

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

838 ➤

Corporate Criminal Liability  
for Offences

912 ➤

The Company Secretaries  
(Amendment)  
Regulations, 2012

933 ➤

Guidelines for Setting up  
and Conversion of Firms of  
PCS into LLPs

Ownership  
and  
Responsibility



THE INSTITUTE OF  
Company Secretaries of India

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

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N. K. Jain for The Institute of Company Secretaries of India,  
ICSI House, 22, Institutional Area, Lodi Road, New Delhi- 110 003.  
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- 01 >> SIRC - Thiruvananthapuram Chapter - Meeting of ICSI Delegation with Hon'ble Chief Minister of Kerala - Standing from Left: Chitra V.S, N.C. Nair, V.A. Sasidharan Nair, Baiju Ramachandran, Nesar Ahmad, Oommen Chandy (Hon'ble Chief Minister of Kerala), Harikrishnan R, Bijoy P Pulipra, N.K. Jain and Vimal S.V.
- 02 >> SIRC - Thiruvananthapuram Chapter - Meeting of ICSI delegation with President, Trivandrum Chamber of Commerce - Standing from Left: Vimal S. V, Bijoy, Nesar Ahmad, E.M. Najeed (President, Trivandrum Chamber of Commerce), Harikrishnan R and Baiju Ramachandran.
- 03 >> NIRC - Bhilwara Chapter - National Seminar on Role of Infrastructure Development in Economic Growth - Sitting on the dais from left: R K Jain, R L Nolakha ( CMD, Nitin Spinners Ltd., Bhilwara), Ram Lal Jat (Former Minister, Govt. of Rajasthan), Prof I V Trivedi (Vice Chancellor, MLS University, Udaipur), Dr. C P Joshi (Hon'ble Union Minister of Road Transport and National Highways, Govt. of India), Dr. Bharat Chhparwal (Former, Vice Chancellor, Devi Ahilya University, Indore), Smt. Susheela Salvi (Zila Pramukh, Bhilwara), Hitender Mehta and Anil Dangi (President, Zila Congress, Bhilwara).
- 04 >> NIRC - Seminar jointly with SAFIM on Shaping Values for Effective Corporate Governance - Inaugural Session - Standing from Left: Shyam Agrawal, Vijay K. Poddar (Director, SAFIM & Member, Executive Committee, Sri Aurobindo Society), O.P. Dani, Arup Roy Choudhury (CMD, NTPC Ltd.), T.N. Chaturvedi (Former Governor, Karnataka & Kerala), Dr. Abid Hussain (Former Ambassador of India to USA & Member, SAFIM Advisory Board), Dr. A.K. Balyan (MD & CEO, Petronet LNG Ltd. & Member, SAFIM Advisory Board), Nesar Ahmad, Rajiv Bajaj and A.K. Gurnani.
- 05 >> 7th International Conference organised jointly by ICSI and CSSA on Governance, Rating and Economic Performance on 19.6.2012 at Johannesburg, South Africa - Sitting from Left: N K Jain (Secretary & CEO, The ICSI), Nesar Ahmad (President, The ICSI), Bob Lees (Past President, CSSA) and Stephen Sadie (CEO, CSSA).
- 06-15 >> Address by the dignitaries, from Left: Nesar Ahmad, Bob Lees, N K Jain, Stephen Sadie, Joel Wolpert ( Technical Adviser, CSSA), Mahesh Shah ( Past President, The ICSI), Charl Kocks (CEO, Ratings Afrika), B Narasimhan (Council Member, The ICSI), Alice Mathew (Company Secretary, SANRAL) and Shalini T Budathoki (Director, CII).
- 16 >> A view of the delegates present at the International Conference.
- 17 >> Group photo of the Indian delegation.









- 18 >> Nesar Ahmad (standing 5th from Right) and N K Jain (standing Left) with Carina Wessels (President, CSSA, standing 6th from Left), Stephen Sadie (CEO, CSSA, standing 2nd from Left) and other Council Members and Officers of Chartered Secretaries Southern Africa (CSSA).
- 19 >> Joey Mathekga (Acting Chief Director: Enforcement, standing 3rd from Right), Lana Van Zyl (Director Investigations, standing 2nd from Left), Flip Dwinger (Legal Division, standing Left) of Government of South Africa and Stephen Sadie (CEO, CSSA, standing 2nd from Right) seen with Nesar Ahmad and N K Jain.
- 20 >> ICSI - CCGRT - Joint Programme with BSE on Corporate Governance and Retail Investors - Inaugural Session - Dravid Gerald {(President and CEO, Securities Investors Associations(Singapore))} lighting the Lamp. Others seen in the picture from Left: Prashant Saran (Former Whole Time Member, SEBI), N.L. Bhatia (President, Investor Education and Welfare Association(IEWA)& Practising Company Secretary), Kishor A. Chaukar (MD, TATA Industries Ltd.), Siddharth Shah (Chairman, BSE Brokers' Forum) and Atul Mehta.
- 21 >> ICSI-CCGRT - Foundation Day lecture - G.N. Bajpai (former Chairman, SEBI) delivering the Foundation Day Lecture. Others sitting from Left: B Narasimhan, Atul Mehta, S.N. Ananthasubramanian and Mahavir Lunawat.
- 22 >> SIRC - Coimbatore Chapter - Bhoomi Poojan and Foundation Stone Laying Ceremony of Chapter Building - Dr. M. Veerappa Moily (Hon'ble Union Minister of Corporate Affairs) seen with other dignitaries during lighting of lamp to mark the occasion.
- 23 >> Dignitaries seen after unveiling the Foundation Stone of the Chapter Building.
- 24 >> EIRC - Bhubaneswar Chapter - Seminar For Directors of Odisha State PSUs - N.K. Jain addressing during the inaugural session. Others sitting on the dais from Left: J.K. Mohapatra (IAS, Principal Secretary, Finance, Govt. of Odisha), P.K. Ghadai (Hon'ble Minister, Finance & PE, Govt. of Odisha), A.K. Tripathy (IAS, Principal Secretary, Deptt of P.E., Govt. of Odisha) and J.B. Das.
- 25 >> A view of the participants at the Seminar.
- 26 >> WIRC - Seminar on SME Listing - A Big Opportunity - Release of Empower - a weekly e-bulletin - standing from Left: NehaBaid, MahavirLunawat, S.N.Ananthasubramanian, Ashish Chauhan, Sanjay Gupta, S V Murlidhar Rao, Jagdish Rattanani, Ramesh Dharmaji and Ragini Chokshi.
- 27 >> WIRC - Vadodara Chapter - Discussion on Contemporary Issues with President and Vice President, the ICSI - Sitting from left: Suresh K Kabra, Nesar Ahmad, S N Ananthasubramanian and Umesh H Ved.







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# At a Glance

## Articles (A 267 - 308)

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### Corporate Criminal Liability: Company Directors' and Officers' Liability for Offences and the Principle of Attribution

p- 838

Dr K R Chandratre

A study of law on corporate criminal liability would, however, show that regardless of whether a statutory provision specifically provides for directors/officers making vicariously liable for a company's offence, they can be held liable and thus the concept of vicarious liability is not unknown to criminal law. In fact, the principles of identification and attribution do contemplate corporate criminal liability to be vicariously fixed to directors/officers provided, of course, the company has been found to be primarily guilty.

### Right to Information Act, 2005 An Overview

p- 847

R. Rajesh

The right guaranteed under the RTI Act is considered as a weapon to expose those who are negligent in performing their public duties and to nail down the corrupt officials. Without information it would not be fully possible to exercise our valuable fundamental right of 'Freedom of Speech and Expression' as guaranteed under Article 19(1) (a) of the Indian Constitution. The main objective of this Act is to ensure greater and more effective access to information and to maintain transparency and improve accountability in the working of the public departments both Central and State.

### Whistle Blowing and Professional Responsibility

p- 855

Prof. S.K.Malhotra

Whistle blowing is the process of informing the authorities about the illegal or immoral or unethical conduct of business in an organization.

Precisely, whistle blowing is an action taking place within an organization. The reporting of an incident in an organization by an external agency or even the employee is not whistle blowing. There are certain basic differences between whistle activity and reporting.

Whistle blowing policy will never give an automatic protection to any organisation from wrong doings. The effectiveness of the system mainly depends upon how the wrong doings become costly to the performer of the act.

### Marketability and Stamp Duty on Issue and Allotment of Debentures by a Private Limited Company

p- 860

S.Krishna Kumar

Article 27 of Schedule I of the Indian Stamp Act, 1899 prescribes stamp duty on debentures, being marketable securities. The stamp duty on debentures is a central subject and would not vary with the registered office or place of holding of the board meeting. The question arises whether the debentures issued by a private limited company are marketable securities and the debenture certificate attracts payment of stamp duty under Article 27 of Schedule I of the Indian Stamp Act, 1899.

### A close analysis on Contracts in restraint of trade and profession

p- 865

Jaya Ankur Singhania

The strict interpretation of Section 27 of the Indian Contract Act by various courts of India does not leave a scope of deviation save and except for sale and purchase of goodwill and confidential information in the nature of trade secret. The Constitution of India also provides a fundamental right to every individual under Article 19(1) (g) to carry on and practice any profession, trade or vocation of his own choice. We can thus consider that reasonableness of such negative covenants is a prime factor which is required to be taken into consideration for the purpose of evaluating the enforceability of Section 27 of the Indian Contract Act.

### Shareholders' Inspection Right - 'Law in books' v. 'Law in action'

p- 872

L. H. Khilnani

Every company is required to maintain certain statutory registers, records and returns, which must be open to inspection by a member. The register of members has historically been a public register and is open to inspection by any member or debenture-holder without fee and any other person on payment of such fee as may be prescribed for each inspection. The right to inspect, make extracts or require a copy of the register of members is a statutory right. Lack of information to shareholders is probably the most common violation of shareholders right and almost always a bone of contention amongst shareholder and those in charge of the corporation. The position of shareholders has been rather weak, especially when compared to those managing the company commonly known as insiders. In India, right of



inspection is a most contentious subject when exercised by any investor. More so, when it touches 'Register of Members' as it is guarded record by the insiders and most wanted record by the investors. The insiders invariably tend to use dilatory tactics to avoid or delay inspection right of the shareholders. Academicians perceive "shareholders' right of inspection" as 'law in books' rather than 'law in action'. Legal researchers opine that it is the duty of legislature to seek obedience of the written law, by making the law in the books such that the law in action can conform to it. At the same time, they believe that onus is on the legal practitioners to make the law in action corresponds to the law in the books.

## Legal World (LW 77 - 86)

p- 880

- ◆ **LW 63.07.2012** Delhi High Court issues directions to BIFR to regulate the abuse of registration process by companies which file successive references even after rejection by BIFR of their earlier references
- ◆ **LW 64.07.2012** ROC need not have to provide information as to records and returns maintained under section 610 of the Companies Act, under the RTI Act.[Del]
- ◆ **LW 65.07.2012** MRTP Commission's power to review is not curtailed by limitation.[SC]
- ◆ **LW 66.07.2012** Securities Appellate Tribunal explains the differences between acquisitions made under regulations 11(1) and 11(2) with respect to making mandatory public offer
- ◆ **LW 67.07.2012** Acquisition of shares by promoters, who were split over disputes, does not make them under persons acting in concert.[SAT]
- ◆ **LW 68.07.2012** On facts, the compensation claim that the deceased son was employed by his father in family business at the time of accident was rejected by the Bombay High Court
- ◆ **LW 69.07.2012** Delhi High Court upholds the reinstatement of workmen

## From the Government (GN 132 - 164)

p- 890

- ◆ Constitution of CLB Benches for the purpose of exercising and discharging the Board's powers and functions
- ◆ Corrigendum to Limited Liability Partnership (Amendment) Rules, 2012
- ◆ The Limited Liability Partnership (Amendment) Rules, 2012
- ◆ Companies Director Identification Number (Second Amendment) Rules, 2012
- ◆ Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2012
- ◆ Extension of time in Filing of annual return by Limited Liability Partnerships (LLPs)
- ◆ Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed

- ◆ Extension of time in Filing of annual return by Limited Liability Partnerships (LLPs)
- ◆ Cost Accounting Records and Cost Audit - general clarifications
- ◆ Cost Accounting Records and Cost Audit - clarifications about coverage of certain sectors thereunder
- ◆ FII Investment in Government debt long term and corporate debt long term infra category
- ◆ Clarification to the "Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) Circular dated April 13, 2012"
- ◆ Redressal of complaints against Stock Exchanges (SEs) and Depositories through SEBI Complaints Redress System (SCORES)
- ◆ Establishment of Connectivity with both depositories NSDL and CDSL- Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement
- ◆ Reporting of Offshore Derivative Instruments (ODIs)/ Participatory Notes (PNs) activity
- ◆ Revision in framework for Qualified Foreign Investor (QFI) investment in Equity Shares and Mutual Fund schemes
- ◆ Exit Policy for De-recognized/ Non-operational Stock Exchanges
- ◆ The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (SECC)
- ◆ Annual return on Foreign Liabilities and Assets Reporting by Indian Companies - Revised format
- ◆ Export Credit Refinance Facility (ECR): Relaxation
- ◆ Overseas Direct Investments by Indian Party- Online Reporting of Overseas Direct Investment in Form ODI
- ◆ The Company Secretaries (Amendment) Regulations, 2012

## Other Highlights

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- ◆ Members Admitted/ Restored
- ◆ Certificate of Practice Issued/Cancelled
- ◆ Licentiate ICSI Admitted
- ◆ News From the Regions
- ◆ Company Secretaries Benevolent Fund
- ◆ Our Members
- ◆ Appointment Advertisements
- ◆ Prize Query
- ◆ Post Membership Qualification Course in Corporate Governance
- ◆ ICSI National Award for Excellence in Corporate Governance, 2012 - Draft Questionnaires for Comments and Suggestions
- ◆ Guidelines for Setting up and Conversion of Firms of PCS into LLPs
- ◆ Company Secretaries' Diary
- ◆ Prize Query Scheme Enhancement of the Prize Amount
- ◆ KYC Norms for PCS
- ◆ 40th National Convention of Company Secretaries



# CG & CSR : WATCH

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

## NEW DEVELOPMENTS

### 1. 1.Malaysian Code on Corporate Governance 2012-

The Malaysian Code on Corporate Governance 2012 (MCCG 2012) was launched in March 2012 by the Securities Commission Malaysia. This supercedes the Malaysian Code on Corporate Governance 2007. It sets out broad principles and specific recommendations on structures and processes which companies should adopt in making good corporate governance an integral part of their business dealings and culture.

This new code on corporate governance focuses on clarifying the role of the board in providing leadership, enhancing board effectiveness through strengthening its composition and reinforcing its independence. It also encourages companies to put in place corporate disclosure policies that embody principles of good disclosure. Companies are encouraged to make public their commitment to respecting shareholder rights.

*The code defines Corporate Governance as:*

*"the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder value, whilst taking into account the interests of other stakeholders."*

The MCCG 2012 will be effective on 31 December 2012. Listed companies are required to report on their compliance with the principles and recommendations of the MCCG 2012 in their annual reports. Companies are however encouraged to make an early transition to the principles and recommendations elaborated in this new code.

MCCG 2012 can be accessed at:  
[http:// www.sc.com.my](http://www.sc.com.my)

### 2. COSO released thought paper on Enterprise Risk Management for Cloud Computing - June 20, 2012

Committee of Sponsoring Organizations of the Treadway Commission (COSO) is a joint initiative of the five private sector organizations and is dedicated to providing thought leadership through the development of frameworks and guidance on enterprise risk management, internal control and fraud deterrence.

Cloud computing is the next major milestone in technology and business collaboration, more and more organizations are seriously considering adopting the same. Cloud computing refers to delivering hosted services over the Internet, it potentially enables organizations to increase their business model capabilities and their ability to meet computing resource demands while avoiding significant investments in infrastructure, training, personnel, and software.

In response to the growing number of organizations utilizing cloud computing as a viable alternative for meeting their technology needs, the COSO has published a new thought paper titled Enterprise Risk Management for Cloud Computing.

As with any new technology, cloud computing entails commensurate risks. The thought paper provides guidance on following the principles of the COSO Enterprise Risk Management (ERM) - Integrated Framework to assess and mitigate the risks arising from cloud computing.

COSO encourages practitioners and others interested to monitor cloud computing as a part of their organization's enterprise risk management

This thought paper on ERM for Cloud Computing can be downloaded from:  
<http://www.coso.org/>



### GREEN IDEA



#### Green Buildings

- ◆ Use natural ventilation,
- ◆ Use good quality insulation to avoid sunrays to penetrate the walls
- ◆ Purchase Energy Star appliances only
- ◆ Use CFL's, daylight sensors, dimmers whenever possible
- ◆ Use water conserving appliances and apply water harvesting techniques

### Something Good: Green India Mission

The Government has put in place a National Mission for a Green India as part of the country's National Action Plan for Climate Change with a budget of Rs 46,000 crores (approx. USD 10 billion) over a period of 10 years. The overarching objective of the Mission is to increase forest and tree cover in 5 million ha (m ha.) and improve the quality of forest cover in another 5 m ha.

Report to the People on Environment and Forests 2010-2011, India

#### To Remember

July 11 - World Population Day

### Quote of the month



"Sustainable development (also) mandates the efficient use of available natural resources. We have to be much more frugal in the way we use natural resources. A key area of focus is energy. We have to promote, universal access to energy, while, at the same time, promoting energy efficiency and a shift to cleaner energy sources by addressing various technological, financial and institutional constraints."



Prime Minister Dr. Manmohan Singh,  
statement at the Plenary of the United Nations Conference on Sustainable Development Summit, June 21, 2012  
Rio de Janeiro

### FORTHCOMING EVENTS

#### WIPO-FICCI-NBAI: International Conference on IPR

The World Intellectual Property Organization (WIPO) is organizing a International Conference on "Managing Innovations and Successful Commercialisation of Intellectual Property Assets", in cooperation with the Federation of Indian Chambers of Commerce & Industry (FICCI) and National Bar Association of India (NBAI) at Hotel Lalit, Mumbai on 24-25th July 2012.

### FEEDBACK & SUGGESTIONS

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



All great undertakings are  
achieved through mighty  
Obstacles ●●

Swami Vivekananda

Dear Professional Colleagues,

**T**he success cannot be achieved without overcoming the hurdles. In the context of professionals like us, these hurdles may relate to our perception, attitude and approach towards dynamic changes that are happening around and our preparedness. Let me explain, if we resist to overcome such hurdles, they would not only persist but become mightier. Taking ownership in what you do would surely help you in tackling the challenges and you will find every breakage of hurdle as professional gain.

Every one of us would have experienced a sense of satisfaction, when we accomplish a task, giving us inner peace with the message that we own this accomplishment. We should accept that such feeling is priceless. Such sense of satisfaction comes from our voluntary sincere effort to achieve a particular task. I feel that this effort come from taking ownership consciously, subconsciously that makes us feel that we are the owner of that task and that pushes us to accomplish more.

*In order to achieve that kind of satisfaction, we have to ingrain in our personality, perspective, vision and attitude the essential ingredients of ownership, such as responsibility, maintenance of quality, effective time management, integrity in action and professional excellence. In fact, ownership starts even before an action, as it traverse through the path of perception, planning, actioning/implementation and sustaining the successful action. It is a virtuous cycle that is operational continuously for successful professionals.*

## 40<sup>th</sup> National Convention

You will appreciate that the intensity of change has been accelerated over a period of time, in terms of business, regulatory, social, environmental, technological dimensions. The speed and the texture of change demands the resilience thresholds to be kept in pace with the movement of change in all its dimensions. This demands the professionals like us to be appreciative of the change that is happening around. Then we have to upgrade to the level of expectations of change in terms of knowledge and skills to perform efficiently and effectively. Professionals like Company Secretaries, who travel through the midst of dynamic business environment, have to be pro-active performer to guide the companies.

It is in this backdrop, the Council of the Institute has decided **Vision 2020 - Transform, Conform and Perform** as theme for the 40th National Convention of Company Secretaries to be held from October 4 to 6, 2012 at Aamby Valley, Mumbai. The theme of the Convention is proposed to be deliberated in four technical sessions viz., (i) Economic Volatility and Risk Management, (ii) CS - Whistle Blower or Conscience Keeper, (iii) Financial Markets - Engine for Economic Growth and (iv) Challenges and Opportunities in SME Sector.

I appeal to all of you to block these dates to participate in this annual mega event to appreciate the insights into the dimensions of change, expectations from professionals and the strategies to conform and perform. In addition, the fraternity of Company Secretaries from all over India and abroad will provide you an opportunity to rediscover professional synergies, strengthen networking and develop professional brotherhood.

I invite all my professional colleagues to prepare well researched articles for publication in the souvenir to be released at the Convention. An announcement is being published in this issue.





## **Report of Hon'ble Parliamentary Standing Committee on Companies Bill, 2011**

Hon'ble Parliamentary Standing Committee on Finance presented its 57<sup>th</sup> Report relating to Companies Bill, 2011 to the Hon'ble Speaker of Lok Sabha. You are aware that Hon'ble Standing Committee on Finance had earlier examined, the Companies Bill, 2009 and had presented its report on the same in the Parliament on 31<sup>st</sup> August, 2010. Subsequently, in view of the recommendations made by the Hon'ble Standing Committee, the Companies Bill, 2011 was introduced in Lok Sabha on December 14, 2011. The Companies Bill, 2011 was once again referred to Hon'ble Parliamentary Standing Committee on Finance on 5<sup>th</sup> January, 2012 for examination and report. This report will pave the way for new company legislation.

## **Company Secretaries (Amendment) Regulations, 2012**

The Company Secretaries (Amendment) Regulations 2012 has been notified on 4<sup>th</sup> June 2012, paving the way for introduction of Corporate Compliance Executive Certificate to students who have passed foundation programme and such papers of executive programme as may be decided by the Council including prescribed training requirements, and also the introduction of two new PMQ courses, on Competition Law and Corporate Restructuring and Insolvency. The amended regulations also provide for provisional registration for undergoing coaching for the Executive Programme, for a person who has appeared or enrolled himself for appearing in the degree examination in any discipline other than the Fine Arts.

## **Meeting with Mr. Oommen Chandy, Hon'ble Chief Minister of Kerala**

I along with a delegation of the Institute comprising Mr. N K Jain and office bearers of Thiruvananthapuram Chapter met Mr. Oommen Chandy, Hon'ble Chief Minister of Kerala and apprised him of initiatives taken by the Institute towards growth and development of the profession of Company Secretaries, including Corporate Governance, CSR. The delegation submitted a representation for recognizing the profession of Company Secretaries for conducting audit under Kerala Value Added Tax, 2003. The delegation also submitted a memorandum with a request to provide adequate area of land in Thiruvananthapuram and Kochi for setting up of Training and Research

Centres. At the advice of Hon'ble Chief Minister, the delegation had fruitful telephonic discussion with Hon'ble Finance Minister of Kerala regarding VAT Audit and carving out new areas for practicing Company Secretaries in Kerala. The delegation also met Mr. A Ajith Kumar, IAS, Secretary, Housing and Taxes, Government of Kerala.

## **Meeting with President, Trivandrum Management Association**

The delegation also met Mr. Babu Thomas, President of Trivandrum Management Association (TRIMA) and apprised him of the role of the Company Secretary, both in employment and practice, in Corporate Management, Administration and Governance. The delegation also apprised him of the initiatives taken by the Institute towards growth and development of the profession. During the discussion TRIMA and ICSI agreed to enter into MOU for association in various levels of management activities and jointly conducting professional development and continuing education programmes.

## **Meeting with President, Trivandrum Chamber of Commerce**

The meeting with Mr. W M Nazeeb, President, Trivandrum Chamber of Commerce (TCC) has been very encouraging as he assured us of all support in the development of the profession in the region and emphasized on jointly conducting professional development programmes. During the discussion, both ICSI and TCC agreed to enter into MOU for mutual benefit of members of respective organisations.

## **CSIA Presentation to WTO**

I along with Mr. Anil Murarka, President CSIA participated in the CSIA presentation before the WTO on June 25, 2012 at Geneva seeking inclusion of a separate service head namely '**CORPORATE GOVERNANCE, COMPLIANCES AND SECRETARIAL ADVISORY SERVICES**' under the Service Sectoral classification list of WTO. Needless to mention that during the last decade the increasing importance and developments in the domain of Corporate Governance around the world, mandates the adoption of a separate set of classification under the WTO Service Sectoral Classification list that was drawn up when the concept of Corporate Governance was not much prevalent.



# From the President

*In the post presentation, seven countries supported the initiative of CSIA and some other countries appreciated and agreed to support the proposal when it comes for discussion. The meeting has been very encouraging and I am sure it will go a long way in promoting corporate governance and compliance services in global arena.*

## **Interaction with Regulators in South Africa**

*During visit to South Africa, I alongwith Mr.N K Jain, Secretary & CEO, the ICSI and the CEO of Chartered Secretary Southern Africa had discussion with regulatory authorities in South Africa and apprised them of the role of Company Secretaries in corporate governance and the recognitions to Company Secretaries under various laws in India. We also discussed the successful implementation of MCA 21, an e-governance initiative of Ministry of Corporate Affairs and XBRL in India. Encouraged by the discussions, the South African Regulatory authorities expressed interest in having legislation for Company Secretaries of South Africa on the lines of The Company Secretaries Act, 1980.*

*We also had discussion with Ms. Carina Wessels, President and members of the Executive Committee of Chartered Secretaries Southern Africa on areas of mutual cooperation and promoting the profession of Chartered Secretary and Good Corporate Governance in South Africa.*

## **Recognition to Company Secretaries under Delhi VAT Act**

*You are aware that the Institute has been pursuing with State Governments to recognise Company Secretaries under their respective VAT Legislations and various States have acceded to our request. I am pleased to inform you that the Government of Delhi has notified Delhi Value Added Tax (Second Amendment) Act, 2012, amending Section 82(1) (b) to include the Practising Company Secretaries to appear before the Delhi VAT authorities.*

## **Recognition of CS qualification for Ph.D.**

*As part of capacity building initiative, the Institute has been making constant efforts to secure recognitions for*

*our members to pursue Ph.D. programme in Universities and management institutions. So far more than fifty five Universities have recognised CS Qualification for pursuing Ph.D. programme.*

*I am pleased to inform you that Rajiv Gandhi Indian Institute of Management, Shillong has recognised CS qualification (among other professional qualifications) for pursuing FPM (Fellow Programme in Management, equivalent to Ph.D.) from July, 2012. Mahatma Gandhi University, Meghalaya has also provisionally recognized CS qualification as equivalent to post-graduate degree for pursuing Ph.D. in law, Commerce and Management. The list of Universities which have recognised CS qualification for pursuing Ph.D. is available on the website of the Institute.*

## **Stakeholders Grievance Committee**

*In today's dynamic environment, being stakeholder centric has become an assurance for effective governance and sustainable organisations. Stakeholders in such organisations, both internal and external, not only perceive but also actually derive value out of their association. It was in this direction that the Council of the Institute has constituted Stakeholders Grievance Redressal Committee under the leadership of Mr. S N Ananthasubramanian, Vice President of the Institute. I am sure the Committee which is working apace, will bring in an effective and efficient service delivery mechanism for stakeholder delight.*

## **Conversion of Firms of PCS into LLPs**

*The Council of the Institute has issued Guidelines for Setting up and Conversion of Firms of PCS into LLPs. The guidelines have come into effect from June 9, 2012. Company Secretaries in Practice who are desirous of forming LLPs or wish to convert their firms of PCS into LLPs may now do so by making an application for approval of their firm name to the Directorate of Membership in the Institute. The guidelines placed on the website of the Institute are being published in this issue.*

## **Know Your Client**

*Client Information as well as due diligence on clients has become a necessity for professionals in today's complex business scenario. Many professional bodies today advise their members to have done due diligence about clients they are dealing with so that they render their professional services in an effective manner without any*





fear of future legal impediments. The Council of the Institute has issued the KYC norms for its practising members, which are recommendatory in nature. I appeal to my professional brethren to follow these norms in their professional dealings. These norms are available on the website of the Institute.

## ICSI Corporate Governance Week

As informed you earlier, the Institute is actively engaged in promoting good corporate governance practices amongst the businesses in India as enumerated in its vision and mission. In furtherance of this cause and in line with our vision, I am pleased to inform you that the Institute has decided to observe 2nd "ICSI Corporate Governance Week" from 27th August to 31st August, 2012 this year. During the "ICSI Corporate Governance Week", it is proposed to organize programmes on Corporate Governance, sustainability and sustainability reporting, risk management and corporate governance, gender diversity, waste management and Good Corporate Citizenship throughout the length and breadth of the country.

The ICSI Corporate Governance Week will commence with a mega launch function at Bangalore on August 27, 2012. Other mega programmes are scheduled in Mumbai, Hyderabad, and Jaipur. The celebrations of the Corporate Governance Week will culminate into Corporate Governance Conclave on August 31, 2012 at New Delhi.

In addition, a number of other activities will be undertaken during the week such as panel discussions, webinars, conferences, lectures, debates, educational programmes, environment protection and awareness initiatives by the Regional Councils and Chapters of the ICSI. I invite all of you to extend your full support and cooperation in making the Week a grand success.

## International Professional Development Fellowship Programme

International Professional Development Fellowship Programme, an initiative of the Institute to provide its members exposure to the expectations of international market for professional services, and opportunities of networking with their counterparts completed its seventh year with the organisation of Fellowship Programme in South Africa covering Sun City, Johannesburg and Cape Town during June 15-23, 2012.

## International Conference

7th International Conference was organised on the theme "Governance, Rating and Economic Performance" in association with Chartered Secretaries Southern Africa and National Foundation for Corporate Governance on June 19, 2012 at Johannesburg, South Africa. The theme of the Conference was deliberated in three technical sessions, namely, Development of Corporate Governance in India and South Africa, Corporate Governance and Rating and National Governance and Responsive Business Performance. The technical sessions were addressed by experts from India and South Africa.

## Visit to Thiruvananthapuram Chapter

I alongwith Mr. N K Jain, Secretary & CEO, The ICSI visited Thiruvananthapuram Chapter of the Institute on June 11-12, 2012 and met various dignitaries, members and students and addressed the Press Conference including an interview on Jai Hind TV.

## Visit to Hyderabad

I visited Hyderabad to participate in the 37th Regional Conference of SIRC of the ICSI on the theme CS - A Proactive Performer on June 29-30, 2012.

I conclude this communication with a quote from Denis Waitley "A sign of wisdom and maturity is when you come to terms with the realization that your decisions cause your rewards and consequences. You are responsible for your life, and your ultimate success depends on the choices you make".

With kind regards,

Yours sincerely,

New Delhi  
June 30, 2012

(CS NESAR AHMAD)  
[president@icsi.edu](mailto:president@icsi.edu)



**Dr K. R. Chandratre\***, FCS

Practising Company Secretary  
Pune.

*krchandratre@gmail.com*



## Corporate Criminal Liability

### Company Directors' and Officers' Liability for Offences and the Principle of Attribution

Corporate Criminal liability is discussed from time to time as and when the judiciary comes up with new interpretations. While examining the general theory of corporate criminal liability, this article has thrown light on various important cases of the Supreme Court as well as the courts of England.

#### INTRODUCTION

With an unexpected and unprecedented spurt in corporate officers being hauled up in cases arising out of 2-G and other scams, frauds and corrupt practices, the question of corporate criminal liability is bound to give rise to a judicial and extra-judicial debate in the near future.

The question of imposing criminal liability on a corporation, such as a company registered under the Companies Act or any other body corporate, for criminal offences committed by directors, officers, employees and other agents acting for the corporation while conducting corporate affairs has gained a lot of importance in the jurisprudence of criminal law.

On the other hand, there have been cases making directors/officers of a company liable for offences for

which the company is primarily liable (since the company is a primary offender) are also on the increase. In the former, the basis of imposing criminal liability on a corporation is its independent personality; in other words, it is the independent personality of the corporation that makes it liable for the criminal liability. In the latter, the directors/officers are sought to be held liable on the basis of the 'vicarious liability principle' or the 'identification principle'.



\* Past President, The Institute of Company Secretaries of India.





A study of law on corporate criminal liability would, however, show that regardless of whether a statutory provision specifically provides for directors/officers making vicariously liable for a company's offence, they can be held liable and thus the concept of vicarious liability is not unknown to criminal law. In fact, the principles of identification and attribution do contemplate corporate criminal liability to be vicariously fixed to directors/officers provided, of course, the company has been found to be primarily guilty. ● ●

Courts have developed one more principle in this field, namely the 'attribution principle' which seeks to attribute to the company the knowledge of its director/officer. The ascription to a company of the action, knowledge and fault of an individual was in the past on the basis either that the individual was 'identified' as the company or was the company's agent (vicarious principle). But in *Meridian Global Funds Management Asia Ltd v. Securities Commission* [1995] 3 All ER 918 (PC), the Privy Council rejected the identification approach and suggested that the principles of agency are the true principles upon which a company is bound, that of 'attribution'.

The question whether a corporation as an artificial person with no mind and body of its own is capable of committing a crime and is criminally liable by the law or not, is no longer a question that now inhibits the courts to be determined as the fundamental issue since the traditional view that a corporation could not be guilty of a crime, because criminal guilt requires intent and a corporation not having a mind could form no intent, that a corporation has no body that can be imprisoned, are no longer valid, although it is indisputable that a company cannot be guilty of any criminal offences which, by their very nature, may be committed only by natural persons (such as bigamy) nor of those which cannot be committed vicariously (such as perjury). Since a corporation can commit crimes only through its agent, who must himself be responsible for the crime, the knowledge and intention of the corporation's servants are to be imputed (attributed) to the corporation.

Etymologically, 'vicarious' means performed, exercised, received, or suffered in place of another; taking the place of another person or thing; acting or serving as a substitute. The expression 'vicarious liability' denotes a legal liability imposed on one person for torts or crimes committed by another (usually an employee but sometimes an independent contractor or agent), although the person made vicariously liable is not personally at fault. When an offence under any law is committed by a company, prosecution is invariably launched against the company, its directors and some of its executives. As 'company' is an artificial person created by law, and is capable of acting only through human agency

occupying the position of directors and executives, it is but natural that directors and executives are arraigned on a charge of an offence committed by the company.

Apart from the nature of an offence which cannot be committed by a corporate body (and therefore the vicarious principle cannot apply), the language of a statutory provision sometimes is such that the vicarious principle cannot apply. For example, in the *Lennard's* case, the relevant statutory provision stated that the owner of a British sea-going ship shall not be liable to make good a loss or damage happening without his actual fault or privity in certain cases. The use of the words 'the owner of a ship', 'without his actual fault or privity' indicated that the provision excluded vicarious liability since only the individual owner of a ship for his own fault or privity can have the benefit of the defence under section 502. This means that for the individual ship owner's fault no other person can be vicariously held liable and thus there is no vicarious liability of a director/officer of a company if it is the owner of a ship.

