Lahoti	FCS-4149	EIRC
155.	Shilpa Shashank Mulye	ACS-14052	WIRC	208.	Mahesh Sodhani	ACS-13613	EIRC
156.	K V Ramesh	ACS-5908	SIRC	209.	Surendra Kumar Singhi	ACS-10056	EIRC
157.	K R Seshadri	FCS-1171	SIRC	210.	Ravi Kumar Murarka	ACS-20659	EIRC
158.	Ajay Kumar Tibrewala	ACS-15566	WIRC	211.	Ms. Minakshi Lakhota	ACS-21725	EIRC
159.	Ms.Shweta Maheshka	ACS-18758	EIRC	212.	Nimesh Anand	ACS-27073	EIRC
160.	Maninder Singh	FCS-4201	NIRC	213.	Krishnendu Nandy	ACS-6653	EIRC
161.	Puneet Bhatia	ACS-26330	NIRC	214.	Jyoti Jain	ACS-18825	EIRC
162.	Ms.R. Varalakshmi	ACS-8544	WIRC	215.	Ms. Payal Bhutoria	ACS-20816	EIRC
163.	Ms.Sunita Khandelwal	ACS-20444	NIRC	216.	Sumit Binani	FCS-4493	EIRC
164.	Praveen Kumar Tiwary	ACS-21443	NIRC	217.	Mohan Lal Tater	FCS-5331	EIRC
165.	Varanasi Hari	FCS-3552	NIRC	218.	Ms. Ajita Khaitan	ACS-14911	EIRC
166.	Ramraj Lakshmanan	ACS-26616	NIRC	219.	Vivek Bajaj	ACS-14882	EIRC
167.	K S Ramakrishnan	FCS-5428	SIRC	220.	Sundeep Soni	ACS-16296	EIRC
				221.	Ms. Ruchi Gupta	ACS-21951	EIRC
				222.	Ms Mohua Datta Gupta	ACS-20102	EIRC



223.	Rajat Goenka	ACS-15474	EIRC	22	Ms. Chaman Agarwal	ACS - 19854	NIRC	10454
224.	Manish Kumar Jain	ACS-17500	NIRC	23	Sh. Sharad Kabra	FCS - 5510	WIRC	10455
225.	Balwant Raj Jain	FCS-2128	WIRC	24	Ms. Sneha Dalia	ACS - 21692	SIRC	10456
226.	Rajmal Labhchand Mogra	ACS-8089	WIRC	25	Mr. Pravin Navamoney	ACS - 29093	WIRC	10457
227.	Ms. Pooja Agarwal	ACS-15356	NIRC	26	Ms. Shilpi Jain	ACS - 28746	NIRC	10458
228.	A N Ramesh Babu	FCS-4503	SIRC	27	Mr. Gaurav Kumar Sharma	ACS - 28276	NIRC	10459
229.	Narottam Das Agrawal	FCS - 269	NIRC	28	Mr. Vijai Kumar Bajpai	ACS - 29002	NIRC	10460
230.	Pawan Kumar Goyal	FCS-2338	NIRC	29	Ms. Rinku Agarwal	ACS - 28912	NIRC	10461
231.	Dinesh Kumar Lodha	ACS-15898	SIRC	30	Ms. Purvi Girishbhai Dave	ACS - 27373	WIRC	10462
232.	Ms. V Geetha	ACS-10118	SIRC	31	Ms. Neha Arora	ACS - 24090	NIRC	10463
233.	Vineet Bose	ACS-19722	NIRC	32	Sh. Anand V Gaikwad	ACS - 1900	WIRC	10464
234.	Ms. G Lata	ACS-8571	SIRC	33	Ms. Hemlata Jain	ACS - 25394	WIRC	10465
235.	Naga Raju Maddimsetti	ACS-24339	SIRC	34	Mr. Amit Dave	ACS - 28787	NIRC	10466
236.	A V Krishnan	FCS-3311	NIRC	35	Mr. Gaurav Chakresh kumar Jain	ACS - 28694	WIRC	10467
237.	Vikash Agarwal	ACS-25919	NIRC	36	Ms. Sunita	ACS - 22529	NIRC	10468
238.	Ms. Ritu Tiwari	ACS-26126	WIRC	37	Ms. Shikha Ruia	ACS - 24238	EIRC	10469
239.	Shreenibasha Mishra	ACS-17042	EIRC	38	Mr. Shashikant Tiwari	ACS - 28994	NIRC	10470
240.	Jagannathan Srinivasan	FCS-232	SIRC	39	Mr. Rajesh	ACS - 28595	WIRC	10471
241.	Ms. Vinodhini Kanagaraj	ACS-24822	SIRC	40	Ms. Chavi Jain	ACS - 23512	NIRC	10472
242.	Ms Pooja Gandhi	ACS-20092	NIRC	41	Ms. Kusum Chauhan	ACS - 21284	WIRC	10473
				42	Ms. Shweta Bajaj	ACS - 28934	NIRC	10475
				43	Sh. Nitin Misra	ACS - 24286	NIRC	10476
				44	Ms. Deepali Goel	ACS - 28197	NIRC	10477
				45	Ms. Nidhi Lochan	ACS - 22090	NIRC	10479
				46	Ms. Meenakshi Gupta	ACS - 22112	NIRC	10480
				47	Ms Kajal Rai	ACS - 21442	NIRC	10481
				48	Mr. Manoj Pandey	ACS - 28955	SIRC	10482
				49	Ms. Khushaboo Goyal	ACS - 28981	EIRC	10483
				50	Mrs. Ruchi R Kotak	ACS - 18871	WIRC	10484
				51	Mr. Shailandra Kumar	ACS - 29014	NIRC	10485
				52	Sh. Krishna Rao Inturi	ACS - 23071	SIRC	10486
				53	Sh. Mayur Maganlal Buha	ACS - 26043	WIRC	10487
				54	Sh. Navin Chandra J Desai	ACS - 5262	WIRC	10488
				55	Ms. Nuzhat Fatima	ACS - 28960	EIRC	10489
				56	Ms. Sona Balaji	ACS - 26895	NIRC	10490
				57	Sh. Avanish Dwivedi	ACS - 13983	WIRC	10491
				58	Mr. Ankit Bhatia	ACS - 28529	NIRC	10492
				59	Ms. Rashmi Sahni	ACS - 25681	NIRC	10493
				60	Ms. Ekta Anand	ACS - 19714	WIRC	10494
				61	Sh Nagendra Reddy Reddem	ACS - 20525	SIRC	10495
				62	Ms. Rajashri Sai	ACS - 26760	SIRC	10496
				63	Ms. Anuradha Sharma	ACS - 29092	NIRC	10497
				64	Ms. Abhilasha John	ACS - 29041	WIRC	10498
				65	Ms. Varsha Venkatesh Shenoy	ACS - 26106	SIRC	10499
				66	Mr. Mehul Kedarbhai Raval	ACS - 28155	WIRC	10500

CERTIFICATE OF PRACTICE

Sl. No.	Name	ACS/FCS No.	Region	CP No.
ISSUED*				
1	Ms. Priyanka Saxena	ACS -28828	NIRC	10432
2	Mr. Rajeev Kumar Nayak	ACS -28795	NIRC	10433
3	Mr. Uttam Singh Negi	ACS -28109	NIRC	10434
4	Mr. Sukhwinder Singh	ACS -28990	NIRC	10435
5	Sh. Jigar Kamlesh Vyas	ACS -25139	WIRC	10436
6	Dr. Pankaj Jayantilal Gandhi	ACS -28962	WIRC	10437
7	Sh. Vivek Kumar	ACS -21295	NIRC	10438
8	Ms. Priyanka Saxena	ACS - 28729	NIRC	10439
9	Sh. B Narasimhan	FCS - 1303	WIRC	10440
10	Sh. Prem Kumar Iyer	ACS - 9450	WIRC	10441
11	Ms. Neha Dewan	ACS - 24010	NIRC	10442
12	Mr. Ashish P. Tripathi	ACS - 23396	WIRC	10443
13	Ms. Megha Gupta	ACS - 27204	NIRC	10444
14	Sh. G L Subhramanian	ACS - 27282	SIRC	10445
15	Ms. Charu Gupta	ACS - 28653	NIRC	10446
16	Sh. Jaydev R Betai	FCS - 1203	WIRC	10447
17	Mr. Manish Jain	ACS - 28858	NIRC	10448
18	Sh. Yogesh Kumar Gupta	FCS - 3148	NIRC	10449
19	Sh. Harshal Raghavendra Joshi	ACS - 26718	WIRC	10450
20	Ms. Kamlesh Gupta	ACS - 13862	NIRC	10451
21	Ms. Priyanka Agarwal	ACS - 26316	NIRC	10453

* During the month of November, 2011



News from the Institute

CANCELLED*

1. Ms. Swati Verma	ACS-23742	NIRC	9943
2. Jay Prakash Lodha	FCS-4714	NIRC	9500
3. Ms. Parul Misra	ACS-16018	NIRC	7672
4. Praveen Kumar Bharti	ACS-17671	NIRC	8358
5. Ms. Leena Sharma	ACS-27764	NIRC	9955
6. Gopalkrishna G. Bhat	ACS-18597	SIRC	9832
7. Abhijeet Chowdhury	ACS-22380	EIRC	8401
8. Ms. Neha Jain	ACS-20185	NIRC	7368
9. Sumit Maheshwari	ACS-25777	NIRC	9313
10. Ms. Deepa Magar	ACS-23048	NIRC	8709
11. Ms. Urmi Pares Majethia	ACS-28047	WIRC	10452
12. Mukesh Kumar Singh	ACS-26660	NIRC	9652
13. Ms. Garima Kakkar	ACS-27229	NIRC	10154
14. Manish Mehta	FCS-6304	NIRC	9380
15. Ms. Jayalakshmi G.	ACS-25310	SIRC	9793
16. Ms. Neha Jain	ACS-20185	NIRC	7368
17. Ms. Neha Rani Agarwal	ACS-20123	NIRC	9148
18. Mahendra Singh	ACS-21464	NIRC	9266
19. Vinit Kumar Dalmia	ACS-27942	NIRC	10254
20. Ms. Navneet Kaur Bhatia	ACS-25238	EIRC	9122
21. Ms. Shweta Sharma	ACS-25074	WIRC	9088
22. Anil Kumar Gupta	ACS-10148	NIRC	2525

LICENTIATE ICSI

Sl. No.	Name	Licentiate No.	Region No.
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ADMITTED**

1. Asharam Ramfer Vishwakarma	6293	WEST
2. Debesh Mohantray	6294	EAST
3. Kailesh Prem Kumar Joshi	6295	SOUTH
4. Ms. Manpreet Kaur Bagga	6296	WEST
5. Ms. Apoorva Nand Kishor Bhagwat	6297	WEST
6. Neeraj Kumar	6298	NORTH

Attention Members !

Members Who Are Yet To Get The Identity Cards Issued From The Institute Are Requested To Apply For The Same By Sending A Request In Writing Indicating Name, Membership No. And Date Of Birth Alongwith Their Latest Two Coloured Passport Size Photographs (Indicating On The Reverse The Name And Membership No.) To The Membership Section Of The Institute At 22, ICSI House Institutional Area, Lodi Road New Delhi - 110003. For Queries, If Any,

Contact On

Phone No. 011- 4534 1061
Mobile No. 9868128682
E-Mail Ids member@icsi.edu & acs@icsi.edu

* During the month of November, 2011

** During the period 11.11.2011 to 30.11.2011

Payment of Annual Membership and Certificate of Practice Fee

The names of members who could not remit their annual membership fee for the year 2011-12 by the last extended date i.e. 31st August, 2011 stand removed from the Register of Members w.e.f. 1st September, 2011. They may pay the fee and get their names restored by making an application in Form `BB` with the entrance fee (Associate members Rs. 1500/- & Fellow members Rs. 1000/- respectively) alongwith restoration fee of Rs. 250/-. Form-BB is available on the web-site of the Institute and also published else where in this issue.

The Certificate of Practice of the members who could not remit their annual Certificate of Practice fee for the year 2011-12 by the specified date i.e. on or before 30th September, 2011 stand cancelled w.e.f. 1st October, 2011. They may restore their Certificate of Practice by making an application in Form `D` with the restoration fee of Rs. 250/-. Form-D is available on the web-site of the Institute and also published else where in this issue.