## Recent Supreme Court judgments

The Supreme Court in *Thermax Ltd v. K M Johny & Others* 2011 AIR SCW 5952, while dismissing the appeal on the grounds that the complaint against a company and its directors/officers was a dispute of civil nature as it concerned with a commercial contract and that it did not make the offences of criminal breach of trust and cheating under sections 405 and 420 of the Indian Penal Code, remarked that "the concept of vicarious liability is unknown to criminal law." However, immediately after that remark, the Supreme Court referred to section 141 of the Negotiable Instruments Act and section 32 of the Industrial Disputes Act as examples of statutory provisions making directors/officers of a company liable for company's offences. Notably, sections 141 and 32 referred are nothing but examples of vicarious criminal liability of company directors/officers when a company is primarily liable for the offence but its directors/officers are



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made vicariously liable. In the Supreme Court's view since no similar liability has been sought to be attached to directors/officers under sections 405 and 420 of the IPC, they cannot be held liable when in a complaint a company is made a primary offender.

A study of law on corporate criminal liability would, however, show that regardless of whether a statutory provision specifically provides for directors/officers making vicariously liable for a company's offence, they can be held liable and thus the concept of vicarious liability is not unknown to criminal law. In fact, the principles of identification and attribution do contemplate corporate criminal liability to be vicariously fixed to directors/officers provided, of course, the company has been found to be primarily guilty. The discussion below would clearly indicate that.

In *Iridium India Telecom Ltd v. Motorola Incorporated & Others* [2010] 160 Comp Cas 147;(2011) 1 SCC 74 the question posed at the beginning of this article was directly for consideration. Although the case has been remanded to the High Court (and hence is still sub-judice), a vital point made by the Supreme Court (contrary to the High Court's conclusion) is that a company can have *mens rea*. The Supreme Court has noted several crucial cases (mostly English) which have conclusively established that in appropriate circumstances the mind of a director/officer of a company may be imputed to the company and director's/officer's guilty mind may be treated as the guilty mind of the company. This branch of law developed quite extensively and there have been several cases in England laying down the broad principles.

The Supreme Court discussed in detail corporate criminal liability when an offence is committed by a company's directors and officers. It said: "... *virtually in all jurisdictions across the world governed by the rule of law, the companies and corporate houses can no longer claim immunity from criminal prosecution, on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent.*"

In *V. P. Shrivastava v. Indian Explosives Ltd* [2010] 159 Comp Cas 529 (SC) with regard to a criminal complaint under sections 406, 420 and 120B of the Indian Penal Code, 1860, read with sections 540 and 542 of the Companies Act, 1956, against the appellants (senior employees of a company) on the allegation that at the time of entering into an agreement with the complainant company, they, by having suppressed the fact that the company was likely to be declared a sick

company and was, in fact, declared to be so by the BIFR, had the dishonest intention to induce complainant to enter into the agreement, which amounted to cheating. The case, however, resulted into the Supreme Court refusing to entertain on the ground that there was no specific averment about the company's employees dishonestly inducing to enter into the agreement. The court stated: "*Where a director or officer of a company is sought to be made liable for an offence for which the company is primarily responsible, it is incumbent for the complainant firstly to make specific allegation and secondly to establish the offence by cogent evidence.*"

## What is 'corporate criminal liability'?

In criminology, the expression 'corporate crime' refers to crimes committed either by a corporation (i.e., a business entity having a separate legal personality from the natural persons that manage its activities), or by individuals that may be identified with a corporation or other business entity.

The Black's Law Dictionary, 7th edition, defines the expression 'corporate crime' as "a crime committed either by a corporate body or by its representatives acting on its behalf." The term 'corporate', of course, denotes "of, for, or belonging to a corporation" and the term 'corporation' denotes body corporate which term includes a company registered under the Companies Act.

Contextually, the expression 'corporate crime' is used to connote two things: (a) a crime committed by a company; and (b) a crime committed by the agents of a company such as directors and officers. To put it differently, there are two broad headings by which the concept of corporate criminal liability can be classified: (a) criminal liability of a company; and (b) criminal liability of officers of a company.

The *US Legal Definitions* defines 'corporate crime' as crimes committed either by a business entity or corporation, or by individuals that may be identified with a corporation or other business entity. A corporate crime is the act of its personnel and need not be authorized or ratified by its officials. It is sufficient if the officials were exercising customary powers on behalf of the corporation. Thus, to a substantial degree, the crime of the corporation is interwoven with the acts of its officials. Such criminal acts are reflective of the character of the persons who manage the corporation. Consequently, it would seem reasonable to utilize a corporate crime to impeach a corporate official's credibility if the official is connected to the crime.

The term 'corporate crime' describes corporate activities

1. Corporations and Criminal Responsibility, Ceila Wells, Oxford Monographs on Criminal Law & Justice, second edition, p. 1.





which are perceived to involve a transgression of some aspect of criminal law. A broad division is often made in criminal law between what are known as regulatory offences and those which are thought of as conventional crime. 'Corporate crime' is commonly used to denote breaches of regulatory offences.<sup>1</sup>

Two very well-settled principles in the domain of corporate criminal liability are:

- First human agents who act on behalf of a corporation (or a body corporate) are vicariously liable for the offences of the corporation.
- Second, the corporation (or body corporate) is liable for wrongs committed by the human agents who act on behalf of the corporation and in relation to its affairs.

In another case on the subject,<sup>2</sup> the respondents were a limited company and one of its officers. Both were charged with offences under the Defence (General) Regulations [regulation 82(1) and (2)] in that with intent to deceive they produced documents and furnished information for the purposes of the Motor Fuel Rationing (No 3) Order 1941, which were false in material particulars. The returns were signed by the transport manager of the company. The respondents contended that the offences charged required for their commission an act of will or state of mind which a body corporate could not have. The court however rejected that argument and held that, the knowledge and intention of its servants were to be imputed to the body corporate. In the case of a company documents have to be prepared by one or more of its officers, since it is quite incapable of acting apart from the acts of its officers. It was argued that in the case of a false return made in respect of petrol the officer making the return should be charged and not the company. It was, however, held that such an offence may be committed by the

company which may be charged and fined in respect of the offence. Macnaghten J. succinctly and vividly explained the concept thus:

"A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention-indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities ..., his knowledge and intention must be imputed to the body corporate. In my opinion the submission that was made to the magistrates that the company could not in law be capable of a criminal intention is one that cannot be sustained."

There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes which a corporation is incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.<sup>3</sup>

Courts have evolved the principle of 'identification' which is relevant in the area of criminal liability of directors and officers as it seeks to 'identify' an individual acting for a company and thereby renders himself responsible for the company's offence.

## Corporate criminal liability and *mens rea*

The contention that a corporation cannot be held criminally liable because it cannot have *mens rea* is often raised in the corporate criminal liability cases. The expression *mens rea* (criminal intent) is variously described, such as guilty mind, blameworthy mind, criminal intention, evil intent, guilty or wrongful purpose etc. *Mens rea* is one of the essentials of a crime. It means 'criminal intent', that is the essential mental element that in theory has to be proved for all crimes, although in practice some statutory offences are crimes of

2. Director of Public Prosecutions v. Kent and Sussex Contractors Ltd [1944] 1 KB 146; [1944] 14 Comp Cas 133.

3. Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 405.



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absolute liability, regardless of criminal intent. Every crime requires a mental element. Even in strict or absolute liability some mental element is required. *Mens rea* or *actus non facit reum nisi mens sit rea* (the intent and act must both concur to constitute the crime; the act itself does not make a man guilty unless his intention were so or his mind is also guilty) is considered a fundamental principle of penal liability.

It is now a well-set principle that a limited company is capable of committing crimes except those which only human being can commit, notwithstanding that it can only form an intention through its human agents. For example, a company can commit the offence of conspiracy to defraud. In this regard in *R. v. ICR Haulage Ltd.*<sup>4</sup> it was said:

"Offences for which a limited company cannot be indicted are exceptions to general rule arising from the limitations which must inevitably attach to an artificial entity, such as a company. Included in these exceptions are the cases where, from its very nature, the offence cannot be committed by a corporation, for example, perjury, an offence which cannot be vicariously committed or bigamy, an offence which a limited company, not being a natural person, cannot commit vicariously or otherwise. A further exception, but for a different reason comprises offences of which murder is an example, where the only punishment the court can impose is corporal, the basis on which this exception rests being that the court will not stultify itself by embarking on a trial in which, if a verdict of guilty is returned, no effective order by way of sentences can be made."

Therefore, it is rather late in the day to contend that a company cannot have *mens rea* and is not liable for an offence which requires *mens rea* to be an essential ingredient of the offence because it has no mind where *mens rea* lies.

Where an offence (statutory or common law) requires proof of *mens rea*, the company may be convicted by way of the doctrine of identification or, as it is otherwise known, the 'alter ego' doctrine. This is a device developed by the judges for attributing a mind to the artificial person (the company) in order to hold it criminally liable. Because the company is an artificial entity it can only act through its agents. By this doctrine the courts deem the mind of certain 'agents' to be the directing mind or 'alter ego' of the company. Their conduct and their *mens rea*, when they are acting as authorised agents on behalf of the company and in the course of its business, are attributed to the company. The question as to which 'agents' will constitute the directing mind or person of a

Two very well-settled principles in the domain of corporate criminal liability are: First human agents who act on behalf of a corporation (or a body corporate) are vicariously liable for the offences of the corporation. Second, the corporation (or body corporate) is liable for wrongs committed by the human agents who act on behalf of the corporation and in relation to its affairs.

company for purposes of the doctrine of identification is discussed in several important cases. The guilty mind of the directors or managers will render the company itself liable. However, a non-human defendant could not be convicted of the crime of manslaughter by gross negligence in the absence of evidence establishing the guilt of an identified human individual.<sup>5</sup>

As held by the Supreme Court in *Assistant Commissioner v. Velliappa Textiles Ltd.* (2003) 11 SCC 405, in order to trigger corporate criminal liability for the actions of the employee (who must generally be liable himself) the actor-employee who physically committed the offence must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the alter ego of the employer-corporation or its directing mind. Since the company / corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.

## Whose mind is deemed to be the mind of the company?

As often as not, courts equate the mind of these human persons with that of the legal person, i.e., the company, so as to hold the latter responsible for the company's offences. It has been held by the courts that it cannot be said that a company cannot have a guilty mind inasmuch as the company's mind is the mind of the persons controlling the company. Those persons primarily are the company's directors and some key officers. This theory is inevitable as or else many of the offences committed in the name of relating to the company would go unpunished.

The Delhi High Court has held,<sup>6</sup> that it cannot be said that a

4. [1944] 1 All ER 691; [1945] 15 Comp Cas 47.

5. Attorney General's Reference (No 2 of 1999) [2000] 3 All ER 182.

6. Dharma Pratishtan v. Miss B. Mandal, IAC [1988] 173 ITR 487 (Del).





company cannot have a guilty mind. The company's mind is the mind of the persons controlling the company. If the persons controlling the company have acted fraudulently on behalf of the company, it is the company which would be indicated for the fraud committed by the persons controlling it. Hence, even though *mens rea* is one of the elements of the offence which is the subject-matter of the criminal complaint against a company, the company can be held guilty of the offence if the persons controlling the company had acted on its behalf in committing the offence.

The proposition that a company's mind is the mind of the persons controlling the company contemplates that a company or corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons.<sup>7</sup>

## The 'directing mind and will' concept

A corporation or a body corporate, of which a company registered under the Companies Act is a kind, is an abstraction. It is a juristic person. It acts through human beings, who occupy the position of directors and officers; they are agents of the company. They are, therefore, liable for the offences committed, in law, by the corporation. Since a company cannot act of itself, but only through an individual, and even then not necessarily through one and the same individual, the question arises whether, on the one hand, a person so acting is acting as a living embodiment of the company, or whether, on the other hand, he is merely acting as the company's employee or agent.<sup>8</sup>

The need for determination as to who the directing mind and will of a company arises because the law seeks to attribute to the company the acts of its officers and the person, in doing a particular act, is to be regarded as the company or, in other words, as a living embodiment of the company. The Halsbury's Laws of England explains this need as follows:

"For most civil purposes it is not necessary to decide the matter, since, usually as a result of the doctrine of

ostensible authority, the company will be bound by the acts of the person acting on its behalf. The question is, however, often a live one so far as the criminal law is concerned, since for the acts of a person who may properly be classified as 'the directing mind of the company' the company will undoubtedly be liable criminally if those acts are in breach of any of the provisions of the criminal law; but, if the person who has acted is merely an employee or agent, the company may well be able to refute any charge or take advantage of any exempting provision based on actual fault in the actor."<sup>9</sup>

A classic exposition of the 'directing mind and will' concept is to be found in the celebrated speech Viscount Haldane L.C. in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* (1915) AC 705:

"My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directive will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meetings; that person may be the board of directors itself, or it may be, and in some companies it is so, that person has an authority co-ordinate with the board of directors given to him under the articles of association, and is appointed by the general meeting of the company and can only be removed by the general meeting of the company."

In this case, section 502 of the Merchant Shipping Act 1894 provided that "The owner of a British sea-going ship ... shall not be liable to make good ... any loss or damage happening without his actual fault or privity ...." thus making it possible



7. Iridium India Telecom Ltd v Motorola Incorporated & Others [2010] 160 Comp Cas 147 (SC).  
8. Ibid.  
9. Halsbury's Laws of England, 4th edition (1996), Vol 7(2).



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for the owner of a vessel to exempt himself from liability for loss or damage which is caused without 'his actual fault or privity'. But if the owner of the vessel is a corporation (or a company) the fault or privity of the company's director or officer would be attributed to the company so as to deprive it of the defence which section 502 provided. A cargo of benzine on board ship was lost by a fire caused by the unseaworthiness of the ship in respect of the defective condition of her boilers. The ship-owners were a limited company and the managing owners were another limited company. The managing director of the latter company (Mr Lennard) was the registered managing owner and took active part in the management of the ship on behalf of the owners. He knew or had the means of knowing the defective condition of the boilers, but he gave no special instructions to the captain or the chief engineer of the ship regarding their supervision and took no steps to prevent the ship from sailing with her boilers in an unseaworthy condition. The House of Lords held that the owners had failed to discharge the onus which lay upon them of proving that the loss happened without their actual fault or privity.

As to whether the managing director's fault can be attributed to the company and it can be held liable for the loss, Viscount Haldane L.C. said that Mr. Lennard had taken the active part in the management of this ship on behalf of the owners, and was registered as the person designated for this purpose in the ship's register. Mr. Lennard therefore was the natural person to come on behalf of the owners and give full evidence not only about the events ... which related to the seaworthiness of the ship, but about his own position and as to whether or not he was the life and soul of the company; for if Mr. Lennard was the directing mind of the company, then his action must, unless a corporation is not to be liable at all, have been an action which was the action of the company itself within the meaning of section 502, upon the true construction of which in such a case as the present one that the fault or privity is the fault or privity of somebody who is not merely a servant or agent for whom the company is liable upon the footing respondent superior, but somebody for whom the company is liable because **his action is the very action of the company itself.**" [emphasis supplied]

The concluding words are indicative of the basis of the 'directing mind and will' concept which attributes the acts of individual acting for the company to the company by treating him as 'as a living embodiment of the company'; he does not just act as an agent; he himself is the company.

This concept of 'directing mind and will' was further developed by considering the human agent acting for the company as the company itself or its embodiment of which

Courts have evolved the principle of 'identification' which is relevant in the area of criminal liability of directors and officers as it seeks to 'identify' an individual acting for a company and thereby renders himself responsible for the company's offence.

*Tesco Supermarkets Ltd v. Natrass*<sup>10</sup> is a classic example. There, Lord Reid said:

"I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

The 'directing mind and will' doctrine, sometimes known as the 'alter ego doctrine', has been developed, with no divergence of approach, in both criminal and civil jurisdictions, the authorities in each being cited indifferently in the other. A company has no mind or will of its own; the need for it arises because the criminal law often requires *mens rea* as a constituent of the crime, and the civil law intention or knowledge as an ingredient of the cause of action or defence. The doctrine attributes to the company the mind and will of the natural person or persons who manage and control its actions<sup>11</sup>.

10. [1971] 2 All ER 127 (HL).

11. *El Ajou v Dollar Land Holdings plc* [1994] 2 All ER 685; [1994] BCC 143 (CA)





Since a company is an artificial person, the knowledge of those who manage and control it must be treated as the knowledge of the company. Those who 'constitute the directing mind and will of the company' are the company for this purpose. Their minds are its mind; their intentions its intention; their knowledge its knowledge. A corporate body can have knowledge<sup>12</sup> only by the attribution of the knowledge of a natural person<sup>13</sup>.

Where an offence is committed by a company, directors and officers of the company can be made liable. In *General Relief Association v. Crown*<sup>14</sup> concerning the words "whoever keeps any office or place for the purpose of drawing any lottery" in section 294A of the Indian Penal Code where a lottery was operated by a company, it was contended that section 294-A did not apply to companies at all since the word 'whoever' implies an actual human being and cannot refer to a corporation or company which should be referred to by a pronoun of the neuter gender. The Judge, however, rejected that argument and held that *whether the corporation can or cannot be liable, its officer or officers may well be liable and investigation alone can determine if any or all them are so liable.*" [emphasis supplied]

In the *El Ajou* case the knowledge of the chairman that money received by the company had been obtained by fraud was attributed to the company. In another English case<sup>15</sup>, the question was whether information that a bribe had been paid to one of the parties had "come to the attention" of a company for the purposes of a provision in a financing agreement which required it to make full disclosure of all such information material to the agreement. It had in fact come to the attention of only one of the directors and it was held that information relevant to the company's affairs that comes into the possession of one director, can properly be regarded as information in the possession of the company itself.

If the responsible agent of a company acting within the scope of his authority puts forward on its behalf a document which he knows to be false and by which he intends to deceive, his knowledge and intention must be imputed to the company. So, the company was guilty of an offence notwithstanding that it is only through its human agents that a company can have the intent to deceive or can make a false statement knowingly<sup>16</sup>.

Where it was contended that a company's goods were sold by its officers fraudulently for their personal gain and without the knowledge of the company and that the company could not be charged with an offence involving an intent to deceive

or guilty knowledge, it was held that, the officers were acting within the scope of their employment in making the sales and the returns, and the fact that these were made with intent to defraud the company did not render the officers any the less the agents of the company acting with authority. The transactions which were concealed and omitted from the documents which were put forward were transactions where the respondents' goods were sold on the respondents' premises by the respondents' servants to the respondents' customers, made the company and officers of the respondent company liable<sup>17</sup>.

The principle of 'identification' is relevant in the area of criminal liability of directors and officers. This principle, seeks to identify a human being who should be held responsible for the offence for which the corporation is primarily responsible because the law seeks to hold it responsible and punish it. The principle of attribution is just another facet of the principle of identification.

## The attribution principle

In this context, to attribute means to say or believe that somebody is responsible for doing something; to say or think that something is the result or work of someone else.

The attribution principle seeks to attribute to the company actions of its agents who act on its behalf and manage its affairs, and enter into transactions on its behalf. Since a company has a separate legal personality, yet has no ability to think and act for itself, for a company to enter into any transaction, be held liable for any tort, or commit a crime, the law must determine which thoughts and actions of its directors, employees and other agents *may be attributed to it*<sup>18</sup>.

The attribution principle is an extension of the 'directing mind and will' principle as laid down in the *Lennard* case. It is applied when the vicarious liability principle cannot be applied because an offence is such that it can be committed only by a human being, e.g. rape, murder, bigamy, etc the company cannot be held liable and convicted if any of the offences falling in this category is committed by its agents, e.g. directors. However, there are several other offences which may be committed by an agent of the company in relation to the business or affairs of the company or in the course of discharging his duties as an agent of the company, for which the company may be held liable, convicted and punished, and in doing so the *mens rea* of such agent may be attributed to the company.

The attribution principle was derived by the Privy Council in

12. Ibid.

13. *Lebon v Aqua Salt Co Ltd* [2009] 1 BCLC 549 (PC).

14. [1932] 2 Comp Cas 503 (Lahore).

15. *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261.

16. *Director of Public Prosecutions v Kent and Sussex Contractors Ltd* [1944] 1 KB 146; [1944] 14 Comp Cas 133.

17. *Moore v I Bresler Ltd* [1944] 2 All ER 515.

18. See *Gore-Brown on Companies*, 2007 edition, para 7.17.



# Articles

Corporate Criminal Liability Company Directors' and Officers' Liability for Offences and the Principle of Attribution

The need for determination as to who the directing mind and will of a company arises because the law seeks to attribute to the company the acts of its officers and the person, in doing a particular act, is to be regarded as the company or, in other words, as a living embodiment of the company.

*Meridian Global Funds Management Asia Ltd v. Securities Commission* [1995] 3 All ER 918 (PC). The basis of the principle was explained thus:

"Any proposition about a company necessarily involves a reference to a set of rules. A company exists because there is a rule (usually in a statute) which says that a *persona ficta* shall be deemed to exist and to have certain of the powers, rights and duties of a natural person. But there would be little sense in deeming such a *persona ficta* to exist unless there were also rules to tell one what acts were to count as acts of the company. It is therefore a necessary part of corporate personality that there should be rules by which acts are attributed to the company. These may be called 'the rules of attribution'."

The Privy Council held that where a company's rights and obligations could not be determined either by the primary rules of attribution, expressed in its constitution or implied by law, for determining what acts were to be attributed to the company, or by the application of the general principles of agency or vicarious liability, the question of attribution for a particular substantive rule was a matter of interpretation or construction of that rule. If the court decided that the substantive rule was intended to apply to a company it then had to decide how the rule was intended to apply and whose act or knowledge or state of mind was for that purpose intended to count as the act, knowledge or state of mind of the company. Although in some cases that could be determined by applying the test of whose was the 'directing mind and will' of the company so that his fault or knowledge became the company's fault or knowledge, that test was not appropriate in all cases. Since the policy of the 1988 Act was

to compel, in fast-moving markets, the immediate disclosure of the identity of persons who became substantial security holders in publicly listed companies, the application of the Act to corporate security holders required a rule of attribution by which the knowledge of the person who, with the authority of the company, acquired the relevant interest was to be attributed to the company, since otherwise the policy of the Act would be defeated and there would be a premium on the board paying as little attention as possible to what its investment managers were doing. Accordingly, on the true construction of sections 20(3) and (4) of the 1988 Act, a company knew that it had become a substantial security holder when that fact was known to the person who had authority to do the deal and it was then obliged to give notice under section 20(3). It followed that K's knowledge was to be attributed to the appellant.

In *Supply of Ready Mixed Concrete (No 2), Director General of Fair Trading v. Pioneer Concrete (UK) Ltd* [1995] 1 All ER 135 (HL), a restrictive arrangement in breach of an undertaking by a company to the Restrictive Practices Court was made by executives of the company acting within the scope of their employment. The board knew nothing of the arrangement; it had in fact given instructions to the company's employees that they were not to make such arrangements. The House of Lords held that for the purposes of deciding whether the company was in contempt, the act and state of mind of an employee who entered into an arrangement in the course of his employment should be attributed to the company. This attribution rule was derived from a construction of the undertaking against the background of the Restrictive Trade Practices Act 1976: such undertakings by corporations would be worth little if the company could avoid liability for what its employees had actually done on the ground that the board did not know about it.

Probably, for the first time in India, the attribution principle has been referred to and discussed in *Iridium India Telecom Ltd v. Motorola Incorporated & Others* [2010] 160 Comp Cas 147; (2011) 1 SCC 74 with the following remark:

"The Courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. *The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation.* In other words, the criminal intent of the "alter ego" of the company/body corporate, i.e., the person or group of person that guide the business of the company would be imputed to the corporation."

This is a welcome development for the development of law concerning corporate criminal liability.





**R. Rajesh, ACS**  
Advocate, Chennai.

[rrajeshadvocate@gmail.com](mailto:rrajeshadvocate@gmail.com)



# Right to Information Act, 2005

## An Overview

Like the Consumer Protection Act, the Right to Information Act is assuming importance and significance day by day. The right guaranteed under the RTI Act is considered as a weapon to expose those who are negligent in performing their public duties and to nail down the corrupt officials. The scope of this right as interpreted by the courts is outlined in this article.

### INTRODUCTION

In today's world, information is sought for in all respects not only for the individual requirements of a person but also to highlight the various discrepancies in the functioning of the public departments which is highly detrimental to the welfare of the society.

Information is an integral part of our life to upgrade ourselves on various issues which may either have a direct or indirect influence on our day to day life and to put it rightly information is the fuel or energy for our knowledge. Without information it would not be fully possible to exercise our valuable fundamental right of 'Freedom of Speech and Expression' as guaranteed under Article 19(1)(a) of the Indian Constitution. Even prior to this Act coming into existence thereby conferring a statutory right on the citizens of the Country to obtain information from the public authorities, the Supreme Court has in the past recognized this right

as a fundamental right embedded with the 'freedom of speech and expression'. The Supreme Court has dealt with this issue in cases *Benette Coleman v. Union of India*, AIR 1973 SC 60 and in *Raj Narain v. State of UP*, (1975) 4 SCC 428. Like India, every democratic country attributes much importance to the freedom of speech and expression and in order to exercise such right more effectively and efficiently information is a vital source and in the present scenario a person who is more informative is considered to be more knowledgeable. The people of the country are the masters hence they are entitled to know how their servants are functioning for the welfare of the people and development of the country. The main objective of this Act is to ensure greater and more effective access to information and to maintain transparency and improve accountability in the working of the public departments both Central and State. The Right to Information Act, 2005 (RTI Act) which is a Central Act applies throughout the country except the State of Jammu and Kashmir and it applies to all the citizens of the country who can seek information from the public authorities.

In view of the significant changes brought in, this Act



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supersedes the Freedom of Information Act, 2002 which was repealed in terms of section 31 of the Right to Information Act, 2005. Under this Act a Citizen can seek information only from the public authorities. Section 2(h) of the RTI Act, 2005 defines public authority to mean any authority or body or institution of self-government established or constituted (a) by or under the Constitution (b) by any other law made by Parliament (c) by any other law made by State Legislature (d) by notification issued or order made by the appropriate Government, and includes any (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government. Therefore information can also be sought from private authorities or bodies which are directly covered under the Act if it is owned, controlled or substantially financed either directly or indirectly by the funds provided by the Govt. and indirectly covered are those if the information can be accessed by a Govt. department then the same can be accessed through that Govt. department under the RTI Act.

## Procedure

A person who wishes to exercise this right can make a request for information in writing or electronic means to the public authority along with the prescribed fee which varies depending upon the nature of the information sought and no fee is payable by the citizens who are below the poverty line (BPL). The request for information must be made either in English or Hindi or in the official language of the area in which the application is being made and the applicant is not required to state any reason for requesting the information or any other personal details except those that may be

The Right to Information Act, 2005 creates an express bar under section 23 on the jurisdiction of the civil courts from entertaining any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

necessary for contacting him. A person can seek information about the status of his applications or complaints regarding his passport, ration card, electricity and water connections etc. 'Right to information' means the right to information accessible under this Act which is held by or under the control of any public authority.

## Public Information Officer (PIO)

From the time this Act came into force w.e.f. 12.10.2005, every public authority must designate an officer as the Public Information Officer (PIO) who is responsible for providing information as contemplated under this Act. The Act also prescribes the time limit within which the Public Information Officer must provide the information as requested by the applicant failing which the PIO will invite trouble. In fact the law also contains a provision which states that the information must be provided free of charge where a public authority fails to comply with the time limits specified in Sec. 7(1). The PIO must render all reasonable assistance to the applicant in providing the information as per the Act. Under normal circumstances, the PIO must provide information within a period of 30 days and where the life and liberty of a person is involved then the time limit prescribed is 48 hours from the time the request is made since Article 21 of the Indian Constitution guarantees protection of life and personal liberty to all persons. In case if the PIO rejects the request, it is the duty of the PIO to communicate the same along with the reasons and the time limit within which the appeal against such rejection is to be made and the particulars of the appellate authority.

## Third Party Information

A question often arises as to whether a person can seek information about another person who has provided information in confidence to the public authorities like Income Tax authorities, passport authorities etc. Section 11 of the Act deals with third party information which means a person invoking this right before a public authority seeking information which is submitted to the Govt. in confidence by another person. 'Third Party' means a person other than the citizen making a request for information and includes a public authority. Where the PIO intends to disclose any information





or record concerning third party must give a written notice to such third party of his intention to disclose and invite the third party to make a submission either in writing or orally thereby giving him an opportunity to make representation against the proposed disclosure. Thereafter the PIO has the powers to decide whether to disclose the information of a third party or not. The provisions of appeal are equally applicable to third parties also hence in the event of the third party aggrieved by any decision he can also prefer an appeal similar to an applicant. Recently a citizen in Kochi filed an application under the RTI Act before the Income-tax Department in Kerala asking for certified copies of the IT returns for 5 years from 2005 which was filed by the former Chief Justice of India (third party). The PIO provided an opportunity to the third party to hear his views and the third party objected to providing such information on the ground that they were likely to be misused when cyber crimes were on the increase and nobody would like to give personal details as no public interest is involved as these are exempted from disclosure as per Section 8(j) of the RTI Act, 2005. The IT department after taking his views rejected the RTI application.

## Exempted Information

Though the law permits obtaining all the information from the public authorities there are certain exceptions to it. The PIO need not provide information which are exempted from disclosure under section 8 of the RTI Act, 2005 such as information the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the state, information which are expressly forbidden to be published by any court or tribunal or such disclosure may constitute contempt of court or the information the disclosure of which would cause a breach of privilege of Parliament or the state legislature, information including commercial confidence, trade secrets or intellectual property, information received in confidence from Foreign Govt., personal information which would invade privacy of a person unless larger public interest

is involved.

## Excluded Authorities

According to Section 24, the RTI Act is not applicable to certain organisations which are listed in the Second Schedule such as Intelligence and security organisation established by the Central Government, the only exception being the information pertaining to the allegations of corruption and human rights violations which is to be provided within 45 days from the date of receipt of the request with the approval of the Central Information Commission. Recently the Central Govt. by way of a notification included the Central Bureau of Investigation (CBI) within the list specified in the Second Schedule thereby making the Act not applicable to it subject to the exceptions as stipulated in Section 24 of the Act. The said notification was challenged before the Madras High Court which upheld the decision of the Central Govt. The decision of the Madras High Court is discussed hereunder in detail.

## Complaint

Apart from preferring appeals, the Act also permits a person to lodge a complaint in case he is unable to submit a request for information to the PIO due to vacancy in appointment or the PIO refusing to accept his application for information or refusing access to any information or demanding an unreasonable fee or provides incomplete, misleading or false information under the Act. Such a Complaint can be given under section 18 of the Act before the appropriate Commission i.e. Central Information Commission or the State Information Commission as the case may be.

## Appellate Authorities

Where there is a right there must be a remedy since a right without remedy is meaningless. The Act also prescribes the remedy in the event of a person aggrieved by the order or decision of the PIO refusing to provide information. No fee is payable on the appeals and the burden of proof that denial of information was justified lies with the PIO. Section 19 of the Act deals with the appeal. First appeal against the order of PIO lies before the officer senior in rank to the PIO which is to be filed within 30 days from the date of receipt of the decision or from the expiry of the prescribed time limit within which the PIO must have provided the information requested and the said officer has the power to condone the delay if there is sufficient cause in not filing the appeal within the time limit. Similarly second appeal against the decision of the First appellate authority lies before the Central Information Commission or the State Information Commission depending upon the concerned public authority whether belonging to Central Govt. or State Govt. The time limit for preferring the second appeal is 90 days and the Commission also has





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Though the law permits obtaining all the information from the public authorities there are certain exceptions to it such as information the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the state, information which are expressly forbidden to be published by any court or tribunal or such disclosure may constitute contempt of court or the information the disclosure of which would cause a breach of privilege of Parliament or the state legislature, information including commercial confidence, trade secrets or intellectual property, information received in confidence from Foreign Govt., personal information which would invade privacy of a person unless larger public interest is involved.

powers to condone the delay if there is sufficient cause in not filing the appeal within the prescribed time limit. The Act also prescribes the time limit of 30 days with an extension of 15 days from filing of the appeal for disposing of the appeal by the first appellate authority whereas no such time limit is prescribed for the second appellate authority for disposing of the appeal. Against the order or decision of the second appellate authority no further appeal is provided under the RTI Act and since the statute gives a finality to the decision of the Information Commission and when the appellate remedies are exhausted under the Act, the aggrieved person can always challenge the order of the Information Commission by filing a Writ Petition before the High Court under Article 226/227 of the Constitution since the orders of the Information Commission are subject to judicial review.

## Penalties

The Information Commission while disposing of the complaint or appeal is vested with powers to impose on the PIO a minimum penalty of Rs. 250 per day till the application is received or information is furnished and the maximum penalty shall not exceed Rs. 25,000/-. Such a penalty can be

imposed only in the event of the PIO without any reasonable cause refused to receive an application for information or has not furnished the information within the time limit prescribed under section 7 or malafidely denies the request for information or knowingly provides incorrect, incomplete or misleading information or destroyed information or obstructs in any manner in furnishing the information.

## Miscellaneous

Even partial disclosure of information is permitted which means part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information may be provided.

Section 22 of the Act contains a *non-obstante* clause wherein it states that the provisions of the RTI Act would override the Official Secrets Act, 1923 and any other law for the time being in force.

The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as per Section 9 of the Code of Civil Procedure (C.P.C.). The Right to Information Act, 2005 creates an express bar under section 23 on the jurisdiction of the civil courts from entertaining any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

## Recent judgments under the RTI Act, 2005

### 1) Independence of Judiciary versus Right to Information

In a recent judgment of the Supreme Court in *Khanapuram Gandaiah v. Administrative Officer and Other* (2010) 2 SCC 1, there was a need to discuss about the Independence of Judiciary as against the fundamental right to receive information under the RTI Act, 2005. The issue in the said case was whether a person invoking RTI Act, 2005 can seek information as to how and why a judicial officer arrives at such a decision or form an opinion while exercising his judicial functions in a case before him. The brief facts of the said case were that the Appellant before the Supreme Court in the aforesaid case filed an application on 15.11.2006 under Section 6 of the RTI Act before the Administrative Officer-cum-Asst. State Public Information Officer seeking information to the queries such as under what circumstances the Judge of a Civil Court passed the judicial order dismissing the appeal filed by him before the Civil Court. The application filed by the appellant was dismissed by the PIO against which he invoked the appellate remedies and having failed before the appellate authorities and being aggrieved by the Order of





the AP State Information Commission dt. 20.11.2007 dismissing his appeal he filed a Writ Petition before the Andhra Pradesh High Court and the High Court also dismissed his Writ Petition on the ground that the information sought by him cannot be provided under the RTI Act and his application was not maintainable since judicial officers are protected by the Judicial Officers' Protection Act, 1850. The High Court dismissed the Writ Petition on 24.04.2009 and the said decision is reported in AIR 2009 AP 174.