The 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/-(*)

For queries,

If any, the members may please contact Mr. D.D. Garg, Desk Officer and/or Mrs. Vanitha Dhanesh, Sr. Assistant on telephone nos. 45341062/64 or on mobile no. 9868128682 or through e-mail id's at dd.garg@icsi.edu, cp@icsi.edu or member@icsi.edu

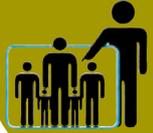
Mode of Remittance of Fee

The fee can be remitted by way of :

- i] On-Line (through payment Gateway of the Institute's web-site (www.icsi.in)).
- 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 the Membership Section on telephone Nos.011-45341047 or Mobile No.9868128682 / through e-mail ids: annualfee@icsi.edu, member@icsi.edu



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	8467	Dr. Haradhan Sarkar	FCS - 5867	KOLKATA
2	8468	Mr. Raghu Jhunjhunwala	ACS - 29158	KOLKATA
3	8482	Mr. Sushanta Pradhan	ACS - 29239	BARGARH
4	8501	Sh. Rakesh Ghorawat	ACS - 18253	HOOGHLY
5	8508	Mr. Udit Agarwal	ACS - 29222	KOLKATA

NIRC

6	8465	Sh. Manoj Bhargava	FCS - 5164	VAISHALI
7	8466	Sh. Sanket Jain	ACS - 26531	DELHI
8	8470	Sh. Sachin Gupta	ACS - 18494	CHANDIGARH
9	8472	Sh. Santosh Kumar	ACS - 15907	JAIPUR
10	8478	Sh. Jasvir Singh	ACS - 21938	PATIALA
11	8481	Ms. Kanika Gupta	ACS - 29219	DELHI
12	8483	Sh. Vikas Kumar Garg	ACS - 16715	NEW DELHI
13	8484	Sh. Rajeev Guglani	ACS - 20058	LUCKNOW
14	8485	Sh. Anuj Kumar Tiwari	ACS - 19754	LUCKNOW
15	8488	Sh. Vaibhav Goel	ACS - 19603	NEW DELHI
16	8489	Sh. Manoj Kumar Verma	ACS - 23166	DELHI
17	8492	Ms. Komal Gupta	ACS - 23756	AGRA
18	8493	Ms. Ruchi Mitra	ACS - 24796	JAIPUR
19	8494	Ms. Era Bhardwaj	ACS - 20010	GURGAON
20	8497	Sh. R A Gupta	ACS - 1625	DELHI
21	8498	Sh. Anupam Srivastava	ACS - 26679	LUCKNOW

22	8500	Mr. Chandan Kumar Singh	ACS - 28439	NEW DELHI
23	8504	Mr. Aman Kumar Jain	ACS - 22437	NEW DELHI
24	8511	Mr. Priyank Nigam	ACS - 23636	NEW DELHI
25	8512	Mr. Brajmohan Singh	ACS - 26411	NEW DELHI

SIRC

26	8469	Mr. Kiran Kumar Bodla	ACS - 29116	HYDERABAD
27	8471	Mr. Srikanth Godavarthi	ACS - 29143	HYDERABAD
28	8473	Ms. Prerna Mundada	ACS - 29164	HYDERABAD
29	8474	Ms. Syamali Atchyuta	ACS - 29157	GUNTUR
30	8476	Mr. Harish D	ACS - 28840	CHENNAI
31	8477	Sh. Deepak Tibrewal	ACS - 28751	HYDERABAD
32	8479	Sh. K Ramananda Pai	ACS - 17198	BANGALORE
33	8487	Ms. Paridhi Bhargava	ACS - 29190	HYDERABAD
34	8491	Mr. Balla Visweswara Rao	ACS - 29077	HYDERABAD
35	8495	Sh. N V Thanigaimani	FCS - 2959	CHENNAI
36	8499	Mr. Akshaya Kumar Pradhan	ACS - 26855	CHENNAI
37	8505	Mr. Babu R	ACS - 28852	CHENNAI

WIRC

38	8464	Sh. Amit Suresh Rao Kamble	ACS - 23113	NAGPUR
39	8475	Sh. Shridar Vijay Phadke	ACS - 20707	DOMBIVLI (EAST)
40	8480	Sh. Jayesh Uttamlal Chouhan	ACS - 16259	MUMBAI
41	8486	Mr. Pradeep Gunanand Dhaundiyal	ACS - 27473	THANE
42	8490	Sh. Vivek Nayak	ACS - 22177	BHOPAL
43	8496	Mr. Vidit Deepak Bhai Narsana	ACS - 28344	THANE
44	8502	Sh. Pradeep Pasari	ACS - 11742	MUMBAI
45	8503	Sh. Mahendra N Soni	FCS - 3076	AHMEDABAD
46	8506	Sh. Ajit Pratap Singh	FCS - 5554	MUMBAI
47	8507	Ms. Alka Singh	ACS - 15936	NAVI MUMBAI
48	8509	Mr. Ravindra Ashok Mishra	ACS - 29159	MUMBAI
49	8510	Mr. Sawankumar Rushabhbbhai	ACS - 27935	AHMEDABAD
50	8513	Ms. Neelam Rangwala	ACS - 27698	MUMBAI

* During the period 22/11/2011 to 20/12/2011

Application For Restoration Of Membership (Reg. 13)

To
The Secretary to the Council of
The Institute of Company Secretaries of India
ICSI House, 22, Institutional Area
Lodi Road
NEW DELHI - 110 003

Sir,

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

1. Name in full
(in block letters) Surname Name

2. Address:
(i) Professional
Designation
.....
.....

Tel. No.(s)..... Fax No.
Mobile No. E-mail Id

- (ii) Residential :.....
.....
.....

Tel.No PAN no.

3. Date of admission as an Associate/
Fellow member of the Institute

4. Membership Number FCS/ACS

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

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

7. I send herewith a sum of Rsbeing the arrears of Annual Membership fee of Rsfor the years to and restoration fee of 250/-

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

Place
Date

Yours faithfully,

Signature

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

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

Sir,

I furnish below my particulars

- (i) Membership Number FCS/ACS:.....
 (ii) Name in full:
 (in block letters) Surname Name
 (iii) Date of Birth:.....
 (iv) Professional Address:.....

- (v) Phone Nos. (Resi.)..... (Off.)
 (vi) Mobile No Email id
 (vii) Additions to or change in qualifications, if any:

1. Submitted for (tick whichever is applicable):

- (a) Issue..... (b) Renewal..... (c) Restoration

2. (a) Particulars of Certificate of Practice issued / surrendered/Cancelled earlier

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

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

Yours faithfully,

(Signature)

Encl.

Place:

Date:

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



News From the Regions

EASTERN INDIA REGIONAL COUNCIL

Bhubaneswar Chapter

Career Awareness Programmes

Bhubaneswar Chapter conducted a number of Career Awareness Programmes in different parts of Odisha. Apart from the career awareness programmes meeting with the Principal, HODs of Arts, Science and Commerce of the Institutions were also organized. While CS A. Acharya, Vice Chairman and CS Debadatta Mohapatra, Secretary of the Chapter addressed at Bhubaneswar, CS S.N. Mallick, Fellow Member addressed in the Bhadrak District, CS Sushil Kumar Hota addressed in Bolangir District, CS Rajendra Kumar Kar addressed in Keonjhar District and CS Pranab Kumar Mishra, Associate Member of the Institute addressed in Ganjam District and ICSI Officials addressed the programmes held on 17.12.2011. The speakers explained the students about the ICSI, its career prospects, placement services, course contents, fee structure and other facilities being provided to the students. ICSI informative brochures about the CS course were distributed at the gathering. ICSI Teacher Kits were also provided to the Institutions.

Investor Awareness Programmes by Resource Persons

Bhubaneswar Chapter arranged thirteen Investor Awareness Programmes under Resource Person in various parts of Odisha during November, 2011. The programmes were conducted by CS Susanta Pradhan, CS Subrata Pradhan and CS Ardhendu Sekhar Rout, Associate Members of the Institute.

Investor Awareness Programmes

Bhubaneswar Chapter organized 3 Investor Awareness Programmes covering 2 districts located in small towns and cities of Odisha. All the programmes were sponsored by Investor Education & Protection Fund of Ministry of Corporate Affairs, Government of India. The programmes were well attended by a large number of housewives, students, lecturers of schools/colleges, retired persons, general investors etc. A beginners guide and Investor related

information/literatures both in English and regional language were distributed amongst the participants. Feedback about the programmes was also collected from the participants of the programmes. During the question hour session several queries on the capital markets, investor related grievances were raised which were clarified by the dignitaries present on the dais. In all the aforesaid programmes the participant investors expressed their happiness for organization of such types of programmes by the Ministry of Corporate Affairs, Government of India and also praised the efforts of the ICSI for its awareness campaign in the remote towns and villages of Orissa. They also requested for organizing once again this type of programmes in their locality so that more and more people can get benefit from the programmes. While CS J.B. Das, Chairman, CS Arabinda Acharya, Vice Chairman, CS Debadatta Mohapatra, Secretary, CS Priyadarshi Nayak, Treasurer of the Bhubaneswar Chapter addressed in the Programmes, CS Pranab Kumar Mishra, Associate Member of the Institute, Dr. Swati Mishra, Principal, MITS School of Biotechnology, Bhubaneswar contributed a lot for success of the programmes at Kashinagar and Paralakhemundi of Gajapati District. Further a lot of support and contribution were received from the local dignitaries. The programmes were conducted by CS Susanta Pradhan, CS Subrata Pradhan and CS Ardhendu Sekhar Rout, Associate Members of the Institute.

Hooghly Chapter

Interactive Session with RD(ER), MCA

On 13.11.2011 the Hooghly Chapter of The ICSI organised an Interactive Session cum Diwali Meet at the Chapter premises wherein Dr. Navrang Saini, Regional Director (Eastern Region), Ministry of Corporate Affairs, Govt. of India was the guest speaker. CS Ashok Purohit, Chairman, Hooghly Chapter in his welcome address briefed about the events and programmes that the Chapter has organised till date. He also emphasized about the forthcoming programmes - Student Conference and Motivational Programme. CS Anjan Kumar Roy, Chairman, EIRC of the ICSI in his address said that XBRL allows information modelling and the expression of semantic meaning commonly required in business reporting.

Dr Navrang Saini, said that XBRL is a standards-based way to communicate and exchange business information between business systems. It is a freely available, market-driven, open, and global standard for exchanging business information. He further had interaction with the delegates on the implementation aspect of XBRL.

NORTHERN INDIA REGIONAL COUNCIL

Punjab State Conference on Corporate Growth - Creating Opportunities through



Professional Value Addition

On 5.11.2011 the Regional Council organized a Programme on Punjab State Conference on Corporate Growth - Creating Opportunities through Professional Value Addition. Prof. Paramjit Singh Jaswal, Vice Chancellor, Rajiv Gandhi National University of Law, Punjab was the Chief Guest. CS Nesar Ahmad, Vice President, the ICSI was the Guest of Honour. The speakers of the programme were CS Nesar Ahmad, CS Rachna Sayal, Associate Vice-President, Investment Banking, Almondz Global Securities Ltd., G.S. Chawla, Director, Master Trust Ltd., Kanwerinder Khanna of HSBC, CS Hitender Mehta, Partner, Vaish Associates, Rajive Chawla, President, FSIA & Managing Director, Jairaj Ancillaries Pvt. Ltd, CS Satwinder Singh, Partner, Vaish Associates, G.R. Bhatia, Partner, Luthra & Luthra and Anupam Malik, Joint Labour Commissioner, Haryana.

Meeting of Company Secretaries in Practice for Discussion on Peer Review

On 14.11.2011 the Regional Council organized a meeting of Company Secretaries in Practice for Discussion on Peer Review. CS Nesar Ahmad, Vice President, the ICSI and Chairman, Peer Review Board, ICSI was the speaker.

Study Circle Meeting on Analysis of New Cost Accounting Record Rules and Cost Audit Report Rules

On 18.11.2011 the Regional Council organized a Study Circle Meeting on Analysis of New Cost Accounting Record Rules and Cost Audit Report Rules. D.P.Singh, Cost Accountant was the speaker.

One Day Programme on Repositioning the Profession in Changing Business Environment

On 19.11.2011 a One Day Programme on Repositioning the Profession in Changing Business Environment was organized by the Regional Council.

Dilip Raosaheb Deshmukh, Chairman, CLB was the chief guest. Dr. Sandeep Srivastava, Commissioner, Customs, Central Excise & Service Tax, Noida was the Guest of Honour. The Guest Speakers were Rajesh Doshi, Director - Compliance and Secretarial, Religare Enterprises Ltd., Dr. Ashok Haldia, Whole Time Director, PTC Financial Services Ltd., Murli Balasubramaniam, Sr.Vice - President - Legal & Company Secretary, Nestle India Ltd., Ajit Yadav, President & Group Legal Counsel, Vedanta Group, Vikas Gupta, Advocate, Pathways Legal Consultants, CS NJN Vazifdar, Past President, ICSQ, CS Lalit Jain, Sr. Vice-President & Company Secretary, Jubilant Life Sciences Ltd. and Nivedan Sahani, Vice-President, Tata Tele Enterprise Services.

East Zone Study Group Meeting on Service Tax Valuation Rules

On 19.11.2011 the East Zone Study Group organized a programme on Service Tax Valuation Rules. CS Amit Chaurasia was the speaker.

West Zone Study Group Meeting on Concept of Takeover Code

On 26.11.2011 the West Zone Study Group organized a Meeting on Concept of Takeover Code. CS Ranjeet Pandey, Chairman, NIRC was the speaker.

North Zone Study Group Meeting on Practical Aspects of Copy Rights, Trade Marks, and Design Law

On 27.11.2011 the North Zone Study Group organized a Meeting on Practical Aspects of Copy Rights, Trade Marks, and Design Law. Vikas Mishra, Advocate was the speaker.

South Zone Study Group Meeting on an Overview of Takeover Code

On 2.12.2011 the South Zone Study Group organized a Meeting on An Overview of Takeover Code. CS Ranjeet Pandey was the speaker.

Investor Awareness Programmes

On 2.11.2011 the Regional Council organized an Investor Awareness Programme on Capital Market and Mutual Funds at Lakshmi Bai College, Ashok Vihar, Delhi. Dr. Veena Gautam, Vice Principal of the College, Dr. Gayatri Verma, HOD, Commerce Association of the College, CS J.K. Bareja, CS G.P. Madaan were the speakers.

On 21.11.2011 another Investor Awareness Programme on Investment Opportunities in Capital Market was held at S.P. Jain Auditorium, South Campus, New Delhi.

CS.G.P. Madaan, Prof. V.K. Kaul, HOD of Department of Business Economics, South Campus, CS J.K. Bareja were the speakers.

Career Awareness Programmes

The Regional Council organized 28 Career Awareness Programmes during the month of November 2011. CS J.K. Bareja, CS G.P. Madaan, CS Ravi Sharma, CS Pradeep Debnath, CS Shiv Kumar Tyagi, CS Sangeeta Harpalani, CS Anupam Jha, CS Supriya Thukral, CS Ruhi Bhasin, T.R. Mehta, Animesh Srivastava and Himanshu Shara addressed in the Career Awareness Programmes. During the programmes the students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the



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Company Secretary ship course both in employment and in practice. Pamphlets of Career in Company Secretary ship Course were distributed to the students.

Rajasthan State Conference

On 10.12.2011 NIRC of the ICSI (hosted by Bhilwara Chapter) organized Rajasthan State Conference at Bhilwara on "Managing Knowledge Dynamics & Creating Professional Avenues". Prof. Dr. V.K. Goswami, Vice Chancellor, Sangam University was the Chief Guest of the conference. Anil Murarka, Nesar Ahmad, N.K. Jain, P.K. Mittal and Vikas Khare, Pavan Kumar Vijay, Saurabh Kalia, Advocate, B.B. Pradhan, Unit Head, Jindal Saw Ltd., Ranjeet Pandey, Hitender Mehta, Dhananjay Shukla and Shyam Agrawal, R.K. Jain, G.C. Jain, President of Sangam India Ltd. R.P. Agarwal, MD, SR Tex Fab. Ltd. Praveen Jain, CFO & Company Secretary, BSL Ltd., R.A. Kabra, President, Suzuki Textiles Ltd., V.P.S. Tapadia, Nitin Mehta, Sudhir Garg and other dignitaries were present on the occasion. More than 250 members, students and others attended the conference.

Foundation Stone Laying Ceremony

On 10.12.2011 the Bhilwara Chapter of NIRC of the ICSI organised Foundation Stone Laying ceremony of the Chapter at Patel Nagar, Bhilwara. Ujjaval Singh Rathore, Additional District Magistrate, Bhilwara was the Chief Guest of the function. Anil Murarka, Nesar Ahmad, N.K. Jain, P.K. Mittal, Vikas Khare, Pavan Kumar Vijay, Ranjeet Pandey, Hitender Mehta, Dhananjay Shukla, Shyam Agrawal, R.K. Jain, G.C. Jain, President of Sangam India Ltd. R.P. Agarwal, MD, SR Tex Fab. Ltd. Praveen Jain, CFO & Company Secretary, BSL Ltd., R.A. Kabra, President, Suzuki Textiles Ltd., V.S. Tapadia, Nitin Mehta, Sudhir Garg, Sanjay Samdani, Sanjana Jain, members, students and other dignitaries were also present on the occasion.

Faridabad Chapter

Career Awareness Programmes

The Chapter organized Career Awareness Programmes at IMT College Sec-85, Faridabad. The programmes were attended by more than 300 students.

The speakers for the programme were CS Vinit Sikka, Vice - Chairman of Faridabad Chapter of NIRC of the ICSI and CS Atul Arora. The speakers informed the students about the role and importance of Company Secretaries in corporate world with the help of Power Point Presentations and 15 minutes CD on career as a Company Secretary. The students were informed about the Institute, eligibility for the course, course structure, fees details, cut-off dates, coaching, training and other related information. The Speaker also highlighted the opportunities available to those who completed the Company Secretary ship course, also

focused on what would be the mindset and preparation required from a student who wanted to pursue this course. Brochures containing brief details of the Company Secretary ship course were distributed to the Students. In the end there was a question - answer session with Vinit Sikka and the students about the CS course.

Cricket Match

On 4.12.2011 the Chapter organized a Cricket Match at Aravali International School, Faridabad. The match was played between Chairman's Team versus Vice Chairman's team. Chapter Chairman CS Ajay Garg and CS Vinit Sikka were the Captains. CS Sunil K. Nagar was the man of the match for his remarkable contribution to the victory of the team lead by Vice Chairman.

Jodhpur Chapter

Panel Discussion on the Provisions of the New Companies Bill, 2011

Professionals, company secretaries, CAs and CWAs along with the students of commerce and ICSI had a panel discussion on provisions of the new Companies Bill 2011 at Jodhpur. The panel members included CS H.R. Tuteja, CA Yogesh Birla, CWA K.K. Vyas and CS Mukesh Bansal. The Guest Lecturer Mahesh Pandya from BSE spoke about the investor protection aspects being taken care of now a days. Said Mahesh Pandya "BSE's role in protecting investors' fund is critical, necessary care must be taken to safeguard the investments instead of acting on rumours. Under the corporate governance, a company secretary is guardian of the investors also". He provided many tips and tricks of safe investments and imparted knowledge about the working, rights of investors and duties of the brokers as middlemen. Introducing the subject, CS Mukesh Bansal said "New Companies Bill 2011 has been tabled in Parliament with so many changes which are favourable to the corporate sector's growth. There are certain anomalies too. the experts have gathered to discuss on this, which is concurrent topic today". H.R. Tuteja, senior member of the profession said "right from the year 1956, the Companies Act has undergone changes and the time of 55 years has made it redundant. Right from the sections to appendices to interpretation, all have changed and hence, the new Bill has brought new light". He discussed the role of independent directors and rotation of auditors.

CA Yogesh Birla said "Corporate Social Responsibility is mandatory now. 2% of average net profit is mandatorily be spent now. All companies need to follow and the company secretary is thus a guardian for this too". He explained the roles and responsibilities of a CS in changing era. CWA K.K. Vyas said " financial statements need discussion and presentation has been taken care in new Companies Bill".



Vyas explained the analysis of financial statements in a lucid way.

Career Guidance Camp at Cairn India Enterprise Centre

The career guidance camp, being third in the series, was attended by more than 36 girls and boys from different colleges. Chairman, Jodhpur Chapter CS Mukesh Bansal addressed in a lucid way and provided the necessary guidance to them. On the occasion all related literature was distributed. Another career guidance camp being the second in the series was attended by more than 50 girls and boys of different colleges. The Chairman, Jodhpur Chapter CS Mukesh Bansal along with CA Jitendra Agarwal of Barmer addressed the students. Discussing the provisions of the latest Companies Bill 2011, CS Mukesh Bansal guided them about the roles and responsibilities of a Company Secretary. Another career guidance camp was held at Barmer being the first in the series. More than one hundred girls and boys of Kendriya Vidyalaya Airforce got into the interaction with Chairman, Jodhpur Chapter CS Mukesh Bansal along with CA Jitendra Agarwal of Barmer. CS Mukesh Bansal said "Pursuing the course of CS along with your college will make you a professional at an early age and that will be an advantage whole thru the life. The ICSI has made the entry into the course so easy, course so exhaustive and acceptable in the Industry that all the students are finding a good career out of it." He offered all the needed help to the students and distributed the information leaflets to the students and the Principal.

Visit of NIRC Chairman to Jodhpur Chapter Office

Ranjeet Pandey, Chairman, NIRC, Dhananjay Shukla and Shyam Agrawal visited the Chapter office and met the members and students of the Chapter. Later on, a Career Counselling Session for 400 girls of the Western Rajasthan's biggest girls school Sohanlal Mahihar Girls Senior Secondary School was organized in their conference hall. Pandey addressed the students and guided them to the roles and responsibilities of the profession of Company Secretaries. Shukla gave the much needed guidance on how to apply for the course and move into the Course along with their college. Shyam emphasized the need of Career Counselling in their school lives. The Management greeted the visiting faculties.

The Chapter organized a Seminar on Challenges in the Profession where Ranjeet Pandey gave his address as the Chief Guest. Pandey said that Challenges are more and same are the opportunities. Hence the students must concentrate on opportunities, increase their knowledge and focus on the course of CS. Shukla addressed about the changing roles of a Company Secretary and said that today, a Company Secretary is pivot to the growth of a corporate and hence, he must be an all-rounder. Shyam explained the

increasing thrust on Corporate Governance which has made the role of a Company Secretary as a guardian of the shareholder and all other stakeholders and hence he needs to be updated. CS Mukesh Bansal, Chairman, Jodhpur Chapter in his welcome address said that Knowledge of a company secretary is key to success and hence strive for the professional excellence is a must. The programme also witnessed oath ceremony for the Rotract Club of Jodhpur ICSI and launch of a magazine called "The Catalyst".

SOUTHERN INDIA REGIONAL COUNCIL

Discussion Meeting on Unlisted Public Companies [Preferential Allotment] Amendment Rules, 2011

The ICSI - SIRC organized a discussion meeting on Unlisted Public Companies [Preferential Allotment] Amendment Rules, 2011. B Chandra, Company Secretary in Practice, Chennai led the discussion. Chandra informed the members that the Bill came into force with effect from 14th December 2011 to amend the Unlisted Public Companies [Preferential Allotment] Rules, 2003 and it is applicable to all unlisted public companies in respect of preferential issue of equity shares, fully convertible debentures, partly convertible debentures or any other financial instruments, which would be convertible into or exchanged with equity shares at a later date. The speaker also observed that under the new amendment Bill, no issue of Shares or any other instruments convertible into shares including hybrids convertible into shares on a preferential basis can be made by a company unless authorized by its articles of association and unless a special resolution passed by the member in a general meeting authorizing the Board of Directors to make such issue. Chandra also discussed in detail the pros and cons of the new Bill.

Members present actively participated in the discussion with the speaker.

Discussion Meeting on Peer Review - An Overview

On 16.11.2011 the ICSI - SIRC organized a discussion meeting on Peer Review - An Overview at ICSI - SIRC House, Chennai. R Sridharan, Central Council Member, The ICSI and Company Secretary in Practice, Chennai led the discussion. Earlier B Ravi, Chairman, ICSI-SIRC briefed about the Peer Review Group constituted by the ICSI. Sridharan explained that the Exposure Draft of the Guidelines released at the 12th National Conference of Practising Company Secretaries held at Ooty during 13th to 15th July 2011 and the same was approved by the Council



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in its 202nd Meeting held on 25th and 26th August, 2011. Sridharan informed that the ICSI Guideline No. 1 of 2011 - Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries was notified in the Official Gazette of India dated October 18, 2011 and the guidelines are effective from 1st October 2011. He further explained that "Peer Review" is an evaluation of a peer's work or performance by a group of people in the same occupation, profession or industry. Peer review deals with examination and review of systems and procedures to determine whether the systems and procedures are in existence, effective, operating continuously during the period under review and put in place by the practice Unit. He further observed that Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and providing guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. He also informed that, a member who wants to be a reviewer: Should possess at least 10 years of post membership experience, Should be currently in practice as a Company Secretary. He also threw light on offsite review, onsite review, obligations of the practice unit, selection of members / firms subject to review, periodicity of review, cost of peer review, prescribed rates of fee for peer review and dispute resolution. The members actively participated in the discussion meeting.

Bangalore Chapter

6th SIRC Conference of PCS on CS -March Towards Mark of Excellence

The Bangalore Chapter of the ICSI hosted the two day 6th Southern India Regional Conference of Practicing Company Secretaries on the theme CS-March towards "Mark of Excellence on 11 and 12 11. 2011 At Vivanta by Taj, Bangalore.

Inaugural Session: The programme commenced with an invocation song and CS B Ravi, Chairman, SIRC of the ICSI welcomed the Chief Guest, S Sureshkumar, Hon'ble Minister for Urban Development, Law and Parliamentary Affairs, Government of Karnataka, the Key Note Speaker Dr. Jija Madhavana Harisingh, IPS [Retd.], Former Director General of Police and all present for the Conference. The Chief Guest inaugurated the programme. CS G.M. Ganapathi, Chapter Chairman introduced the Chief Guest S Sureshkumar, Hon'ble Minister for Urban Development, Law and Parliamentary Affairs, Government of Karnataka and CS M. Chandrappa, Past Chairman, SIRC of the ICSI presented a bouquet to the Chief Guest. CS Nagendra D Rao, Member, SIRC of the ICSI introduced the Key note Speaker Dr. Jija Madhavana Harisingh, IPS [Retd.], Former Director General of Police and CS V.S. Shyamala, Past Chairman, SIRC of the ICSI presented a bouquet to the Key Note Speaker.

Sureshkumar in his address shared his experience and praised the strength of the Mission and Vision of the ICSI. He stressed the importance of a Company Secretary in the society and their services provided under various fields of law, Infrastructure, Corporates, Service industries and many more in overcoming the obstacles and ensuring smooth functioning of an organisation under lawful and judicial perspective. He then advised all the professionals to work with commitment so as to face the challenges and reach greater heights of success.

Dr. Jija Madhavan Harisingh, in her key note address, dwelled on the theme of the conference and stated that its relevance is not only in one's work, but is also for one's personal life. She likened Company Secretary to Krishna, the Charioteer and Moral Guide to every Arjuna-the Corporates/Boards. She then stated Excellence is a moving target like the Sports Records and cautioned that racing has to have its Intelligence and the bird's eye view of the overall scheme of the things. She then said that Skilled, well informed and committed, Company Secretaries to a large extent can guide and lead the Corporates through the complexities of Corporate Governance practices. She concluded by saying that the confluence and optimization of Intelligence Quotient, Emotional Quotient and Spiritual Quotient will lead to one to achieve the desired goals. Thereafter the Chief Guest released the Souvenir of 6th Southern India Regional Conference of Practicing Company Secretaries.

Technical Session I: The topic for the first technical session was "Flying with FEMA". Arvind Salvi, Former DGM, Reserve Bank of India, Mumbai was the Speaker. Arvind Salvi in his presentation on "Flying with FEMA" highlighted the salient features and important sections of FEMA. He then explained briefly the mechanism of FEMA and the different FOREX transactions under the Current and Capital Accounts. He also dealt with Foreign Direct Investment, its policy framework and procedural aspects. He then covered the aspects of External Commercial Borrowings and Overseas Investments. There was lively interaction by the members present.

Technical Session II: The topic for second technical session was "Launching Pad to Unlock Wealth"- SME Exchange. S. Ganapathy Subramanian, Vice - President, Karvy Computershare Private Limited, Hyderabad was the speaker who in his presentation on "Launching Pad to Unlock Wealth"- SME Exchange introduced the topic and gave a brief overview and background of the topic. He then highlighted the basic aspects of Micro, Small and Medium Enterprises (MSME) and its rise and significance in India. He also highlighted some of the challenges faced by MSMEs and the initiatives undertaken by the Government and the solutions available to overcome these obstacles. He also explained in detail the benefits of listing MSME both from the investor and the Company perspective. There was lively interaction by the members present.



Technical Session III: The Topic for the third technical session was "Take Over to Over Take". CS V N Shiv Shankar, Legal Advisor and Corporate Law Consultant, Chennai was the Speaker who in his presentation on "Take Over to Over Take" gave an overview of the recent changes in Takeover code under SEBI and explained briefly the applicability of it under Substantial Acquisition, Indirect Acquisition and Voluntary Offers. He also dealt with the new provisions in comparison with earlier provisions. He then highlighted the recent changes in Takeover Code and the impact of the new code and the role of Company Secretary under these new provisions. There was lively interaction by the members present.