Against the decision of the AP High Court, the appellant preferred an appeal before the Supreme Court and his main contention was the RTI Act does not provide for any special protection to the Judges and thus the appellant has a right to know the reasons as to how the Civil Judge has decided his case in a particular manner. The Supreme Court after hearing the parties pointed out that the appellant did not prefer a regular appeal against the order passed by the Civil Court in respect of which the information were sought for. Under the RTI Act an applicant is entitled to the copy of the opinions, advices, circulars, orders etc. but he cannot ask for any information as to why such opinions, advices, circulars, orders etc. have been passed, especially in matters concerning judicial decisions. Further the Supreme Court held that 'a judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the Judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order'. A judge should be free to make independent decisions or else it would certainly affect the independence of the judiciary. The Supreme Court therefore in the aforesaid case dismissed the appeal and

affirmed the decision of the High Court.

## 2) Exclusion of Central Bureau of Investigation (CBI) from the purview of the RTI Act

The Central Government recently issued a Notification No. GSR 442(E) dt. 09.06.2011, including the Central Bureau of Investigation (CBI) within the ambit of the Second Schedule to the Right to Information Act thereby considering it under the category of 'Intelligence and Security Organisations' which are outside the purview of the RTI Act, 2005 as per Section 24 of the Act.

The said notification was challenged by way of a Writ Petition filed before the Madras High Court and the High Court discussed the issues elaborately and rendered its judgment in *S. Vijayalakshmi v. Union of India & Others*, 2011 (5) CTC (Current Tamilnadu Cases) 376. The issue that was under challenge in the said Writ Petition was whether the notification of the Central Government in exempting the CBI from the purview of RTI Act, 2005 by including it in the Second Schedule is legally valid or *ultra vires* Section 24 of the RTI Act and Article 14 of the Constitution of India.

The inclusion of CBI in the Second Schedule was challenged on the ground that it was enjoying the privileges under section 8 of the Act for the past 5 years ever since the Act came into force and there is no sudden development for inclusion of CBI in the Second Schedule. The other contention of the petitioner was Section 24 exempts only intelligence and security agencies and CBI being an investigating agency cannot be granted a blanket exemption. The CBI enjoys the privilege that investigative data require confidentiality has been adequately taken care in Section 8(1)(g) & (h) of the Act. On the other hand, the Central Govt. responded that since there was a representation from the CBI that they were facing difficulties in their working due to the queries raised under the RTI Act and such exemption was granted on the basis of the legal opinion received that CBI qualifies as a security and intelligence organisation under section 24 of the Act. The CBI's proposal for exemption also merited acceptance because various other security agencies and police departments had been included in the Second Schedule to the RTI Act. It was further claimed that the CBI investigates offences covering wide spectrum including complex terrorists claims and serious financial frauds involving functions relating to intelligence collection and security of the country. Intelligence plays a vital role at every stage of investigation by the CBI and some of the leads provide information about conspiracy, *modus operandi*, motive etc. The CBI has an inbuilt mechanism of transparency and accountability and documents which are





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There is no doubt that every public authority must maintain transparency in order to prevent corruption in their departments at the same time the spirit of the law must not be misused in order to harass or trouble the officials of the public departments who are performing an additional duty keeping in mind that they are not particularly recruited for the purpose of providing information under the Act and the applicant do not have any obligation except payment of a nominal fee.

relied on by the Agency in a case of prosecution, are given to the accused free of cost and there are several provisions in the Cr.P.C. and the accused can summon any document/record etc. under section 91 of Cr.P.C. to defend himself. The CBI also presented a list of cases (both past and present) which are handled by it and the inputs are based on intelligence collected which may relate to the security of the State and the Court agreed to the fact that it could not be denied that those cases are of very sensitive in nature and if information are provided under the Act it may have a direct bearing on the national/internal security apart from having direct bearing on the financial security of the country. The Addl. Solicitor General contended that the phrase 'Security and Intelligence Agency' must be understood in the light of what is meant by the term 'Security' in this context and security refers to the security of the state. It was further contended that this does not mean merely the security of the entire country or the whole state and it is also not restricted to Armed Rebellion or Revolt.

The Court while rendering its judgment stated that there is a distinction between the exemption from disclosure of information contemplated under section 8(1) of the Act to that of the exemption of the organisation themselves and the information furnished by them to the Government under section 24(1) of the Act. Therefore both the provisions are exclusive of each other and one cannot substitute for the other. The Court therefore meant that the proposition adopted by the petitioner that the CBI which was all along getting exemption under section 8 would not be entitled to exemption under section 24 of the Act cannot be accepted. The Court also took into consideration various past judgments of Supreme Court in order to arrive at a decision

whether the CBI would qualify to fall under the category of both an intelligence and security organisation.

The High Court while upholding that there is no error in the decision of the Govt. of India to include the CBI in the Second Schedule to the RTI Act stated reasons to its findings thus: 'As rightly contended the Security of the State can be affected in various ways and there can be no exact or exhaustive definition and security threats may be varied both internal and external and the Security of the State can be affected in various ways which include the corruption of the Government officials, unauthorised disclosure of State Secrets, Economic offences to destabilise the National Economy and therefore, intelligence gathering is an inseparable part of the work of a security agency. Thus it can be safely concluded that the security of the state is a very broad concept'. Hence on that basis CBI would qualify to be an intelligence and security organisation.

The Madras High Court finally concluded that the impugned notification was neither ultra vires Section 24 of the RTI Act nor violative of the provisions of the Constitution of India hence dismissed the Writ petition after recording the submissions of the Learned Addl. Solicitor General that the notification has been placed before both the Houses of Parliament and would be taken up for consideration in the ensuing session.

Hence the said amendment including CBI in the Second Schedule of RTI Act would come into force upon the Parliament passing the same in both the houses.

### 3) Whether a student is entitled to seek Information on instructions and solutions to questions given to the examiners?

Normally the right under the RTI Act are exercised by citizens for seeking information from Public departments belonging to the Central or State Governments. But this is a peculiar case where a student of the Institute of Chartered Accountants of India (ICAI) [which is also a public authority as per the definition under the RTI Act] sought information such as the instructions and the solutions to questions given by ICAI to the examiners and moderators.

The Supreme Court elaborately dealt with the issues raised in the appeal and decided the matter on merits in *The Institute of Chartered Accountants of India v. Shaunak H. Satya & Others*, (2011) 8 SCC 781.

The facts of the case are the first respondent in the said appeal who was a student of ICAI submitted an application on 18.01.2008 to the Public Information Officer (PIO) of the ICAI under the RTI Act seeking information under 13 heads such as





- 1) Educational Qualification of the examiners & moderators with subject wise classifications
- 2) Procedure established for evaluation of exam papers.
- 3) Instructions issued to the examiners and moderators oral, as well, as written if any.
- 4) Procedure established for selection of examiners & moderators
- 5) Model answers if any given to the examiners & moderators if any
- 6) Remuneration paid to the examiners & moderators
- 7) Number of students appearing for exams at all levels in the last 2 years
- 8) Number of students that passed at the 1st attempt from the above.
- 9) From the number of students that failed in the last 2 years from the above, how many students opted for verification of marks as per Regulation 38
- 10) Procedure adopted at the time of verification of marks as above.
- 11) Number of students whose marks were positively changed out of those students that opted for verification of marks
- 12) Educational qualifications of the persons performing the verification of marks under Regulation 38 and remuneration paid to them.
- 13) Number of times that the council has revised the marks of any candidate, or any class of candidates, in accordance with regulation 39(2) of the Chartered Accountants Regulations, 1988, the criteria used for such discretion, the quantum of such revision, the authority that decides such discretion, and the no. of students along with the quantum of revision affected by such revision in the last 5 exams, held at all levels.

The ICAI responded to all the 13 queries by a reply dt. 22.02.2008 and not being satisfied the student filed an appeal before the first appellate authority which dismissed the appeal by an Order dt. 10.04.08 and the student filed second appeal before the Central Information Commission (CIC) in regard to queries (1) to (5) & (7) to (13) and the Commission dismissed the appeal by an order dt. 23.12.2008 in regard to query nos. 3, 5 & 13 while directing the disclosure of information in regard to the other questions. While disposing of the appeal the reasoning given by the CIC was that in respect of query no. 3, the item of information being the intellectual property of the institute it need not be disclosed since it attracts the exemption under section 8(1)(d) of the RTI Act. In respect of query no. 5, since the institute explained that what is provided to the examiners are 'solutions' and not 'model answers' hence the 'solutions' qualifies to be terms barred by Section 8(1)(e) of the RTI Act and it also attracts Section 8(1)(d) since it is the exclusive intellectual property of the Public Authority i.e. ICAI. In

respect of query no. 13, since the reply of the Institute was that the details sought are highly confidential in nature and there is no larger public interest warrants disclosure, the same is denied under section 8(1)(e) of the RTI Act, 2005 and the said reply was accepted by CIC and it was held that there shall be no further disclosure of information as regard this item of query.

Aggrieved by the order of the CIC, the student filed a Writ petition before the Bombay High Court on rejection of information sought under query nos. 3, 5 & 13. The High Court upon hearing the parties allowed the petition accepting the principal defence of the ICAI that the information sought for is confidential and till the result of the examination is declared, the information sought by the student has to be treated as confidential, but once the result is declared that information cannot be treated as confidential.

Against the Order dt. 30.11.2010 of the High Court, the ICAI preferred an appeal before the Supreme Court and the main contention was that the information sought as per query nos. 3 & 5 are concerned, they are instructions and model answers given to examiners hence cannot be disclosed as they are exempted from disclosure under section 8(1)(d) & (e) of the RTI Act and also under Section 9 of the Act. The issues that were before the Supreme Court for consideration were:

- (i) Whether the instructions and solutions to questions given by ICAI to examiners and moderators, are intellectual property of the ICAI, disclosure of which would harm the competitive position of third parties and therefore, exempted under Section 8(1)(d) of the RTI Act?
- (ii) Whether providing access to the information sought would involve an infringement of the Copyright and therefore the request for information is liable to be rejected under Section 9 of the RTI Act?
- (iii) Whether the instructions and solutions to questions are information made available to examiners and moderators in their fiduciary capacity and therefore exempted Under Section 8(1)(e) of the RTI Act?
- (iv) Whether the High Court was justified in directing the Appellant to furnish to the First Respondent five items of information sought in Query no. 13 relating to Regulation 39(2) of Chartered Accountants Regulations, 1988?

In regard to the first issue, the decision of the Supreme Court was disclosure of the question papers, model answers and



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instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held and in fact the question papers are disclosed to everyone at the time of examination. The ICAI voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination. Therefore, Section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers and instructions if any given to the examiners and moderators after the examination and after the evaluation of answer scripts is completed as at that stage they will not harm the competitive position of any third party. Therefore the court rejected the contention of the ICAI that if the information is exempt at any given point of time it continues to be exempt for all time to come.

With regard to the second issue, the words 'infringement of copyright' used in Section 9 have a specific connotation. Section 51 of the Copyright Act, 1957 provides that when a copyright in a work shall be deemed to be infringed. Section 52 of the Act enumerates the acts which are not infringement of a copyright. A combined reading of Sections 51 & 52 (1)(a) of Copyright Act shows that furnishing of information by an examining body, in response to a query under the RTI Act may not be termed as an infringement of copyright.

On the 3rd issue, while deciding on the issue of fiduciary relationship between the examiner and the ICAI, the Supreme Court referred to the decision in *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Others* 2011 (8) SCALE 645" and held that Section 8(1)(e) uses the words "information available to a person in his fiduciary relationship. Significantly Section 8(1)(e) does not use the words "information available to a Public Authority in its fiduciary relationship". The use of the words "person" shows that the holder of the information in a fiduciary relationship need not only be a 'Public Authority' as the word 'person' is of much wider import than the word 'public authority'. The Court further held that among the 10 categories of information which are exempted from disclosure under section 8 of the RTI Act, 6 categories of information

which are described in Clauses (a), (b), (c), (f), (g) & (h) carry absolute exemption. Information enumerated in Clauses (d), (e) & (j) carry only conditional exemption that is the exemption is subject to the overriding power of the Competent Authority under the RTI Act in larger public interest, to direct disclosure of such information. The Court therefore held that the CIC was right in holding that the information sought under query 3 & 5 were exempted under Section 8(1)(e) and that there was no larger public interest requiring denial of the statutory exemption regarding such information.

With regard to the fourth issue, since the information sought under parts (i), (iii) & (v) of query 13 are not maintained and is not available in the form of data with the ICAI in its records, ICAI is not bound to furnish the same since on a combined reading of Section 2 (f) & (j) and Section 3 the information sought is not a part of the record of ICAI and where such information is not required to be maintained under any law or the Rules or Regulations of the public authority, the Act does not cast an obligation upon the Public Authority to collect or collate such non-available information and then furnish it to an applicant. The Supreme Court therefore allowed the appeal in part and set aside the order of the High Court and restored the order of the Central Information Commission subject to a modification in regard to query no. 13.

The aforesaid judgment would equally apply to similar institutions.

## Conclusion

All the information which are under the custody of a public authority must be disclosed by the public authorities as and when a request is made irrespective of whether the applicant is in need of it or not. The purpose is to achieve the objective of the Act. There is no doubt that every public authority must maintain transparency in order to prevent corruption in their departments at the same time the spirit of the law must not be misused in order to harass or trouble the officials of the public departments who are performing an additional duty keeping in mind that they are not particularly recruited for the purpose of providing information under the Act and the applicant do not have any obligation except payment of a nominal fee. The ICAI in the aforesaid case has raised its concerns before the Court which has asked it to make a representation before the Central Govt. in order to consider bringing necessary changes under the Act. Similarly the CBI has raised its concerns which has been remedied by way of a notification. The Central Govt. must voluntarily come forward to hear the representations of all the public authorities in order to identify the hardships faced by the PIOs in performing their duties under the Act and must take steps to plug the loopholes without compromising the fundamental right guaranteed to the citizens of the country. ■







**Prof. S.K. Malhotra, FCS**  
Prof. Finance - Amity Business  
School, Amity University

*smalhotra@amity.edu*



# Whistle Blowing and Professional Responsibility

Whistle blowing can be defined as 'the release of information by a member or former member of an organization that is evidence of illegal or immoral conduct in the organization or conduct in the organisation, which is not in the public interest' (Boatwright, 2003). Whistle blowing has become a widely accepted practice world around. However, the corporate world in India is yet to seriously incorporate this practice in their corporate governance practices.

Whistle blowing is the process of informing the authorities about the illegal or immoral or unethical conduct of business in an organisation. The cushion is who can release such information, to whom and what the procedure is. The definition is clear about the first question. The right of release of information always rest with the member or former member of an organization.

The member can be an employee, former employee, a customer or any stake holder. However, reporting the crime to the police by a witness, testifying in a court of law, a press report by a reporter uncovering some illegal practise in a corporation/operation etc. are not considered as whistle blowing. Precisely, whistle blowing is regarding an activity taking place within an organization. The reporting of an incident in an organization by an external agency or even the employee is not whistle blowing. There are certain basic differences between whistle blowing activity and reporting. Firstly, the information should be something,

which is not otherwise available to the public, and the employee should have obtained such information during the course of his or her employment as a part of the job. Secondly, there is a distinction between whistle blowing and sounding the alarm. While the first one is release of some vital information which is detrimental to the public interest, which is not otherwise available to the public, the second one is dissent with the employer about the issues which are already known to the public. Thirdly, the information should be of some significant evidence of some misconduct in the organization which is based on logic a legal action could be initiated. Fourth, the information should be released through a channel other than the normal communication channel. Some organizations permit the employee to write directly to the CEO. In some other organizations, a vigilance department separately looks after this matter. For example in public sector banks, there are chief vigilance officers, who look after such issues. Usually, the CVOs are appointed from another bank with direct accountability to the Central Vigilance Organization of Government of India. Fifthly, the release of information should be voluntary and should not be under pressure or persuasion by anyone. Lastly, whistle blowing



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Whistle blowing has now become an accepted practice worldwide. Many countries have their own legislation to protect whistle blowers and ensure that corruption and malpractices are brought to the notice of authorities immediately. For example US has enacted Whistle Blower Protection Act in 1989 and designated the office of Special Council as the recipient of whistle blower report.

must be an act of moral protest and not an act of vengeance or taking revenge on the employer.

## Justification for Whistle Blowing

A question generally asked is whether whistle blowing is justified? There is a specific reason to ask this question. The employees, on joining the duty, generally enter in to an agreement with the organisation that they would maintain confidentiality of information and would not divulge classified information to outsiders. The loyalty of an employee is not only to the organisation, but the loyalty is towards his colleagues and to some extent to himself and his family. The employee is an agent of the company and their employment contract prevents the employee from doing any action which is detrimental to the interest of his/her employer. This argument leads to a very pertinent question namely are whistle blowers disloyal agents? The employer always desires the employees to maintain the confidentiality of vital information. However, the agent is expected to perform only those duties which are part of his job contract. Therefore, loyalty does not mean loyalty to every action of the employer, but the employees, need only to be loyal to the legitimate action of the employer. In this context, it is interesting to recollect the comments passed by the chief of police, Kerala a few years ago in connection with the firing by policeman against the mob. The chief was critical on the action and told that only legitimate orders of superior need to be obeyed. The word loyalty has a wider meaning. It must be in the best interest of the organization's goals.

## Conditions for whistle blowing

Whistle blowing can be justified only if the following conditions are fulfilled:

1. **Moral Importance:** The first question to be asked is on the moral importance of the issue against which the whistle blower has acted. There should be sufficient cause to highlight as a moral violation and consideration should be given to the extent to which the activity is directly harmful.

And the results could be predicted.

2. **Understanding the Seriousness:** Whistle blowing is an act which can bring irreparable damage to the individual or group of individuals against whom the whistle blower levels charges. Therefore, the person blowing the whistle should have adequate documentary evidence to the charges. Whistle blowers should not act merely on rumours or hearsay, but they should evaluate the situation from different angles and get expert opinion before jumping into action.
3. **Last resort:** The whistle blower should have exhausted all other steps before going to this level. The first step is the internal route through which the whistle blower can draw attention of the higher authorities to the unethical practise or objectionable action.
4. **Sufficient cause:** The action which the whistle blower discloses should be of sufficient seriousness, that if continued could bring substantial damage to the organization or the public at large. Difference of opinion with the superior or colleagues or personal vendetta does not constitute a sufficient cause to blow a whistle.
5. **Authenticity:** The whistle blower should inform the appropriate authorities the details of the objectionable action, the names and addresses of the person responsible for such action, the extent of damage it can create to the organization specifically and the public at large and the identity of the whistle blower showing where and how he/she could be contacted. Authorities ignore normally anonymous complains unless they are of serious nature calling for an immediate investigation.
6. **Responsibility:** The employees in an organization should understand their role in the organization and decide upon blowing the whistle against the wrong doings on others. Some organizations have offered internal protection to their employees if they inform the officials the objectionable actions of others in the organization. The employees in such cases approach the CEO directly and apprise him/her of the actions of others which would bring damage to the organization.
7. **Confidentiality:** The authorities who receive information from whistle blowers are bound to maintain confidentiality of the information as well as the informer. Many times, people keep quiet for fear that they would be identified and attacked if they bring the wrong doings to the attention of the appropriate authorities.
8. **Success Rate:** Effective whistle blowing takes place only if proper action is initiated on the information received from the whistle blowers. Therefore, whistle blowers should take care to see that the actions against which they blow whistle is sufficient enough to attract public response and action from authorities. Many times whistle blowing becomes unsuccessful either because the person or group against which whistle blowing is done is highly powerful or public is not responsive.



## Effective whistle blowing policy

**A well-drafted whistle blowing policy should cover the following essential aspects:**

1. **Responsibility:** The policy should communicate to the employees about their responsibility and report all the serious or unethical practices to proper authorities through appropriate internal channel.
2. **Reporting procedure:** The policy should spell out the clear procedure to report the issues in a confidential manner. The procedure should state the method of reporting, the authority to whom to be reported, time specification if any, documents/evidence if any to be attached, channel of reporting, circumstances where superseding is permitted etc.
3. **Skilled personnel:** The persons authorized to receive the reports should be properly trained to investigate the report from the employees maintaining the confidentiality. The person authorized for this purpose should enjoy proper authority in the organization and the programme should be evaluated periodically. Another important aspect is that the person should be impartial and respectable.
4. **Commitment:** The policy should communicate to the employees about its commitment to initiate its action on the reports received from them. The organisation assures that it would not ignore or misuse the report received from the employees. The best policy will also communicate to the whistle blowers about the action taken on their reports.
5. **Guarantee of protection:** The policy should ensure protection against any penal action against them by the employers for disclosing the information through whistle blowing. The assurance should be in the form of the legal protection and provide for penalty against those employees who violate the protection rules.
6. **Prevention of misuse:** Some employees may use whistle blowing route to take revenge upon the superiors. Companies are worried about over-protection. Therefore the policy should also communicate the penalty provisions against those employees who misuse the facility and level charges against the company or its higher officials without sufficient cause and documentary proof.

## Whistle Blowing - International and Indian perspective

Whistle blowing has now become an accepted practise worldwide. Many countries have their own legislation to protect whistle blowers and ensure that corruption and malpractices are brought to the notice of authorities immediately.

For example US has enacted Whistle Blower Protection Act in 1989 and designated the office of Special Council as the recipient of whistle blower report. The US companies are subject to the provisions of Section 404 of the Sarbanes

Oxley Act with regard to accountability policies, auditor independence, financial disclosures etc. The Whistle Blower Protection Act of Japan ensures protection from penal action from companies against employees blowing whistle against the objectionable policies and practises of the company. There also exists some conflicts between the Sarbanes Oxley Act of US and European Data Protection Law and discussions are going on to settle the disputes. In India, the Monopolies and Restrictive Trade Practices Act provided protection to consumers from monopolistic practices and resultant exploitations by companies. This Act has since been replaced by the Competition Act 2002 to protect the interest of consumers and to ensure freedom of trade carried on by other participants in the markets in India. In 2004, the Government of India passed an order of authorizing the Central Vigilance Commission (CVC) to receive written complaints or disclosure on any allegation of corruption or misuse of office and recommend appropriate action. The jurisdiction of CVC covers all public sector undertakings including public sector banks and government departments. The Reserve Bank of India has now initiated measures to introduce whistle blowing policy for private sector banks.

**Central Vigilance Commission has issued the following guidelines regarding whistle blowing in public sector undertakings:**

1. The CVC shall, as a designated agency, receive written complaints or disclosure on any allegation of corruption or of misuse of office by any employee of the central government or of any corporation established under Central Act, government companies, societies or local authorities owned or controlled by the Central Government.
2. The designated agency will ascertain the identity of the complainant, if the complaint is anonymous; it shall not take any action in the matter.
3. The identity of the complainant will not be revealed unless the complainant himself has either made the details of the complaint public or disclosed his identity to any other office or authority.
4. While calling for further report/investigation, the Commission shall not disclose the identity of the informant and also shall request the concerned head of the organization to keep the identity of the informant a secret, if for any reason the head comes to know the identity.
5. The Commission shall be authorized to call upon the CBI or the police authorities, as considered necessary, to render assistance to complete the investigation pursuant to the complaint received.
6. If any person is aggrieved by any action on the ground that he is being victimised due to the fact that he had filed a complaint or made disclosure, he may file an application before the Commission seeking redress in the matter. The





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Commission may give suitable directions to the concerned person or authority. If the Commission is of the opinion that either the complainant or the witnesses need protection, it shall issue appropriate direction to the concerned government authorities.

7. In case the commission finds the complaint to be motivated or vexatious, it shall be at liberty to take appropriate steps.
8. The Commission shall not entertain or enquire in to any disclosure in respect of which a formal or public enquiry has been ordered under the Public Servants Inquiries Act, 1850, or a matter that has been referred for enquiry under the Commission of Inquiry Act, 1952.
9. In the event of the identity of the informant being disclosed in spite of the Commission's directions to the contrary, it is authorized to initiate appropriate action as per extant regulations against the person or agency making such disclosure.

These guidelines are applicable to public sector banks also. The CVC co-ordinates with the CVOs of the banks in the matter of conducting enquiries and initiating actions. Private sector banks do not come under the purview of these guidelines. Therefore, Reserve bank of India has issued draft guidelines on whistle blowing policy in private sector banks and foreign banks. Excerpts from these guidelines are as under:

1. The complaints in this scheme covers the areas such as corruption, misuse of office, criminal offences, suspected/actual fraud, failure to comply with the existing rules or regulation such as Reserve Bank of India Act, 1934, Banking Regulation Act 1949, etc. and acts resulting in financial loss/operational risk, loss of reputation, etc. detrimental to depositor's interest / public interest.
2. Under the scheme, employees of bank concerned, customers, stakeholders and NGO's can lodge complaints. Anonymous/ pseudonymous complaints will not be covered under the scheme and such complaints will not be

entertained.

3. Reserve Bank of India (RBI) will be the Nodal Agency to receive complaints under the scheme. RBI would keep the identity of the complainant secret, except in cases where complaint turns out to be vexatious or frivolous and action has to be initiated against the complainant as mentioned in Para 3 above.
4. The institution against which complaint has been made can take action against complainants in cases where motivated/ vexatious complaints are made under this scheme after being advised by RBI.
5. The complaints should be sent in a closed/secured envelop.
6. The envelop should be addressed to the Chief General Manager, Reserve Bank of India, Department of Banking Supervisor, Fund Monitoring Cell, second floor, World Trade Centre, Centre 1, Cuffe Parade, Mumbai 400005. The envelop should be super-scribed complaint under Protection Disclosure Scheme for Banks.
7. The complainant should give his/her name and address in the beginning or at the end of the complaint or in an attached letter.

In case of employee making such complaint, details such as name, designation, department, institution & place of posting etc, should be furnished.

8. The text of the complaint should be carefully drafted so as not to give any details or clue to complainant's identity. The details of the complaint should be specific & verifiable.
9. If the complaint is accompanied by particulars of the person making the complaint, RBI shall take in the following steps:
  - a) It would ascertain from the complainant whether he was the person who made the complaint or not.
  - b) The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other authority.
  - c) If the identity of the complainant is concealed, RBI shall make discreet inquiries & ascertain that there is basis for proceeding further with the complaint.
  - d) Either as a result of discreet enquiry, or on the basis of the complaint itself without any enquiry, if RBI is of the opinion that the matter requires to be investigated further, RBI may consider calling for the comments/responses from the chairman/Chief Executive officer of the considered bank.
  - e) After obtaining the response of the concerned bank or on the basis of independent scrutiny conducted/ordered by RBI, if RBI is of the opinion that the allegations are substantiated, the RBI shall recommend appropriate actions to the concerned bank. These shall *inter alia*, include the following:
    - Appropriate action to be initiated against the concerned official.
    - Appropriate administrative steps for redressing the loss caused to the bank as a result of the corrupt



Whistle blowing policy will never give an automatic protection to any organisation from wrong doings. The effectiveness of the system mainly depends upon how the wrong doings become costly to the performer of the act.

act or misuse of office, or any other offence covered by the scheme.

- Recommend to the appropriate authority/ agency for initiation of criminal proceedings, if warranted by the facts and circumstances of the cases.
  - Recommend for making corrective measures to prevent recurrence of such events in future.
  - Consider initiating any other action that it deems fit keeping in view the facts of the case.
10. If any person is aggrieved by any action on the ground that he is victimised due to the fact that he had filed a complaint or disclosure, he may file an application before the RBI seeking redressal in the matter. RBI shall take such action, as deemed fit. In case the complainant is an employee of the bank, RBI may give suitable directions to the concerned official / bank as the case may be, preventing initiation of any adverse personnel action against the complainant.
  11. Either on the basis of application of the complainant or on the basis of the information gathered, if RBI is of the opinion that either the complainant or witnesses in the case need protection, the RBI shall issue appropriate directions to the concerned bank.
  12. The system evolved hereinabove shall be in addition to the existing grievance redressal mechanism in place. However, secrecy of identity shall be observed, only if the complaint is received under the scheme.
  13. In case RBI finds that the complaint is motivated or vexatious, RBI shall be at liberty to take appropriate steps.
  14. In the event of the identity of the informant being disclosed in spite of RBI's directions to the contrary, RBI shall be authorised to initiate appropriate action as per the regulations against the person or agency to suitably compensate the complainant.
  15. All private sector and foreign banks operating in India may frame a 'Protected Disclosures Scheme' duly approved by their respective Boards of Directors, keeping in view the broad framework given above. The policy should clearly lay down norms for protection of identity of employees making

disclosures under the scheme and safeguarding them from any adverse personal action.

Whistle blowing policy will never give an automatic protection to any organisation from wrong doings. The effectiveness of the system mainly depends upon how the wrong doings become costly to the performer of the act. For example, TAP Pharmaceutical Products, an American joint venture which manufactured Lupron, a drug used to treat prostate cancer and infertility had to agree for an out of court settlement of US \$875 million with the US prosecutors for trying to bribe Dr. Gerstein, a urologist to substitute their drug in place of a rival drug used by him. Dr. Gerstein reported the matter to Federal Authorities. As per US practice Dr. Gerstein will get an amount of US \$ 95 Million for reporting a corrupt practice. In Indian, situation, such reporting will enable further corruption and even the name of the whistle blower will be made known to the affected parties. The story of Satyendra Dubey, who was shot dead, is an example, Dubey, the 31 year old engineer in National Highway Authority of India was instrumental in bringing out large scale corruptive practices in allotment of road building contracts. The interesting factor is that in India the penalty is often so ineffective that it in fact promotes crime. In US some of the big companies have become bankrupt on account of imposition of penalties. Another important aspect is the speed in taking decisions. In India it would take ten to fifteen years to complete the legal process, whereas in US, the judicial process is quick. While they penalise dishonest, they also reward honesty, which is lacking in India. We have to re-script many of our laws and procedures, if we want to reach the international standards.

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# Articles

**S. Krishna Kumar, ACS**  
Chennai.

*krishnakumarariyer@yahoo.com*



## **Marketability and Stamp Duty on Issue and Allotment of Debentures by a Private Limited Company**

This article discusses the important question as to whether the debentures issued by a private limited company are marketable securities and the debenture certificate attracts payment of Stamp Duty under Article 27 of Schedule I of the Indian Stamp Act, 1899.

### **Preamble**

According to Section 2(12) of the Companies Act, 1956 (Act), 'debenture' includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not. A debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a debenture. Debentures are also issued, without security, in which case they are merely promises to pay, ranking in the event of the company being wound-up equally with other unsecured creditors. Debentures can be either secured or unsecured, fully or partly convertible or non-convertible and can be issued by public and private limited companies.

Article 27 of Schedule I of the Indian Stamp Act, 1899 prescribes stamp duty on debentures, being marketable securities. The stamp duty on debentures is a central subject and would not vary with the registered office or place of holding of the board meeting. The question that arises in this context is whether the debentures issued by a private limited company are marketable securities and the debenture certificate attracts payment of stamp duty under Article 27 of Schedule I of the Indian Stamp Act, 1899.

### **Instruments chargeable to duty under the Indian Stamp Act, 1899**

The Indian Stamp Act, 1899 (Stamp Act), is concerned with documents or instruments only. The thing which is made liable to duty is an "instrument". 'Instrument' is defined as a document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying or terminating a right, a writing executed and delivered as the evidence of an act or agreement; a writing which contains some agreement and is so called because it has been prepared as a memorial of what has taken place or been agreed upon.





"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at. Though stamp duty is leviable on the instrument and not on the transaction, it is the substance of the transaction as embodied in the instrument and not the form of the instrument that determines the stamp duty. There can be no legal impediment to a party selecting and adopting a particular form of transaction to minimise the expenses of stamp duty. The revenue cannot say that object of the transaction was to achieve a purpose not disclosed in the document and that therefore the document should be deemed to be that which it is not.

An instrument is chargeable to stamp duty under the law in force in India where such instrument was executed, or where several persons executed the instrument at different times, first executed. An instrument so framed as to come within two or more of the descriptions in Schedule I of the Stamp Act, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties.

## Securities

As per Section 2(h) of The Securities Contracts (Regulation) Act, 1956, 'Securities' include :

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- Derivative;
- Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- Security receipt as defined in Section 2(zg) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- Units or any other such instrument issued to the investors

under any mutual fund scheme;

- Any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- Government securities;
- Such other instruments as may be declared by the Central Government to be securities; and
- Rights or interests in securities

## Marketability

'Marketable' means "offered for sale in a market; being such as may be justly or lawfully sold or bought", that securities may be marketable in the market if capable of being sold and purchased without any restrictions. The word 'marketable' in the definition of 'securities' contemplates existence of a market place. In other words, the transfer of a security in a company must vest title in the purchaser and this vesting of title in the purchaser should not be made to depend on any other circumstance except the circumstance of sale and purchase. A market, therefore, contemplates a free transaction in which securities can be sold and purchased without any restriction as to title. The securities which in a market must, therefore, have a high degree of liquidity by virtue of their characteristic of transferability. Such character of free transferability is to be found in the securities of a company. Marketability of a security cannot be decided based on whether the security is issued by a private or public limited company.

## Marketable Security

Under the Stamp Act, 'Marketable Security' means a security of such a description as to be capable of being sold in any stock market in India or in the United Kingdom. This definition is based on the definition in the English Act. In the English Act, there is a special charging provision applicable to marketable securities, but under the Stamp Act in which there is no such provision, marketable securities are charged according to the description under which they come, such as debenture, mortgage, promissory note, etc. The words "of such a description" are important, the intention being on the one hand to include a security of such a description as to be capable, according to the use and practice of markets, of being there bought and sold, although there may in fact be no market for the particular security in question, and on the other hand, not to include a security which is not of that description although having some value, it is in fact capable of being sold. An instrument which may fall within the description of "promissory note" and is chargeable as such under the Stamp Act may be a marketable security according to this definition if the test laid down in it is satisfied.



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An instrument is chargeable to stamp duty under the law in force in India where such instrument was executed, or where several persons executed the instrument at different times, first executed. An instrument so framed as to come within two or more of the descriptions in Schedule I of the Stamp Act, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties.

All securities which can be sold without any restriction should be considered as marketable securities and the word 'marketable' in the definition of securities should be consisting meaning only 'saleable'.

The very definition of private company vide Section 3(1)(iii)(a/b) of the Companies Act, 1956, requires that it should, by its article, restrict the right to transfer its shares, and limits the total number of members to fifty. Shares of a private company do not possess liquidity, because the purchaser of shares cannot be guaranteed that he will be registered as a member of the company. Such shares cannot be easily sold in the market or otherwise they cannot be said to be marketable and cannot, therefore, be said to fall within the definition of 'securities' as a 'marketable security'.

## Valuation of stock and marketable securities

Under Section 21 of the Stamp Act, where an instrument is chargeable with ad valorem duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument. The value of shares or marketable securities that are not quoted or sold in any stock market should be based upon the average of the latest private transactions, which can generally be ascertained from the Secretary or other proper officer of the particular company. If there have been no dealings, the value is, unless some other reliable evidence of market value is forthcoming, taken at par. Section 22 provides that if such price or value is mentioned in the instrument for purpose of calculating duty, it shall be presumed to be correct.

## Different types of debt securities issued in India

Market Segment	Issuer	Instruments
Government Securities	Central Government	Zero Coupon Bonds, Coupon Bearing Bonds, Treasury Bills, STRIPS
	State Governments	Coupon Bearing Bonds
Public Sector Bonds	Government Agencies/ Statutory Bodies	Government Guaranteed Bonds, Debentures
	Public Sector Units	PSU Bonds, Tax-Free Bonds, Debentures, Commercial Paper
Private Sector Bonds	Corporates	Debentures (Convertible / Non-Convertible), Debentures with Warrants, Bonds, Commercial Paper, Floating Rate Bonds, Zero Coupon Bonds, Inter-Corporate Deposits, Interest Rate Derivative products
	Banks	Certificates of Deposits, Debentures, Bonds
	Financial Institutions	Certificates of Deposits, Bonds

A variety of hybrid securities that combine features of plain vanilla debt securities and exchange traded derivatives are being issued through private placements and listed on stock exchanges. Such securities differ from plain vanilla debt securities or debt securities issued with embedded call or put options, i.e. by offering market linked returns obtained through exposures on exchange traded derivatives. Since such returns are linked to equity markets, such securities are also called equity linked debentures or stock linked debentures, etc.

## Debentures

Debenture can be either secured or unsecured, fully or partly convertible or non-convertible and can be issued by public and private limited companies. It can be issued to the public or to select investors on private placement basis. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited. However, nothing prevents it from issuing debentures on private placement basis, if the articles empowers the Board to borrow by issuing of debentures. Debentures are issued in denominations as low as Rs.1,000/- and have maturities normally ranging between one and ten years. Long maturity debentures are rarely issued, as investors are not comfortable with such maturities.

Debentures can be either Registered or Bearer Debentures. There is nothing in the Companies Act to prevent the issue of



bearer debentures. Registered debentures are those debentures in respect of which all details including names, addresses and particulars of holding of the debenture holders are entered in a register kept by the company. Such debentures can be transferred only by executing a regular transfer deed. But bearer debentures can be transferred by way of delivery and the company does not keep any record of the debenture holders. Interest on debentures is paid to a person who produces the interest coupon attached to such debentures. Debentures in which a company undertakes to pay the debenture debt and interest to the bearer of the debentures are negotiable instruments, and the title to them can consequently be transferred by mere delivery of the debentures without notification to the company.

Compulsorily convertible debentures shall also retain the basic elements of ordinary debentures until they are converted in accordance with the terms and conditions of issue. Upon conversion they would, of course, partake the character of equity. Till allotment of shares takes place, the shares do not exist.

## Transferability of debentures

Unlike in the case of shares, there is no restriction imposed under the Companies Act for transfer of debentures issued by a private limited company on private placement basis. The same are freely transferable and listing of said debentures on recognized stock exchange(s) is optional on the part of the issuer. Although under Section 108 of the Companies Act, the instruments of transfer for debentures are to be properly stamped, the obligation to deliver to the company an instrument of transfer within 12 months in the case of listed companies and 2 months in the case of unlisted companies from the date of stamping by the prescribed authority, do not apply to debentures. Although unsecured debentures are actionable claims, a special procedure prescribed by Section 130 of the Transfer of Property Act, 1882 for transfer of actionable claims does not apply to transfer of such debentures in view of the exemption given by Section 137 of that Act.

As regards a debenture, a further aspect to be noted is that it is a chose in action i.e. an actionable claim as defined under Section 3 of the Transfer of Property Act, 1882 and as such is subject to equities. That is to say, a transferee of a debenture takes it subject to any equitable rights the company may have against the transferor, unless the terms of issue of the debenture expressly provide that repayment will be made to the registered holder, without regard to any equities that may exist between the company and previous holders of the debentures.

## Stamp duty on debentures

As per Article 27 of Schedule I of the Stamp Act ("Article 27") the instrument was described as "DEBENTURE (whether a mortgage debenture or not), *being a marketable security*

transferable-....."

Similarly under Article 62 (b), the instrument was described as TRANSFER (whether with or without consideration) - of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by Section 8 .....

As per Article 27, the stamp duty payable on a Debenture (whether a mortgage debenture or not) being a marketable security transferable by (a) endorsement or by a separate instrument of transfer; (b) by delivery, would be .05% per year of the face value of the debenture, subject to the maximum of .25% or Rs.25 lakh whichever is lower. There is an exemption provided under proviso to Article 27, in respect of debentures issued by an incorporated company or other body corporate in terms of a registered mortgage deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or part, their property to trustees for the benefit of the debenture holders: Provided that the debentures so issued are expressed to be issued in terms of the said mortgage deed.

The object of providing exemption under Article 27 is to ensure that duty should be payable only once. If it is paid on the mortgage deed, no duty is necessary on the separate debentures issued in conformity with it. This provision is intended for the benefit of companies, and does not apply to private persons or proprietors of estates, issuing debentures. Such debenture issuers will be responsible not only for the payment of the duty on the mortgage, but also for the payment of the additional duty which is required for debentures.

According to the Companies Act and the Stamp Act, debenture, whether issued by a private or public limited company, is a marketable security and freely transferable by endorsement or by a separate instrument of transfer (or) by delivery unless the terms of the issue provides otherwise.

For meeting the working capital requirements, companies in particular NBFCs (mostly unlisted), raise thousands of crores of rupees from time to time, through issue of unsecured debentures for maturity period upto 89 days, with put & call option, on private placement basis. Under Section 113 of the Companies Act, the issuers are obliged to issue and deliver to the allottees within 3 months from the date of allotment, a document known as a certificate of debentures, to the effect that they are holding a certain number of debentures of the Company showing their nominal and paid-up values and distinctive numbers. This certificate is the only documentary evidence of title in the possession of debenture holders. Apart from equities, it confers upon the holder a title to the debentures for all legal dealings and purposes. As against a company, it





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constitutes a marketable title in the hands of debenture holder and prevents the company from disputing that title by what is popularly known as estoppel against the company. This certificate is the *prima facie* evidence of the title to the debentures. Issuers get around with payment of stamp duty on these instruments by issuing only a Letter of Allotment (LOA) with the promise of issuing a formal debenture later - however the allotment was never made / debenture certificate never issued and the LOA itself is redeemed on maturity or on exercise of put / call option, as the case may be. These LOAs are freely tradable but transfers attract stamp duty. Though, these transactions attract the provisions of Article 27, the stamp duty cannot be paid since there was no instrument.

By sensing the systemic risk to the financial system due to such unethical practice and to regulate issuance of non-convertible debentures (NCDs) by corporates (including NBFCs), the Reserve Bank of India came out with Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010, in June 2010.

As per the said Directions, among other things, NCDs shall not be issued for maturities of less than 90 days from the date of issue and the exercise date of option (put/call), if any, attached to the NCDs shall not fall within the period of 90 days from the date of issue. Subsequent to the said RBI Directions, Corporates / NBFCs manage their short-term working capital requirements through issue of commercial papers and stopped issuing unsecured debentures for maturity period upto 89 days due to unviability of the instrument as a result of increased cost due to stamp duty.

## Listing and trading of debt securities

The listing of debt securities issued on private placement basis on a recognized stock exchange is optional on the part of the issuer. Mostly issuers with high credit rating list their debt securities on stock exchange(s) in order to avail lower / better interest rates by providing exit option to investors through stock exchange(s). The secondary market trading is heavily biased in favour of high rated papers like AAA and AA+ which account for about 95% of the total trading.

The corporate debt market in India is a pure and simple OTC market as all the deals are done over phone by market participants. Dematerialization facilitates settlement process, reduces transaction costs, and can be easily integrated with the existing electronic settlement system for capital market in the country.

As per the trade information released by National Stock Exchange of India Limited (NSE), negligible trade takes place

either on the exchange platform or reported to it after the trades are brokered in the OTC market. NSE's Wholesale Debt Market (WDM) platform for price discovery is not being used by NSE's WDM members. Although large number of trades are said to be facilitated by the WDM members they do not issue contract notes so that they are not obligated to report the trades to the NSE. The brokers have their own ways of getting compensated for the services they render to their clients. In such a regime, the investors are said to be trading among themselves directly in the OTC market. In the OTC market, the risk of settlement is invariably absorbed by the participants themselves as the market practice forces a seller to give transfer instruction to the depository first before receiving the payment by way of cheque.

Since the OTC market trading data is not released by any information vendor, it is difficult to ascertain how much amount of trading actually happens in this market. The only reliable source of estimating the total amount of transactions in the market is the depositories but depositories do not publish this information on a daily basis as they do not have information on traded prices.

## Conclusion

In India about 95 per cent of the debt securities issued by corporates on private placement basis were not listed on any stock exchange(s). Actual listing of a debt security issued on private placement basis on stock exchange(s) or satisfying the eligibility conditions for listing at the time of issue are not condition precedent for determining the marketability of such security. Securities which are of such description as to be capable of being sold and purchased in the market without any restrictions are marketable securities. Issue and allotment of secured or unsecured debentures by private limited companies on private placement basis entails payment of stamp duty under Article 27.

To exclude the instrument from the ambit of Article 27, a private limited company issuing debentures may curtail the marketability of the instrument by clearly providing in the terms of issue and the corresponding debenture certificate that the debentures are not marketable securities and not transferable by endorsement or by a separate instrument of transfer or by delivery. In such a case, the debenture certificate need not be stamped under Article 27. The stamp duty on debentures is currently kept at a maximum of Rs.25 lakh, which is substantially low as compared to the ad valorem duty paid earlier. Hence, the company providing such restriction has to see whether it makes sense to curtail the marketability of the instrument in order to save a small amount of stamp duty. Further, this may open the window for the revenue authorities to interpret and classify the instrument under any other Article of Schedule I of the Stamp Act, which may eventually result in payment of higher stamp duty on the instrument. ■



**Jaya Ankur Singhania, ACS**  
Jaya Sharma &  
Associates, Practising Company  
Secretaries, Mumbai.

[jaya.jscs@gmail.com](mailto:jaya.jscs@gmail.com)



# A close analysis on contracts in restraint of trade and profession

This article highlights the issues in relation to non-enforceability of contracts containing provisions pertaining to restraint of trade and profession as laid down under Section 27 of the Indian Contract Act, 1972.

A contract is a legally enforceable agreement which seeks to protect and enforce personal rights and obligations as specified under the contract between the parties to the agreement. Generally, a contract of employment contains a restrictive covenant restricting an employee from joining a competitor and more importantly a covenant to protect the intellectual proprietary rights or the confidential information of the employer. The Supreme Court has considered and upheld the validity of section 27 of the Indian Contract Act in various landmark judgments some of which are: *Niranjan Shankar Golikari v. Century Spinning and Manufacturing Co.*, *Superintendence Co. v. Krishna Murgai* and *Percept D' Mark v. Zaheer Khan*.

## Need for Non - Competition and Non - disclosure Clauses in today's world

Companies heavily rely on 'innovative ideas and suggestions' and the protection of such ideas and suggestions is of prime importance. As a result

companies are taking precautions by inserting restrictive covenants in the employment contracts. The most valuable property of companies in today's world is its employees and the proprietary rights owned by the Company. But the key issue is how to retain such assets?

*A restrictive covenant provides that if the employer employee relationship is terminated, the employed person is prohibited from joining a competitor of the former employer in a defined area for a specified period of time and from divulging confidential information.*





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There is no law which prohibits an individual from poaching employees of their former employer. Even the employees who hold managerial position cannot be restrained by this provision. However, the employees who are poached still owe a duty of fidelity and good faith to the employer and hence are liable to disclose such attempts of approach by the ex-colleague to their employer.

Section 27 of the Indian Contract Act states that any agreement restraining any person from exercising any lawful profession, trade or business of any kind, are void. The section carves out an exception in the case of sale of the goodwill of a business. The person who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein provided that such limits appear to the Court reasonable, regard being had to the nature of the business. However, subject to this other post-contractual non-competition covenants are void and unenforceable under Section 27 of the Indian Contract Act, which states as under:

**"Agreement in restraint of trade, void - Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.**

**Exception 1.- Saving of agreement not to carry on business of which goodwill is sold.-One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business."**

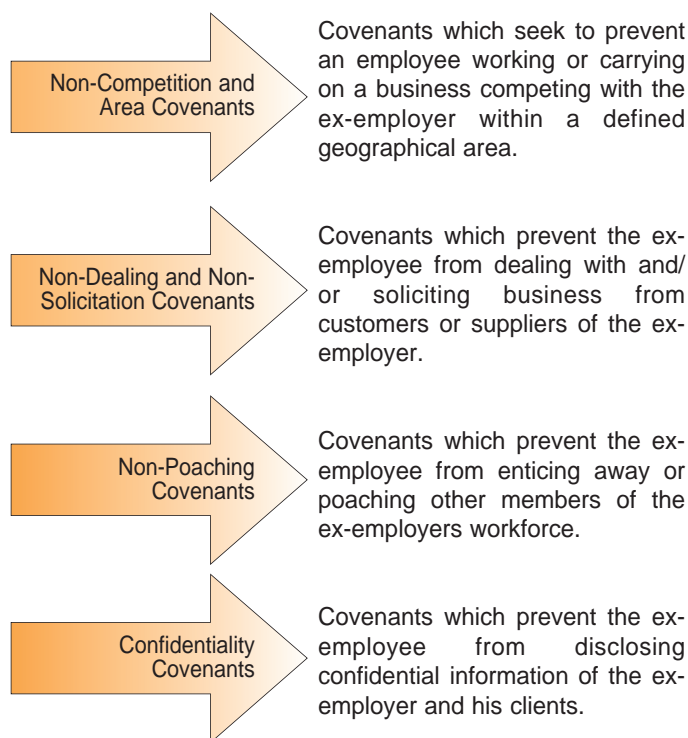
The Madras High Court<sup>1</sup> on June 8, 2010 held that the petitioner was bound by terms of agreement and could not escape from liability to pay damages. The petitioner in this case had challenged the order refusing to accept his resignation letter and certain clauses of the agreement executed by him. The clauses obliged him to serve for six years and the other clause dilutes the rigour with quantified damages to be paid. The petitioner was beneficiary of three years leave period together with salary paid and he was treated as service

candidate. Also, when there were thousands of candidates standing for direct selection to Super Speciality PG courses, petitioner had advantage of being selected as a service candidate under 50% quota. Therefore, contract agreed to by petitioner which stipulates that he should serve for six years in institution after completion of course cannot be considered as unenforceable. *The ratio decidendi* in this decision is:

**"If a party to contract is aware of a condition laid down in agreement, subsequently they cannot escape from liability mentioned therein."**

## Categories of covenants

The categories of restrictive covenants which are commonly used by employers to protect their proprietary interests are as under:



The enforceability of a particular restrictive covenant depends on the facts and circumstances of the individual cases. However, the principles relevant to enforceability have been developed in case law and the key case laws relating to each category of covenant is set out below.

The Supreme Court<sup>2</sup> held that considerations against restrictive covenants are different in cases where the restrictions are to apply after the termination of the contract than in those cases

1. Dr. S. Gobu v. The State of Tamil Nadu rep. by its Secretary to Government, Transport Department, The Director Institute of Road Transport and The Dean, Perundurai Medical College and Hospital

2. Niranjan Shankar Golikari v The Century Spinning and Manufacturing Company Limited AIR 1967 SC 1098, 1967(2) SCR 367 and in Superintendence Company of India Private Limited v Krishna Murgai AIR 1980 SC 1717 and followed by the Bombay High Court in Taprogge Gesellschaft mbH v IAEC India Limited AIR 1988 Bombay 157





where they are to operate during the term of the contract. Negative covenants which operate during the term of the contract of employment, when the employee is bound to serve his employer exclusively, are generally not regarded as restraints of trade and, therefore, do not fall under section 27 of the Indian Contract Act but a negative covenant which restricts the rights of the employee after the termination or cessation of the employment, would be void.

The Supreme Court<sup>3</sup>, has laid down the legal position with regard to post-contractual covenants or restrictions which has been consistent, unchanged and well settled in our country which are as under:

1. a restrictive covenant extending beyond the term of the contract is void and unenforceable;
2. the doctrine of restraint of trade does not apply during the continuance of the contract of employment and it applies only when the contract comes to an end; and
3. the doctrine is not confined only to contracts of employment, but is also applicable to all other contracts.

Courts have generally taken a strict view of covenants in restraint of trade in employment contracts than in other business agreements in order to provide greater flexibility and bargaining power to the employees.

## Non-Competition and Area Covenants

The Delhi High Court<sup>4</sup> has on the strength of sequence of events wherein the plaintiffs (Pepsi) tried to establish a *prima facie* case that the defendants (Coke) had offered inducements to various persons to breach their existing contracts with Pepsi. It was alleged that Coke had caused considerable damage to Pepsi's business by hijacking their employees who had been trained by them and who had acquired confidential and exclusive business information during the course of their employment. It was also mentioned that Pepsi genuinely and *bona fide* apprehended that Coke were in the process of causing further damage to their business. Pepsi had thus sought that the defendant be restrained from employing in any manner, offering employment to or inducing any employee of Pepsi to breach the existing employment contract and other obligations with Pepsi, or in any manner interfering with and/or hindering the business of Pepsi through tortious actions and illegal means. The question was whether, on the facts, the plaintiffs were entitled to relief of injunction under Order 39, Rules 1 and 2, Code of Civil Procedure, 1908. The Delhi High Court held that:

*"the grant of injunction is an equitable relief and various*

*factors have to be carefully taken into consideration before granting it. On consideration of the totality of the facts and circumstances of this case, prima facie, the plaintiffs are not entitled to injunction for the following, amongst other reasons: admittedly, in the service and employment contracts of the plaintiffs, there is a negative covenant clause, restraining an employee from engaging or undertaking employment for twelve months after he has left the plaintiff's service. It is well settled that such post-termination restraint, under Indian law, is in violation of section 27 of the Indian Contract Act. Such contracts are unenforceable, void and against the public policy. What is prohibited by law cannot be permitted by court's injunction. Again, all crucial, vital and important averments of the plaint have been specifically, denied in the written statements. The defendants on the basis of documentary evidence have tried to discredit the veracity and truthfulness of the plaintiff's averments. In view of the categorical denial in the written statements, at this stage, it is difficult for the court to ascertain the veracity and truthfulness of the averments and allegations mentioned in the plaint. This can only be ascertained after the parties have been given an opportunity of adducing their evidence and opportunity to cross-examine the witnesses. Again, equitable relief of injunction can only be granted if the plaintiffs have approached the court by disclosing the whole truth and have inspired implicit trust and confidence of the court by demonstrating their conduct. The plaintiffs were not entitled for injunction for the following reasons also:*

1. *The injunction, as prayed for by the plaintiffs, if granted would certainly have direct impact of curtailing the freedom of employees for improving their future prospects and service conditions by changing their employment.*
2. *Rights of an employee to seek and search for better employment cannot be restricted by an injunction.*
3. *Injunction cannot be granted to create a situation such as 'once a Pepsi employee, always a Pepsi employee'. It would almost be a situation of 'economic terrorism' or a situation creating conditions of 'bonded labour'.*
4. *Freedom of changing employment for improving service conditions is a vital and important right of an employee, which cannot be restricted or curtailed by a court injunction.*
5. *Inter-changeability of service is an accepted norm of service jurisprudence which cannot be curtailed by a court injunction.*
6. *'Employees' right to terminate their contracts also cannot be curtailed by court injunction.*
7. *An injunction can be granted only for protecting the rights of the plaintiffs, but cannot be granted to limit the legal rights of the defendants.*
8. *An injunction cannot be granted where the courts have a doubt in the credibility, veracity and truthfulness of the plaintiffs' version.*

3. Percept D Mark (India) Private Limited v. Zaheer Khan (2006) 4 SCC 227

4. Pepsi Foods Limited & Ors. v. Bharat Coca-Cola Holdings (P) Ltd. & Ors. (1999) 4 CLJ 138



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9. An injunction also cannot be granted in a case where the court directly or indirectly gets the impression that the injunction has been sought for extraneous considerations or oblique motives.
10. Rough and tumble of the business including stiff competition has to be faced in a free market economy. The problems which should be settled in the market place cannot be brought to law courts or settled by a court injunction.
11. In economic matters, while granting injunctions, business realities have to be taken into consideration. The employees seek betterment and advancement of their careers, while they are in service. It is impracticable and unrealistic to artificially create a situation by a court injunction when employees would first leave the employment and then look for better service conditions and job opportunities.
12. Most of the senior employees of the plaintiffs or the defendants were working with other multinationals or business organisations. They joined the plaintiffs or the defendants because attractive salaries and better service conditions were offered by them. The plaintiffs themselves have engaged a large number of employees who were working in other multinationals or business organisation. They were appointed because they had work experience with other organisations. The same plaintiffs are not justified in seeking an injunction so that their employees may not join the defendants. All that is to be seen is whether the defendants had adopted unfair means in advancing their business interest or not.
13. In a free market economy, everyone concerned, must learn that the only way to retain their employees is to provide them attractive salaries and better service conditions. The employees cannot be retained in employment perpetually or by a court injunction.
14. Free, fair and uninterrupted competition is the life of trade and business. This freedom in free market economy has to be zealously protected in the larger interest of free trade and business. No injunction can be granted which is likely to restrict or curtail this freedom.
15. It is difficult to hold at this stage that the predominant object and paramount consideration behind the actions of the defendants was designed to injure the plaintiffs.
16. At this stage, it is also difficult to hold that the defendants resorted to business practices, which are unethical, illegal and constitute tortious interference in the business of the plaintiffs.

"On consideration of the totality of the facts and circumstances, the plaintiffs have not made out a strong prima facie case for the grant of injunction at this stage. The balance of convenience is also not in favour of the plaintiffs.



*No irreparable injury is likely to be caused to the plaintiffs".* The Bombay High Court<sup>5</sup> followed the cases referred to above and held that, if a contract of service is for a particular term and the employee leaves service within that period, an injunction could be granted until expiry of the term but in other cases if the restriction is not reasonable it will be hit by Section 27 of the Indian Contract Act. In the instant case, there being no fixed term of service, it was held that the restriction was rightly held to be unreasonable and no relief can be granted. In paragraph 9 of this judgement, the Bombay High Court clarified "contracts are of two types; (i) Contracts wherein during the period of employment, an employee would not serve anywhere else and if he leaves service, he will not use or divulge any information; (ii) after the period of employment or contract, some restriction is put on him in connection with the information or technical know-how obtained by him in the course of employment." In the former class of cases, the restriction must be held reasonable and would not be hit by Section 27 of the Indian Contract Act. In the later class, however, the position is different. If such restriction is not reasonable Section 27 of the Indian Contract Act shall apply and the restrictions may be held to be unlawful and unenforceable.

The Bombay High Court<sup>6</sup> held that where there was a service contract which had a negative covenant which is quoted below:

*"You acknowledge that during the course of your employment with the company, you will become familiar with the company's trade secrets and with other confidential information concerning the company and its associates and related companies and that your services will be of a special, unique and extraordinary value to the company. You agree that during the term hereof and for six months thereafter, you shall not directly or indirectly own, manage, control, participate in, consult with, render service for or engage in any business competing with the business of the company or its associates or related companies within*



*India. For the purpose of this agreement, the 'business of the company' shall mean satellite or cable television".*

On an application for interim reliefs it was held by the Bombay High Court that, where the defendant had acquired some trade secrets and was imparted special training and was in possession of confidential information such matters can be proved at the trial stage and until it is proved a negative covenant in matters of personal services cannot be enforced. It was further clarified that freedom of contract must yield to freedom of occupation in the public interest. There is nothing to suggest that plaintiff would suffer irreparable loss if the injunction was not granted. The mere fact that the plaintiff may face some inconvenience or competition is no ground for enforcing a negative covenant in matter of personal service against the Defendant and it is also not in public interest to restrict healthy competition.

The Delhi High Court<sup>7</sup> relied upon the decision of the Supreme Court<sup>8</sup> where in it was held that the law on the subject of post-contractual covenants is well-settled and that all contracts in restraint of trade are void and hit by Section 27 of the Indian Contract Act. The court further laid down that an employee particularly after the cessation of his relationship with his employer is free to pursue his own business or seek employment with someone else. However, during the subsistence of his employment, the employee may be compelled not to get engaged in any other work or not to divulge the business/trade secrets of his employer to others and, especially, competitors. In such a case, a restraint order may be passed against an employee because Section 27 of the Indian Contract Act does not apply to such a situation.

## Reasonable restriction

In another case the employee had received training on the express condition that after such training he would serve the company for the period of five years. In case of breach by the employee, he was liable to pay to the company liquidated damages of rupees thirty thousand. The court held that this was not a post-contractual negative covenant and only a reasonable restriction was imposed on the employee. However, since the employee had already served for a period of eighteen months, the substantial portion of the loss was allowed be deducted from the liquidated damages payable by the employee to the company<sup>9</sup>.

## Customer covenants (non-solicitation/non-dealing)

A non-solicitation covenant prohibits the employee from

initiating contact with a customer whereas a non-dealing covenant prohibits the employee from dealing with the customer even where it is the customer who has initiated the contact. A covenant preventing an employee from dealing with and/or from soliciting business from customers or suppliers of the employer during the course of employment may be a reasonable restraint which can legitimately be used to protect trade connections. Under Section 27 of the Indian Contract Act, negative covenants relating to non-solicitation after the expiry or termination of the contract will be considered as a restraint on trade and consequently will be held to be void and unenforceable.

## Non-Poaching Covenants

As stated above, under Section 27 of the Indian Contract Act, negative covenants relating to non-solicitation/non-poaching after the expiry or termination of the contract will be considered as a restraint on trade and consequently will be held to be void and unenforceable.

There is no law which prohibits an individual from poaching employees of their former employer. Even the employees who hold managerial position cannot be restrained by this provision. However, the employees who are poached still owe a duty of fidelity and good faith to the employer and, hence are liable to disclose such attempts of approach by the ex-colleague to their employer. Hence, the ex-employee is required to ensure, that in attempting to persuade former colleagues to change job, they do not use confidential information belonging to their ex-employer.

The Delhi High Court<sup>10</sup> relying on various earlier decisions<sup>11</sup> held that the agreement entered into between the parties to the suit contained a 'Non-solicitation of employees' clause, which was to operate for two years after termination of the agreement. The respondent decided to undertake direct operations in India and issued an advertisement seeking employees and giving preference to candidates having experience in having handled respondent's product or similar product. The petitioner alleged that the advertisement was in violation of the non-solicitation clause and approached the court to prohibit the solicitation and claiming damages. The court held that it is a restriction cast upon the contracting parties and not on the employees. Therefore, the non-solicitation clause by itself did not put any restriction on employees. The restriction is put on the petitioner and the respondent and, therefore, has to be viewed more

10. Wipro Limited v Beckman Coulter International S.A. (2006) 131 DLT 681

11. Electrosteel Castings Ltd v. Saw Pipes Ltd and Ors. 2005 (1) CHN 612; R. Babu and Anr. v. TTK LIG Ltd. 2005 (124) Comp Cases 109 (Madras); Pepsi Foods Ltd and Ors. v. Bharat Coca-Cola Holdings Pvt Ltd and Ors. 1999 (50) DRJ 656; Kores Manufacturing Co. Ltd v. Kolok Manufacturing Co. Ltd. 1957 (3) All E.R. 158 in appeal 1958 (2) All. ER 65; Star India Private Ltd v. Laxmiraj Seetharam Nayak and Anr. 2003 (3) Maha LJ 726; Jet Airways (I) Ltd. v. Mr Jan Peter Ravi Karnik 2000 (4) Bom CR 487

7. Ambiance India Pvt. Ltd v. Naveen Jain (2005) 122 DLT 421 and in High Polymer Labs. Pvt. Ltd. v. R.K. Mutreja ILR (Delhi Series) 1983 Vol 1 213

8. Superintendence Company of India Private Limited v. Krishan Murgai and Niranjan Shankar Golikari v The Century Spinning and Manufacturing Company Limited (Supra)

9. Nazir Maricar v. Marshalls Sons and Co. (India) Limited 2005 (2) CTC 478





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A close analysis on contracts in restraint of trade and profession

liberally than a restriction in an employer-employee contract. The non-solicitation clause did not amount to a restraint on trade, business or profession and would not be caught by Section 27 of the Indian Contract Act. Thus, the injunction could not be granted restraining respondent from employing even those employees of petitioner-company who were solicited.

## Confidentiality Covenants

The four points which a plaintiff has to prove to succeed in a breach of confidence action are as follows<sup>12</sup> :

1. The plaintiff must identify clearly what is the information he is relying on;
2. The plaintiff must establish that such information was handed over in circumstances of confidence;
3. The information must be of the type which can be treated as confidential; and
4. The information must have been used without authority.

The legitimate interests which an employer is entitled to protect are-

1. where the defendants had breached obligation of confidentiality and the plaintiff was granted an injunction<sup>13</sup>.
2. the master is entitled to be protected in regard to his interests in trade secrets and secret manufacturing processes. This protection is secured by restraining the employee from divulging those trade secrets or putting them to use of the servant. The master is also entitled to be protected against invasion of his customers or clientele but the master is not entitled to be protected against competition<sup>14</sup>.

## Reasonableness of such covenants

The Delhi High Court<sup>15</sup> had occasion to discuss reasonableness of restrictive covenants. Here the defendant was restrained from manufacturing, selling or offering for sale the mobile cranes which they had started manufacturing from the design of the plaintiff. In this case, the defendant was working as an assistant production and production manager for six months and later as a purchase manager for two years for the plaintiff. During his period of employment with the plaintiff, he had received all the information which was required for the production of the crane. The information received by the employee during his period of employment was strictly confidential in nature. The plaintiff alleged that the crane produced by the defendant was entirely based on the design of the plaintiff. The defendant was thus restrained under the provisions of the Designs Act, 2000 from copying the design which was construed as confidential

Any post contractual confidentiality covenant which comes into effect after the expiry or termination of the contract would be difficult to enforce. However, if such confidentiality covenant is in respect of trade secrets or intellectual property rights and if such covenant is breached after the expiry or termination of the contract, the covenant can be validly enforced.

information and developed by the plaintiff.

In this case, it was stated that the defendant copied the design of plaintiff's tractor name as Hunter Tractor, which was confidential information. The plaintiff contended that the design was developed by the research and development department of the plaintiff. The defendant was appointed as a senior member of the research and development team for Hunter Tractor and he had access to all the confidential information for the production of the tractor. An interim injunction was granted on the grounds of infringement of copyright and breach of confidentiality<sup>16</sup>. A similar issue was observed in this case where it was stated that the defendants were working as employees of the plaintiff and during their respective periods of employment they had access to confidential information regarding the production of the Organic Titanates which was produced by the ex-employee's new employer. It was held that the defendants had breached the confidentiality obligation under their contracts of employment and therefore the plaintiff was granted an injunction<sup>17</sup>.

In this case<sup>18</sup> reliance was placed on *Robb v. Green* (1985 2 QB 315), it was held that copyright existed not only in what was drafted and created but also in list of clients and addresses designed by the organisation. The relationship between the plaintiff and defendant was one of contract of service. The defendants were restrained from utilising the material of the plaintiff and from disseminating the same for their own benefit.

In the circumstance, the employee can be restrained by an order of court to disclose to others or use for his own profit, trade secrets or confidential information (including client information) which he learns during the course of employment. Though practically discussions occur before a move is contemplated by an employee he must not actually engage in

12. CMI-Centres for Medical Innovation GmbH Vs. Phytopharm PLC (1999) FSR 235

13. INTEC Polymers Ltd. Vs. Mr. Rajendra Eknathrao Tambe IPLR 2005 January 48

14. Shree Gopal Paper Mills Ltd. Vs. Surendra K. Ganeshdas Malhotra AIR 1962 Cal 61(66)

15. Escorts Const. Equipments Ltd. Vs. Action Construction Equipments P. Ltd. AIR 1999 Delhi 73

16. Tractors and Farm Equipment Ltd. v Green Field Farm Equipments Pvt. Ltd. and Ors. C.S. No. 20 of 2005

17. INTEC Polymers Ltd. v Mr. Rajendra Eknathrao Tambe IPLR 2005 January 48

18. Diljeet Titus, Advocate v Mr. Alfred Adebare & Ors. 130(2006) DLT 330



competition. If this conduct is discovered during the course of employment, the employer will be entitled to initiate disciplinary action against the employee and behaviour of this type may well amount to gross misconduct resulting in immediate termination of the employee's employment. The employer in these circumstances should ensure that such disciplinary action is in accordance with the applicable law in India because any contractual restrictive covenants could be rendered unenforceable in the event of a wrongful dismissal by the employer.

## Unreasonableness of such covenants

The Delhi High Court<sup>19</sup> held that the routine day to day affairs of the employer which were in the knowledge of many and were common cannot be classified as trade secrets. The plaintiff's allegation that the defendant had taken alleged confidential information and data of the plaintiff was not believable in the facts and circumstances. The injunction as prayed by the plaintiff would have a direct impact on curtailing the freedom of the defendant in her future prospects and service. Such a restriction will be hit by section 27 of the Indian Contract Act.

In this case the plaintiff company filed a case against the defendant restraining him from divulging any important or confidential information. The Madras High Court<sup>20</sup> in this case held that reasonable restrictions could be placed on an employee in the post-employment period; however a negative covenant could only be restricted to the period of employment. Such a restriction can only be enforceable on the employee by way of an express agreement which needs to be entered into while he is in service. It was held that the injunction sought could not be granted being unreasonable, uncertain and unclear.

It is pertinent to note that any post contractual confidentiality covenant which comes into effect after the expiry or termination of the contract would be difficult to enforce. However, if such confidentiality covenant is in respect of trade secrets or intellectual property rights and if such covenant is breached after the expiry or termination of the contract, the covenant can be validly enforced.

## Efforts by companies to enforce restrictive covenants when employees leave

The process of enforcing restrictive covenants, involves a number of stages. Normally, the company does not want to engage themselves in the lengthy litigation proceedings in India.

Initially, the companies issue a letter to their ex-employees reminding them about their post-contractual confidentiality obligations pursuant to their employment agreements. The letter is in essence a pre-action protocol which states that any violation of such confidentiality obligation by the employee will attract litigation proceedings against him or her.

If such a letter does not act as a deterrent, then the companies instruct their advocates or solicitors to again send a reminder letter regarding their post-contractual confidentiality obligations pursuant to their employment agreements and that any violation of such confidentiality obligation by the employee will attract litigation proceedings against him or her.

Where this pre-action protocol is ineffective, the next stage is to initiate legal proceedings. It is important to note that many employers will only take the initial step of corresponding with the ex-employee and their new employer to seek undertakings and to threaten legal action. Many companies will not actually proceed to institute legal proceedings and, where this does happen, the effective actions may be discontinued after the application for interim and interlocutory relief (such as an injunction) is determined. This is due to the heavy backlog of cases in India due to which it takes considerable time for the cases to be listed for trial and then for final hearing and disposal.

Recently, it has been observed that various employers with a motive to retain its employees have started retaining part of the salary with an agreement to hand over such sum after completion of a certain number of years of service.