Technical Session IV: The Topic for the fourth technical session was "Wear to Win and Speak to Lead". Dr. Rajdeep Manwani, Co-ordinator, Department of Commerce, Jain University, Bangalore, Premjeet Singh, Senior General Manager, Reid & Taylor (India) Limited, Bangalore and Sayeeda Ghani, Category Head - For Formal Wear (Arrow) Arvind Brands Limited, Bangalore were the Speakers.

Dr. Rajdeep Manwani in his address impressed on how to speak to lead. He advised to have true passion to express oneself and insisted to speak keeping other persons mentality in mind. He also stated that preparation is hard work and performance is relaxation and explained its importance for being a good speaker. He shared his experiences and learnings with numerous real life examples in being an effective speaker. He then concluded his address stating that one should always speak to express not to impress.

Thereafter Premjeet Singh and Sayeeda Ghani presented on etiquettes of corporate dressing. They listed the various corporate dress codes to both Men and Women and its importance and also shared few tips on selection of right clothes, colours, styles and accessories. There was a very lively interaction by the Participants present.

Technical Session V: The Fifth technical session was a panel discussion on "MCA Initiatives". Dr B. Ravi, Chairman, SIRC of the ICSI, Dr. K.S. Ravichandran, Managing Partner, KSR & Co., Company Secretaries, Coimbatore, CS C.P. Sounderarajan, Chief Secretarial Officer, GMR Group, Bangalore and CS R. Sridharan, Member, Central Council, The ICSI were the panellists for the discussion.

The speakers in their discussion on MCA Initiatives covered the pros and cons of new initiatives such as Electronic Annual Reports, Videoconference Meeting with Shareholder, Board Meetings. They also dealt with the green initiatives and its benefits. There was an open floor discussion on the topics covered by the panellists. There was a very lively interaction by the members in the session.

Valedictory Session: Chief Guest Stoka Krishna Das, Governing Body Commissioner, ISKCON Bangalore Group of Temples. Stoka Krishna Das in his profound speech advised the gathering to lead a peaceful life and shared various spiritual thoughts based on the Bhagavathgita for a

successful personal and professional life. CS Nagendra D Rao, Member, SIRC of the ICSI summed up the proceedings of the two day Conference.

7th Management Skills Orientation Programme

On 15.11.2011 The Bangalore Chapter of the ICSI organised the inaugural function of the 7th Management Skills Orientation Programme (MSOP). CS N.R. Ravikrishnan, Company Secretary, Infosys Limited, Bangalore was the Chief Guest who inaugurated the MSOP. CS N.R. Ravikrishnan in his inaugural address advised the participants to have commitment towards values and have ethical integrity and transparency in the profession. He emphasized on the importance of working and having an attitude to learn new things and to focus on diversified areas to upgrade one's knowledge for an optimal output.

On 1.12.2011 at the valedictory session CS Rajesh S Narang, Vice President- Legal & Company Secretary, Mindtree Limited, Bangalore was the Chief Guest who in his address shared his experiences and the expectations of corporates from a Company Secretary. He emphasized the need to develop good listening skill so as to be able to garner detailed Information leading to better accomplishment of undertaken tasks and sharing of knowledge and keeping updated. Jagadeeshwari and Anil Xavier, Participants, shared their feedback about the MSOP Programme. The Chief Guest then distributed the Best Participant award to Ashish Kumar A Parmar and prizes for the Best Project to the team comprising Aditya Kumar Jain, Kunal S Karsia, Ashish Kumar A Parmar and Nalin Bilochan for the Project on "Human Resource Development". He also distributed the Course Completion Certificates to the participants.

Career Awareness Programmes

The Bangalore Chapter of the ICSI conducted the 2 (Two) Career Awareness Programmes during the month of November 2011. Nearly 160 students taken together attended these career awareness programmes. The speaker was CS K Chandra Sekhar, Company Secretary, Ace Designers limited, Bangalore who explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc., the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. He then highlighted the opportunities available to those who complete the Company Secretary ship course. Further the speaker enumerated the emerging areas of practice and the changing role of Company Secretary. He 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



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students and the film on Career as a Company Secretary was also screened during the programmes.

Hyderabad Chapter

Work Shop on Practical Insights on XBRL

On 5.11.2011 the Chapter organised a Workshop jointly with ICWAI on Practical Insights on XBRL. CS P.Chiranjeevulu, Chairman, ICSI-Hyderabad Chapter in his welcome address gave a brief introduction to XBRL and its importance. A.S. Nageswar Rao, Chairman, Hyderabad Chapter of ICWAI spoke about the significance of XBRL in minimizing the need for multiple reporting and the difficulties in implementation. V. Srinivasulu, Executive Director, APGIC & APGDC distinguished between normal filing and XBRL filing, and gave an introduction of the taxonomy of XBRL. He elaborated on the need for XBRL, its advantages and compared XBRL to a barcode. He explained the requirements during the filing of Annual Report, requirements of Schedule VI, Accounting standards, Companies Act, Business Rules and Calculation Requirement. He threw some light on the practical working of XBRL in detecting errors and giving cautions in the form of working.

He presented the chronological steps in the process of XBRL filing and listed out briefly the exemptions. A Practical demo on XBRL was also conducted, where he showed the participants the procedure of filing.

CS S. Chidambaram, Company Secretary in Practice shared his views on XBRL and explained briefly the various practical difficulties faced by the professionals during filing. Members actively participated in the interactive sessions and speakers replied the queries raised by the members.

Workshop on Limited Liability Partnerships - Appropriate Vehicle for SMEs

On 17.11.2011 a workshop on the above topic was jointly organized by the ICSI- Hyderabad Chapter in association with FAPCCI, ICAI and ICWAI. The workshop started with an address by V S Raju, President, FAPCCI and Chiranjeevulu, Chairman of the Chapter. It was mentioned that in MSME, 90% of the owners were proprietary concerns and they obviously needed an alternate vehicle to emerge stronger. Chairman of ICAI and ICWAI also spoke on the occasion. E Selvaraj, Regional Director, South East Region, MCA, Govt. of India, M V Chakranarayan, Registrar of Companies, Hyderabad and D Vijay Bhaskar, Official Liquidator, AP High Court also addressed the gathering.

V S Raju stressed on the importance of services that required multi-disciplinary combination offering a menu of solutions to international clients and said that the LLP framework could be useful in the small and medium scale

sector.

Shanmugam Sundaram, Chairman SIRC, ICAI in his address opined that LLP is the easiest vehicle for unorganized sector to get into the organized sector, while stating that AMT was a deterrent.

D Vijay Bhaskar Official Liquidator, AP High Court, asserted that LLP was new to India, unlike UK and USA. He exhorted the professionals to pay attention to the lacunae in the Act and contribute towards modifying the same for better implementation. It could be that LLP was only deemed as a psychological advantage, and that it was a short Act, easy to incorporate and wind up. LLP is still a baby in the corporate sector and needed careful nurturing, he said.

MV Chakranarayan, Registrar of Companies, Hyderabad spoke on the forms of Business organizations and advantages of LLP and special significance to MSMEs.

He referred to the MCA website for details of online registrations and conversion processes. He made an earnest appeal to the MSME sector for incorporating under LLP regime.

E. Selvaraj, Regional Director, MCA South East Region, spoke on the requirements for LLP and the liability component. He spoke on the role of intellectual contribution in kind, as an equally important contribution as cash/monetary contribution. People were under illusionary problems regarding availability of bank credit and creation of charge on the LLP firm. He also suggested an interaction with RBI to resolve any such issues, however he said that inputs from all sectors were welcome.

The technical sessions were handled by Saloni Khandelwal, Director, PWC Pvt. Ltd. on Restructuring of LLPs and by D V Manohar, Director Deloitte Haskins & Sells on LLP Alternate Business vehicle -International scenario. Samuel Nagadesi, CA, illustrated the provisions of taxation and its effects on LLPs.

Special Meeting on Role of Libraries in Knowledge Societies

On 18.11.2011 the Chapter organized a Special Meeting on Role of Libraries in Knowledge Societies on the occasion of Library Week Celebrations. Prof. S. Sudarshan Rao, Professor & Head, Dept. of Library & Information Science, Osmania University was the speaker. He said that information society as a concept had changed to a knowledge society and thus the role of public libraries must undergo similar changes of priority. He emphasised the role of public libraries when most people have ample access to a plethora of information and entertainment. He said that libraries must move from defining their professional role in terms of providers of information literacy to a role as multimodal knowledge centres encompassing information as well as entertainment, retrieval as well as production. Second, librarians need to redefine their role in the physical library as facilitators of multimodel literacy and do so in close cooperation with other partners advancing civic society.



Interactive Meeting on Assessment Procedures under Income Tax & VAT

On 28.11.2011 the Chapter organized an Interactive Meeting on Assessment Procedures under Income Tax & VAT Jointly with All India Federation of Tax Practitioners of Southern Zone at its premises. CS R. Ramakrishna Gupta, Secretary of ICSI-Hyderabad Chapter invited dignitaries on the dais and spoke on the occasion. CS P. Chiranjeevulu, Chapter Chairman presided over the function. Dr. M.V.K. Moorthy, National Executive Member, All India Federation of Tax Practitioners of Southern Zone initiated the discussion and spoke about the critical issues in Assessments. CA A.C. Gangaiah, Practising Chartered Accountant was the main speaker. He spoke on Revenue/Expenditure, Purchases/Sales, Types of Assessments Under IT Act, Types of Assessments Under VAT, Assessment - Presentation of Facts & Legal Provision for Computation of Income chargeable to tax, reassessment by same authority - IT, Recording the reasons for reassessment - 148(2) and also emphasized reassessment of income escaped, reassessment beyond 4 years from Assessment Year - advance ruling by Authority for Clarifications and Advance Rulings.

CS V. Ahalada Rao, Secretary of All India Federation of Tax Practitioners of Southern Zone gave the closing remarks of the interactive meeting.

Mangalore Chapter

Full Day Programme

On 3.12.2011 the Chapter conducted a full day programme at Mangalore. CS Ullas Kumar Melinamogaru, Chapter chairman in his welcome address informed the audience that this programme is being conducted by the Chapter for the benefit of the members and students.

Chethan Nayak, managing Committee Member in the first technical session on foreign Investment in India - FEMA said that foreign investment in India is governed by the provisions of Foreign Exchange Management Act, 1999, that prior to the current legislation Foreign Exchange Regulation Act was in force to control & regulate foreign investment in India. However after the liberalization of the economy FEMA was introduced to manage the foreign investment in India. He explained that even though the two legislations have a lot of similarities there are some basic differences between the two legislation, for instance the main objective of FERA was to control the inflow & outflow of foreign investment, whereas the main objective of FEMA is to manage the inflow & outflow of foreign investment. Moreover the Concept of Capital account transaction & current account transactions are more clearly defined under FEMA.

He then explained Capital account transactions and Current account transactions.

After explaining the basic differences between the two legislations the resource person then went on to explain the various concepts of FEMA. The concepts discussed at length were as follows: Wholly owned subsidiary, Residential Status, Close relatives, Foreign direct investment, Government route (FIPB), Automatic route, Mode of Investment, Function of FIPB and elaborated the same.

The resource person concluded by stating the recent changes in the provisions of FEMA. The queries then raised by the members and students were successfully responded by the resource person.

Ullas Kumar Melinamogaru the resource person in the second technical session stated that the Company secretary's profession is closely related to the functioning of the corporate sector, the Company Secretary he explained serves as a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities and all other stakeholders and moreover he ensures that Board procedures are followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws. A CS has been recognized by law as one of the principal officers of the company.

He explained that a Company Secretary being a multidisciplinary professional, renders services in the following areas including Corporate Governance and Secretarial Services, Corporate Secretarial Services, Secretarial and Compliance Audit, Corporate laws advisory services, Representation services, Financial market services and other Services. The resource person concluded his presentation by stating that though the range of services that a CS is trained to perform is wide in actual practice however the function performed by a Company Secretary depends on the size of the company and the nature of activities that the company is engaged in. The queries raised by the members and students were successfully addressed by the resource person.

In the third technical session CS Chethan Nayak dealt with the topic Recent Changes and Need of Compliance from Professionals. Nayak discussed the following circulars in detail: General Circular No: 2/2011 08.02.2011 Direction under Section 212(8) of the Companies Act, 1956; General Circular No: 4/2011 04.03.2011 Payment of Commission to Non-Whole Time Directors of the Company under Section 309(4) (b) of the Companies Act, 1956; Circular dated 09.03.2011: Circular dated 27.05.2011 Payment of MCA fees through e-mode; Cir No.8/2011 25.03.2011: Prosecution of directors; Circular No.9/2011 31.03.2011 and Cir.No.25 / 2011 12.05.2011 and Cir No. 26/2011 - 18.05.2011 and Cir No.37 07.06.2011; Circular 18//2011 24.04.2011 - Sending of Annual reports by email; Circular no.23/2011 read with Companies Particulars of employees



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amendment Rules 2011; Circular No.36/2011: Striking of the name of defunct companies- FTE. CS Chethan Nayak concluded the technical session by stating that these circulars issued by the MCA are intended to protect the interest of all the stakeholder groups. The resource person then invited queries from the students and members present at the gathering. The queries so raised were successfully addressed by the resource person.

Dr. Sudhir Raj K in the fourth technical session on Soft skills and personality development started his presentation by stating that an unexamined life is not worth living, an examined (being conscious) life sucks everything. Human beings are thought factory hence the key to developing soft skill is to change one's thinking. He explained the gathering that there is nothing in life that is either good or bad but thinking makes it so. Hence the quality of ones thinking determines the quality of life.