## Conclusion

The strict interpretation of Section 27 of the Indian Contract Act by various courts of India does not leave any scope of deviation save and except for sale and purchase of goodwill and confidential information in the nature of trade secret. The Constitution of India also guarantees a fundamental right to every individual under Article 19(1)(g) to carry on and practice any profession, trade or vocation of his own choice. Reasonableness of negative covenants is a prime factor which is required to be taken into consideration for the purpose of evaluating the enforceability of Section 27 of the Indian Contract Act.

The legal position with regard to post-contractual covenants or restrictions has been consistent, unchanging and completely settled in our country. The legal position clearly crystallised in our country is that while construing the provisions of Section 27 of the Indian Contract Act, neither the test of reasonableness nor the principle of restraint being partial is applicable, unless it falls within express exception engrafted in Section 27 of the Indian Contract Act.

19. American Express Bank Ltd. v. Priya Puri reported in (2006) III LLJ 540 Del

20. Polaris Software Lab. Limited rep. by its Company Secretary v. Suren Khivadkar reported in (2004) ILLJ 323



**L.H. Khilnani, FCS**  
Legal Head &  
Company Secretary  
Jyoti Structures Limited  
Mumbai.

*mail@khilnani.com*



## Shareholders' Inspection Right

### 'Law in books' v. 'Law in action'

Inspection of the records and books of a company by a shareholder is a very valuable right conferred by the Act upon the shareholder with a view to ensure transparency in the conduct of business and with a view to have good governance. How far the right is effective, is what has been discussed here.



Every company is required to maintain certain statutory registers, records and returns, which must be open to inspection by a member. The register of members has historically been a public register and is open to inspection by any member or debentureholder without fee and any other person on payment of such fee as may be prescribed for each inspection.

The right to inspect, make extracts or require a copy of the register of members is a statutory right. Lack of information to shareholders is probably the most common violation of shareholders right and almost always a bone of contention amongst shareholder and those in charge of the corporation. In India, the right of inspection is a most contentious subject when exercised by any investor, more so, when it touches 'Register of Members' as it is guarded record by the insiders and most wanted record by the investors. The insiders invariably tend to use dilatory tactics to avoid or delay inspection right of the shareholders. Academicians perceive "shareholders' right of inspection" as 'law in books' rather than 'law in action'. Legal researchers opine that it is the duty of legislature to seek obedience of the written law, by making the law in the books such that the law in action can conform to it. At the same time, they believe that onus is on the legal practitioners to make the law in action corresponds to the law in the books.

### INTRODUCTION

Historically, the position of shareholders has been rather weak, especially when compared to those managing the company commonly known as insiders. Whatever the reasons may be, the weakness of the position of shareholders has been much talked about regulatory dilemma to balance the rights of minority shareholders against the principle of shareholder democracy.





The right to inspect, make extracts or require a copy of the register of members is a statutory right and one of the valuable rights of the shareholders. Companies are also required to allow extracts to be made from certain documents, registers and records and to furnish copies of certain documents, registers and records on demand by a member or by any other specified person.

Under the Companies Act, 1956 [Act], every company is required to maintain certain statutory registers, records and returns, which must be open to inspection by a member. Even non-members may also ask for inspection of certain documents in the manner prescribed in the relevant provisions of the Act. Traditionally these registers were kept in physical form, and updated by hand. But with technology advancement, these registers are maintained in electronic form. The Supreme Court in *Sil Import v. M/s. Exim Aides Silk Exporters* AIR 1999 SC (1609) observed that for the need to update legislations, the Courts have the duty to use interpretative process to the fullest extent permissible by the enactment and held that in interpreting the provisions of law, technological advancement should also be taken into consideration.

Some of the registers and records are required to be kept open by a company for inspection by directors and members of the company and by other persons. The right to inspect, make extracts or require a copy of the register of members is a statutory right and one of the valuable rights of the shareholders. Companies are also required to allow extracts to be made from certain documents, registers and records and to furnish copies of certain documents, registers and records on demand by a member or by any other specified person. Non-compliance with the provisions relating to maintenance, preservation and inspection of registers and records, to the extent they are statutory, creates punishable offences and leads to various penalties on the company, the directors and every officer in default.

## Shareholders' Rights

A member's interest in the company is composed of rights and obligations which are defined by the law and governed by the memorandum and articles of association of the company.

Subject to the provisions of the Companies Act, 1956, the Articles of Association of a company establish rights and duties

between the members *inter se* and the members and the company. Only a person whose name is on register can exercise privileges of a member.

The rights of a shareholders as pronounced by the Supreme Court in *Life Insurance Corporation of India v. Escorts Ltd. and Ors.* AIR 1986 SC 1370 are as under :

- (i) to elect directors and thus to participate in the management through them;
- (ii) to vote on resolutions at meetings of the company;
- (iii) to enjoy the profits of the Company in the shape of dividends;
- (iv) to apply to the Court for relief in the case of oppression;
- (v) to apply to the Court for relief in the case of mismanagement;
- (vi) to apply to the Court for winding up of the Company;
- (vii) to share in the surplus on winding up.

Lack of information to shareholders is probably the most common violation of shareholders right and almost always a bone of contention amongst shareholder and those in charge of the corporation. While the corporation holds the legal title to its property, the stockholders are deemed to be real and beneficial owners thereof and, as such, are entitled to information concerning the management of the property and business they have confided to the officers and directors of the corporation as their agents. The Supreme Court in *Bacha F. Guzdar v. Commissioner of Income-tax*, AIR 1955 SC 74 observed that a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder *vis-a-vis* the company was explained in the case of *Chiranjitlal Chowdhuri v. The Union of India and Others* [1950] S.C.R. 869, 904). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company



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Those in charge of the corporation are merely the agents of the stockholders who are the real owners, and the owners are entitled to information as to the manner in which the corporate business is conducted and have a right to inspection and obtain copies. Before exercising the right to inspect or seeking copy of register of members, it is worthwhile to study the law as it exist in statutes and examine the law as it is enforced. ●●

is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The court remarked that there is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares, an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as observed by *Lord Anderson in Commissioners of Inland Revenue v. Forrest* (1924) 8 T.C. 704, 710).

Contrary to the above view, courts in developed countries like United Kingdom & United States have held that the stockholders of a corporation are the equitable owners of its assets, and the officers act in a fiduciary relation as agents of the corporation and of the stockholders. Shareholders have a vital interest in receiving access to accurate information regarding the financial status and management of their company. The shareholders' right to examine the records of the corporation is a privilege incident to his ownership of stock. The fundamental principle is that the shareholders own the corporation, including all property possessed by the corporation, including all the information and all the records. Those in charge of the corporation are merely the agents of the stockholders who are the real owners, and the owners are entitled to information as to the manner in which the corporate business is conducted and have a right to inspection and obtain copies. Before exercising the right to inspect or seeking copy of register of members, it is worthwhile to study the law as it exist in statutes and examine the law as it is enforced.

## Register of members

Every company is required to maintain a register of members, and enter therein the following particulars in respect of each member:-

- ◆ name, father's /husband's name, address and occupation;
- ◆ number of shares held distinguishing each share by its number except where such shares are held with a depository and the amount paid on those shares;
- ◆ the date at which each person was entered in the register as a member; and
- ◆ the date at which each person ceased to be a member.

Every company having more than 50 members should keep an index of the names of the members of the company unless the register is in such form as in itself constitute an index'.

The register and index of beneficial owners maintained by a depository under the Depositories Act, 1996 shall be deemed to be an index of members and register of members for the purpose of the Act.<sup>2</sup>

The question as to whether the register of members under Section 150 of the Companies Act, 1956, includes the beneficial owners of the respondent bank came up for consideration before Madras High Court in case of *Dinesh Kumar Jhunjunwala v. The Karur Vysya Bank Ltd.* [2007] Comp LJ 131 (Mad.). The Court held that the definition of 'member' includes beneficial owner, whose name is entered in the records of the depository, shall be deemed to be a member of the concerned Company. The respondent cannot now contend that the register of members to be maintained under Section 150 of the Companies Act, 1956, will not cover the beneficial owner, whose name is entered in the records of the depository. Once the members of the depository are deemed to be members of the Company, registers of the Company, being maintained as per Sections 151 and 152 of the Companies Act, 1956, must contain the names of the beneficial owners maintained by the Depository.



The court observed that hence the order passed by the Company Law Board directing the respondents to furnish the list of members, extract of register of its members, excluding the list of beneficial owners of the shares of the bank is unsustainable as the same is contrary to Section 41(3) of the Companies Act, 1956, and also in violation of Section 152A of the Act. If the interpretation given by the Company Law Board is to be accepted, the insertion of Section 41(3) will be rendered meaningless. Thus, it is clear that after enactment of the Depositories Act, 1996 (Act 22 of 1996), the membership of the Company got widened and the beneficial owners, whose name are entered in the records of the depository, shall also be deemed to be the member of the concerned company. The "members of the Company" is defined without any ambiguity in the Companies Act, 1956 and the intention of the legislature shall not be given a narrow interpretation as argued by the learned Counsel for the respondent. Hence, it is not open to the respondent Bank now to contend that it will maintain a list of members, excluding the beneficial owners, whose names are found in the records of the depository. Therefore, the direction given by the Company Law Board, which is questioned by the appellant, deserves to be quashed and accordingly the same is set aside. The respondent was bound to furnish copy of all members of the Company and not in exclusion of the beneficial owners, whose names are found in the register of depository. The register and index should be maintained at the registered office of the company unless, in a general meeting, a special resolution is passed, authorizing the keeping of the register at any other place within the same city, town or village in which the registered office is situated and an advance copy of the proposed special resolution is given to the Registrar of Companies.<sup>3</sup>

The Company Law Board in *HB Stockholdings Limited v. Jaiprakash Industries Limited*, [2003] 116 CC 28 CLB declined to entertain a prayer of the petitioner to furnish a copy of the Register in magnetic media as also a copy of the beneficial owners of the shares held in the demat form on the ground that it forms part of the Register of Members in addition to print media. It held that once the petitioner has sought for a copy in the print form, he is not entitled for a second/another copy in the magnetic media. Further, in terms of Section 150 of the Act, every company is mandated to maintain a Register of Members in print form and there is no mandatory provision to maintain the same in a magnetic media. A company may, on its own, choose to maintain the same in a magnetic media, in addition to print form and not under any statutory provision. The Board held that the observations of the Supreme Court in *Exim Aides Silk Exporters (supra)* case were not applicable in the present case, as the issue in that case was whether a notice sent by a fax could be considered to be a "notice in writing" by registered post. In the present case, the petitioner is seeking to enforce a



statutory right and as long as there is no mandatory provision to maintain the Register in magnetic media, the petitioner cannot demand a copy of the Register in magnetic media maintained optionally by a company as the same is outside the scope of Section 163. Where a company closes its register of members, it should give not less than 7 days previous notice by advertisement in an English newspaper or in a vernacular newspaper circulating in the district in which the registered office is situated<sup>4</sup>.

Except when the register is closed under the provisions of the Act, the register along with index should be open for inspection during the business hours of the company, subject to such reasonable restrictions as the company may impose by its articles or in general meeting so that not less than 2 hours in each working day of the company are allowed for inspection. Members or debenture holders can inspect the register and index without payment of any fee and any other person can inspect the register on payment of the requisite fee. Copies of the register can be demanded by any person who inspects the register. In India, right of inspection is a most contentious subject when exercised by any investor. More so, when it touches 'Register of Members' as it is guarded record by the insiders and most wanted record by the investors. Let us now analyze the rights of shareholder to inspect the register of Members and demand copies.

## Law in Books v. Law in Action

Academicians perceive "shareholders' right of inspection" as 'law in books' rather than 'Law in action'. "Law in books" refers to the law as it is written and/or codified in law books. "Law in action" refers to how and if a law is applied or enforced, which varies depending on the enforcer. The law in books is

4. Section 154 with relevant provisions of the listing agreement





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comprised of the laws as they are written, while law in action relates to how law is enforced in the real world. To truly understand the way that the laws operate and to really know how courts act, we must study the law as it is enforced and how judicial officers behave. It is only when the law is put into action the awareness of the law in books is heightened and can become the subject of intense public debate.

The law in action is a legal realism that examines the role of law as it is enforced in society and not as it exists in the statutes (law in books). The discrepancy between law in the books and the law in action has been discovered innumerable times since Roscoe Pound used the phrase in 1910. Pound recognized and argued that there is a fundamental difference between law in books and law in action. He believed that distinction between legal theory and judicial administration is often a very real and a very deep one ....

In theory there ought to be a direct relationship between the law in books and the law in action. Legal scholars believe that as the legal process is a human process there is often a difference between what law makers envisaged (what the laws say) and judicial administration of law (how law is put into practice).

The register of members has historically been a public register and indeed under Section 163 (2) of the Act the register is open to inspection by any member or debenture-holder without fee and any other person on payment of such fee as may be prescribed for each inspection. In addition, any person (whether or not a member) may make extracts from register or could require a copy of the register, index or any part thereof on payment of such sum as may be prescribed.

No doubt the right to inspect or require a copy of the register of members is a legal right conferred by the legislature. An aggrieved person can make an application to the Central Government seeking an order for compelling inspection of document or direction that extracts required shall forthwith be sent to the person requiring it.

Any such person who has carried out an inspection may require a copy of such register on payment of the prescribed fees. The company shall cause any copy required by any person to be sent to that person within a period of ten working days<sup>5</sup>.

The Calcutta High Court in case of *Re: Maknam Investments Ltd.*, [1996] 87 Company Cas 689 Cal., expressed a view that before asking for a copy of the list of members on payment of requisite fees, inspection should have been carried out. The question of shareholders' inspection right and the right to seek a copy of register of members came before the Company Law

Shareholders are permitted to conduct the inspection in person or by agent. There is no requirement to disclose who will do the inspection in the written demand; nor is there any requirement to execute or provide any authority or power of attorney.

Board in case of *HB Stockholdings Limited v. Jaiprakash Industries Limited*, [2003] 116 CC 28 CLB. The Board observed that a plain reading of Sub-section (1) and Sub-section (3) of the Act would reveal that the right to inspect and right to seek a copy are independent rights. The Board held that the term "any such member----" used by the legislature in Sub-section (3) has to be read conjunctively with Sub-section (2) and if done so the term "any such member----" is used to give right to seek copies of the register only to those members who have carried out the inspection. Therefore, there is no element of doubt that for claiming the right to seek copy of the register of members, the condition precedent is that the person seeking copy should have inspected the register.

The Board also observed that once a person inspects the register, he is entitled to ask for a copy of the same, the purpose or motive being irrelevant. The Board further held that the petitioner is entitled to only a copy of the register of members in print form and rejected plea for furnishing a copy in the magnetic media.

The above view has consistently been taken by the Company Law Board. In *Sravya Finance and Investment Private Limited v. Kumar's Metallurgical Corporation Limited*, [2006] 134 CC 818 the CLB has confirmed that "the right under Section 163 to seek a copy of the register of members accrues to a member who has carried out an inspection."

Although the Act does not define "part of the register" the view is often taken that a request for a copy of a "part of the register" must identify that part in such a way that the company or its agent is not required to do any research in order to comply with the request e.g. a "part of a register" could be the part according to the sequence of the index or specified page numbers. Requests for inspection or provide copies of register or index by reference to any geographical boundaries, by nationality, gender or size of holding should be carefully considered based upon legal advice.

5. Sub-section (3) & (4) of Section 163 of the Act



The CLB in case of *HB Stockholdings (supra)* held that the term "require a copy of the Register---" stated in clause 163 (3) (b) indicate that one can seek a copy of the entire Register without identifying specific pages. This being the position of law, the company cannot insist the petitioner to either identify or authenticate the pages of the Register required by it. The Board accordingly directed the company to furnish copies of all the pages in the Register authenticated by the petitioner on receipt of the prescribed fees. Since the number of folios is very large, it directed the company to supply copies of the active folios and in case, the petitioner desires copies of dormant folios also, the company is at liberty to move this Bench for direction. Corporates generally decline such requests on the ground that the request is not in accordance with the provisions of Section 163 of the Act without indicating in what manner the request for a copy was not in accordance with the provisions of Section 163 of the Act.

The general tendency amongst the company managements is to try and avoid entertaining the shareholders who are interested in exercising their rights under the Companies Act. The insiders invariably tend to use dilatory tactics to avoid or delay inspection right of the shareholders.

## Fees for Inspection

The fees payable pursuant to Section 163 (3) (b) read with Rule 21 A of the Companies (Central Government's) General Rules and Forms, 1956 shall be rupee one for every one hundred words or fractional part thereof required to be copied.

The Calcutta High Court in *Re: Maknam Investments (supra)* observed that provision of sub- section (3) (b) of section 163 of the Act envisages that the member on payment of such sum obtain copies of the register of members. This envisages a prior

payment to the company of the prescribed sum, and it is only upon such payment that a copy is to be supplied as provided under Section 163(4).

The Bombay High Court in case of *Fomento Resorts and Hotels Ltd. v. Mahendra G. Wadhvani*, [1996] 85CompCas1 (Bom.) held that no doubt the company is under a statutory obligation to supply copies whenever asked for by anybody subject, of course, to demanding and collecting the necessary charges for preparing the copies. The approximate cost, as per law, the company can charge is Re. 1 for every 100 words and for preparing copies of folios of 3,800 members it will work out to about Rs. 2,280. The court observed that if xerox copies are taken, it will be convenient since it will save lot of time and in which case the cost will come to Rs. 3,800. The Court held that company shall give typed copies of the extracts of the register of members within a period of six months after the respondent sends cash of Rs. 2,280 in pursuance of this order. In case the respondent wants the copies earlier, it is open to him to send cash of Rs. 3,800 to the appellant-company and in which case the appellant-company shall supply xerox copies of the lists of members within a period of two weeks from the date of receipt of the cash.

## Penalty

If any inspection, or the making of any extract, is refused, or if any copy of the register is not sent within a period of ten working days, the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five hundred rupees for every day during which the refusal or default continues.<sup>6</sup>

The Central Government may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.<sup>7</sup>

In United States Section 220 of Delaware's General Corporation Law provides shareholders with a limited right to inspect the books and records of Delaware companies in which they own stock. The right is subject to several conditions, including the condition that shareholders have a "proper purpose" for seeking inspection. The right to inspect corporate records exists so that the shareholder may ascertain whether the affairs of the corporation are properly conducted and that he may vote intelligently on questions of corporate policy and management.

A corporation is not an entity that can be separated from its members, for in reality those running the corporation "are

6. Sub-section (5) of Section 163 of the Act  
7. Sub-section (6) of Section 163 of the Act



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merely the agents of the shareholders?" Because it is the shareholders who actually own the corporation, the common law right of inspection extends to all records that are reasonably required by the requesting shareholder to investigate the conduct of the corporation's financial condition, or to determine whether a corporation is being efficiently managed. [*Cooke v. Outland*, 265 N.C. 601, 610, 144 S.E.2d 835 (1965); *Huyilar v. Cragin Cattle Co.*, 40 N.J.Eq. 392, 398]. In the latter case, it was said:

"Stockholders are entitled to inspect the books of the company for proper purposes at proper times..., and they are entitled to such inspection though their only object is to ascertain whether their affairs have been properly conducted by the directors or managers. Such a right is necessary to their protection. To say that they have the right, but that it can be enforced only when they have ascertained, in some way without the books, that their affairs have been mismanaged, or that their interests are in danger, is practically to deny the right in the majority of cases. Oftentimes frauds are discoverable only by examination of the books by an expert accountant. The books are not the private property of the directors or managers, but are the records of their transactions as trustees for the stockholders."

The Ohio Supreme Court has upheld this principle holding that the right to inspect records of the corporation by the shareholder derives from both statute and common law. In *William Coale Development Co. v. Kennedy*, 121 Ohio St. 582, 170 N.E. 434, 435, the Ohio Supreme Court held that Shareholders' Inspection Right, at Common Law, is based on the premise that every shareholder of a private corporation has the right, by reason of his interest, to inspect and examine the books and papers of the corporation at "reasonable times and places" and for "proper purposes".

The right of inspection rests upon the proposition that those in charge of the corporation are merely the agents of the stockholders, who are the real owners of the property [*Cincinnati Volksblatt Co. v. Hoffmeister*, 62 Ohio St. 189- 201, *Pagett v. Westport Precision, Inc.*, 845 A.2d 455, 460 (Conn. App. 2004)].

At common law, the right of a shareholder to inspect the books and records of a corporation was a fundamental incident to ownership of stock. The right to inspection rests upon the broad ground that the business of the corporation is not the business of the officers exclusively, but is the business of the stockholders. [*Danziger v. Luse*, 103 Ohio St. 3d 337 (Ohio 2004)].

The basis of a shareholder's right to inspect the books and



records of a corporation is his ownership of the corporate property and assets through his ownership of shares; as an owner, he has the right to inform himself as to the management of the corporate property by directors and officers who are his trustees in direct charge of the property.

"Can anything be plainer than the fact that the owner of property has a clear right to inspect his own property? When the owner of property selects an agent or agents to care for and manage his property, how can that act be held to clothe the agent with power to manage the owner as well as to manage the property, and to prevent the owner from even looking at his own property except he do so pursuant to the rules and restrictions promulgated by the agent, who was wholly without power or authority to formulate any such rules or regulations? Are we to forget and abandon all the law pertaining to the relation of principal and agent?" [*William Coale Development Co. v. Kennedy*, 121 Ohio St. 582, 170 N.E. 434 (1930)].

In United Kingdom Under Companies Act, 2006 the register and the index of members' is open for inspection and a member or any person has a right to inspect and require copies. Where a company receives a request, it must within five working days either-

- (a) comply with the request, or
- (b) apply to the court.

The court shall direct the company not to comply with the request if it is satisfied that the inspection or copy is not sought for a proper purpose.

Under the Companies (Company Records) Regulations 2008, a company is not required for the purposes of inspection or a copy of a company record to present information in that record in a different order, structure or form from that set out in that record. Company records may be kept in hard copy or electronic form, but if kept in electronic form, they must be capable of being reproduced in hard copy form. A company is not required to present the company record in a different form





to the one in which it is made available for inspection. A company is not obliged to make available for inspection or provide copies of any registers or index by reference to any geographical location, nationality, size of holding of shares, by person or by corporate body or by gender.

In England there is a common law right of inspection of public documents by a person interested therein so far as may be necessary for the protection of such interest. This rule was stated by Lindley, L. J., in *Mutter v. Eastern and Midlands Railway Co.* (1888) 38 Ch. D. 92, in these words (p. 106):

When the right to inspect and take a copy is expressly conferred by statute the limit of the right depends on the true construction of the statute. When the right to inspect and take a copy is not expressly conferred the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this principle..."

## Exercising the Right of Inspection

Although the Act does not prescribe any procedure for seeking inspection or demanding copies, the following general guidelines should be adhered to while exercising the right :

### ► Written Demand

The demand for inspection must be in writing and should be delivered at the registered office of the company. However, neither the statute nor the common law prescribes any particular format or method of delivery. Presumably, email to an officer or director would be just as effective.

### ► Statement of Purpose Under Indian Law

It is not essential to state the purpose of the inspection and therefore, the question of purpose must be a proper purpose or a company refusing inspection on this account does not arise. Contrary to this, in advanced countries like UK & US a person seeking inspection has to disclose the purpose of the inspection and if court is satisfied that inspection or copy is not sought for a proper purpose it shall direct the company not to comply with the request.

### ► Description of Documents Requested

The statute does not require the shareholder to describe the documents sought for inspection but it is desirable to give a list of registers or records required for inspection. But it is desirable process to list the registers or records of which inspection is sought. This will also enable the company to make available the required registers or records for the purpose of inspection.

### ► Timing of the inspection

A shareholder is entitled to conduct the inspection at any reasonable time or times. There is no requirement of any period of notice to the company. Conceivably, a shareholder could show up at the place where the company is required to maintain the registers or records, hand over the written demand, and begin the inspection immediately. However, it is good practice to give prior intimation to the company for inspection and to facilitate the company to keep the registers or records ready for inspection.

### ► Place of Inspection

The statute does not specify where the inspection must take place. The Act requires the corporation to keep certain records and to make them available for inspection. Therefore, the logical conclusion is that the inspection is to be made where the registers or records are kept.

### ► Who will do the inspection

Shareholders are permitted to conduct the inspection in person or by agent. There is no requirement to disclose who will do the inspection in the written demand; nor is there any requirement to execute or provide any authority or power of attorney. However, if the shareholder does not intend to be present, the best practice would be at least to identify the agent who will conduct the inspection in the written demand or prior to the commencement of inspection.

### ► Use of Information Obtained

The Act is silent on for use as well as misuse of information obtained from the registers. A person must not send to or contact the member or solicit investments. The information obtained should not be used for unsolicited commercial communication or unsolicited telemarketing calls or promoting any commercial transaction in relation to goods, investments or services.

## Conclusion

Legal researchers opine that it is the duty of legislature to seek obedience of the written law, by making the law in the books such that the law in action can conform to it. At the same time, they believe that onus is on the legal practitioners to make the law in action corresponds to the law in the books. To bring in line the law in action i.e. shareholders' inspection right or seek copies, with the law in the books, the legislature should modify the law by eliminating the word 'such' from the term 'any such member...' used in Sub-section (3) of Section 163 of the Act. To equate the law in books and law in action as adopted and practiced in advanced countries like UK & US, the legislature should amend the law and put the onus on company to apply to the court, if the inspection or copy is not sought for a proper purpose. ■



## Corporate Laws



**LW 63.07.2012**

**ALCATEL-LUCENT INDIA LTD v. USHA INDIA LTD [DEL]**

W.P. (C) 12723 of 2012

A.K. Sikri & Rajiv Sahai Endlaw, JJ.

[Decided on 01/06/2012]

***Sick Industrial Companies (Special Provisions) Act, 1985 read with article 227 of the Constitution of India - repeated reference to BIFR in order to take shelter under section 22 of SICA- Can a company do this - Working directions issued to BIFR to check this kind of abuse of law.***

### Brief facts

The petitioner feels aggrieved by the action of the respondent Usha India Limited, in making repeated references before the BIFR and appeals therefrom before the AAIFR, even when previous references made by the petitioner were rejected. The

grievances of the petitioner is that it amounts to continuous and systematic abuse of process resorted to by Usha India limited with the sole motive of delaying and defeating the rights of its creditors. Usha has been filing repeated references before the BIFR and getting for itself protection of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 which it is otherwise not entitled to. To highlight the purported *mala fides* and abuse on the part of the Usha, the petitioner traced the following events in its petition.

**Decision : Directions issued to the BIFR.**

### Reason

We have considered these submissions of counsel for the parties, made at the Bar. At the outset, we would like to remark that even though no reference is pending at present and looking from this angle, we could have disposed of the writ petition without passing any effective order. However, the matter cannot be treated in the manner projected by the learned counsel for the respondent. Present case itself eloquently demonstrates that there can be misuse of the machinery provided under the SICA by making repeated references year after year; taking advantage of the manner in which such references are admitted, consequence of which is that all proceedings against such a company shall stand stayed under Section 22 of the SICA; to gain time endlessly with repeated references even when previous references are rejected on merits.

We would like to start our discussion by stating that in any insolvency regime, there is an apparent conflict between the issues involved, namely, recovery of the dues of the creditors from a company, restructuring/rehabilitation of an insolvent company and effective liquidation process/system to ensure timely liquidation of the companies which cannot be revived. Interests of all groups concerned with these aspects are paramount: whether it be of creditors in the recovery of their debts or that of an insolvent company seeking revival. Above all, public interest including the economic interest of the nation which is paramount is subserved only when interest of all the aforesaid groups is protected. It is for this reason balancing of these purported rival and antagonist interests becomes a delicate task. All kinds of creditors and investors in a company would like to put their money at stakes only if they are reasonably confident that they would be able to recover the money invested; be it shareholder, debenture holder or a financial institution giving credit to such a company. Not only they want reasonable returns on the money invested, they want recovery of their investment also in the time of need. If a feeling is generated that money invested may be put in jeopardy, investors may stop making investments.

The experience of the working of the SICA has been far from satisfactory. This enactment was formulated as an alternative to the process of recovery through civil courts, which was a very



time consuming process and the winding up through the companies Act where hardly any recoveries could be made by the financial sector, while at the same time, ensuring that social and economic fallout of the said two routes of recovery could be avoided. However, unfortunately the new system set up in place of SICA met with only limited success. On the contrary it lent itself to gross misuse of some of its provisions particularly Section 22 of the Act.

As mentioned above, present case appears to be one where *prima facie* the provisions of Section 22 of the SICA are taken undue advantage of. Therefore, at least in those cases where the reference was rejected in previous years on merits by the BIFR, guidelines can be issued to ensure that fresh references in subsequent years should not be mechanically entertained.

Learned counsel for the respondent may be right in contending that while registering the references, the Registrar cannot act as quasi judicial authority which is the function of the Board. However, in order to ensure that such situation does not recur, at least in those cases where the reference is rejected earlier, matter can be referred directly to the BIFR and BIFR should look into the same and to decide whether it is a case for admitting the reference. Even if BIFR decides it to admit after finding that the conditions for the same are satisfied, it can still take a decision as to whether the provisions of Section 22 should be allowed to prevail or not. Section 22 stipulates that proceedings can go on with the consent of the Board/BIFR and the Board can in such cases pass a general order giving such a consent. At that stage, in such cases, where the references were rejected previously, the BIFR can pass appropriate directions refusing to extend the benefit of Section 22 of the SICA.

We, thus, dispose of this writ petition with the direction that BIFR should formulate necessary Practice Directions in the light of our aforesaid discussion within three months and issue the same for compliance.

## LW 64.07.2012

### REGISTRAR OF COMPANIES & ORS v. DHARMENDRA KUMAR GARG & ANR [DEL]

W.P. (C) 11271/2009

Vipin Sanghi, J.

[Decided on 01/06/2012]

**Section 610 of the Companies Act, 1956 read with sections 2(j), 3, 4, 22 of the Right to Information Act - Whether information and records maintained by ROC under section 610 of the Companies Act has to be provided under the RTI Act to a information seeker-Held, No.**

## Brief facts

The present writ petition has been preferred by the Registrar of Companies, NCT of Delhi & Haryana (ROC) and its CPIOs to assail two similar orders dated 14.07.2009 passed by the Central Information Commission (CIC) in complaint case Nos. CIC/SG/C/2009/000702 and CIC/SG/C/2009/000753. By these similar orders, the appeals preferred by the same respondent-querist were allowed, rejecting the defence of the petitioners founded upon Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent-querist in his two applications under the Right to Information Act (RTI Act) be provided to him before 25.07.2009. The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show-cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

The respondent Dharmendra Kumar Garg filed an application under the RTI Act requiring the PIO of the ROC to provide information in relation to company No. 056045 M/s Bloom Financial Services Limited and also wanted copies of the annual return etc. The PIO-Sh. Atma Shah responded by stating that in view of the provisions of Section 610 of the Companies Act, 1956(the Act) the documents filed by companies pursuant to various provisions of the Act with the ROCs are to be treated as information in public domain and such information is accessible by public and advised the respondent that he can obtain the desired information by inspecting the documents filed by the company in this office and that certified copies of the desired documents can also be obtained on payment of fees prescribed thereof. The PIO further stated that in view of the above, the information already available in the public domain would not be treated as information held by or under the control of public authority pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information to the public. The view taken by the PIO has already been approved by two other CICs while the CIC-Delhi, dealing with this issue held against the petitioner. Hence the present petition.

Decision : Petition allowed.

## Reason

There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as information within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is





whether the mere fact that the said documents/record constitutes information, is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?

In *Sh. K. Lall v. Sh. M.K. Bagri, Assistant Registrar of Companies & CPIO*, F. No. CIC/AT/A/2007/00112, the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. This view was followed by Sh. A.N. Tiwari in a subsequent order dated 29.08.2007 in *Shri Shriram (Dada) Tichkule v. Shri P.K. Galchor, Assistant Registrar of Companies & PIO*. The same view was taken by another Central Information Commissioner namely, Prof. M.M. Ansari in his orders dated 29.03.2006 in *Arun Verma v. Department of Company Affairs*, Appeal No. 21/IC(A)/2006, and in the case of *Sh. Sonal Amit Shah v. Registrar of Companies*, Decision No. 2146/IC(A)/2008 dated 31.03.2008, and various others, copies of which have been placed on record. It appears that all these decisions were cited before learned Central Information Commissioner Sh. Shailesh Gandhi. In fact, in the impugned order, he also refers to these decisions and states that I would respectfully beg to differ from this decision.

The Central Information Commission while functioning under the provisions of the RTI Act, no doubt, do not constitute a Court. However, there can be no doubt about the fact that Central Information Commission functions as a quasi-judicial authority, as he determines *inter se* rights and obligations of the parties in relation to the grant of information, which may entail civil and other consequences for the parties.

It is a well-settled canon of judicial discipline that a bench dealing with a matter respects an earlier decision rendered by a coordinate bench (i.e., a bench of same strength), and is bound by the decision of a larger bench. If this discipline is breached, the same would lead to complete chaos and confusion in the minds of the litigating public, as well as in the minds of others such as lawyers, other members/judges of quasi-judicial/judicial bodies, and the like. Breach of such discipline would result in discrimination and would shake the confidence of the consumers of justice. There can be no greater source of discomfiture to a litigant and his counsel, than to have to deal with diametrically opposite views of coordinate benches of the same judicial /quasi-judicial body. If the emergence of contradictory views is innocent i.e. due to ignorance of an earlier view, it is pardonable, but when such a situation is created

consciously, with open eyes, and after having been put to notice, the judge/authority responsible for the later view should take the blame for creating confusion and for breaching judicial discipline.

In the present case, the Central Information Commissioner Mr. Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.

The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders – taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act.

One such instance, cited by learned counsel for the petitioner is in the case of *Smt. Dayawati v. Office of Registrar of Companies*, in CIC/SS/C/2011/000607 decided on 23.03.2012. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of *K. Lall v. Ministry of Company Affairs*, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007.

The reasoning adopted by Shri Shailesh Gandhi, the learned Central Information Commissioner for taking a view contrary to that taken by Sh. A.N. Tiwari in his order dated 12.04.2007 (which has been extracted hereinabove), does not appeal to me. The view taken by Sh. A.N. Tiwari, Central Information Commissioner appeals to this Court in preference to the view taken by Sh. Shailesh Gandhi, Central Information Commissioner in the impugned orders. The impugned orders do not discuss, analyse or interpret the expression right to information as defined in Section 2(j) of the RTI Act. They do not even address the aspect of Section 610 of the Companies Act



being a special law as opposed to the RTI Act.

I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted without any reasonable cause or malafidely denied the request for information or knowingly gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information. The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority. Clearly, the PIOs acted bonafide and without any malice.

Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.

For all the aforesaid reasons, I allow the present petition and

quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner. The parties are left to bear their respective costs.

**LW 65.07.2012**

**M/S A.B.N.A. & ORS. v. THE MANAGING DIRECTOR, U.P.S.I.D.C. LTD & ANR [SC]**

Special Leave Petition (C) Nos. 16116-16117 of 2010

A.K.Patnaik J.

[Decided on 08/05/2012]

***Monopolies and Restrictive Trade Practices Act - Section 13(2)-Power of the Commission to review its order - Whether any limitation prescribed-Held, No.***

## Brief facts

The respondents published an advertisement in the Hindustan Times, New Delhi inviting applications from entrepreneurs for allotment of industrial land in Greater Noida on payment of 10% of the cost of allotted land. In response to the advertisement, the petitioners applied for a plot and on 05.03.1994 a plot of 800 square metres in Site-C was allotted. The petitioners paid 10% of the cost of the plot on 23.03.1994. However, physical possession of the plot was not given to the petitioners on the ground that the petitioners had not paid all the dues for the plot. The petitioners then filed a complaint UTPE No.119 of 2000 before the MRTP Commission and after notice to the respondents the complaint was heard from time to time. While the complaint was pending, petitioners filed I.A. No.18 of 2004 before the MRTP Commission to take possession of the allotted plot. On 13.09.2007, the MRTP Commission passed an order directing that the respondent shall handover possession of the allotted plot within next two weeks to the complainant and as regards the balance amount, if any due, the respondents shall submit a detailed chart giving the dates on which the subsequent installments were due and the amount payable on each due date. By the order dated 13.09.2007, the MRTP Commission also directed the petitioners to furnish a fresh SSI certificate to the respondents and directed that the matter be listed on 01.11.2007 for further directions. Instead of handing over possession of the allotted plot to the petitioners, the respondents filed Review Application No.16 of 2007 on 18.12.2007 and by the impugned order dated 04.03.2009 the MRTP Commission allowed the Review Application and recalled the order dated 13.09.2007 insofar as it directed the respondents



to handover possession of the plot to the petitioners. Aggrieved, the petitioners filed Review Application No.06 of 2009 before the Competition Appellate Tribunal and by the impugned order dated 05.01.2010, the Competition Appellate Tribunal dismissed the Review Application of the petitioners.

**Decision : Petition dismissed.**

## Reason

For deciding the contention raised on behalf of the petitioners that the order dated 13.09.2007 of the MRTTP Commission was a consent order, we must look at the order dated 13.09.2007 of the MRTTP Commission. On a reading of the order dated 13.09.2007, we do not find that the directions in the said order to the respondents to handover the possession of the plot to the petitioners was based on the consent of the learned Advocates appearing for the respondents and this is what has been held by the MRTTP Commission also in the impugned order dated 04.03.2009. Thus, the contention of the petitioners that the order dated 13.09.2007 of the MRTTP Commission was a consent order is misconceived.

The language of sub-section (2) of Section 13 makes it clear that the MRTTP Commission may amend or revoke any order in the manner in which it was made at any time. The expression at any time would mean that no limitation has been prescribed by the legislature for the MRTTP Commission to amend or revoke an order passed by it. Hence, the argument on behalf of the petitioners that the MRTTP Commission could not have entertained the Review Application for recalling the order dated 13.09.2007 beyond the period of 30 days has no foundation in law. Moreover, the order dated 13.09.2007 of the MRTTP Commission on its plain reading was only an interim order and the MRTTP Commission could modify or revoke the interim order directing the respondents to handover physical possession of the plot to the petitioners if it thought that such a direction could only be considered at the time of finally deciding the complaint. We therefore do not find any infirmity in the order dated 04.03.2009 of the MRTTP Commission recalling the direction to handover physical possession of the allotted plot to the petitioner saying that this direction can be considered at the stage of final adjudication of the complaint.

On a perusal of the impugned order dated 04.03.2009, however, we find that although the respondents cited the judgment of this Court in *Ghaziabad Development Authority v. Ved Prakash Aggarwal (supra)* and contended before the MRTTP Commission that the MRTTP Commission had no authority to order handing over of possession and that the jurisdiction was only with the Civil Court to order specific performance of the contract, the MRTTP Commission has

observed that this contention cannot be dealt with while passing the interim order and can only be decided at the time of final adjudication of the complaint. Hence, we are not called upon to decide the question whether the MRTTP Commission has power to direct handing over the possession of the plot to the complainant and this question can be decided by the MRTTP Commission at the stage of final adjudication of the complaint.

In the result, we do not find any merit in these Special Leave Petitions and accordingly we decline to grant special leave to the petitioners.

## LW 66.07.2012

### RAJESH TOSHNIWAL v. SEBI & ORS [SAT]

Appeal No.139 of 2011

P. K. Malhotra & S.S.N. Moorthy, Members.

[Decided on 01/06/2012]

***Section 15(T) of the Securities and Exchange Board of India, 1992 read with Regulation 11(1) and 11(2) of the Securities and Exchange Board (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 - Successive acquisition of shares- Tribunal explains the relevant provisions of "creeping acquisition" and "acquisition post creeping acquisition".***

## Brief facts

The appellant was a shareholder of the company. Respondents no.2 to 9 are part of the promoter group of the company. On March 3, 2007 the acquirers were allotted 30 lac share warrants of Rs. 150 each which were optionally convertible to an equal number of shares at a premium of Rs. 140 per share. They paid a sum of Rs. 33,09,45,000 between August 21, 2008 and September 1, 2008 towards the balance amount payable by them for conversion of the said share warrants and informed the company about the intention to exercise the option to convert the share warrants into equity shares. As a result, the acquirers were allotted 30 lac equity shares of the company on September 1, 2008. The shareholding of the acquirers went up from 43.15 per cent to 51.62 per cent. The increase of 8.74 per cent triggered regulation 11(1) read with 14(2) of the takeover regulations and the acquirers were obliged to make a public announcement. There was delay in making the statutory public announcement. The public announcement was made on March 25, 2009 on which the Board issued an observation letter. The offer opened on December 31, 2009 and closed on February 1, 2010. The acquirers bought 7,14,370 shares in the open offer and they were transferred to their account on March 4, 2010.





Completion report was filed by the merchant bankers on March 10, 2010. The offer price was Rs. 150 per share with interest of Rs.17.70 per share. The acquirers were also allotted 70 lac share warrants on August 29, 2008 which were optionally convertible into equity shares of Rs.10 at a premium of Rs.290.40 per share.

The acquirers exercised the option for conversion of the above warrants by paying the consideration between February 17, 2010 and February 26, 2010. The company allotted equity shares to the acquirers on February 28, 2010. In this process also the shareholding of the acquirers increased from 51.61 per cent to 64.09 per cent and according to the appellant the requirements of regulation 11(1) read with 14(2) of the takeover regulations got triggered. There was no public announcement as contemplated in the aforesaid regulations. The appellant informed the Board by way of several communications the failure of the acquirers to comply with the provisions of takeover regulations. As a result of protracted correspondence by the appellant with the Board, a show cause notice was issued to the acquirers. At this juncture, the company came out with a public announcement on June 14, 2010. This was, admittedly, delayed. On this occasion, the appellant addressed a communication to the Board claiming that he should be given the benefit of the higher offer price of Rs. 300 per share since the second acquisition had taken place within 6 months from February 1, 2010 i.e. the date of closure of the first open offer. The appellant also requested the Board to keep the second open offer in abeyance pending decision on enhanced payment to the appellant and to undertake investigation into the matters.

In reply, the Board started adjudication proceedings against the acquirers, but no directions were issued under the takeover regulations as requested by the appellant. The appellant further proceeded with a series of correspondence with the Board mainly asking for enhanced payment of Rs.300 per share with interest to the shareholders who tendered their shares in the first open offer. On April 20, 2011 the impugned communication was issued by the Assistant General Manager of the Board turning down the request of the appellant for enhanced payment for the shares tendered in the first open offer. This decision of the Board is under challenge in the present appeal.

**Decision : Appeal dismissed.**

## Reason

The argument of the appellant with regard to regulation 11(1) read with regulation 20A is that the open offer in this case which opened on March 25, 2009 related to the acquisition of shares at Rs. 150 per share with interest and it, having closed on February 1, 2010, the acquirers could not have acquired another tranche of 7 lac shares at Rs.300 per share on February 28, 2010 i.e. within 6 months from the closure date. Regulation 20A deals with 'acquisition price under creeping acquisition' and

imposes a prohibition of 6 months for further acquisition from the date of closure of the first public offer. It is necessary to examine the provisions of regulation 20A(1) in the background of the facts available in the present case. Regulation 20A(1) admittedly deals with a scenario where "further shares" are acquired under regulation 11(1) of the regulations. Acquisition of further shares under regulation 11(1) relates to creeping acquisition. Creeping acquisition takes place only in situations governed by regulation 11(1) and not under regulation 11(2) of the regulations. In other words, creeping acquisition is permissible only under regulation 11(1) of the regulations. The facts of the case show that the impugned acquisition has been held to be falling under regulation 11(2) since it is not in the nature of creeping acquisition. Considering the shareholding after the conversion of the first tranche of warrants the entire promoter group held 64.85 per cent and with the acquisition of the second tranche of warrants the threshold limit crossed over from regulation 11(1) to 11(2). In short, this is not a case of creeping acquisition. Regulation 20A deals with acquisition price under creeping acquisition route provided under regulation 11(1) and it has no application to regulation 11(2) where the acquisition relates to limits more than the parameters laid down for creeping acquisition. The increase in shareholding in this case is beyond the five per cent limit laid down for creeping acquisition and so regulation 11(2) comes into operation. Having regard to the substantial acquisition of shares and voting rights in the present case, it has to be concluded that the provisions of regulation 20A do not apply to the facts of the case and so the prohibition period of 6 months has no relevance. The appellant's learned counsel stated that 'marginal heading' to a section cannot be taken as the sole guiding factor in interpreting the language of the section. According to him, the 'marginal heading' to Regulation 20A may not mean that it is confined only to creeping acquisition. We agree with the general proposition of law made by the appellant's learned counsel. However, the 'marginal heading' to a section invariably throws some light on the content and implication of the section. In the present case, as discussed above, the content of the regulation relates to creeping acquisition and it is integrally connected with regulation 11(1). A reference was also made to the recommendations of the Bhagwati Committee report which resulted in the introduction of regulation 20 A(1). The committee proceeded on the assumption that acquisitions during the offer period irrespective of the price of acquisition is a price sensitive information and should be disclosed. It also recommended a prohibition period of 6 months. The recommendations may not be of any special assistance to the appellant. The actual implications of creeping acquisitions, closure of public offer etc have to be considered from the language of the regulation and connected provisions and not from the wording contained in the recommendations of the committee. At any rate, acquisition



during the 'offer period' highlighted by the appellant's learned counsel has to be taken in its general sense so as to avoid any misuse of acquisitions during the offer period. It cannot be imported to interpret the language of the regulation which is clear and unambiguous.

The next issue to be considered is whether the entire promoter group has to be considered as a homogenous unit and, therefore, acting in concert in the acquisition of shares. It is the basic principle of corporate law that promoter group is a homogenous class. It is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer. The acquirers have always filed their shareholding as belonging to the promoter group. In the disclosures made to the stock exchanges and the Board, the promoters' shareholding consisted of the group as a whole. Even though there is a mention in the offer document that the acquirers by themselves are responsible to the offer to the exclusion of other promoter group the conduct of the promoters as a whole suggests that their behaviour was always united. The appellant's learned counsel made a pointed reference to para 1.2 of the second public announcement (Page 49 of the appeal paper book) and stated that there is an unequivocal mention therein that there is no person acting in concert with the acquirers and all purchase in the public offer will be made by the acquirers. He also referred to a few other conditions laid down in the public announcement to highlight his contention and support his view. It is interesting to note that an identical statement is made in the same terminology in the first public announcement also. Merely because a statement is made in the public announcement document the statutory position cannot be altered. The statement contained in the public announcement relates to only the formalities connected with the purchase of shares in the instant case. It cannot govern the general statutory position of the promoters. The promoters, as a rule, belong to a homogenous group unless otherwise proved by attendant circumstances to be otherwise. In the present case, except the statement contained in the public announcement no circumstance is pointed out which would prove that a set of promoters are a class apart. It is a matter of record that the shareholding of the entire promoter group was always disclosed as a group holding to the regulators. In the public announcement document also the shareholding of the entire promoters group is specifically grouped together. The objective of the open offer was consolidation of shareholding and this could be achieved only by grouping the acquirers and other promoters together. When the shares got pledged with the merchant banker towards escrow obligation in the open offer all the promoters had given their consent. The other promoters also participated by giving their shares as pledge or security. The decision of the Supreme Court in *Daiichi* case relied on by

the appellant may not be of any assistance to him since it deals with a different set of facts relating to common object underlying the acquisition of shares. In the case of K.K. Modi, again relied upon by the appellant, the shareholders were admittedly a divided house. In the present case the various statements furnished by the promoter group and the conduct of the parties show that they acted together. Perhaps the appellant has introduced the above argument with a view to diluting the percentage of shareholding which is reckoned in the acquisition of shares and consideration for public announcement. We cannot appreciate the stand taken by the appellant in this regard.

In view of the discussions above, we hold that the acquisition in the instant case is one covered under regulation 11(2) and not 11(1) of the takeover regulations. In this view of the matter, the order passed by the Board is upheld.

## LW 67.07.2012

### NIKHIL MANSUKHANI v. SEBI [SAT]

Appeal No. 8 of 2012

P. K. Malhotra & S. S. N. Moorthy, Members.

[Decided on 11/05/2012]

***Regulation 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Section 15(H) the Securities and Exchange Board of India Act, 1992 - Acquisition of shares by promoters who had split up due to disputes- Whether they are people acting in concert - case remanded back to decide the issue with reference to cases decided by the Supreme Court (Daichi Sankyo case) and the Bombay High Court (K.K.Modi case).***

## Brief facts

On receipt of a complaint dated October 1, 2010 from the Company Secretary of M/s MAN Industries (India) Limited (the company) regarding certain irregularities committed by Mr. J. C. Mansukhani, Vice Chairman and Managing Director of the company and by JPA Holdings Pvt. Ltd. (appellant in Appeal no. 196 of 2011), the Board conducted investigations into the transactions in shares of the company for the period June 2010 to September 2010. It was noted that on June 16, 2010 the company informed the Bombay Stock Exchange Limited (BSE), where its shares are listed, that the board of directors of the company, in the meeting held on June 15, 2010 had considered and approved allotment of 2,50,000 equity shares of Rs. 5/- each at a premium of Rs. 30/- per share to Mr. Nikhil Mansukhani, a promoter (appellant in appeal no. 8 of 2012) upon conversion of



2,50,000 warrants by way of preferential allotment. Again, on June 21, 2010 the company informed BSE outcome of the board meeting held on June 19, 2010 regarding allotment of 10 lacs shares of Rs. 5/- each at a premium of Rs. 30/- per share to Nitin Mansukhani, Anita Mansukhani and JPA Holdings Ltd. upon conversion of 10 lacs warrants. It was further observed during the course of investigations that as per shareholding pattern of the promoters of the company for the quarters ending March 2010, June 2010 and September 2010, the aggregate promoter holding as on June 30, 2010 was 53.36 per cent which, in the subsequent quarter i.e. quarter ending September 30, 2010, went up to 55.18 per cent. The increase in the total promoter shareholding was due to conversion of warrants into shares as stated above and acquisition of shares from the market by J. C. Mansukhani. When the total promoter shareholding increased to 55.18 per cent, it crossed the threshold limit of 55 per cent and the acquirers were required to make a public announcement in accordance with the provisions of regulation 11(1) read with second proviso to regulation 11(2) of the takeover code. Since no such public announcement was made, the acquirers allegedly violated provisions of the said code.

A common show cause notice was issued to all the three entities asking them to show cause as to why an enquiry should not be held against them and penalty imposed under relevant provisions of the Act for the aforesaid violation. The adjudicating officer did not accept the explanation given by the appellant and, by the impugned order, held all the three entities, including the two appellants before us, guilty of violating regulation 11(1) read with second proviso to regulation 11(2) of the takeover code and imposed a penalty of Rs. 10 crores on them under Section 15H of the Act on the basis of joint and several liability.

**Decision :** Remanded for fresh adjudication.

## Reason

Having considered the rival submissions and material placed on record, we are of the view that the adjudicating officer, while passing the impugned order, has not dealt with or considered the principles of law laid down in the above noted two judgements. No doubt, the appellant informed about the split in the promoter group to the stock exchanges only in April 22, 2011, the fact remains that there was sufficient material available on record to show that the dispute between the two promoter groups is continuing since 2009. In view of this fact, it was for the Board to bring sufficient material on record to show that inspite of conflict among the promoters, the members of the two groups were acting in concert while acquiring the shares for the purpose of increasing their voting rights for gaining control over the company or they had common objective or purpose for substantial acquisition of shares. The appellants, vide their reply dated June 20, 2011 in response to the show cause notice have specifically taken this ground and referred to the above noted two judgements. However, the adjudicating officer while passing

the order has not dealt with the same. Neither he has made any reference to the two judgements noted above nor he has recorded any finding as to how the three acquirers of the shares, against whom the impugned order has been passed, are 'person acting in concert' within the meaning of the takeover code. We are, therefore, of the considered view that the impugned order has been passed without taking into consideration the material available on record and the legal position set out above.

We, therefore, set aside the impugned order and remand the matter to the Board for passing a fresh order dealing with the submissions made by the appellants in their reply dated June 20, 2011 and other documents submitted by them, more particularly, the law laid down in the two judgments referred to above. The Board may call for further information from the appellant, if it is felt necessary for passing a fresh order in accordance with law. ■

## Labour & Industrial Laws

**LW 68.07.2012**

**LATA RAMCHANDRA UBALE v. RAMCHANDRA SHANKAR UBALE & ANR [BOM]**

First Appeal No. 397 of 2011

Mridula Bhatkar, J.

[Decided on 08/05/2012]

***Employee's Compensation Act, 1923 - Sections 3 and 30 - Deceased son alleged to have been employed by father- Whether compensation is payable - Held, No.***

## Brief facts

Appellant is the mother of the deceased and respondent No.1 was the father of the deceased. The deceased was 19 years old at the time of the accident and he was employed as a driver on a jeep owned by his father. On the point of employment, the





appellant has examined herself, her mother and Respondent No.1. The Appellant produced payment slip at Exhibit 50 made to their son for the job as a driver. All the three witnesses have deposed that Respondent No.1 used to pay Rs.3,000/per month and Rs.25/daily Bhatta to the deceased. However, accepting the evidence of the Respondent no.2 insurance company, the Commissioner held that the employment of the son cannot be considered as employment with his father under the Act and rejected the claim. Hence the present appeal.

**Decision : Appeal dismissed.**

## Reason

The issue involved in the Appeal is short. The fact of the employment and the relationship of the deceased and Respondent No.1 as employer employee is challenged by the insurance company. The Act is a beneficial legislature enacted in the interest of the workman who should get immediate financial aid to assist his family to come out of the sudden financial crisis they have faced due to the accident which has taken place in the course of the employment. Under The Act, the burden lies on the Applicant to prove the basic fact of the employment and the accident had taken place in the course of the employment. In the present case, the fact of accident is not disputed but the relationship of the deceased with his father as a employer and employee is under challenge. It is made clear that a member of a family can be employed by the other member of the family. A wife or a son can be employed by the husband or father and the wages can be paid in the capacity of employer to the other family member. Law acknowledges such employer employee relationship amongst the family members of one family. Court cannot turn the Nelson's eye to the ground realities in the urban as well as rural families and their work culture. In India still joint family system exists. Brothers or son and father or spouses form partnership or a company and can be employed in such establishment. In the rural areas such employment in agricultural, dairy business is possible. The issue is not *res integra*.

In the present case, to prove the fact of employment all the three witnesses i.e. Latabai "mother", Kalabai "grandmother" and Ramchandra "father" have given oral evidence that the deceased was working as a driver on the jeep owned by the Respondent No.1 father. If such a evidence is not controverted then it can be accepted. However, the insurance company has vehemently disputed the fact of employment not only by cross examining these witnesses but by actively leading evidence of two witnesses to demolish the case of the Appellant. It was deposed that deceased as a driver used to carry vegetables for sale from one place to the other but did not give any money to father. If at all the vegetables were taken from one place to other and sold then whatever money was earned that was to be given to the employer by the driver. However, there is an admission of the witnesses that no money was given by the deceased son to his father after selling the vegetables. The Respondent No.1

deposed that he used to earn Rs.15,000/to 20,000/monthly and he has also employed 2 or 3 labourers in the agricultural field and he used to pay Rs.3,000/-per month and Rs.25/daily Bhatta to his deceased son. Thus, the total of the wages paid by the Respondent No.1 was Rs.9,000/- to 10,000/-, which appears excessive, disproportionate to his monthly earning.

Insurance company has examined witness Sanjay Sadashiv Kohinkar who is an advocate and has investigated the matter by visiting personally to the house of Respondent No.1 and ascertained the fact of employment of the deceased with Respondent No.1. He submitted a report to the insurance company and has deposed that he personally made an enquiry with the brother of Respondent No.1 and also enquired on cell phone with Respondent No.1 regarding the employment of the deceased. Respondent No.1 and his brother specifically denied the fact of the employment of the deceased with Respondent No.1 and have stated that he was a family member and was not employed. The Commissioner rightly believed the evidence of these witnesses. His evidence cannot be discarded only because he is an interested witness. Considering the evidence of the witnesses of the Applicant and the evidence of Mr. Kohinkar, the insurance company has successfully dislodged the evidence of the Applicant on the point of employment of the deceased.

There are neither specific rules nor straight jacket formula can be applied to prove the fact of employment of one family member with other family member. It entirely depends on the facts and circumstances of each and every case independently. However, it is necessary for the Applicant to tender the evidence to prove the fact of the employment and the fact of accident as taken place in the course of the employment. The burden lies on the Applicant. Once the evidence is tendered then onus shifts on the insurance company to disprove this particular fact. If evidence goes uncontroverted or evidence of the Applicant is found believable then on the point of employment the Commissioner may accept evidence of the Applicant. Though, a mathematical formula of the evidence cannot be set in the form of rules, the Commissioner is required to apply yardstick of reasonable common sense and accept the evidence which satisfies his rational thinking and conscious. The word "employment" used in Section 3 of the Act is with specific purpose and the Courts are required to give the correct and appropriate meaning to the said word. Under such circumstances, I hold that the view taken by the Commissioner is a correct view. Thus, the Judgment and Order passed by the Commissioner is not illegal, bad in law and requires no interference.

**LW 69.07.2012**

**CLASSIC BOTTLE CAPS (P) LTD v. USHA  
SINHA & ORS [DEL]**

W.P. (C) 6860/2002



P.K.Bhasin, J.

[Decided on 29/05/2012]

***Industrial Disputes Act, 1947 - Reinstatement of workmen - Tribunal passing award favouring workmen based on the cross examination of the management's witness - Management challenges the award - whether the award to be intervened - Held, No.***

## Brief facts

The respondent-workmen were admittedly employed with the petitioner-management. They had approached the labour authorities with the grievance that their services had been terminated illegally by the petitioner herein. Since they could not get any relief against the petitioner there the dispute between the petitioner was referred for adjudication to the Industrial Tribunal. The respondent-workmen had filed their separate statements of claim whereby they claimed that the termination of their services to be illegal. The petitioner-management had also filed its separate written statements denying the allegations of illegal termination of the services of the respondents.

It was pleaded that the respondent no. 1 was employed w.e.f. 2nd May, 1988 while respondent no. 2 was employed w.e.f. 1st April, 1989 and that they were remaining absent w.e.f. 10.9.89 and 20.9.89 respectively and further that they had not completed 240 days of service and that the management was ready to take them back on duty without any back wages.

After examining the evidence adduced before it by both the sides the Industrial Tribunal vide its award under challenge came to the conclusion that the services of the respondent-workmen were illegally terminated by the petitioner and after holding so relief of reinstatement in service with 50% back wages was granted to both of them. The petitioner company felt aggrieved by the award of the Industrial Tribunal and thus filed this writ petition.

**Decision :** Petition dismissed.

## Reason

The petitioner-management's main argument was that since the respondent-workmen had not completed 240 days of service before the alleged termination of their services Section 25-F of the Industrial Disputes Act, 1947 was not attracted and so there is a justified reason for this Court to interfere with the award of the Industrial Tribunal which has allowed the claim of the workman because of non-compliance of Section 25-F by the petitioner.

The Tribunal has accepted the case of the respondent-workmen relying upon the admission of the witness of the management, Sh. K.K. Pahuja, in his cross-examination that the respondent no. 1 had been employed w.e.f. 10.6.86 and respondent no. 2 w.e.f. 26.3.88 respectively with the petitioner-management and as per that statement both the workmen had completed 240 days service.

The petitioner had contended that the management's witness had in his affidavit clearly given the exact dates of appointment of the workmen and, therefore, his statement to the contrary in cross-examination could not be given any weightage. However, this Court is not inclined to accept this argument. Cross-examination is as much a part of evidence of a witness as the examination-in-chief. If any party is able to elicit any admission on some vital point of dispute from a witness that admission can certainly be used by the party who is benefitted by that admission. So, there is no illegality committed by the Tribunal in using the admission made by management's own witness. Similarly, no fault can be found with the finding of the Tribunal that services of the workmen had been terminated by the petitioner since it cannot be believed that if workmen were actually absenting no action would have been taken against them and their names would have continued to remain on its rolls.

A reading of the impugned award in the present case shows that it does not suffer from any jurisdictional error and is also not vitiated by any error of law apparent on the face of the record. So, there is no scope for any interference by this Court and this writ petition being devoid of any merit is liable to be dismissed. ■

## SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out special issues of Chartered Secretary on the following topics during the remaining period of the year 2012:

1. Arbitrability of disputes relating to Oppression and Mismanagement. - September 2012 issue
2. Attitudinal shift in the functioning of Corporates and Company Secretaries - October 2012 issue and
3. Corporate Restructuring and Insolvency - December 2012 issue.

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

**The articles may kindly be forwarded to:**

The Deputy Director (Publications), The ICSI, 22, Institutional Area, Lodi Road, New Delhi 110003.

**E-Mail:** [ak.sil@icsi.edu](mailto:ak.sil@icsi.edu)

**copy to** [<ks.gopalakrishnan@icsi.edu>](mailto:ks.gopalakrishnan@icsi.edu).



From the Government

# Corporate Laws



## 01 Constitution of CLB Benches for the purpose of exercising and discharging the Board's powers and functions

Issued by the Company Law Board vide F.No. 10/43/2005-CLB Dated 14.06.2012.]

1. In exercise of the powers conferred by Sub-Section 4(B) of Section 10(E) of the Companies Act, 1956 (I of 1956) read with Regulation 4 of Company Law Board Regulations, 1991, amended from time to time and in supersession of all earlier orders, the Chairman Company Law Board hereby constitutes the following Benches for the purpose of exercising and discharging the Board's powers and functions in the manner specified below:-

(a) Matters filed before the Principal Bench before 31st March 2008 and pending in the following Benches shall be dealt with by anyone of the following: -

### NEW DELHI BENCH

1. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
2. Shri B.S.V. Prakash Kumar, Member (Judicial).

### KOLKATA BENCH

1. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
2. Shri Amlesh Bandopadhyay, Member (Technical).

### MUMBAI BENCH

1. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
2. Smt. Vimla Yadav, Member (Technical).

### CHENNAI BENCH

1. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  2. Shri Kanthi Narahari, Member, (Judicial).
- (b) Matters pending before the Additional Principal Bench as on 31<sup>st</sup> March 2008 shall be dealt with by the Chennai Bench consisting of anyone of the following:
- a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri Kanthi Narahari, Member, (Judicial).
- (c) The Constitution of the Benches shall be as under:

### PRINCIPAL BENCH

- (1) Matters relating to sections 247, 250, 269 and 388B of the Act shall be dealt by Principal Bench at New Delhi consisting of Justice Shri Dilip Raosaheb Deshmukh, Chairman.

### NEW DELHI BENCH

- (2) Matters relating to all Sections except 247, 250, 269 & 388B of the Act and sections mentioned at clause 2(a) of Part (c) shall be dealt by New Delhi Bench consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri. B.S.V. Prakash Kumar, Member (Judicial).
- (2)(a) Matters relating to sections 17, 18, 19, 43, 49, 58A, 58AA, 79/80A, 113, 117B, 117C, 118, 141, 144, 163, 167, 186, 188, 196, 219, 225 and 621A of the Companies Act, 1956 and section 45QA of the R.B.1. Act, 1934 shall be dealt by Shri DhanRaj, Member (Technical), New Delhi Bench.

### KOLKATA BENCH

- (3) Matters relating to all Sections except 247, 250, 269 and 388B of the Act shall be dealt by Kolkata Bench consisting of any one of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri Amlesh Bandopadhyay, Member (Technical).

### MUMBAI BENCH

- (4) Matters relating to all Sections except 247, 250, 269 & 388B of the Act and sections mentioned at clause 4(a) of Part (c) shall be dealt by Mumbai Bench consisting of any one of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Smt. Vimla Yadav, Member (Technical).
- (4) (a) Matters relating under sections 17, 18, 19, 43, 49, 58A, 58AA, 79/80A, 113, 117B, 117C, 118, 141, 144, 163, 167, 186, 188, 196, 219, 225 and 621A of the Companies Act, 1956 and section 45QA of the R.B.1. Act, 1934 shall be dealt by Shri Ashok Kumar Tripathi, Member (Judicial) Mumbai Bench.





## CHENNAI BENCH

- (5) Matters relating to all Sections except 247, 250, 269 and 388B of the Act shall be dealt by Chennai Bench consisting anyone of the following :
  - a. Justice Shri Dilip Raosaheb Deshrnukh, Chairman.
  - b. Shri. Kanthi Narahari, Member (Judicial).
2. Matters in which upon conclusion of final hearing orders have been reserved by the Members under transfer vide office order of even number dated 30/4/2012 , such Members would pass orders in such matters at their new place of posting after due notice to the parties.
3. This Order shall come into force with effect from 18th June 20 12.

**P.K. Malhotra**

Secretary, Company Law Board

## 02 Corrigendum to Limited Liability Partnership (Amendment) Rules, 2012

Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2011-CL-V) Dated 21.06.2012.]

In the notification of the Government of India, Ministry of Corporate Affairs published in the Gazette of India vide G.S.R.(E) 430. .. Dated 5th June, 2012 relating to Limited Liability Partnership (Amendment) Rules, 2012, in page number 2, in point number 5, for "In the said rules, for Forms 1 to 31, the following forms shall be substituted, namely:-" , read "In the said rules, Form 32 has been inserted and for Forms 1, 2, 3, 4, 5, 8, 11, 12, 15, 17, 18, 22, 23, 24, 25, 27, 28, 29, 31, the following forms shall be substituted, namely:-"

**Renuka Kumar**

Joint Secretary to Govt. of India

## 03 The Limited Liability Partnership (Amendment) Rules, 2012

Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2011-CL-V) Dated 05.06.2012.]

In exercise of the Powers conferred by sub-section (1) of section 79 of the Limited Liability Partnership Act. 2008 (6 of 2009). the Central Government hereby makes the following rules further to amend the Limited Liability Partnership Rule, 2009 namely:

1. (1) These rules may be called the Limited Liability Partnership (Amendment) Rules, 2012.
- (2) They shall come into force with effect from 11<sup>th</sup> June. 2012.
2. In the limited liability Partnership Rules 2009 (hereinafter referred to as the said rules), after rule 8, the following provision shall be inserted, namely:-

"Provided that in case of incorporation, the individual who has given consent to act as partner or designated partner shall file consent in Form-2 along with fee as mentioned in annexure -A,"

3. in the said rules. in rule: 18. in sub-rule (2)-
  - (a) in clause [ix], the following proviso shall be inserted, namely;-
 

'Provided that the name shall be reserved. in case the 'No Objection Certificate' is granted by the registered Limited Liability Partnership company, as the case may be.;
  - (b) for clause (xiii), the following clause shall be substituted, namely :-
 

"(xiii) it includes words like ' Bank' , Insurance", and ' Bankins', 'Venture capital' or 'mutual fund' or business activity includes the words like ' Bank', 'Insurance'. and ' Banking', ' Venlure capital' or 'mutual fund' or such similar names without the approval of regulatory authority; Provided that the approval of regulatory authority shall be obtained at the time of application for incorporation or change of name of an existing Limited Liability Partnership, as the case may be."
  - (c) in clause [xvi], the following provision shall be inserted. namely:-
 

"Provided that the approval of the council governing the profession shall be obtained at the time of application for incorporation or change of name of an existing Limited Liability Partnership, as the case may be."
4. In Annexure 'A' of the said rules,-
  - (a) after para 3, the following para shall be inserted, namely;-
 

**"3A. For filing, registering or recording notice of appointment, cessation, change in name, address, designation of a partner or designated partner, Intimation of Designated Partner Identification Number and consent to become a partner or designated partner in Form 4. ...Rs. 50";**
  - (b) in para 4. after item (e). the following item shall be inserted, namely:-
 

**"(f) An application for striking off name of defunct Limited Liability Partnership under rule 3" ...Rs. 500";**
5. In the said rules, for Forms 1 to 31, the following forms shall be substituted\*, namely:-

**Renuka Kumar**

Joint Secretary to Govt. of India

\* Not reproduced here. plz. log on to MCA Website [www.mca.gov.in](http://www.mca.gov.in) for the forms in the notifications section.



## 04 Companies Director Identification Number (Second Amendment) Rules, 2012

Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2011-CL-V dated 05.06.2012.]

- 1 In exercise of the powers conferred by clause (a) and (b) of sub-section (1) of section 642 read with sections 266 A, 266B and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, further to amend the Companies (Director Identification Number) Rules, 2006 namely:-

### 1. Short title and commencement

- (1) These rules may be called the Companies Director Identification Number (Second Amendment) Rules, 2012.
- (2) They shall come into force with effect from 11<sup>th</sup> June, 2012.

2. In the Companies (Director Identification Number) Rules, 2006, in form DIN-I, after serial number 4, the following serial number shall be inserted, namely:-

"4A Whether resident in India ☐ Yes ☐ No"

**Renuka Kumar**  
Joint Secretary to Govt. of India

## 05 Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2012

Issued by the Ministry of Corporate Affairs vide F.No. 17/51/2012-CL V dated 31.05.2012.]

In exercise of the powers conferred by sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Central Government's) General Rules and Forms, 1956, namely: -

1. (1) These rules may be called the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2012.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Central Government's) General Rules and Forms, 1956, in Annexure 'A', for Form 23AB, the following Form shall be substituted, namely:-

### "FORM NO. 23AB

{See Rule 7A}

### Statement containing salient features of Balance Sheet and Profit and Loss Account as per section 219(1) (b) (iv)

#### Form of Abridged Financial Statements

Name of the Company .....

Abridged Balance Sheet as at.....

(Rupees in .....)