The resource person said that key to personality development is to control one's mind. He cited the example of Capt. Sully an American pilot who showed amazing personality and presence of mind at the face of adversity to prevent a plane crash. He also cited the example of president Barrack Obama during the presidential election he addressed the people as "I have an unusual name and an exotic background but my values are essentially American values and my story is a part of the larger American story" Sudhir Raj K said that what both these eminent personality had in common is that they had a magnetic personality and a tremendous faith in their own ability. In order to achieve both of this one has to think positively. He concluded his presentation by stating that personality is ultimately a brand. He also successfully replied the queries raised by the members and students present.

WESTERN INDIA REGIONAL COUNCIL

Study Circle Meeting on Update on SEBI Takeover Code

On 13.11.2011 ICSI-WIRC organized a Study Circle Meeting on Update on SEBI Takeover Code at Mumbai. Prakash Pandya, Secretary, ICSI-WIRC and Practising Company Secretary, addressed the participants of the meeting. Around 70 members were present in the meeting.

Raipur Chapter

Discussion on Compliance Certificate & Recent Case Laws

On 20.11.2011 Raipur Chapter of WIRC of the ICSI,

organized an interactive Study Circle Meeting on the above topic. The faculty was CS Brajesh Agrawal and CS S. K. Batra. In the first part of the discussions a case study was put forth by CS S.K. Batra covered under section 81(3) of the Companies Act, 1956 read with SEBI Guidelines. The facts of the case were as under:

Company 'A' had inter-corporate deposits from Company 'B'. There was an oral understanding that the loans will be adjusted against equity allotment as and when further issue was made. Company B was also the shareholder in Company 'A'. Company 'A' issued right shares. Company B applied for the shares and requested that the loan amount be used as share application money. Company filed with a draft of the Offer Letter contained the fact that shares will be allotted to Company 'B' against the adjustment of loan amounts standing to their credit. SEBI did not approve the adjustment. Company 'A' came up with an appeal before Securities Appellate Tribunal. SEBI contends that the aforesaid allotment falls under the Preferential Allotment. Provisions of Section 81(3) are attracted and formalities like special resolution, Central Government approval, etc. are required to be complied with. The Company contends that the loans were repayable on demand and thus no convertibility of loan was involved. Company 'B' was entitled to the right shares and was well within its rights to call back the loan and pay the equity by its cheques. The adjustment was only to facilitate the transactions.

At the outset CS S.K. Batra threw light on the possible decision in the case by Securities Appellate Tribunal giving his arguments on behalf of the Company 'A' and later on other members present expressed their views also in the matter. And the arguments were very lively throughout the session creating a Court like situation.

In the second part of the Study Circle Meeting CS Brajesh Agrawal made presentation on "Compliance Certificate". He started with history of Compliance Certificate; date from which compliance certificate became applicable to companies, which companies are required to get Compliance Certificate, eligibility of Company Secretary to issue Compliance Certificate, tenure of Company Secretary issuing Compliance Certificate, disqualifications for Company Secretary to issue Compliance Certificate, ethical code of conduct for PCS, requirement of getting "No Objection Certificate" from previous PCS issuing Compliance Certificate, Penalty to be imposed on PCS for False Certification, usual practice to be adopted by PCS for verification and preparation of Compliance Certificate and other provisions related with Compliance Certificate. The members present discussed their practical issues regarding the topic.

Around 30 members were present and there was lively interaction throughout the session.



ICSI-CCGRT

Program on New Takeover Code

On 21.10.2011, ICSI-Centre for Corporate Governance Research and Training (CCGRT) organized a program on 'New Takeover Code' at Grand Hotel, Mumbai. M S Sahoo, Former Whole Time Member, SEBI inaugurated the program. S V Subramanian, Advisor, L & T Ltd. and Chairman, SSB gave the introductory remarks during the inaugural session. The speakers for the program were Yogesh Chande, Advocate and Shashikala Rao, Former Vice President (Corporate Secretarial) Reliance Industries Limited and Practising Company Secretary.

S V Subramanian commenced his introductory remarks by throwing light on the evolution of takeover law in India. Sometime in 1988, an interesting transaction took place in that area. A few of the Financial Institutions sold a basket of shares to an instrumentality of a nationalised bank which in turn sold them, not as a basket but as an individual group of shares to various corporates. This basket contained 7% shareholding of another corporate. The corporate which acquired these shares, say acquirer (such term was not used at that point of time) with this 7% shareholding attempted to exercise some control over the other corporate. This captured the attention of the media, public, stock exchanges and the government machinery and this triggered the amendment to Clause 40 of Listing Agreement. In 1992, SEBI came into existence with the primary objective of investor protection and regulation of capital markets. SEBI could not afford to passively look at promoters exiting the businesses after negotiating a good price for their shareholding and passing the control very quietly, leaving the shareholders in the rush. SEBI also could not be a mute witness to the acquirers acquiring control after negotiating with the promoters but not giving a fair option to the existing shareholders to exit the business. Therefore in 1997, SEBI introduced Substantial Acquisition of Shares and Takeovers Regulations which is popularly known as the Takeover Code. It was then 1997 and now we are in 2011 and there has been lot of changes during this period. In 1997, SEBI defined various terms in the Takeover Code viz. what is control, who is the promoter, who are the persons acting in concert etc. It also laid down the trigger for making an open offer to the existing shareholders to enable them to exit. After ascertaining the then prevailing shareholding pattern for exercising control in a company, SEBI felt that 15% can be the trigger point. At 15%, a person either acquires control or is deemed to be acquiring control over the company and therefore is required to give an exit option to the existing shareholders. Then came the next question as to whether the exit option be given to all shareholders or not and also whether complete exit or partial exit should be given. The prevailing economic conditions warranted that 100% exit cannot be given to all the shareholders and therefore a limited percentage of 20% was

fixed as it was felt that at 35%, person can have a commendable control over the company. SEBI had also given various other options to the acquirer under creeping acquisition, obligations of the acquirer, obligations of the target company etc. After so many years and various litigations, SEBI wanted to review the Code and for this purpose appointed the Achuthan Committee which studied and made several recommendations on various aspects of the Code. Most of them were accepted and a New Takeover Code notified by SEBI. He then discussed some of the significant provisions of the new takeover code. After once again looking on the current shareholding pattern for exercising control in a company, SEBI felt that 25% is good enough for exercising control. As far as minimum offer size is concerned, Achuthan Committee recommended 100% i.e. once 25% is acquired, there should be complete exit option for the balance 75% shareholding but SEBI restricted it to 26%. There has always been a resistance by the corporates for complete exit option for the reason that there are no financial solutions available for funding 100% takeover. But in this scenario, the shareholder does not get a complete exit. He gets an exit of 26% of his holding and has in hand remaining 74%. For selling those shares, he has to go through the market route and post offer market price may be higher or lower affecting the shareholder to that extent. The other issue is that if 100% exit is given, the company has to be delisted in which case the resulting unlisted company need not comply with all the listing agreement provisions. This is not very desirable at this point in time. On the other hand if offer size is 26%, the acquirer can exercise control with 51% (25%+26%) as well as the target company can stay a listed company. The next significant issue is the provision of non-compete fees on pricing. Achuthan Committee recommended that there should be no separate provision for non-compete fees and it should be a part of the offer price. The general opinion is that if there is a separate fee for non-competition or for technical know-how to the promoter, it should not form part of the pricing as it is given especially to the promoter and not to all shareholders for not competing. However, SEBI has decided that by whatever name called, the price has to include all these fees.

M S Sahoo, Former Whole-Time Member, SEBI reiterated the importance of continuous professional development by quoting with example that "Do not attempt today's work with yesterday's technology. One must always acquire today's technology for today's work".

He traced the evolution of the takeover code in India. Of the various items of securities laws, the takeover has been the most fertile field for SEBI, professionals media, and courts and tribunals. This is being frequently modified, to accommodate learning from the experience, judicial pronouncements, and increasing sophistication of takeover



News from the Institute & Regions **ICSI-CCGRT**

market so that it remains relevant in the changed environment. While the laws remain relevant to the market environment, we need to remain relevant for, and prosper in, the changed legal environment. He congratulated CCGRT for helping them to do so. He also congratulated the participants for their passion to remain relevant in the changed legal environment, which is evident from their participation in this CPE. HE expressed happiness that participants assembled here to acquire today's technology for today's work.

Why Takeover? He mentioned that the primary objective of securities markets is to allocate capital to the most efficient use. To do so, this has two mechanisms, namely, market for new issues or primary market, and market for corporate control or takeovers. Through the mechanism of primary market, this enables comparison and evaluation of various alternatives, competing uses of capital and ensures channelization of capital to the use where the expected return is the highest. This, in turn, ensures highest possible return on the capital and, therefore, optimum economic growth. However, after the capital is allocated in primary market to an entity for a particular use, there is no guarantee that people behind the entity would always deliver the best potential return. They may fail to do so for various reasons. In case they fail, the securities market, through the mechanism of market for corporate control, popularly known as takeover, brings in a different set of people who can realise the full potential of the entity. This mechanism allocates entities / productive assets - in the form of going concerns - to the highest bidder. Thus, takeover, as the second mechanism of capital allocation, ensures the highest possible return on capital on a continuous basis. It does so in two ways. First, it brings in more efficient/competent people to manage the entity. Second, it deters people from running the company below its performance potential as that would make the company vulnerable to takeover. Through improved performance of entities, the takeover mechanism contributes to higher return on capital and consequently, economic development.

A fundamental premise underlying the market for corporate control Sahoo added, is the existence of a high positive correlation between corporate managerial efficiency and the market price of shares of that company. As an existing company is poorly managed - in the sense of not making as great a return for the shareholders as could be accomplished under other feasible managements - the market price of the shares declines relative to the shares of other companies in the same industry or relative to the market as a whole. The lower the stock price, relative to what it could be with more efficient management, the more attractive the takeover becomes to those who believe that they can manage the company more efficiently. And the potential return from the successful takeover and revitalization of a poorly run company is enormous. The takeover mechanism brings in

competitive efficiency among corporate managers and thereby affords strong protection to the interests of vast numbers of small, non-controlling shareholders. Compared to the salutary effect of this mechanism, the studies in the US context reveal that other efforts of the SEC and the courts to protect shareholders seem small. There is, however, no such study in Indian context. Sahoo urged CCGRT to undertake one to verify if the study in the US context also holds good in India. In fact, takeover code offers CCGRT a very fertile ground for research. It can research into the economics and efficacy of each provision in the code. In the absence of research, we are using thumb rule to fix various thresholds such as 5%, 25%, 26%, etc.

Why Regulations? We now know how powerful takeover is for investor protection and economic development. We need to promote an efficient and vibrant market for takeover in the interest of economic development and investor protection. Such promotion requires conducive regulations. Further, when somebody acquires a large fraction of a firm's shares or control of a company, it enables him to elect a new board of directors, replace its top management, or alter its methods of doing business. This often implies significant consequences for various stakeholders. We need regulations to ensure that such acquisition happens in a non-disruptive manner, without affecting operations of the firm and trading of its securities adversely, while protecting the interests of various stakeholders equitably. For example, it should ensure that the shareholders of the target company get the highest possible price for their shares and all shareholders get the same exit price, while the acquirer suffers the least possible financial and regulatory burden and the transactions are successfully completed within a reasonable time. In short, we need regulations to balance the conflicting interests of stakeholders and thereby promote an orderly and thriving market for takeovers. In fact, takeover code is the best example of SEBI's effort to achieve simultaneously all three of its statutory objectives, namely, investor protection, market development and regulation.

The objectives of takeover code, as stated by the Achuthan Committee, are:

a. To provide a transparent legal framework for facilitating takeover activities; To protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors need a fair, equitable and transparent framework to protect their interests; To balance the various, and at times, conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies; To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investments; To provide acquirers with a transparent legal framework to acquire shares in or control of the target



company and to make an open offer; To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer; To ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decisions; To regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company; and To ensure that only those acquirers who are capable of actually fulfilling their obligations under the Takeover Regulations make open offers.

Sahoo mentioned that it is important to understand the objectives, as these often aid in interpretation of provisions. These are counterpart of statement of objects and reasons appended to a statutory bill. In fact, it is useful to read and understand the entire report of the Achuthan Committee which gives rationale for each provision in the code.

Preliminary Chapter

As per regulation 1.1, the Regulations are titled the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. This seeks to regulate substantial acquisition and takeover. However, the terms 'substantial' or 'takeovers' are not defined in the Act. For this, you have to rely on the FAQ on SEBI website. Takeover is taking over the control of a target company. Substantial acquisition of shares is acquisition of substantial quantity of shares or voting rights of a target company.

Date of effect: As per regulation 1.2, the code comes into effect on the 30th day from the date of publication. Hence effective from 23rd October 2011. The usual practice is from date of publication or from a date so appointed for the purpose.

Indirect Acquisition: As per regulation 1.3, the entire code is applicable to both direct and indirect acquisitions of shares of or voting rights in, and control over a target company. Earlier select provisions (10, 11&12), only those relating to open offers, applied to indirect acquisitions. Indirect acquisition earlier was limited to acquisition of a company which enabled control over Target Company. Now it covers acquisition of any entity which enables control over Target Company. Now in some cases, indirect acquisition would be treated as direct acquisition. If the net assets/turnover/market capitalization of a target company exceeds 80% of that of the entity being acquired, it would be considered as direct acquisition.

Obligations: Sahoo stated that the code casts two kinds of obligations in relation to substantial acquisitions or takeovers; (a) open offer obligations if the holding exceeds a certain percentage (25) at any point of time, if acquisition exceeds a certain percentage (5) over a financial year, or if there is acquisition of control, and (b) disclosure obligations when the holding exceeds a certain percentage (5) at any point of time, when acquisition or disposal exceeds a certain percentage (2), and annual disclosure of holding. Disclosure would cover the shares taken on encumbrance or given on release of encumbrance.

Definitions: Acquisition is now defined. It means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, control over, a target company.