Current reporting period DD/MM/YY	Previous reporting period DD/MM/YY
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#### Sr Particulars

#### No.

### I EQUITY AND LIABILITIES

#### (1) Shareholders' funds

- (a) Paid-up Share Capital
  - (i) Equity
  - (ii) Preference
- (b) Reserves and surplus
  - (i) Capital Reserves (including Revaluation Reserve, if any);
  - (ii) Revenue Reserves;
  - (iii) Surplus
- (c) Money received against share warrants

#### (2) Share application money pending allotment

#### (3) Non-current liabilities

- (a) Long-term borrowings
- (b) Deferred tax liabilities (Net)
- (c) Other Long-term liabilities
- (d) Long-term provisions

#### (4) Current liabilities

- (a) Short-term borrowings
- (b) Trade Payables
- (c) Other Current Liabilities
- (d) Short-term provisions

#### Total of (1) to (4)

### II ASSETS

#### (5) Non-current assets

- (a) Fixed assets
  - (i) Tangible Assets (Original cost less depreciation)
  - (ii) Intangible Assets (Original cost less depreciation / amortisation)
  - (iii) Capital work-in-progress
  - (iv) Intangible assets under development
- (b) Non-current investments
- (c) Deferred tax assets (net)
- (d) Long-term loans and advances
- (e) Other Non-Current Assets

#### (6) Current assets

- (a) Current investments
- (b) Inventories
- (c) Trade Receivables
- (d) Cash and cash equivalents



- (e) Short-term loans and advances
- (f) Other current assets

## Total of (5) to (6)

Note Complete Balance Sheet, Statement of Profit and Loss, other statements and notes thereto prepared as per the requirements of Schedule VI to the Companies Act, 1956 are available at the Company's website at link \_\_\_\_\_

Abridged Profit and Loss Account for the year ended on

(Rupees in ....)

S.No.	Particulars	Figures for the current reporting period (DD/ MM/ YY)	Figures for the previous reporting period (DD/ MM/ YY)
I.	<b>Income</b>		
	Revenue from Operations (Details to be given as per*)		
	Less: Excise duty		
	<b>Net Revenue from Operations</b>		
II	Other Income (See Note 5)		
III	Total Income (I + II)		
IV	<b>Expenditure</b>		
(a)	Cost of materials consumed		
(b)	Purchase of stock-in-trade		
(c)	Changes in inventories of finished goods, work-in-progress and stock-in-trade		
(d)	Employee benefits expense		
(e)	Finance costs		
(f)	Depreciation and amortisation expense		
(g)	Other expenses (See Note 5)		
	<b>Total Expenditure (a to g)</b>		
V	<b>Profit before exceptional and extraordinary items and tax (III-IV)</b>		
VI	Exceptional items		
VII	Profit before extraordinary items and tax (V±VI)		
VIII	Extraordinary items		
<b>IX</b>	<b>Profit / (loss) before tax (VII±VIII)</b>		
X	1. Tax expense		
	2. Deferred tax		
<b>XI</b>	<b>Profit / (loss) after tax for the year from continuing operations (IX-X)</b>		
XII	Profit / (loss) from discontinued operations		
XIII	Tax expenses of discontinued operations		
XIV	Profit / (loss) from discontinued operations (after tax) (XII-XIII)		
XV	Profit / (loss) for the year (XI+XIV)		
XVI	Earnings per equity share:		
	(a) Basic		
	(b) Diluted		

\* Details of Revenue from Operations:

- a) In respect of a company other than a finance company revenue from operations shall be disclosed as under:

(Rupees in ....)

S.No.	Particulars	Figures for the current financial reporting period (DD/MM/YY)	Figures for the previous financial reporting period (DD/MM/YY)
I.	Sale of products manufactured		
II	Sale of goods traded		
III.	Revenue from services provided		
IV.	Other Operational Revenue		

- b) In respect of a finance company, revenue from operations shall be disclosed as under:

- (a) Revenue from Interest; and
- (b) Revenue from Other financial services

## NOTES TO THE ABRIDGED BALANCE SHEET AND THE ABRIDGED PROFIT AND LOSS ACCOUNT

- The amounts to be shown here should be the same as shown in the corresponding aggregated heads in the financial statements as per Schedule VI or as near thereto as possible.
- The total amount of contingent liabilities and that of commitments should be shown separately.
- All notes forming part of the financial statements as per Schedule VI to which specific attention has been drawn by the auditors or which form a subject matter of qualification by the auditor should be reproduced.
- If fixed assets are revalued, the amount of revaluation to be shown separately for the first five years subsequent to the date of revaluation.
- Any item which constitutes 20% or more of the total income or expenditure (including provisions) should be shown separately.
- Amount, if material, by which any item shown in the profit and loss Account are affected by any change in the accounting policy, should be disclosed separately.
- Notes shall include the notes, if any, contained in the complete financial statements pertaining to the following:
  - Period and amount of defaults on the balance sheet date in repayment of loans and interest.
  - Amalgamations, acquisitions, restructurings and demergers during the reporting period.
  - Material events affecting the going concern assumption.
  - Investigation and inspection conducted or ordered under the provisions of Companies Act, 1986.
  - Non-compliance with any law during the reporting period.
  - Any other note considered significant by the management.





## From the Government

8. Book Value and Market value of Quoted Investments (both for current year as also previous year) be mentioned.
9. Notes in the abridged balance sheet should be given the same number as in the main balance sheet.
10. Disclosure of Related Party Transaction shall be made in terms of the requirements of Accounting Standard (AS) 18, Related Party Disclosures, notified under Companies (Accounting Standards) Rules, 2006.
11. Details of Cash and Cash Equivalents shall be disclosed as follows:
  - (a) Balances with banks;
  - (b) Cheques, drafts on hand;
  - (c) Cash in hand;
  - (d) Others (specify nature)
12. In terms of Accounting Standard (AS) 3, Cash Flow Statement, wherever required, as notified under Companies (Accounting Standards) Rules 2006, the following abridged Cash Flow Statement shall be included:

Abridged Cash Flow Statement		
	Figures for the current reporting period	Figures for the previous reporting period
1. Cash flows from operating activities		
2. Cash flows from investing activities		
3. Cash flows from financing activities		
4. Net increase/(decrease) in cash and cash equivalents		
5. Cash and cash equivalents at beginning of period		
6. Cash and cash equivalents at end of period		

13. Segment revenue, segment capital employed (segment assets minus segment liabilities) and segment result for business segments or geographical segments, whichever is the enterprise's primary basis of segment reporting (disclosure of segment information shall be presented) only if the company is required, in terms of Accounting Standards (AS) 17, Segment Reporting, as notified under Companies (Accounting Standards) Rules 2006 to disclose segment information in its annual financial statements;
14. Level of rounding off should be the same as in the main balance sheet and the profit and loss account.
15. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in

the head/subhead or any changes *inter se*, in the financial statements or statements forming part thereof, the same shall be made. The above stated salient features of the Balance Sheet and the Profit and Loss Account should be authenticated in the same manner as the Main financial statements.

### AUDITOR'S REPORT

- ◆ Auditor's Report shall be submitted by the statutory auditors in accordance with the Standard on Auditing (SA) 810, Engagements to Report on Summary Financial Statements, issued by the Institute of Chartered Accountants of India. Auditor's report on unabridged financial statements shall also be given.

### DIRECTORS' REPORT

- ◆ Salient features of Director's Report shall be disclosed. Subsidiary Company / companies : Every holding company shall attach a statement relating to its subsidiary company / companies to be furnished in pursuance of clauses (c), (f) and (g) of sub-section (1) of section 212.

(Signed by Directors/Secretary)  
in the manner prescribed in section 215(1)."

**Renuka Kumar**  
Joint Secretary to Govt. of India

## 06 Extension of time in Filing of annual return by Limited Liability Partnerships (LLPs)

Issued by the Ministry of Corporate Affairs vide General Circular No. 15/2012 dated 29.06.2012.]

1. In continuation of this Ministry's Circular no 13/2012 dated 06.06.2012 on the subject cited above, it is stated that the time for filing the Annual Return by LLPs (i.e. Form 11) has been extended up to 31 st July, 2012.
2. In order to have better understanding of the circular, it is clarified that the time limit of 60 days shall be read as 122 days for filing of Form 11 by LLPs in respect of the Financial Year ending on 31.03.2012. This circular shall be effective from 30.06.2012.

**Sanjay Shorey**  
Joint Director

## 07 Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed

Issued by the Ministry of Corporate Affairs vide General Circular No. 14/2012 dated 21.06.2012.]



The Ministry of Corporate Affairs has decided that fees shall be applicable on the following forms at the rates indicated in the table below:-

S.N.	Form No.	Particulars of the Form	Applicable fee
1.	Form 1 of Investor Education protection Fund Rule	Statement of amounts credited to Investor Education and Protection Fund.	As per Schedule X to the Act.
2.	Form 23B	Information by statutory auditor to the Registrar of (companies pursuant to section 224(1)(a) of the Companies Act, 1956.	As per Schedule X to the Act.
3.	Form 24A	Application to RD (a) For Appointment of Auditors under section 224(3) (b) Others	As per Companies (Fee on Application) Rules, 1999
4.	Form 36	Receiver's or manager's abstract of receipts and payments (charge related form)	As per Schedule X to the Act.
5.	Form 61	Application to RoC- (a) Compounding of Offences u/s 621A (b) Application for extension of Annual General Meeting upto 3 months u/s 166 of the Act (c) Application for extension of time for preparation of Annual Accounts upto 18 months u/s 220 of the Act. (d) Others	(a) As per Companies (Fee on Application) Rules, 1999 (b) -Do- (c) -Do- (d) -Do-
6.	Form 62	Form for submission of misc. documents under the below mentioned rules: (a) Form 154 of the Companies (Court) Rules, 1959 (b) Form 157 of the Companies (Court) Rules, 1959 (c) Form 158 of the Companies (Court) Rules, 1959	As per Schedule X to the Act.
7.	Form 65	Application to the Central Govt (HQ)- (a) Application pursuant to rule 2 of the Companies (Application for Extension of Time or Exemption under Subsection (8) of Section 58A) Rules, 1979.	(a) as per Companies (Fee on Application) Rules, 1999

	(b) Information and explanation on reservations and qualification contained in the cost audit report by a company (c) Others	(b) Nil  (c) as per Companies (Fee on Application) Rules, 1999
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3. This circular will come into effect from 22nd July, 2012.

**Sanjay Shorey**  
Joint Director

## 08 Extension of time in Filing of annual return by Limited Liability Partnerships (LLPs)

Issued by the Ministry of Corporate Affairs vide General Circular No. 13/2012 dated 06.06.2012.]

1. The Ministry has started the process of decentralization of the functions of the Registrar LLP by authorizing respective ROCs to discharge the functions of Registrar LLP also on and from 11.06.2012. Consequently, the LLP system shall remain closed from 31.5.2012 to 10.6.2012.
2. As per the provisions of section 35 of the LLP Act, LLPs which do not file Form 11 within a period of sixty days of the date of closure of their financial year are required to pay additional fees. In order to avoid payment of additional fees by such LLPs due to closure of the system from 31.5.2012 to 10.6.2012, it has been decided to extend the time limit prescribed under the provisions of section 35 of the LLP Act by 30 days .
3. In order to have better understanding of the circular, it is clarified that the time limit of 60 days shall be read as 90 days for filing of Form 11 by LLPs in respect of the Financial Year ending on 31.03.2012. This circular shall be effective from 31.5.2012.

**U.C. Nahta**  
Director (Inspection & Investigation)

## 09 Cost Accounting Records and Cost Audit – general clarifications.

Issued by the Ministry of Corporate Affairs vide General Circular No. 12/2012 dated 04.06.2012.]

1. Ministry of Corporate Affairs has so far issued following circulars in connection with the cost accounting records, cost audit, appointment of cost auditors etc:



# From the Government

1. General Circular No. 15/2011 dated 11th April, 2011
2. Master Circular No. 2/2011 dated 11th November, 2011
3. General Circular No. 67/2011 dated 30th November, 2011
4. General Circular No. 68/2011 dated 30th November, 2011
5. General Circular No. 8/2012 dated 10th May, 2012
6. General Circular No. 11/2012 dated 25th May, 2012

It is hereby clarified that all these circulars [including the present circular] are applicable in respect of all the Cost Accounting Records Rules notified in 2011 and the industry specific Cost Audit Orders issued so far; to the extent these are relevant and applicable.

2. Ministry of Corporate Affairs vide no. 52/26/CAB-2010 dated 2nd May, 2011 had directed that every company to which any of the following rules apply, and wherein, the aggregate value of net worth as on the last date of the immediately preceding financial year exceeds five crore of rupees; or wherein the aggregate value of the turnover made by the company from sale or supply of all products or activities during the immediately preceding financial year exceeds twenty crore of rupees; or wherein the company's equity or debt securities are listed or are in the process of listing on any stock exchange, whether in India or outside India, shall get its cost accounting records, in respect of each of its financial year commencing on or after the 1st day of April, 2011, audited by a cost auditor who shall be, either a cost accountant or a firm of cost accountants, holding valid certificate of practice under the provisions of Cost and Works Accountants Act, 1959 (23 of 1959).

- (a) Cost Accounting Records (Bulk Drugs) Rules, 1974
- (b) Cost Accounting Records (Formulations) Rules, 1988
- (c) Cost Accounting Records (Fertilizers) Rules, 1993
- (d) Cost Accounting Records (Sugar) Rules, 1997
- (e) Cost Accounting Records (Industrial Alcohol) Rules, 1997
- (f) Cost Accounting Records (Electricity Industry) Rules, 2001
- (g) Cost Accounting Records (Petroleum Industry) Rules, 2002
- (h) Cost Accounting Records (Telecommunications) Rules, 2002

3. In supersession of the aforesaid Rules, following industry specific Cost Accounting Records Rules were notified:
  1. Cost Accounting Records (Telecommunication Industry) Rules 2011 notified vide GSR 869(E) dated December 7, 2011.

2. Cost Accounting Records (Petroleum Industry) Rules 2011 notified vide GSR 870(E) dated December 7, 2011.
3. Cost Accounting Records (Electricity Industry) Rules 2011 notified vide GSR 871(E) dated December 7, 2011.
4. Cost Accounting Records (Sugar Industry) Rules 2011 notified vide GSR 872(E) dated December 7, 2011.
5. Cost Accounting Records (Fertilizer Industry) Rules 2011 notified vide GSR 873(E) dated December 7, 2011.
6. Cost Accounting Records (Pharmaceutical Industry) Rules 2011 notified vide GSR 874(E) dated December 7, 2011.

4. In view of above, it is hereby clarified that the Cost Audit Order No. 52/26/CAB-2010 dated 2nd May, 2011 shall be applicable as under:

- a) For all companies wherein their products/activities are already covered under any of the erstwhile industry specific Cost Accounting Records Rules, as mentioned in para 2 above [before their supersession] and meeting with the threshold limits mentioned in the said Cost Audit Orders – in respect of each financial year commencing on or after the 1st day of April, 2011 i.e. from the financial year 2011-12 onwards.
- b) For all companies wherein their products/activities are for the first time covered under any of the revised industry specific Cost Accounting Records Rules, as mentioned in para 3 above and meeting with the threshold limits mentioned in the said Cost Audit Orders – in respect of each financial year commencing on or after the 7th December, 2011 i.e. from the financial year 2012-13 [incl. calendar year 2012] onwards.

5. It is further clarified that in case of companies engaged in production, processing, manufacturing or mining of multiple products/activities, if any of their products/activities are not covered under the industry specific Cost Accounting Records Rules, but are covered under the Companies (Cost Accounting Records) Rules, 2011 notified vide GSR 429(E) dated June 3, 2011 and wherein such products/activities are not covered under cost audit vide cost audit orders dated June 30, 2011 and January 24, 2012; such companies shall be required to file compliance report with the Central Government in accordance with the clarifications given vide para (a) of the MCA's General Circular No. 68/2011 dated 30th November, 2011.





6. The Institute is requested to circulate this General Circular for the information of all concerned.

**B.B. Goyal**  
Adviser (Cost)

## 10 Cost Accounting Records and Cost Audit - clarifications about coverage of certain sectors thereunder

Issued by the Ministry of Corporate Affairs vide General Circular No. 11/2012 dated 25.05.2012.]

1. In partial modification of para (b) (iii) of the General Circular No. 67/2011 dated 30<sup>th</sup> November, 2011, it has been decided to extend exemption from mandatory cost audit to all units located in the specified zones such as Special Economic Zones (SEZs), Export Processing Zones (EPZs) and Free Trade Zones (FTZs) and also to the 100% Export Oriented Units (EOUs), subject to the following:
  - a) Exemption from mandatory cost audit will be available only to those units of a company that are either located in the specified Zones or qualify as 100% EOUs and not to all other units of the same company.
  - b) There will be no exemption from maintenance of cost accounting records and filing of compliance report with the MCA in compliance with the applicable Cost Accounting Records Rules.
  - c) In case any regulatory body seeks cost data in respect of exempted units of any industry, then all relevant units of such industry would be subject to cost audit in accordance with the provisions of applicable Rules/Orders.
  - d) The DTA (domestic tariff area) sales in all such exempted units for each year shall not exceed the permissible limits as per the policy in force. In case their DTA sales for any year exceeds the permissible limits, then the exemption from cost audit available to the unit shall stand withdrawn and the unit would be subject to cost audit in accordance with the provisions of applicable Rules/Orders starting with the year in which exemption stood withdrawn and for every subsequent year thereafter.
  - e) If any such exempted unit either relocates outside the specified Zones or lose 100% EOU status, then the mandatory cost audit would become applicable from

the year in which such change has taken place and for every subsequent year thereafter.

2. The Institute is requested to circulate this General Circular for the information of all concerned.

**B.B. Goyal**  
Adviser (Cost)

## 11 FII Investment in Government debt long term and corporate debt long term infra category

Issued by the Securities and Exchange Board of India vide CIR/IMD/FII&C/15/2012 dated 26.06.2012.]

1. The Reserve Bank of India (RBI), vide its circular dated June 25, 2012 has decided to enhance the existing limit for investment by SEBI registered Foreign Institutional Investors (FIIs) in Government debt by a further amount of USD 5 billion taking the overall limit for FII investment in Government debt from USD 15 billion to USD 20 billion. Accordingly, in partial amendment to para 1 of the SEBI circular CIR/IMD/FII&C/18/2010 dated November 26, 2010, the current limit of USD 5 billion for FII investment in Government securities with 5 year residual maturity shall be enhanced to USD 10 billion. Further, the residual maturity for the said USD 10 billion limit will stand reduced from aforesaid 5 years to 3 years.
2. Vide RBI circular dated June 25, 2012 it has been decided that the conditions for the limit of USD 22 billion for FII investment in corporate debt long term infra category, including the sub-limit of USD 5 billion with one year lock-in/residual maturity requirement and USD 10 billion for non resident investment in IDFs (which are all within the overall limit of USD 25 billion for investment in infrastructure corporate bonds) have been changed as under:
  - 2.1. The lock-in period for investments under this limit has been uniformly reduced to one year; and
  - 2.2. The residual maturity of the instrument at the time of first purchase by an FII/ eligible IDF investor would be at least fifteen months.
3. **Allocation of limits under Government Debt- Long Term category:**  
Additional limit of USD 5 billion (INR 28,496 crore) as stated in para 1 above, shall be auctioned through electronic bidding process, in terms of SEBI circular IMD/FII&C/37/2009 dated February 06, 2009, subject to the modifications stated below:-



# From the Government

3.1. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than INR 2,850 cr. of the investment limit. Where a single entity bids on behalf of multiple entities, in terms of para 7 of SEBI circular CIR/IMD/FIIC/18 /2010 dated November 26, 2010, then such bid would be limited to INR 2,850 cr. for every such single entity.

3.2. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII&C/37/2009, the minimum amount which can be bid for shall be INR 1 cr.

#### 4. Allocation of limits under Corporate Debt- Long Term infra category :

In view of changes in lock-in and residual maturity as stated in para 2 above, it has been decided that limit of USD 7 billion (INR 31,387 crore – converted at prevailing exchange rates at the time when the limits were made available) shall be auctioned through electronic bidding process, in terms of SEBI circular IMD/FII&C/37/2009 dated February 06, 2009, subject to the modifications stated below:

- 4.1. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than INR 3,138 cr. of the investment limit. Where a single entity bids on behalf of multiple entities, in terms of para 7 of SEBI circular CIR/IMD/FIIC/18 /2010 dated November 26, 2010, then such bid would be limited to INR 3,138 cr. for every such single entity.
- 4.2. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII & C/37/2009, the minimum amount which can be bid for shall be INR 1 cr.

5. It has been decided that additional limit for FIIs investments in Government debt long term category and corporate debt long term infra category (with one year lock-in and 15 months residual maturity), shall be allocated through special auction. The auction for this limit shall be done on the BSE from 15:30 hrs to 17:30 hrs, on Wednesday, July 04, 2012.

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

A copy of this circular is available at the web page “F.I.I.” on

our website [www.sebi.gov.in](http://www.sebi.gov.in). The custodians are requested to bring the contents of this circular to the notice of their FII clients.

**S Madhusudhanan**  
Deputy General Manager

## 12 Clarification to the “Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) Circular dated April 13, 2012”

Issued by the Securities and Exchange Board of India vide CIR/MRD/DMS/17/2012 dated 22.06.2012.]

1. SEBI vide circular no CIR/MRD/DMS/12/2012 dated April 13, 2012 had issued broad guidelines for Business Continuity Plan and Disaster Recovery for Stock Exchanges and Depositories.

2. In this regard, Stock Exchanges and Depositories have sought guidance and clarifications regarding some of the provisions of the circular.

3. Upon examination it has been decided to modify the guidelines as under:

a. Clause 1. ii. may be read as:

"Apart from DRS, stock exchanges should have a Near Site (NS) to ensure zero data loss whereas, the depositories should also ensure zero data loss by adopting a suitable mechanism".

b. Clause 1. v. b) may be read as:

"Exchanges / Depositories should have Recovery Time Objective (RTO) and Recovery Point Objective (RPO) not more than 4 hours and 30 minutes, respectively".

c. Clause 1. vii. c) may be read as:

"Stock Exchanges / Depositories / Clearing Houses or Clearing Corporations of Stock Exchanges should also demonstrate their preparedness to handle any issue which may arise due to trading halts in stock exchanges and / or failure or stoppages at other Stock Exchanges / Depositories / Clearing Corporations".

4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the



development of, and to regulate the securities market.

5. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

**B. J. Dilip**  
Deputy General Manager

## 13 Redressal of complaints against Stock Exchanges (SEs) and Depositories through SEBI Complaints Redress System (SCORES)

Issued by the Securities and Exchange Board of India vide CIR/MRD/ICC/16/2012 dated 15.06.2012.]

1. As you are aware, SEBI has commenced processing of complaints through SCORES.
2. The complaints received by SEBI against SEs and Depositories shall be electronically sent through SCORES. You are advised to view the pending complaints at <http://scores.gov.in/admin> and submit the Action Taken Report (ATR) along with supporting documents electronically in SCORES. Please note that updation of action taken shall not be possible with physical ATRs. Hence, submission of physical ATR shall not be accepted for complaints lodged in SCORES.
3. The SEs and Depositories shall do the following:
  - a. indicate a contact person in case of SCORES, who is an employee heading the complaint services division/cell/department. Contact details (i.e. phone no., email id, postal address) of the said contact person be made widely available for e.g. on the websites of SEs/Depositories.
  - b. address/redress the complaints within a period of 15 days upon receipt of complaint on SCORES. In case additional information is required from the complainant, the same shall be sought within 7 days of receipt on SCORES. In such case, the period of 15 days will be counted upon the receipt of additional information.
  - c. maintain a monthly record of the complaints which are not addressed/redressed within 15 days from the date of receipt of the complaint/information, alongwith the reason for such pendency.
  - d. Upload/update the ATR on the SCORES. Failure to do so shall be considered as non-redressal of the complaint and the complaint shall be shown as pending.

4. The circular is issued in exercise of powers conferred upon SEBI under Section 11(1) of the Securities and Exchange Board of India Act, 1992.
5. The circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

**B K Gupta**  
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 CIR/MRD/DP/15/2012 dated 14.06.2012.]

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.

**B. J. Dilip**  
Deputy General Manager





# From the Government

## Annexure A

Sr. No.	Name of the Company	ISIN
1.	Grandma Trading And Agencies Limited	INE927M01011
2.	Tak Machinery And Leasing Limited	INE545L01013
3.	S R K Industries Limited	INE951M01011
4.	Unijolly Investments Company Limited	INE130N01010
5.	First Financial Services Limited	INE141N01017
6.	Healthy Investments Limited	INE160N01017
7.	Premier Polyfilm Limited	INE309M01012
8.	Kings Infra Ventures Limited	INE050N01010
9.	Gee El Woollens Limited	INE022N01019
10.	Integrated Thermoplastics Limited	INE038N01015
11.	Rutron International Limited	INE040N01011
12.	Priyadarshini Thread Limited	INE807M01015
13.	Asian Petroproducts And Exports Limited	INE810M01019
14.	Vishvjyoti Trading Limited	INE025N01012
15.	Parag - Shilpa Investments Limited	INE953M01017
16.	Ravileela Granites Limited	INE427E01019
17.	Osian Industries Limited	INE634M01013
18.	Benzo Petro International Limited	INE981M01018
19.	Rudraksh Cap-Tech Limited	INE191N01012
20.	Toheal Pharmachem Limited	INE312M01016
21.	Integra Engineering India Limited	INE984B01015
22.	National Buildings Construction Corporation Limited	INE095N01015

## 15 Reporting of Offshore Derivative Instruments (ODIs)/ Participatory Notes (PNs) activity

Issued by the Securities and Exchange Board of India vide CIR/IMD/FIIC/14/2012 dated 07.06.2012.]

- Please refer to the SEBI Circular No. CIR/IMD/FIIC/1/2011 dated January 17, 2011 read with Circular No. CIR/IMD/FIIC/7/2011 dated June 15, 2011 and Circular No. CIR/IMD/FIIC/6/2011 dated May 12, 2011 on the captioned matter.
- On a review, it has been decided to revise the reporting timelines specified in para 3 of Circular dated January 17, 2011 which are as follows:-
  - FII's issuing ODIs/PNs shall submit details of ODI/PN transaction report (Annexure A, B and C) along with the monthly summary report by 10th of every month for previous month's ODI transactions. The first such report shall be submitted for the month of October 2012 by November 10, 2012.
  - The details of ODI/PN transaction report for month of December 2011 to April 2012 shall be submitted with six months lag.
  - The details of ODI/PN transactions report for month of May 2012 to September 2012 shall be submitted along with report of October 2012 by November 10,

2012.

- All other provisions of the circular CIR/IMD/FIIC/1/2011 dated January 17, 2011 shall remain unchanged.
- This circular is issued in exercise of the powers conferred under Regulation 20 and 20A of the SEBI (Foreign Institutional Investors) Regulations, 1995 read with Section 11 (1) of the Securities and Exchange Board of India Act 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- A copy of this circular is available at the web page "F.I.I." on our website [www.sebi.gov.in](http://www.sebi.gov.in). The custodians are requested to bring the contents of this circular to the notice of their FII clients.

S. Madhusudan  
Deputy General Manager

## 16 Revision in framework for Qualified Foreign Investor (QFI) investment in Equity Shares and Mutual Fund schemes

Issued by the Securities and Exchange Board of India vide CIR/IMD/FII&C/13/2012 dated 07.06.2012.]

- Vide SEBI circulars Cir/IMD/DF/14/2011 and Cir/IMD/FII&C/3/2012 dated August 09, 2011 and January 13, 2012, respectively, Qualified Foreign Investors (QFI) were allowed to invest in schemes of Indian mutual funds and Indian equity shares subject to terms and conditions mentioned therein. Subsequently, vide SEBI circular CIR/IMD/FII&C/4/2012 dated January 25, 2012, the eligibility criteria for a qualified DP was revised.
- On a review and in consultation with the Government of India (GoI) and RBI, it has been decided to revise the definition of QFI as under:  
QFI shall mean a person who fulfils the following criteria:
  - Resident in a country that is a member of Financial Action Task Force (FATF) or a member of a group which is a member of FATF; and
  - Resident in a country that is a signatory to IOSCO's MMOU (Appendix A Signatories) or a signatory of a bilateral MOU with SEBI:

Provided that the person is not resident in a country listed in the public statements issued by FATF from time to time on-  
(i) jurisdictions having a strategic Anti-Money Laundering/ Combating the Financing of Terrorism (AML/CFT) deficiencies to which counter measures apply, (ii) jurisdictions that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies:

Provided further such person is not resident in India:  
Provided further that such person is not registered with SEBI as Foreign Institutional Investor or Sub-account or Foreign



Venture Capital Investor.

*Explanation.* -For the purposes of this clause:

- (1) The term "Person" shall carry the same meaning under Foreign Exchange Management Act (FEMA), 1999 and section 2(31) of the Income Tax Act, 1961;
- (2) The phrase "resident in India" shall carry the same meaning as in the FEMA 1999, and Income Tax Act, 1961;
- (3) "Resident" in a country, other than India, shall mean resident as per the direct tax laws of that country.
- (4) "Bilateral MoU with SEBI" shall mean a bilateral MoU between SEBI and the overseas regulator that inter alia provides for information sharing arrangements.
- (5) Member of FATF shall not mean an Associate member of FATF.

The definition of QFI, as provided in the circulars Cir/IMD/DF/14/2011 and Cir/IMD/FII&C/3/2012 dated August 09, 2011 and January 13, 2012, respectively, stands amended as above.

3. The word "Purchase" used in clause 6.1.4 of circular Cir/IMD/FII&C/3/2012 dated January 13, 2012 shall be substituted with the word "Subscription".
4. Between clauses 8.6 and 8.7 of Circular dated January 13, 2012, clause 8.6.1 is inserted to read as under:  
"8.6.1. In case a person invests in the same company through both QFI route and FDI route, the aggregate holding of the person in such company shall not exceed five percent of paid up equity capital of the company at any point of time. This investment limit shall be applicable to each class of equity shares having separate and distinct ISIN. This shall be subject to guidelines on FDI as prescribed by GoI and RBI from time to time."
5. It has been decided to allow QFIs to make fresh purchases of eligible securities, out of the sale/redemption/ dividend proceeds of any of the eligible securities. Further, it is clarified that all the eligible securities shall be held in a single demat account of the QFI. Eligible securities shall mean mutual fund units (under both direct and indirect route), equity shares, corporate debt and any other security which is permitted for investment by QFI from time to time by GoI, RBI and SEBI.
6. It has been further decided to extend the option of appointment of custodian of securities by the QFI. The QFI, if it so desires, may appoint a custodian of securities, who would be obligated to perform clearing and settlement of securities on behalf of the QFI client. However, no person shall be appointed as custodian by the QFI unless it is itself the qualified DP of the QFI and is also registered as custodian with SEBI under SEBI (Custodian of Securities) Regulations, 1996.
7. A QFI shall open a single non-interest bearing Rupee

Account with an AD Category- I bank in India, for routing the receipt and payment for transactions relating to purchase and sale of eligible securities subject to the conditions as may be prescribed by RBI from time to time. Accordingly, it is clarified that henceforth there is no more requirement for opening and maintenance of a single rupee pool bank account by the qualified DP. QFIs, shall, henceforth invest in all eligible securities through this single non- interest bearing Rupee Account. Circulars dated August 9, 2011, January 13, 2012, and January 25, 2012 respectively, stand amended as above. 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.

**S. Madhusudan**  
Deputy General Manager

## 17 Exit Policy for De-recognized/ Non-operational Stock Exchanges

Issued by the Securities and Exchange Board of India vide CIR/MRD/DSA/14/2012 dated 30.05.2012.]

1. SEBI vide circular dated December 29, 2008 issued guidelines in respect of exit option to stock exchanges. The exit policy of aforesaid exchanges has been reviewed by the Board and the said Circular stands revised/modified to the extent as under.
2. **Process of De-recognition and Exit**
  - 2.1 Exchanges may seek exit through voluntary surrender of recognition.
  - 2.2 Stock exchanges where the annual trading turnover on its own platform is less than Rs 1000 Crore can apply to SEBI for voluntary surrender of recognition and exit, at any time before the expiry of two years from the date of issuance of this Circular.
  - 2.3 If the stock exchange is not able to achieve the prescribed turnover of Rs 1000 Crores on continuous basis or does not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of this Circular, SEBI shall proceed with compulsory de-recognition and exit of such stock exchanges, in terms of the conditions as may be specified by SEBI.
  - 2.4 Stock Exchanges which are already de-recognised as on date, shall make an application for exit within two months from the date of this circular. Upon failure to do so, the de-recognized exchange shall be subject to compulsory exit process.



3. With regard to exit option to shareholders of exclusively listed companies, on stock exchanges seeking de-recognition and/ or exit and de-recognised stock exchanges, the following process should be followed by the exclusively listed companies. Such an exchange shall monitor the process given below until its exit:

3.1 Exclusively listed companies shall list on any other recognized stock exchange. Such other recognized stock exchanges may facilitate the listing of exclusively listed companies, and, if required, carry out changes to their listing eligibility criteria, in the interest of investors. Stock exchanges may have differential listing criteria for such exclusively listed companies in respect of following criteria viz, Market Capitalization, Dividend paying track record, profitability, and paid-up capital. In this regard, the stock exchanges shall issue the differential listing eligibility criteria for such exclusively listed companies.

3.2 The exclusively listed companies, which fail to obtain listing on any other stock exchange, will cease to be a listed company and will be moved to the dissemination board by the exiting stock exchange. Therefore, in the interest of investors of exclusively listed companies, a mechanism of dissemination board will be set-up by stock exchanges having nationwide trading terminals.

### 3.3 Dissemination Board:

Under this mechanism, a willing buyer and seller will be given an opportunity to disseminate their offers using the services of brokers of stock exchanges hosting dissemination board. The mechanism of dissemination board shall be given wide publicity for the benefit of the investors of exclusively listed companies. Every stock exchange hosting a dissemination board shall clearly bring out the guidelines in respect of the Dissemination Board on its website.

#### Features of Dissemination Board:

- i. Exiting Stock Exchanges will be required to enter into an agreement with at least one of the stock exchanges with nationwide trading terminals providing the Dissemination Board. The exiting stock exchange shall pay a one-time fee for the arrangement as may be decided in the agreement. The fee may be based on number of companies moving on to the dissemination board, number of public shareholders in those companies, their paid up capital etc.

- ii. Exchanges having nationwide trading terminal will not have listing agreement with these companies. However, information received from such companies will be disseminated.
- iii. The buyers/ sellers will be required to register with broker of the exchange where the dissemination board is set up.
- iv. No contract note is required to be issued for such transactions.
- v. The matched trades will not be settled through the stock exchange/Clearing Corporation mechanism and hence, there will be no recourse to the Settlement/ Trade Guarantee Fund and Investor Protection Fund of the Exchange for the trades on Dissemination Board
- vi. The exiting Stock Exchange as well as exchange providing dissemination board will give wide publicity about the dissemination board in one leading national daily and one local daily.

The stock exchanges hosting dissemination board shall issue uniform operational guidelines for the dissemination board.

### 4. Members of Stock Exchanges to continue trading through Subsidiary

4.1. In case of de-recognition of a stock exchange, the exchange may provide trading opportunity to their trading members to trade on stock exchanges having nationwide terminals through their subsidiary company, which will function as normal broking entity in terms of SEBI circular dated December 29, 2008. In case of de-recognition, subsidiary company shall continue to function as broking entities in compliance of, inter alia, the provisions of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

4.2. In case of de-recognition, the MoU mechanism, if any, between a stock exchange not having nationwide trading terminal and a stock exchange having nationwide trading terminal, shall be discontinued and in such cases the trading members of erstwhile stock exchanges will gain access to exchanges having nationwide terminals through membership of the existing subsidiary company.