PAC: The definition of PAC fortified. The definition in 1997 code required that to come within the definition of PAC, the person in question should co-operate with the acquirer by acquiring or agreeing to acquire shares or voting rights in Target Company or control over the target company. The new code only requires co-operation with the acquirer with the common objective of acquiring shares, voting rights or control. The co-operation in acquisition is not necessary. A few more categories of persons have been included in the category of persons deemed to be PAC.

From this preliminary chapter, it is clear that the effort has been made to plug the loopholes. Provisions relating to indirect acquisition, deemed direct acquisitions, acquisition of any entity for indirect acquisition, co-operation in objective to be a PAC, addition of new categories of persons to PAC, disclosure about shares taken on encumbrance, etc. are examples.

Accountability

Sahoo added that similarly, the new code is more focused on accountability. For example, SEBI: While issuing various directions in the interest of investors in any proceeding under the code, SEBI shall comply with the principles of natural justice.

Merchant Banker: The new code specifically provides that the manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with the Regulations.

Acquirer: SEBI can issue a variety of directions. New directions include: directing any person to cease and desist from exercising control acquired over the target company, directing divestiture of such number of shares as would result in shareholding being limited to the maximum permissible non-public shareholding or below, directing not to make any open offer in respect of shares of any target company for appropriate period.

Independent Directors: The new Code imposes a mandatory obligation on the board of directors of the target company to constitute a committee of independent directors to provide written reasoned recommendations on the open offer to the shareholders of the target company. For providing such recommendations, the committee may seek external professional advice. Under the 1997 Code, recommendations by the Board were not mandatory and the Board could, if it so desired, send to the shareholders, its unbiased comments and recommendations to the shareholders, keeping in mind their fiduciary responsibilities as directors. By introducing the requirement of a mandatory recommendation from the Independent Committee, SEBI has



adopted a prudent corporate governance practice, particularly in the event of hostile takeovers. With a mandatory obligation being imposed by the new code on independent directors of the target company to make recommendations to the shareholders, SEBI has made clear its intent of requiring the independent directors to play a more active role in corporate governance.

It started as a formality. It was ornamental to have a few independent directors. Gradually, they were assumed the same role as other directors. Now IDs have higher responsibility. Only they can be in some committees or they have to be majority in some committees. It is now difficult to have peon or drivers to be independent directors. We need institutional mechanism to groom a cadre of independent directors. This offer a business opportunity to CCGRT to launch certification courses for independent directors. If institutions like CCGRT do not do it, barber saloons would do it. As you know, barber gossips about stock market, takeovers, independent directors, corporate governance, etc. The clients waiting for their turn for haircut listen to him with rapt attention. Once I joined his captive audience. But soon I got fed up with his understanding and asked him, 'what do you know about corporate governance?' He told, 'I am sorry, Sir, I know nothing about corporate governance. Only thing I know is that if I talk about it, the hairs of my clients stand up and that makes my job of hair cutting easy. Time has come, we have to avoid learning from hair-cutting saloons. Also you, the company secretaries, being professionals mostly intimately involved with corporate governance, should seize the opportunity and be the preferred choice of corporate for independent directors.

Differences

Sahoo then analysed some of the provisions in the new code in comparison to the previous one:

Whitewash: The 1997 code provided for whitewash in case of change in control of the target company, that is, an open offer would not be required if the shareholders of the target company were to pass a special resolution waiving the open offer in case of change in control. This provision has been deleted.

Bail-out: The chapter relating to bail out takeover for FWCs has been deleted.

Non-compete Fee: The new code has done away with non-compete fee or control premium. It considers, control is a corporate asset and belongs to all. The implication of this notion is that any premium received by an individual for sale of control belongs in equity to all of the shareholders. A number of legal writers, therefore, press for a rule of quality in share purchase price when an outsider buys control in a corporation.

Voluntary Offer: The code has introduced voluntary offer

subject to certain conditions. Shareholders holding shares entitling them to exercise 25% or more of the voting rights in the target company may, without breaching minimum public shareholding requirements under the listing agreement, voluntarily make an open offer to consolidate their shareholding. Voluntary offers are important means for substantial shareholders to consolidate their stake. However, to discourage non-serious voluntary offers, the code sets a minimum offer size of 10%.

Takeover panel: The 1997 code exempted fourteen categories of transactions from the requirement of open offer. It further allowed SEBI to exempt certain categories of transactions from open offer, on request. However, the procedure was that SEBI would refer such requests to a takeover panel for its recommendations. SEBI considered the recommendations of the panel and passed appropriate orders. The new code has removed this mandatory requirement. SEBI would continue to have powers to grant exemption from making open offer and, if it considers necessary, may refer a request to a panel of experts.

Open Field

Sahoo mentioned that practice in the area of takeover code is an open field. It is not reserved for any category of professionals such as lawyers, CA, CS, etc. What matters is only merit. A professional would do well in the area of takeover, not because he is a lawyer or a company secretary, but because of his understanding of the subject. He concluded by once again thanking CCGRT. He thereafter wished all happy learning over next few hours.

Yogesh Chande threw light on the intricacies of New Takeover Code from practical point of view. He explained in brief the important regulations and discussed the legal aspects involved in it. He commenced by pointing out that the open offers under new takeover code are classified into compulsory and voluntary offers and threw light on the same. He then discussed all important definitions along with its legal implications. Definition of the term "control" clarifies that, a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position. This clarification is relevant for board managed companies or companies without any promoters. "Convertible security" means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security, and includes convertible debt instruments and convertible preference shares. The term "shares" also includes depository receipts. The definition of the term "promoter" and "promoter group" has now been made consistent with the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations).

He then threw light on Trigger for compulsory offer, Creeping acquisition limit, Voluntary offer, Offer size, Mode of payment, provision relating to escrow, etc. Completion of the acquisition



triggering an open offer is now expressly permitted after a period of 21 working days if 100% of the offer consideration has been deposited in the escrow in cash. He also pointed out that provisions of ICDR Regulations shall not apply in case the consideration in an open offer involves issue/exchanges of shares and ICDR Regulations have been amended accordingly. The provision permitting change in control through "white-wash" resolution without making an open offer has been done away with. In case of voluntary open offer a 52 week moratorium (look back period) has been introduced on acquisitions before an acquirer can make a voluntary open offer.

With reference to open offer process, Merchant banker can proceed with dispatch of letter of offer if SEBI does not issue any comments on the draft letter of offer within the stipulated time frame. Similarly, certification by the merchant banker as a condition precedent for completing an acquisition has been done away with. Also, an additional criterion for being eligible to make a voluntary delisting offer under the SEBI (Delisting of Equity Shares) Regulations, 2009 has been introduced. He made it clear that an open offer can be withdrawn only in case of refusal of statutory approval, death of the acquirer (natural person), conditions in the agreement which triggered the offer not being met for reasons outside reasonable control of the acquirer provided these conditions have been disclosed in the detailed public statement and letter of offer and such other circumstances which in opinion of SEBI merits withdrawal.

As regards exemptions, some of the acquisitions which are granted general exemption from making an open offer are: (a) only a scheduled commercial bank acting as an "escrow agent"; (b) only an underwriter registered with SEBI and acquiring shares pursuant to an underwriting agreement in terms of the ICDR Regulations; (c) invocation of pledge only by a scheduled commercial bank or a public financial institution as a pledgee; (d) scheme exemptions (not directly involving the target company) subject to certain conditions; (e) passive increase in shareholding because of "company buybacks" subject to certain conditions. Increase in shareholding pursuant to rights issues is also exempted subject to certain conditions. Custodians of depository receipts (carrying an entitlement to exercise voting rights) have not been granted general exemptions. Specific exemptions from an open offer can be granted by SEBI on a case to case basis. Though the concept of takeover panel has been done away with, SEBI can refer exemption applications to a panel of experts for their recommendations.

Yogesh Chande also discussed the obligations of the acquirer & target company and disclosure requirements. In line with international practice, the board of directors of the target company is obliged to constitute a committee of independent directors to provide reasoned recommendations on the open offer. Such recommendations are required to be published. Continuous disclosure requirements pertaining to acquisition and disposal have been simplified. Consequential amendments have also been made to clause 35 of the equity

listing agreement which is effective from December 2011 quarter. Promoters are obliged to disclose details of all "encumbrance" created by them over the shares held by them in the target company and not merely "pledge" of shares.

Shashikala Rao conducted a session on the Disclosure and Role of a Company Secretary under New Takeover Code. She covered Disclosures, Reporting for exempted acquisitions and Role of Company Secretary under the New Takeover Code.

She explained the disclosures required pursuant to Regulations 29, 30 and 31 of the New Takeover Code. She dealt with the importance of giving proper and timely disclosures. She briefly discussed the new formats prescribed for disclosures under the new Takeover Code vis-à-vis the disclosures required pursuant to the SEBI (Prohibition of Insider Trading) Regulations, 1992 and Clause 35 of the Listing Agreement. She mentioned that encumbrance would also be treated as acquisition and release would be treated as disposal. Disclosures of aggregate shareholding and voting rights are required to be given by acquirers, promoters and PACs. Such disclosure is required of shares, voting rights (otherwise than by way of shares), warrants, DRs, convertible securities and any other instrument which would entitle him to voting rights in Target Company. Disclosures will be required to be given by acquirer and PACs for acquisitions aggregating 5% or more of shares and voting rights. No stage wise disclosures would now be necessary. Disclosures will be required for every acquisition or disposal representing 2% or more of shares or voting rights by acquirers and PACs holding 5% or more shares or voting rights, within 2 working days. Persons holding 25% or more shares, promoters and PACs shall disclose aggregate shareholding and voting rights as of March 31, within 7 working days from the end of the financial year to the Stock Exchange and Target Company. Disclosure would be required to be given on creation, invocation and release of encumbrance on shares by promoters and PACs within 7 working days to the Target Company and Stock Exchange. Now, there would be no obligation on Target Company to disclose to Stock Exchange.

Rao also dealt with reporting for acquisitions exempted under Regulation 10. At least 4 working days prior intimation will be required for transfer between qualifying persons, and purchases by promoters from State Financial Institution (SFIs), Venture Capital Fund (VCFs) and Foreign Venture Capital Investment (FVCIs). Post-acquisition report to Stock Exchange should be given not later than 4 working days for all exempted acquisitions under Regulation 10 of the New Takeover Code. Report to Stock Exchange should be given within 21 days of date of acquisition or increase in voting rights for transfers between qualifying persons; purchases by promoters from SFIs, VCFs and FVCIs; acquisition of shares under a Scheme of arrangement not directly involving Target



Company; shares acquired in a scheme of CDR; increase in voting rights pursuant to a buy back (subject to conditions specified) and rights issue.

Thereafter Shashikala discussed the role of Company Secretary as a compliance officer of a Listed Company, Company Secretary of acquirer company, Company Secretary of Target Company and as Practicing Company Secretary. She stressed that onus of compliance with Takeover Code lies with the Acquirer Company and the Target Company. Hence the Company Secretary of the Acquirer Company as well as the Target Company should ensure that all the requirements are duly complied with.

A CS of acquirer company has to conduct Pre-takeover due diligence of target company, ensure compliance with obligations cast on acquirer company, apply to Competition Commission of India (CCI) for approval if required, ensure that all compliance for acquirer is up-to-date, check necessary compliance in case of indirect acquisitions, ensure requisite investment limits under section 372A of the Companies Act, 1956, check limits under section 293(1)(d) of Companies Act if investment is through borrowings, seek approval of Board under section 292 for borrowings and investments (as applicable), seek disclosure from directors, interested parties etc. In case an open offer is triggered, all requirements relating to PA, DPS, letter of offer, pricing, escrow account, appointment of proposed director representing acquirer on Target Company along with the timelines needs to be met. If consideration is by exchange of securities, CS has to ensure that securities are actually issued and despatched to the shareholders.

A CS of Target Company has to ensure compliance with obligations of Target Company and furnish the acquirer with list of shareholders, warrant holders, convertible debenture holders, DR holders etc. within 2 working days from the identified date. He/She has to ensure that the Board of Directors of target company except with approval of shareholders (Special resolution through postal ballot) obtained after PA, do not during the offer period, sell, transfer, encumber or otherwise dispose or enter into any agreement for sale, transfer, etc. of assets of target company, otherwise than in the ordinary course of business; or issue or allot any authorised but unissued securities carrying voting rights (except shares issued on conversion of warrants or debentures on predetermined price; issue or allot pursuant to public or rights issue in respect of which offer document is filed with ROC or Stock Exchange); or enter into any material contracts. The restrictions are also extended to subsidiaries of Target Company. More importantly, the recommendations of the Board of target company on the open offer has to be published, at least 2 business days before commencement of tendering period, in same newspapers where PA was published and a copy of recommendations is to be sent to

SEBI, Stock Exchange and manager to open offer.

Towards the end, the Chief Guest and the speakers responded to all the queries put forth by the participants in this regard.

10th Residential MSOP

ICSI-CCGRT organised its 10th Residential MSOP from 10.11.2011 to 25.11.2011. Dr. K N Vaidhyanathan, Director, Xavier Institute of Management and Research, Mumbai was the Chief Guest. Nesar Ahmad, Vice-President, the ICSI was the Guest of Honour and delivered the introductory remarks. Nesar Ahmad spoke on the scope of CS profession and the recent challenges faced by professionals. He spoke about the scope of CS profession in modern corporate world and reminded the participants about various avenues of profession. Citing various examples from his rich experience; he also mentioned various cross cultural issues.

Dr. Vaidhyanathan complimented the participants for completing CS course and spoke on the significance of learning. He said learning is a life time process and one should always be updated with the contemporary aspects.

Participants from across India had the opportunity to attend various enlightening sessions like Activity based life skills, Overview of Indian Economy, FDI regulations, Practical aspects of Indirect Taxes, Mergers and Amalgamations, IPO, Valuation, Due Diligence, Compliance of listing agreement, IFRS and revised schedule VI, Competition Law, Risk Management etc.

Rev. Fr. Pessa of Xavier Institute of Management and Research, Mumbai, who was also present during the inaugural session briefly interacted with the participants and shared his valuable thoughts on Spirituality in Corporates.

During the session on Experiential learning participants had the opportunity to present on various aspects of Company law. During the program participants also were acquainted with procedural aspects of Board meetings. The participants were divided into various groups and given Case studies of Managerial relevance, which they presented in front of the experts. Further they were allotted Projects of topical relevance which was also presented by them in front of the panel members. Yoga sessions were held in the mornings where pre-dinner sessions were organised in the evenings on selected days.

During the valedictory session held on Friday 25.11.2011 Atul Mehta, Central Council Member and Chairman, CCGRT Management Committee was the Chief Guest. He said that a Company Secretary should have expertise in law and should always be updated with the happenings in Corporate and regulatory sectors. He stressed on the significance of reading and said that being a member of the Institute one should be updated with reading Chartered Secretary and Guidance notes. He reminded the participants about the scope of Secretarial Standards. In conclusion he distributed Course Completion and other certificates for Best Project Group, Best Presenter and Best Participant.



Compulsory Attendance of Professional Development Programs by the Members of ICSI

The Council of the Institute has recently amended the Guidelines for **Compulsory Attendance** of Professional Development Programmes (PDP) by the Members to provide as under:

1.	Next 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

To enable members to partially fulfil this requirement, ICSI-CCGRT, Navi Mumbai is pleased to announce

PCH - 8

TWO-DAY

Program on

PDP - 16

CORPORATE AND COMPANY LAW UPDATES

Day, Date & Timing	Friday, January 27 and Saturday, January 28, 2012	09.30am – 05.30pm 10.00am – 03.30pm
Venue	A/C Conference Hall of ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614	
Coverage includes	<ul style="list-style-type: none"> • New Takeover Code, 2011 • New Postal Ballot Rules 2011 • Preferential Issue of Securities • Proposed Companies Act • Board Meetings through video conferencing • Amendments to Schedule VI 	
Faculty	Eminent speakers with practical exposure to the subject will address the participants.	
Participant Mix	Company Secretaries, Chartered Accountants, Cost Accountants, Bank Officials other professionals, and students of various professional courses.	
Fees	₹ 3200/- per participant for Members of ICSI (20 % discount) ₹ 4000/- per participant for others ₹ 2400/- per student (if self sponsored) 40% discount to cover the cost of program kit, background materials, lunch and other organizational expenses.	

* **Registration:** The Fees may be drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to **Shri Gopal Chalam**, Dean, ICSI-CCGRT Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614

☎ 022-27577814, 4102 1513, email: ccgrt@icsi.edu

* **Limited seats and hence prior registration is desirable**



Announces!!!

**ANNUAL MEMBERSHIP
SCHEME 2012**

**An invitation to attend a variety of
Professional Development Programs organized by ICSI-CCGRT**

ICSI-CCGRT is continuing with the concept of Annual Membership Scheme for the Professional Development Participative Programs organized by it during the period of 12 months, from **January 01, 2012 to December 31, 2012.**

The Scheme was introduced keeping in view the convenience to make payment / take approvals at one time to attend different professional development programs organized during the year.

The annual fees under the Scheme will be as under:

Individual Members	- ₹ 9,000/-
Corporate Members	- ₹ 12,000/-

Facilities & benefits:

- i) To attend all the Professional Development Non Residential programs organized by CCGRT **free of charge** throughout the period of 12 months from **January 01, 2012 to December 31, 2012.**
- ii) Corporate Members may depute any person from their organisation to attend the program, who need not be a member.
- iii) Both Categories of Members can attend the Non-Residential Programs Free of Charge. *Stay charges apply for Residential Programs.*
- iv) Individual Members will not be eligible to depute any other person.
- v) Both categories of members will be entitled to receive the CCGRT background material whether they attend the program or not.

The fees by way of D.D / local cheque payable at Mumbai and drawn in favour of "ICSI-CCGRT A/c" may be sent to the Dean, ICSI – CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai 400 614.

For any Clarifications please contact ☎: 022 - 27577814/15, 022 – 4102 1513 or email: ccgrt@icsi.edu or Fax: 022 - 27574384

Gopal Chalam
Dean
ICSI - CCGRT



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 110 003
Tel 011-4534 1000, 4150 4444, fax +91-11-2462 6727 [email: info@icsi.edu; website: www.icsi.edu]

CAREER OPPORTUNITIES

The ICSI, a premier professional body constituted under an Act of Parliament and having its Head Office at New Delhi, Regional Offices at Delhi, Chennai, Kolkata and Mumbai and 68 Chapters spread across the country is looking for a dynamic and result oriented professional as :



DIRECTOR RESEARCH

At its Centre for Corporate Governance, Research and Training at CBD Belapur, Navi Mumbai.

QUALIFICATIONS

Candidate must be a Member of the Institute or M.Phil, with First or high Second Class at Post Graduate level. The preference will be given to candidates with Ph.D qualification. The candidate must have proven track record in academics & research with good knowledge of Companies Act, Corporate Laws, Economic Laws and general economic scenario. Proficiency in English and working on Computers is a pre-requisite.

JOB REQUIREMENTS

To lead and undertake independent and sponsored research activities including preparation of position papers on vital matters affecting the Corporate Sector, writing / reviewing research based publications of practical relevance to the members of the Institute, providing expert views on professional queries and preparation of background papers for seminars, workshops, conferences, etc.

PERIOD

The position shall be offered on Contractual / Assignment basis for a period upto three years renewable further at the discretion of the Institute.

COMPENSATION

Negotiable

EXPERIENCE

10 years academic / research experience in the relevant area.

AGE

Not exceeding 50 years (as on 01.01.2012) **Relaxation in the qualification, age and experience may be considered at the discretion of the Selection Committee in case of otherwise suitable candidates.**

Preference will be given to those who have exposure to the working of professional Institutes or University.

For further details

For further details viz.procedure for submission of application, etc., please visit our website www.icsi.edu/career with effect from **10th January, 2012**. Interested candidates must **apply only through electronic application form (On-line)**. Last date for submission of application (On-line) is **31st January, 2012**. Reservation Policy as adopted by the ICSI in its Service Rules.



Book Review

Taxmann's Company Law and Practice (Sixteenth Edition) By

A.K. Majumdar & Dr. G.K. Kapoor

Company form of business organization is popular throughout the world. India is no exception to this trend. Whoever wants to enter business chooses this form for achieving his objective. Consequent to this trend there is a greater need for the promoters of businesses to recruit professionals who are well versed with this type of business organisation. This has resulted in giving importance to the study of company law in all professional course

Published by :

Taxmann's Publications (P.) Ltd. 21/35, West Punjabi Bagh, New Delhi 110026

Pages : 1275 pages

Price : Rs.750/-

examinations. In the academic field study of company law is essential in all commercial streams of universities. Company law is very old and in consequence has a mass of judge made law. Companies in India are presently regulated by the Companies Act, 1956. There are many rules, regulations, guidelines, clarifications, etc. in this regard under the Act referred to above and under the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, etc. One has to learn and understand all these if he desires to be associated in running this form of organization successfully. The authors have left no stones unturned to master all these and present in the work under review in a simple language which could be understood even by a lay man the cream of all that is required for successfully running a business of this type. This work will undoubtedly be useful for students of commerce streams in the universities and who pursue professional courses. The popularity of this masterly work could be gauged by the fact that it is in the sixteenth edition since 1995 when it was initially published. I am sure that in the way the topics have been professionally handled it would see many more editions in the years to come. For the benefit of the student community the authors have at the end of each chapter given questions to test the knowledge of the persons who wade through the pages of this admirable work and also a host of practical problems with hints for finding solutions thereto. In the sixteenth edition the authors have covered all the circulars, notifications, guidelines, clarifications issued by the Ministry of company affairs including on Indian Accounting Standards' convergence with International Financial Reporting standards and filing of financial documents with the Registrar in XBRL Mode. The authors have thoughtfully added a subject index at the end of this work which would be very useful for locating the topic of one's interest.

I am sure that this work will be a boon to students pursuing their studies in the commercial stream in universities and in professional courses. This will also be of use to all those who have an interest in this type of business organization.

This work has been excellently produced.

Rohini

Financial Management (Second Edition: 2011) By

Rajiv Srivastava and Anil Misra

In today's globalized world financial management and financial instruments have got an important place in the work of management writers and social scientists. The process is facilitated by coming up of literature from academics and those engaged in business of financial venturing, The book under review is the second edition of the earlier volume with reflection of current thinking and futuristic approach. The entire work has been presented in 816 pages divided into eight parts and three appendices.

Published by :

Oxford University Press, YMCA Library Building, Jai Singh Road, New Delhi 110 001 India

Pages : 816 pages

Price : Rs.595/-

Part I consist of three chapters each dealing with (i) financial management: an overview, (ii) comparative and historical analysis, and (iii) CVP and

break-even analysis. A case-study of Salron Electronics has also been provided here.

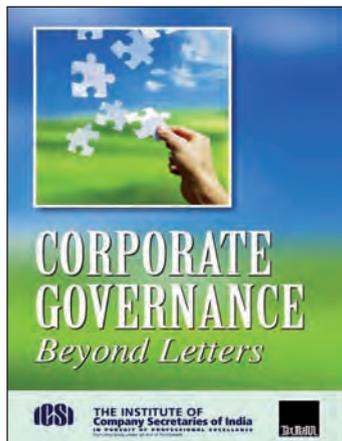
Part II explores the valuation concepts in seven chapters, each confining to i) time value of money, (ii) risk and return, (iii) valuation and management of bonds, (iv) shares and their valuation, (v) portfolio theory, (v) asset pricing models, and (vi) valuation and corporate governance. Investment decision area has been explored in Part III which included i) capital budgeting, ii) cost of capital, (iii) real options, and (iv) mergers and acquisitions. Part IV comprises of financing and dividend decisions which includes (i) capital structure theory, (ii) designing capital structure, (iii) leasing and hire purchases, (iv) dividend decisions, and (v) sources of finance. Working capital management area has been provided in Part V which starts with (i) conceptual framework, (ii) inventory management, (iii) receivables management, and (iv) Cash management. Issues relating to international financial management are projected in Part VI with one chapter each on (i) foreign exchange: rates and markets, (ii) determining foreign exchange rates, and (iii) managing foreign exchange exposure. Derivatives and risk management are detailed in Part VII under three chapters each dealing with (i) risk management: forwards and futures, (ii) options, and (iii) interest rate and currency swaps. Part VIII attempts i) future value of rupees, (ii) discounted value of rupee, (iii) present and future value of annuity, and (iv) EMI calculations. Measurement of market efficiency, optimization of portfolio using Excel, optimization with single index model, finding data through regression, binomial option pricing model, and derivation of EOQ model. Excel applications and their valuation aspects have also been briefly given.

On the whole the publication under review is an important contribution providing in one volume the entire gamut of current thinking and issues relating to financial management. It can very well be recommended to find a place on the tables of financial executives, company secretaries and other corporate business functionaries and business and management academics. It can also be used as recommended literature to management education and updating programmes.

Pro. R.S. Nigam



NEW PUBLICATIONS OF ICSI



CORPORATE GOVERNANCE

Beyond Letters

Price : 1175/-
 ISBN No. : 978-81-7194-979-3
 Edition : 2012

This well researched Treatise provides corporate leaders, corporate professionals, executives, academicians and readers an adaptable framework of best practices, processes and systems to foster a culture of good governance amongst corporates.

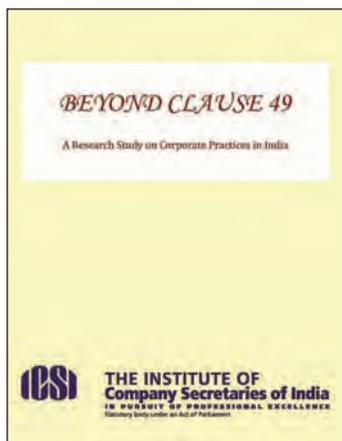
The book incorporates global corporate trends, international, inter-governmental and cross country developments in governance practices and emerging perspective on scope and ambit of corporate governance to include *inter alia* issues related to Board Effectiveness, Transparency and Disclosures, Sustainability Reporting and Accounting, Sustainability Indices, Integrated Reporting. It also contains model codes, policies and practices as well as secretarial standards and case studies to help corporates in establishing best governance norms and practices.



BOARD COMMITTEES

Price : 100/-
 ISBN No. : 978-81-9202-909-2
 Edition : December - 2011

Corporate Governance is pivotal for the success of any enterprise. Board of Directors are primarily responsible for ensuring good corporate governance practices. With the increasing business complexities and time commitment of Board Members, constituting committees have become inevitable for organization of any significant size. This research booklet is an insight into the practices relating to constitution of committees, pursued by top companies participated in "ICSI National Award for Excellence in Corporate Governance" during 2009-2011. This Research booklet bring out an analysis of practices being followed by these companies relating to Board Committees.



BEYOND CLAUSE 49

Price : 100/-
 ISBN No. : 978-81-9202-908-5
 Edition : December - 2011

The concept of Corporate Governance has evolved significantly since it was first introduced in the Listing Agreement as Clause 49 which was divided into Mandatory and Non-Mandatory clauses. Since the Mandatory clauses of listing agreement are generally complied by most of the companies, this research booklet is an insight into the practices relating to compliance of Non-Mandatory Clauses of Listing Agreement by top companies participated in "ICSI National Award for Excellence in Corporate Governance" during 2009-2011. This Research booklet bring out an analysis of practices being followed by these companies by adopting Corporate Governance as "beyond clause 49".



Qualified Foreign Investors (QFIs)

**Allowed to Directly Invest in Indian Equity Market;
Scheme to Help Increase the Depth of the Indian Market
and in Combating Volatility Beside Increasing Foreign
Inflows into the Country**



In a major policy decision, the Central Government has decided to allow Qualified Foreign Investors (QFIs) to directly invest in Indian equity market in order to widen the class of investors, attract more foreign funds, and reduce market volatility and to deepen the Indian capital market. QFIs have been already permitted to have direct access to Indian Mutual Funds schemes pursuant to the Budget announcement 2011-12. Today's decision is a next logical step in the direction.

Foreign Capital inflows to India have significantly grown in importance over the years. These flows have been influenced by strong domestic fundamentals and buoyant yields reflecting robust corporate sector performance.

In the present arrangement relating to foreign portfolio investments, only FIIs/sub-accounts and NRIs are allowed to directly invest in Indian equity market. In this arrangement, a large number of Qualified Foreign Investors (QFIs), in particular, a large set of diversified individual foreign nationals who are desirous of investing in Indian equity market do not have direct access to Indian equity market. In the absence of availability of direct route, many QFIs find difficulties in investing in Indian equity market.

As a first step in this direction, QFIs have been permitted direct access to Indian Mutual Funds schemes pursuant to the Budget announcement 2011-12. As a next logical step, it has now been decided to allow QFIs to directly invest in Indian equity market in order to widen the class of investors, attract more foreign funds, and reduce market volatility and to deepen the Indian capital market.

The QFIs shall include individuals, groups or associations, resident in a foreign country which is compliant with FATF and that is a signatory to IOSCO's multilateral MoU. QFIs do not include FII/sub-accounts.

Salient Features of the Scheme:

- ◆ RBI would grant general permission to QFIs for investment under Portfolio Investment Scheme (PIS) route similar to FIIs.
- ◆ The individual and aggregate investment limit for QFIs shall be 5% and 10% respectively of the paid up capital of Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under the PIS route for foreign investment in India.
- ◆ QFIs shall be allowed to invest through SEBI registered Qualified Depository Participant (DP). A QFI shall open only one demat account and a trading account with any of the qualified DP. The QFI shall make purchase and sale of equities through that DP only.
- ◆ DP shall ensure that QFIs meet all KYC and other regulatory requirements, as per the relevant regulations issued by SEBI from time to time. QFIs shall remit money through normal banking channel in any permitted currency (freely convertible) directly to the single rupee pool bank account of the DP maintained with a designated AD category - I bank. Upon receipt of instructions from QFI, DP shall carry out the transactions (purchase/sale of equity).
- ◆ DP shall be responsible for deduction of applicable tax at source out of the redemption proceeds before making redemption payments to QFIs.
- ◆ Risk management, margins and taxation on such trades by QFIs may be on lines similar to the facility available to the other investors.

The scheme is expected to help increase the depth of the Indian market and in combating volatility beside increasing foreign inflows into the country.

SEBI and RBI are expected to issue relevant circulars to operationalise the scheme by January 15, 2012.

DSM
(Release ID :79306)

The Company Secretaries (Amendment) Bill, 2010

We are happy to inform that both the Houses of Parliament, i.e., Rajya Sabha (on December 12, 2011) and Lok Sabha (on December 19, 2011) have passed the Company Secretaries (Amendment) Bill, 2010 which is awaiting assent of the Hon'ble President of India.

The Company Secretaries (Amendment) Bill, 2010 proposes to amend the Company Secretaries Act, 1980 to apply certain provisions of the Limited Liability Partnership Act, 2008 to the Company Secretaries Act, 1980 in order to allow the members of the professional Institute governed by the Company Secretaries Act, 1980 to form the limited liability partnership and insert new definitions of 'firm', 'partner', 'partnership' and 'sole proprietorship' for the said purpose. It will enable the members of the CS Institute to form LLPs and take benefits of provisions of the LLP Act. This will also enlarge the spectrum of the services provided by members of the CS Institute and will also ensure the competitiveness of the members of the Institute.

The Company Secretaries (Amendment) Bill, 2010 was introduced in the Rajya Sabha on 28th April, 2010 and referred to the Standing Committee on Finance by the Speaker of the Lok Sabha on 4th May, 2010 for examination and report thereon. The Committee vide its report dated 26th August, 2010 expressed agreement with the Amendment proposal of the Bill and recommended the same for consideration.

The Company Secretaries (Amendment) Bill, 2010 was discussed and passed in Rajya Sabha on 12th December, 2011 and introduced and passed by Lok Sabha on 19th December, 2011 along with the Chartered Accountants (Amendment) Bill, 2010 and Cost and Works Accountants (Amendment) Bill, 2010.

The amendments proposed in the Company Secretaries (Amendment) Bill, 2010 are as under:

1. Amendment to section 2 (2) of the Principal Act (the Company Secretaries Act, 1980) to insert in sub-section

(1) after clause (f), clauses (fa) (gb) (gc) and (jj) to define the terms firm, partner, partnership and sole proprietorship as per details given below:-

'(fa) 'firm' shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932, and includes, -

i) The limited liability partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008; or

ii) The sole proprietorship, registered with the Institute;'

'(gb) 'partner' shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 or in clause (q) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be;'

'(gc) 'partnership' means -

(A) a partnership as defined in section 4 of the Indian Partnership Act, 1932; or

(B) a limited liability partnership which has no company as its partner;

'(jj) 'sole proprietorship' means an individual who engages himself in the practice of the profession of the Company Secretaries or offers to perform services referred to in clauses (b) to (f) of sub-section (2);'

2. Amendment to Section 26 to add explanation to section 26 of the Act to clarify that the company includes any limited liability partnership having company as its partner as under:-

"Explanation - For the removal of doubts, it is hereby declared that the 'company' shall include any limited liability partnership which has company as its partner for the purposes of this section."

The Bill will become an Act on receipt of assent of the President.

Toll-free Helpline Service for Investors

PR No. 1/2012

Securities and Exchange Board of India (SEBI)

has launched a toll free helpline service number **1800 22 7575** for investors on December 30, 2011. The service will be available to investors from all over India and will be in 14 languages. At present the available languages are English, Hindi, Marathi, Gujarati, Tamil, Bengali, Malayalam, Telugu, Urdu, Oriya and Punjabi. The service in Kannada, Assamese and Kashmiri will be commenced shortly. The toll free helpline service will be available on all working



days during Monday to Friday from 9:30 a.m. to 5:30 p.m.

In the initial phase, the following services will be available to the investors -

Guidance pertaining to:

- ◆ Status of companies - whether unlisted, sick, delisted, liquidated /wound up etc.
- ◆ Matters pertaining to other Regulators that are not under SEBI purview
- ◆ How to lodge a complaint
- ◆ Against whom to lodge a complaint
- ◆ Complaint status
- ◆ How to open a demat / client account etc.

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 in the following subjects of company secretaries examinations. The applicants are requested to give their option of subjects, in order of preference, under the following disciplines:

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	Rs.5,000/- per paper	Rs.40.00 per answer book
Executive Programme	Rs.6,000/- per paper	Rs.50.00 per answer book
Professional Programme	Rs.7,000/- per paper	Rs.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 and Works 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 and International Trade & Economics 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/Moderator/Paper Setter/Examiner in subjects of Legal, Management, Finance & Accounting and International Trade and Economics discipline 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 graduate/post-graduate level qualification(s) 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/exam.pdf>. The blank application form can also be obtained by post from the Jt. Director (Examinations), The Institute of Company Secretaries of India, C – 37, Sector – 62 Institutional Area, NOIDA – 201 309 or by sending and e-mail to exam@icsi.edu.

COMPANY SECRETARIES BENEVOLENT FUND

HOW TO BECOME THE LIFE MEMBER

Safeguarding and caring for your well being



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

The members can also apply online.

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

Following benefits are presently provided by the CSBF:

Financial Assistance in the event of Death of a member of CSBF:-

Upto the age of 60 years

- Group Life Insurance Policy for a sum of **Rs. 2,00,000;** and
- Upto **Rs. 1,00,000** in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.

Above the age of 60 years

- Upto **Rs. 1,00,000** in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.

Other benefits subject to the Guidelines approved by the

Managing Committee from time to time:-

Reimbursement of Medical Expenses

- Upto **Rs. 40,000**

Financial Assistance for Children's Education (one time)

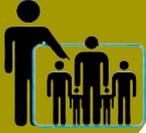
- Upto **Rs. 10,000** per child (maximum for two children) in case of the member leaving behind minor children.

THE MANAGING COMMITTEE OF THE COMPANY SECRETARIES BENEVOLENT FUND (CSBF) IN ITS MEETING HELD ON 29TH SEPTEMBER 2011 HAS DECIDED TO INCREASE THE FINANCIAL ASSISTANCE FROM RS. 3.00 LAKHS TO RS.5.00 LAKHS TO THE NOMINEE(S) OF THE DECEASED MEMBERS OF THE FUND UPTO THE AGE OF 60 YEARS (W.E.F. 1ST APRIL 2012).

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

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

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



Our Members

CONGRATULATIONS

Dr. BAIJU RAMACHANDRAN, ACS on his being awarded the Doctorate of Philosophy in Commerce by Manonmaniam Sundaranar University, Tirunelveli, Tamil Nadu.

Dr. NARESH MAHESHWARI, FCS Chairman of Farsight Group and President of ANMI, on his being elected as Chairman of Asian Forum for Investor Education (AFIE) in the last Annual General Meeting held in South Korea. AFIE is the Pan Asia Pacific Organisation consisting of 32 organisations from 21 Jurisdictions connected with development and regulation of Capital Market and Investor Education.

ON THE MOVE

LALIT KUMAR GUPTA, FCS on his appointment as Managing Director & Chief Executive Officer of Essar Oil Limited. Earlier he was with JSW Energy Limited as Chief Executive Officer & Jt. Managing Director.

Recognition of Company Secretaryship Qualifications as equivalent to Post-Graduate Degree for pursuing Ph.D. in Commerce, Management/Law Disciplines

ALIGARH MUSLIM UNIVERSITY, Aligarh has approved that the Ph.D admissions shall be allowed to CSs as per the University Ordinances (Academic) and Regulations relating to M.Phil./Ph.D. courses effective from 2011-12 session.

SHRI MATA VAISHNO DEVI UNIVERSITY, Katra has approved Membership of ICSI as equivalent to MBA Programme for the purpose of enrolment for Ph.D Programme in Management.

CS QUIZ

Prize query

Ram applied to a Housing Development Authority of a State for allotment of a flat. He was successful in the draw and even though he made the payment he could not get the flat because of a mistake committed by the bank through which he made the deposit for allotment. The State Housing Development Authority neither allotted a flat nor refunded the amount for a number of years after the completion of the draw for allotment. Under the circumstances can Ram successfully claim the refund of the money paid by him and compensation for the delay in the refund ?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th February , 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 January , 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.

Shifting of office address of Assistant Commissioner, Service Tax, Division V, Mumbai - II

(issued by Office of the Commissioner of service tax, Mumbai - II vide trade Notice No. 8/ 2011 dated 15.11.2011)

1. Members of Trade/Service Tax assesseees are hereby informed that the office of the Assistant Commissioner, Division V in Commissionerate of Service Tax, Mumbai - II, presently functioning from 7th floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012 is being shifted to the following premises w.e.f. 21.11.2011:

**5th Floor, CGO Complex, CBD Belapur
Navi Mumbai 400 614 (Phone Nos. 27581035, 27581034)**

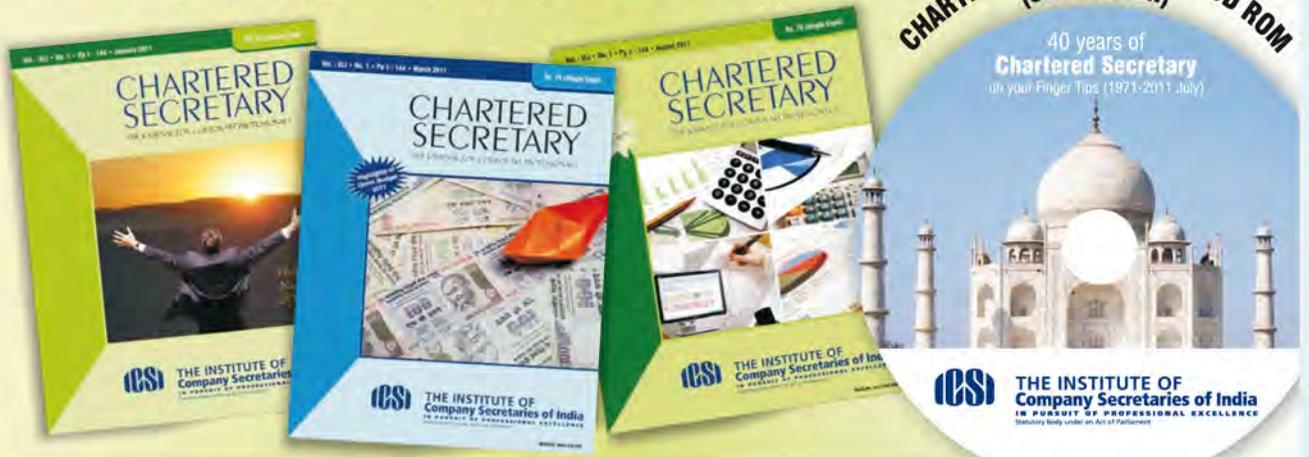
2. In view of above, all the correspondence in future may kindly be made on the new address.
3. The contents of the Trade Notice may please be brought to the notice of all constituent members of your Association in general, and the service providers in particular.

W L Hangshing
Commissioner
Service Tax Mumbai - II

9th Edition

40 Years of Chartered Secretary

on your Finger Tips (1971-2011 July)



About the CD

The CD contains the Chartered Secretary Journal from the year 1971 to July 2011. The CD facilitates easy retrieval of the desired documents, from the vast data of 40 volumes of Chartered Secretary through its customized powerful Search Engine. The CD proves to be a treasure for Company Secretaries, Chartered Accountants, Advocates, Corporate Executives, Academicians and Researchers and provides them a competitive edge in their areas of operation and expertise.

A CD Containing the Chartered Secretary Journal from the year 1971 to 2011 July

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From the Government/ Corporate Miscellany	Issuing Authority, Subject, Notification / Circular / Press Note number, File number, Dates, Headlines, Keyword Search
Points of View	Title, Queriest / Replier's Name, Dates, Keyword Search
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