### 5. Treatment of the Assets of de-recognized exchange

5.1. De-recognized stock exchange (voluntarily de-recognized or compulsorily de-recognized) is permitted to distribute its assets subject to certain conditions as laid down in this circular, as well as other guidelines that may be issued by SEBI, Government(s), or any other statutory authority from time to time.





- 5.2. For the purpose of valuation of the assets of the stock exchange, a valuation agency shall be appointed by SEBI.
- 5.3. The quantum of assets for distribution will be available after payment of statutory dues including income tax, transfer of funds as specified in para 6.1, payment of dues as specified in para 6.2, refund of deposit (refundable) to the stock brokers including their initial contribution/ deposit to Settlement Guarantee Fund / Trade Guarantee Fund (SGF/ TGF), and contribution to SEBI as specified in para 5.4. However, the remainder of SGF/ TGF after refunding to stock broker as mentioned above shall be considered for the purpose of valuation of the assets of the exchange.
- 5.4. In case of de-recognition and exit, the stock exchange shall contribute upto 20% of its assets (after tax) towards SEBI Investor Protection and Education Fund (IPEF) for investor protection and in order to cover future liabilities, if any. The contribution may be decided by SEBI taking into account, inter alia, the governance standards of the stock exchange and estimation of future liabilities.
- 5.5. All stock exchanges including de-recognised stock exchanges shall not alienate any assets of the exchange without taking prior approval of SEBI.
6. Other Conditions:
  - 6.1. The exchange shall transfer Investor Protection Fund, Investor Services Fund, 1% security deposit available with them to the SEBI IPEF. The 1% security deposit shall subsequently be returned to the issuer company in due course on satisfying the prescribed conditions.
  - 6.2. The exchange shall pay following dues to SEBI:
    - 6.2.1. The dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee.
    - 6.2.2. The outstanding registration fees of brokers/trading members of such de-recognised stock exchanges as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition.
      - 6.2.2.1. Dues of the brokers to SEBI shall be recovered by the exchange out of the brokers' deposits / capital / share of sale proceeds / winding up proceeds / dividend payable, etc. available with the exchange.
      - 6.2.2.2. The exchange will be liable to make good any shortfall in collection of dues of the brokers to SEBI.
- 6.3. In case the stock exchange, after de-recognition, continues as a corporate entity under the Companies Act, 1956, it shall not use the expression 'stock exchange' or any variant in its name or in its subsidiaries name so as to avoid any representation of present or past affiliation with the stock exchange. The subsidiaries of de-recognised stock exchanges may continue to function as any other normal broking entity, managed by its own board, with a suitable change of name so as to avoid any representation of any present or past affiliation with the stock exchange.
- 6.4. Sale/distribution/transfer of assets/winding up of such exchanges/companies shall be subject to the applicable laws in force.
- 6.5. The stock exchange shall set aside sufficient funds in order to provide for settlement of any claims, pertaining to pending arbitration cases, arbitration awards, not implemented, if any, liabilities/claims of contingent nature, if any, and unresolved investors complaints/grievances lying with the exchange.
7. SEBI may allow de-recognition and/ or exit to stock exchanges subject to additional conditions as may be decided by SEBI in the interest of trade or in the public interest including securities market.
8. In case of stock exchange seeking exit, through voluntary surrender of recognition or after being compulsorily de-recognized by SEBI, an appropriate order shall be passed by SEBI.
9. **Applicability**  
This circular shall apply to:
  - (i) Recognized stock exchanges
  - (ii) Stock exchanges that stand de-recognised as on date of this circular
  - (iii) Stock exchanges that have applied for derecognition/ exit as on the date of this circular
10. This circular is issued in exercise of powers conferred under Section 11 (1) and 11(2) (j) of the Securities and Exchange Board of India Act, 1992, read with Section 5 of the Securities Contracts (Regulation) Act, 1956, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
11. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

**Rajesh Kumar D**  
Deputy General Manager



## 18 The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (SECC)

Issued by the Securities and Exchange Board of India vide Extracts of SEBI PR No. 66/2012 dated 21.06.2012.]

Based on the Board decisions, the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (SECC) have been notified on June 20, 2012 to regulate recognition, ownership and governance in stock exchanges and clearing corporations.

# Banking Laws



## 19 Annual return on Foreign Liabilities and Assets Reporting by Indian Companies – Revised format

Issued by the Reserve Bank of India vide RBI/2011-12/613, A.P. (DIR Series) Circular No. 133 dated 20.06.2012.]

1. Attention of the Authorised Dealer (AD) Category – I banks is invited to A. P. (DIR Series) Circular No.45 dated March 15, 2011 wherein, it was, inter-alia, stipulated that the annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, to the

Director, External Liabilities and Assets Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, C-8, 3rd floor, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051, by July 15 of every year.

2. The Annual Return on FLA is now modified as attached. An easy-to-fill soft form of the return with guidance to users and in-built validations is now being made available on the RBI website ([www.rbi.org.in](http://www.rbi.org.in) "Forms category " FEMA Forms) which can be duly filled-in, validated and sent by e-mail, by July 15 every year. Any queries related to filling of annual return should be e-mailed. These directions will come into force with immediate effect. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
3. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 and the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 and Notification No. FEMA 120 dated July 07, 2004, respectively will be issued separately.
4. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

**Rudra Narayan Kar**  
Chief General Manager



Confidential

### RESERVE BANK OF INDIA

**Annual Return on Foreign Liabilities and Assets as on 31 March, 20 .....**

(Return to be filled under A.P. (DIR Series) Circular No..... dated .....

and submitted to the Department of Statistics and Information Management, RBI, Mumbai)

**Please read the guidelines/definitions carefully before filling-in the Return**

(Respondents are encouraged to submit the e-form of this return, which can be downloaded from the FEMA Forms section under the 'Forms' category on the RBI website ([www.rbi.org.in](http://www.rbi.org.in)). The e-form is easy-to-fill with user guidance and consistency checks. The duly filled-in e-form should be emailed.)

#### 1. Name and Address of the Indian Company:

Name of the Company : .....  
Address: .....  
.....  
.....



City: ..... State: .....

Pin : [ ] [ ] [ ] [ ] [ ] [ ]

2. PAN Number of Company given by Income Tax Department (10 digit)

[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

3. CIN Number allotted by Ministry of Corp. Affairs, Govt. of India (21 digit)

[ ] [ ]

#### 4. Contact Details

Contact Person Name: ..... Designation: .....

Telephone No: ..... Fax: .....

e-mail: ..... Company's Web- Site (if any): .....

5. Account closing date [ ] [ ] [ ] [ ] [ ] [ ] (DD/MM/YYYY)

6. Nature of Business: .....

(As per National Industrial Classification (NIC) 2008 Code)

7. Whether your Company Name has changed during the last financial year (April - March) (Y/N)? ☐

If yes, please specify the Company's old Name

Company's old Name: .....

Effective Date (DD/MM/YYYY) [ ] [ ] [ ] [ ] [ ] [ ]

8. Whether the Company is listed (Y/N)? ☐

If yes, please furnish the share price on closing date of reference period

	Face Value ( Per Share)		Market Value (Per Share)	
	Latest March	Previous March	Latest March	
Ordinary/Equity Share				

9. Identification of the reporting Company (in terms of inward FDI) ☐

(a) Subsidiary of Foreign entity (b) Associate of foreign entity

(c) Public Private Partnership (d) Special Purpose Vehicle (d) Other

10. Whether the Company is Asset Management Company (Y/N)? ☐

11. Whether the Company has Technical Foreign collaboration (Y/N)? ☐

12. Whether the company has any business activity during the last financial year (April - March) (Y/N)? ☐

## Section II

### (Financial Details)

#### Block 1: Financial Detail of Reporting Company

**CARE:** Information should be reported for all the reference period, i.e. Previous March and Latest March. If reporting period is different from Account Closing Period, then information should be given on internal assessment

#### Block 1A: Total Paid-up Capital of Indian Company:

Item	End-of Previous March		End-of Latest March	
	Number of Shares in actual	Amount in Rs lakh	Number of Shares in actual	Amount in Rs lakh
1.0 Total Paid-up Capital (= 1.1 + 1.2)				
1.1 Total Equity & Participating Preference Share capital (= 1.1(a) + 1.1(b))				

(a) Ordinary/Equity Share*				
(b) Participating Preference Share				
1.2 Non-participating Preference Share#				
2.0 Non-resident Holdings (at face value in Rs lakh)				
2.1 Equity & Participating Preference share capital (Sum of item-1 to item-12)				
1 Individuals				
2 Companies				
3 Foreign Institutional Investors (FIIs)				
4 Foreign Venture Capital Investors (FVCIs)				
5 Foreign Trusts				
6 Private Equity Funds				
7 Pension/ Provident Funds				
8 Sovereign Wealth Fund (SWF)				
9 Partnership/ Proprietorship firms				
10 Financial Institutions				
11 NRIs/PIO				
12 Others non-resident holdings				
2.2 Non-Participating Preference share				
3.0 Non Resident Equity & Participating Preference share capital %				

#### Note

\*In case of different class of Equity Share (class A, class B etc.), consolidated figure should be reported.

#Non-participating Preference Share do not have following rights.

(a) to receive dividend, out of surplus profit after paying the dividend to equity shareholders.

(b) to have share in surplus assets remaining after the entire capital is paid in case of winding up of the company.

#### Block 1B: Profit and Loss Account (from P/L Account)

Item	Amount in Rs lakh	
	Previous Year (April - March)	Latest Year (April - March)
3.1 Profit (+) / Loss (-) before tax (During the Year)		
3.2 Profit (+) / Loss (-) after tax (During the Year)		
3.3 Dividend (Interim & Final Dividend)		
3.4 Tax on Dividend (if any)		
3.5 Retained Profit (= 3.2 - 3.3 - 3.4)		

#### Block 1C: Reserves & Surplus (from Balance Sheet)

Item	Amount in Rs lakh as at the end of	
	Previous March	Latest March
4.1 Reserves		
(Excluding Profit and Loss account balance)		
4.2 Profit (+) and Loss (-) account balance		
4.3 Reserve and Surplus (= 4.1 + 4.2)		
4.4 Net worth of Company (= 1.1 + 4.3)		





# From the Government

## Block 1D: Sales and Purchase made during the Financial Year

Note: To be filled in by company where single foreign direct investor holding is more than 50% in total equity (i.e. If reporting Indian company is subsidiary of Foreign company).

Item	Amount in Rs lakh (During the year)	
	Previous March	Latest March
5.1 Domestic Sales		
5.2 Exports		
5.3 Total Sales (= 5.1+ 5.2)		
5.4 Domestic purchase		
5.5 Imports		
5.6 Total Purchase (= 5.4 + 5.5)		

### Section III (FOREIGN LIABILITIES)

**CARE:** Information should be reported for all the reference period, i.e. Previous March and Latest March. If reporting period is different from Account Closing Period, then information should be given on internal assessment.

#### 2. Investments made in India:

- In case of listed companies, equity should be valued using share price on closing date of reference period.
- In case of unlisted companies, Own Fund of Book Value (OFBV) Method should be used.

## Block-2A:

Investment in India under Foreign Direct Investment (FDI) scheme (10% or more Equity Participation).

[Please furnish here the outstanding investments made under the FDI Scheme in India by Non-resident Direct investors, who were **individually holding 10 per cent or more** ordinary/equity & preference shares of your company on the reporting date]

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	Equity & Participating Preference share capital holding percent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
				Previous March	Latest March
	1.0 Equity Capital (= 1.1 - 1.2)				
	1.1 Liabilities to Direct Investor				
	1.2 Claims on Direct Investor (Reverse investment)				
	2.0 Other Capital # (= 2.1 - 2.2)				
	2.1 Liabilities to Direct Investor				
	2.2 Claims on Direct Investor				

#### Note:

- If the information is to be furnished for more than one investor, then add separate Block with same format.
- #: Other capital, item 2.1 & 2.2 of Block-2A includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its director investor indicated in Block-2A.

## Block 2B:

Investment in India under Foreign Direct Investment (FDI) scheme (Less than 10% Equity Holding)

[Please furnish here the outstanding investments made under the FDI Scheme in India by Non-resident Direct investors, who were individually holding less than 10 per cent ordinary/equity and participating preference shares of your company on the reporting date].

Country-wise consolidated information should be provided below:

Type of Capital	Country of non-resident investor	Equity & Participating Preference share capital holding percent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
			Previous March	Latest March
1.0 Equity Capital (= 1.1-1.2)				
1.1 Liabilities to Direct Investor				
1.2 Claims on Direct Investor (Reverse investment)				
2.0 Other Capital (= 2.1-2.2) #				
2.1 Liabilities to Direct Investor				
2.2 Claims on Direct Investor				

#### Note:

- If the information is to be furnished for more than one country, then add separate Block with same format.
- #: Other capital, item 2.1 & 2.2 of Block-2B includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with non-resident investors holding less than 10 per cent equity and related parties.

## 2C. Portfolio Investment in India

Please furnish here the outstanding investments by non-resident investors, other than those made under Foreign Direct Investment Scheme in India (i.e. other than those reported in Block-2A & Block-2B).

Portfolio Investment	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
		Previous March	Latest March
1.0 Equity Securities (at Market Value)			
2.0 Debt Securities (=2.1+2.2)			
2.1 Money Market Instruments (original maturity upto 1 year)			
2.2 Bonds and Other instruments (original maturity more than 1 year)			

Please ensure that Non-resident Equity & Participating Preference share capital mentioned at item 2.1 of block 1(A) should be reported in either Block-2A or Block-2B or Block-2C at Market Value i.e. sum of equity % in Block-2A, Block-2B & Block-2C must be equal to the item 3.0 of Block-1A for the latest march.

### Section IV (FOREIGN ASSETS)

- Please use the exchange rate as at end-March Previous FY and end-March Latest FY (as applicable) of reporting year while reporting the foreign Assets in Rs lakh.
- If overseas company is listed; equity should be valued using share price on closing date of reference period.
- If overseas company is unlisted, Own Fund of Book Value (OFBV) Method should be used for valuation ....of equity investment.

## Block-3: Equity Capital, Reserves & Surplus of Direct Investment Enterprise (DIE) Abroad (10% or more equity holding by Indian Reporting company)

[Please report here the total equity of DIE, equity held by your company, reserves (excluding P&L Account) and P&L Account of those DIEs in each of which your company hold 10% or more equity shares on the reference date.]

Name of the DIE	Item	Currency	Amount in Rs lakh as at the end of	
			Previous March	Latest March
	3.1 Total Equity of DIE			
	3.2 Equity of DIE held by you			



3.3 Reserves (Excluding P&L Account)			
3.4 Profit and Loss Account balance			
3.5 Reserve and Surplus (=3.3+3.4)			
3.6 Net Worth of DIE (=3.1+3.5)			
3.7 Exchange rate in Rs per unit foreign currency*			

\*: Exchange rate of reporting foreign currency against Indian Rs should be given as on closing date of reference period. FEDAI website (<http://www.fedai.org.in>) may be used for Exchange rates.

#### Block-4: Direct Investment Abroad under Overseas Direct Investment (ODI) Scheme

##### Block-4A: Direct Investment Abroad (10% or more equity holding)

Please furnish here the market value of outstanding investments in DIE, made by your company under the ODI Scheme, in each of which your company hold 10% or more equity shares on the reference date.

Name of the non-resident DIE	Type of Capital	Country of non-resident DIE	Equity holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
				Previous March	Latest March
	<b>1.0 Equity Capital</b> (=1.1-1.2)				
	1.1 Claims on Direct Investment Enterprise				
	1.2 Liabilities to Direct Investment Enterprise (Reverse investment)				
	<b>2.0 Other Capital</b> (=2.1-2.2) #				
	2.1 Claims on Direct Investment Enterprise				
	2.2 Liabilities to Direct Investment Enterprise				

#### Note:

- If the information is to be furnished for more than one overseas company, then ADD separate Block 3 and Block 4A with the same format.
- #: Other capital, item 2.1 & 2.2 of Block-4A includes all other liabilities and claims at Nominal value, except equity shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its DIE reported in Block-4A.

##### Block-4B: Direct Investment Abroad (Less than 10% equity holding).

Please furnish here the market value of outstanding investments in DIE, made by your company under the ODI Scheme, in each of which your company hold less than 10 % equity shares on the reference date.

Type of Capital	Country of non-resident DIE	Equity holding per cent latest year (%)	Amount in Rs lakh as at the end of	
			Previous March	Latest March
<b>1.0 Equity Capital</b> (=1.1-1.2)				
1.1 Claims on Direct Investment Enterprise				
1.2 Liabilities to Direct Investment Enterprise (Reverse investment)				
<b>2.0 Other Capital</b> (=2.1-2.2) #				
2.1 Claims on Direct Investment Enterprise				
2.2 Liabilities to Direct Investment Enterprise				

#### Note :

- If the information is to be furnished for more than one country, then use the ADD Block 4B with the same format.
- # : Other capital, item 2.1 & 2.2 of Block-4B includes all other liabilities and claims at Nominal value, except equity, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with non-resident companies where Indian company holds less than 10 per cent equity and also with related parties.

#### Block-5: Portfolio Investment Abroad

Please furnish here the market value of outstanding investments in non-resident enterprises, **other than those made under ODI scheme reported in Block-4.**

Portfolio Investment	Country of non-resident enterprise	Amount in Rs lakh as at the end of	
		Previous March	Latest March
<b>1.0 Equity Securities (at Market Value)</b>			
<b>2.0 Debt Securities</b> (=2.1+2.2)			
2.1 Money Market Instruments (original maturity upto 1 year)			
2.2 Bonds and Other instruments (original maturity more than 1 year)			

#### Note:

- Country wise consolidated information pertaining to each type of investment should be reported separately.
- If the information is to be furnished for more than one country, then use the ADD Block 5 with the same format..

### Section V (Other Assets and Liabilities)

#### Block 6: Other Investment (i.e., position with unrelated parties)

This is a residual category that includes all financial outstanding liability and claims not considered as direct investment or portfolio investment.

Other Investment	Outstanding Liabilities with unrelated party		Outstanding claims on unrelated party	
	Amount in Rs lakh as at the end of			
	Previous March	Latest March	Previous March	Latest March
6.1 Trade Credit				
6.2 Loans				
6. 3 Currency & Deposits				
6. 4 Other receivable and payable accounts				

[e-Form version of this Return is available on the FEMA Forms section under the 'Forms' category on the RBI website ([www.rbi.org.in](http://www.rbi.org.in)). System Requirement: MS- Excel 2003 and above, with macro enabled]

Place:

Signature and Name of the Authorized person

Date:

Seal/Stamp of the Company

Annex-I to A.P.(DIR Circular) No. \_\_\_\_\_  
dated \_\_\_\_\_

## RESERVE BANK OF INDIA

### Annual Return on Foreign Liabilities and Assets

#### INSTRUCTIONS:

The Reserve Bank's **Coordinated Direct Investment Survey** (CDIS) and **Coordinated Portfolio Investment Survey** (CPIS) are conducted under the auspices of the International Monetary Fund (IMF), wherein information is collected from **Indian resident companies on their foreign financial liabilities and assets position** as at end-March of the previous financial year (FY) and end-March of the latest FY. This information is used in the compilation of India's Balance of Payments (BoP), International Investment Position (IIP), Coordinated Direct Investment and Coordinated Portfolio Investment.

The completed return should be sent by July, **15 every year**. The filled-in return in excel format should be sent at e-mail, however, queries related to filling of return should be e-mailed.

**Confidentiality Clause:** The company-wise information so provided will be kept confidential and only consolidated aggregates will be released by the Reserve Bank.



# From the Government

## General Instruction for filling-in the Schedule:

- 1) Refer to the definitions given in the Excel format of the return before filling-in the return.
- 2) Irrespective of company's Account Closing date, information should be provided in prescribed format for end of previous March and latest March.
- 3) If the reference period is different from the Account Closing Period and/or accounts are unaudited, information should be furnished based on internal assessment or unaudited accounts.
- 4) All amounts should be reported as follows:
  - (a) Blocks 1, 2, 4 & 5 should be reported in Rs. Lakh.
  - (b) Blocks 3 should be reported in actual foreign currencies.
- 5) If any block is not sufficient to report the information, use add button to insert the blocks. Except filled-in return (in excel), **no information in separate annexure will be accepted.**
- 6) **Methodology for valuation of foreign liabilities and foreign assets:**

In case of listed company, equity should be valued using share price on closing date of reference period, while in case of unlisted company, Own Fund of Book Value (OFBV) Method should be used.

### Example: Valuation of Equity Investment using OFBV method in case of unlisted company

		Previous March	Latest March
A	Equity Share Capital		
B	Participating Preference Share Capital		
C	Equity & Participating Preference Share Capital	A+B	A+B
D	Reserves & Surplus		
E	Net worth of the Company	C+D	C+D
F	Equity Share Capital held by Non Resident Direct investor		
G	Participating Preference Share Capital held by Non Resident Direct investor		
H	Equity & Participating Preference Share Capital held by Non Resident Direct investor	F+G	F+G
I	Equity & Participating Preference Share holding Percentage	H/C	H/C
J	FDI at Market Value	E*I	E*I

### Note:

- a) Shares issued to non-resident on Non-Repatriable basis should not be reported in Annual Return.
- b) Traded Debt securities should be valued at market price, while all other types of debt, viz., loan, trade credit, deposits, and other accounts payable / receivable should be valued at nominal value.
- c) While reporting the foreign currency denominated, use the exchange rate as at end-March Previous FY and end-March Latest FY (as applicable)

### Before filling the return to the Reserve Bank of India, please check that:

- You have reported all the items of the return relevant to you and as per your record.
- You have kept a copy of the filled-in schedule in your own records.

### For any clarification, please contact:

ELASD Help -desk  
Telephone No.:(022)26571265 / 26578340 / 26578241  
FAX No. :(022) 26571265 /26570848  
e-mail:

Annex-II to A.P.(DIR Circular) No. \_\_\_\_\_  
dated \_\_\_\_\_

## Concepts & Definitions to be used while filling-in Annual Return on Foreign Liabilities and Assets

### Residence of Enterprises

An enterprise is said to have a centre of economic interest and to be a resident unit of a country (economic territory) when the enterprise is engaged in a significant amount of

production of goods and/or services there or when it owns land or buildings located there. The enterprise must maintain at least one production establishment in the country and must plan to operate the establishment indefinitely or over a long period of time.

### Retained Profit (Block 1B, Item 3.5, Section -II)

Retained profit (loss) = Profit (loss) after tax - Dividend declared - Tax on dividend  
(i.e. Item 3.5 = Item 3.2 minus Item 3.3 minus Item 3.4, of Block 1B)

### Reserves (Block 1C, Item 4.1, Section-II)

It includes all the reserves shown in the balance sheet of a company. It should not include the balances carried forward from P/L accounts.

### Profit and loss account Balance (Block 1C, item 4.2, Section-II)

The Profit and Loss (P/L) Account balances carry forwarded to the balance sheet should be reported at item 4.2 of Block 1C. The information should be taken from the Balance sheet and not from P/L account.

### A. Direct Investment:

Direct investment is a category of international investment in which a resident entity in one economy [Direct Investor (DI)] acquires a lasting interest in an enterprise resident in another economy [Direct Investment Enterprise (DIE)]. It consists of two components, viz., Equity Capital and Other Capital.

### (i) Equity Capital under Direct Investment

It covers (1) Equity in branches and all shares (except non-participating preference shares) in subsidiaries and associates; (2) Contributions such as the provision of machinery, land & building(s) by a direct investor to a DIE by equity participation; (3) Acquisition by a DIE of shares in its direct investor, termed as Reserve investment (i.e. claims on DI).

### (a) Foreign Direct Investment in India (Block 2A, 2B, Section-III)

If the Indian company has issued the shares to non-resident entities under the FDI scheme in India, then it should be reported under the Foreign Direct Investment in India (Liabilities), Section III of the return. If the non-resident entity holds the 10 per cent or more equity plus participating preference shares together, in the reporting Indian company, then it should be reported under **Block-2A** (item 1.1, liabilities to direct investor). However, if non-resident entity holds less than 10 per cent of the equity plus participating preference shares capital of reporting Indian company, then it should be reported under **Block-2B** (item 1.1, liabilities to direct investor). In both the cases, the non-resident entity is





called as the Direct Investor (DI) while the reporting Indian company is called as Direct Investment Enterprise (DIE).

If the **reporting Indian company** also holds the **equity shares in its DI** company abroad and if its shareholding is **less than 10 per cent** of equity capital of DI company, then it is called as **reverse investment** and same should be **reported under item 1.2** (claims on direct investor) of the respective blocks, i.e. **Block 2A** or **2B**.

## **(b) Direct Investment abroad by Indian companies** (Block 4A and 4B, Section-IV)

If the reporting Indian company invests in equity and/or participating preference shares of overseas company, under the Overseas Direct Investment Scheme in India, i.e. investment in Joint venture or wholly owned subsidiaries abroad, then it should be reported under Section IV of the return. If the Indian company **holds 10 per cent or more** equity plus participating preference shares together, in overseas company, then it should be reported under **Block-4A** (item 1.1, claims on direct investment enterprise). However, if the Indian company holds **less than 10 per cent** of the equity plus participating preference shares capital of overseas company, then it should be reported under **Block-4B** (item 1.1, claims on direct investment enterprise). In both the cases, the Indian company is called as the Direct Investor (DI) while the overseas company is called as Direct Investment Enterprise (DIE).

If the **overseas DIE** also holds the **equity shares in Indian reporting company** (DI) and if its shareholding is **less than 10 per cent** of equity capital of Indian reporting company, then it is called as **reverse investment** and same should be reported under item 1.2 (liabilities to DIE) of the respective blocks, i.e. **Block-4A** or **4B**.

## **(ii) Other Capital under Direct Investment** (Block 2A, 2B, 4A and 4B)

The other capital (other receivables and payables, except equity and participating preference shares investment) component of direct investment covers the outstanding liabilities or claims arising due to **borrowing and lending of funds, investment in debt securities including non-participating preference shares, trade credits, financial leasing, share application money etc., between direct investors and DIEs and between two DIEs that share the same Direct Investor**. Non-participating preference shares owned by the direct investor are treated as debt securities & should be included in Other Capital.

Other payables and receivables between Indian reporting company and its non-resident direct investor holding 10 per cent or more equity and/or preference share capital, should be reported at item 2.1 and 2.2 respectively of Block 2A.

However, other payables and receivables between Indian reporting company and non-resident investor holding less than 10 per cent of equity and/or preference capital as well as with non-resident fellow enterprises (related parties) should be reported at item 2.1 and 2.2 respectively of Block 2B.

Similarly, other receivables and payables between Indian reporting company and its overseas direct investment enterprise where Indian company hold 10 per cent or more equity and/or preference capital, should be reported at item 2.1 and 2.2 respectively of Block 4A. However, other receivables and payables between Indian reporting company and overseas direct investment enterprise where Indian company hold less than 10 per cent of equity and/or preference share capital of overseas company, as well as with non-resident fellow enterprises (related parties) should be reported at item 2.1 and 2.2 respectively of Block 4B.

## **B. Portfolio Investment:**

### **(i) Portfolio Investment**

(Block 2C & 5)

It covers **external claims by or liabilities to reporting Indian company** in equity and debt securities **other than those included in direct investment** (Block 2A, 2B on liability side and Block 4A and 4B on asset side). Debt securities include long-term bonds & notes and short-term money market instruments.

Any investment made **by the non-resident entities in Indian company** under the Portfolio Scheme in India should be reported under **Block-2C** (Portfolio liabilities). Further, shares purchased by non-residents of Indian reporting company through the secondary market, should be reported as Portfolio liabilities at Block 2C.

Any investment made **by the Indian company** in foreign shares and / or debt securities, **apart from the investment made under the Overseas Direct Investment Scheme**, should be reported under **Block-5** (Portfolio assets).

### **(ii) Equity Securities**

(Block 2C & 5, Item 1.0)

Equity securities are instruments acknowledging the holders' claim to the residual income of the issuing enterprise after the claims of all creditors have been met. These include ordinary shares, stocks, participating preference shares, depository receipts (ADRs/GDRs) denoting ownership of equity securities issued to non-residents, shares/units in mutual funds & investment trusts, equity securities that are sold under repurchase agreement, equity securities that are



# From the Government

sold under securities lending arrangement.

## (iii) Debt Securities (Block 2C & 5, Item 2.0)

These include bonds & notes and money market instruments.

### (iii.a) Bonds and Notes (Block 2C & 5, Item 2.1)

This category includes debt securities with original contractual maturities of more than one year (long-term). It includes the long-term securities such as Debentures, Non-participating preference shares, Convertible bonds, Negotiable certificates of deposit, Perpetual bonds, Collateralized mortgage obligations, Dual currency, Zero coupon and other Deep discounted bonds, Floating rate bonds and Index-linked bonds etc.

### (v) Money Market Instruments (Block 2C & 5, Item 2.2)

These short-term instruments with original contractual maturities up to one year include treasury bills, commercial paper, banker's acceptances, short-term negotiable certificates of deposit and short-term notes issued under note issuance facilities. It may be noted that the instruments that share the characteristics of money market instruments but are issued with maturities of more than one year are classified as Bonds and Notes.

## C. Other Investments: (Block 6, Section-V)

This is a residual category that **includes** all financial outstanding liabilities and assets **not considered as direct investment or portfolio investment** such as:

### (C.i) Trade Credits

Trade credits are assets and liabilities that arise from the **direct extension of credit from a supplier to a buyer** for transactions in **goods and services and advance payments** by buyers for transactions in goods and services and for work in progress. **Trade credit assets are advance payments** made by **importer (you)** for (your) imports or **credit extended by exporter (you)** directly to (your) importer. **Trade credit liabilities are advance payment received** by the exporter (you) for (your) exports or **credit received by importer (you)** directly from (your) exporter. It may be noted here that **funding provided by an enterprise other than the supplier** for the purpose of purchasing goods or services is treated **as a loan** and not as trade credit.

### (C.ii) Loans

Loans are direct lending of funds by a creditor to a debtor through arrangements. These include, external commercial borrowings, loans to finance trade (i.e. Buyers' credit in which a bank or a financial institution or an export credit

agency in the exporting country extends a loan directly to a foreign buyer or to a bank in the importing country to pay for the purchase of goods and services), mortgages, and other loans and advances. Financial leases and repurchase agreements are also considered loans. These outstanding loans (liabilities/claims) should be reported under the loan item of Block 6.

Note that **loan received from or payable to the non-resident direct investor** should be reported under **Other Capital of Block-2A or 2B** while loan extended to or taken from your subsidiaries/ associates abroad should be reported under **Other Capital of block 4A or 4B**.

### (C.iii) Currency & Deposits:

If the reporting Indian company is a **bank**, then all the outstanding balances of NRE, NRO (current/saving/fixed deposits) and FCNR accounts as well as any credit balance in VOSTRO accounts and overdue in NOSTRO accounts, should be reported against **currency and deposits under the heads 'outstanding liabilities'**. Similarly, credit balances in NOSTRO accounts as well as debit balances in VOSTRO accounts should be reported against **currency and deposits under the heads 'outstanding claims'**.

If the reporting entity is **other bank**, then the currency and deposits kept abroad, including the ECB park abroad, should be reported against currency and deposits under the heads 'outstanding claims'.

### (C.iv) Other Receivable and Payable Accounts:

These are the residual items that include all external financial liabilities and assets not recorded elsewhere. These are miscellaneous receivables and payables such as accounts relating to interest payments in arrears, loan payments in arrears, outstanding wages and salaries, prepaid insurance premium, outstanding taxes etc.

## Identification of the Indian company (Item 9, Section-I).

### a) Foreign Subsidiary:

An Indian company is called as a Foreign Subsidiary if a non-resident investor owns more than 50% of the voting power/equity capital OR where a non-resident investor and its subsidiary(s) combined own more than 50% of the voting power/equity capital of an Indian enterprise.

### b) Foreign Associate:

An Indian company is called as Foreign Associate if non-resident investor owns at least 10% and no more than 50% of the voting power/equity capital OR where non-resident investor and its subsidiary(s) combined own at least 10% but no more than 50% of the voting power/equity capital of an Indian enterprise.



## c) Special Purpose Vehicle:

A special purpose Vehicle (SPV) is a legal entity (usually a limited company of some type or, sometimes, a limited partnership) created to fulfil narrow, specific or temporary objectives. SPV have little or no employment, or operations, or physical presence in the jurisdiction in which they are created by their parent enterprises, which are typically located in other jurisdictions (economies). They are often used as devices to raise capital or to hold assets and liabilities and usually do not undertake significant production.

## d) Public Private Partnership:

Public-private partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project.

## 20 Export Credit Refinance Facility (ECR): Relaxation

Issued by the Reserve Bank of India vide RBI/2011-12/603, Ref. MPD No. 355/07.01.279/2011-12 dated 18.06.2012.]

At present, the Export Credit Refinance (ECR) limit is fixed at 15 per cent of the outstanding rupee export credit eligible for refinance as at the end of the second preceding fortnight.

With a view to enhancing the credit flow to the export sector, it has been decided to enhance the eligible limit of the ECR facility for scheduled banks (excluding RRBs) from 15 per cent of the outstanding export credit eligible for refinance to 50 per cent, effective fortnight beginning June 30, 2012. This will provide additional liquidity support to banks of over ₹300 billion. The rate of interest charged on the ECR facility will continue to be the prevailing repo rate under the LAF, which is currently 8.0 per cent.

Janak Raj  
Adviser-in-Charge

## 21 Overseas Direct Investments by Indian Party- Online Reporting of Overseas Direct Investment in Form ODI

Issued by the Reserve Bank of India vide RBI/2011-12/585, A.P. (DIR Series) Circular no. 131 dated 31.05.2012.]

1. Attention of Authorised Dealer Category - I (AD Category

- I) banks is invited to A.P. (DIR Series) Circular No. 36 dated February 24, 2010, wherein ADs were advised about the operationalisation of the online reporting system of overseas direct investments (ODI) with effect from March 2, 2010. The system, inter alia enables online generation of the Unique Identification Number (UIN).

2. Under the online reporting system, AD Category – I banks could generate the UIN online under the automatic route. However, reporting of subsequent remittances under the automatic route as well as the approval route was to be done online in Part II of form ODI, only after receipt of the letter from the Reserve Bank confirming the UIN.
3. It has now been decided to communicate the UIN in respect of cases under the Automatic Route to the ADs/Indian Party through an auto generated e-mail to the email-id made available by the AD/Indian Party. Accordingly, with effect from June 01, 2012 (Friday), the auto generated e-mail, giving the details of UIN allotted to the JV / WOS under the automatic route, shall be treated as confirmation of allotment of UIN, and no separate letter shall be issued by the Reserve Bank to the Indian party and AD Category - I bank confirming the allotment of UIN.
4. It may also be noted that the subsequent remittances under the automatic route and remittances under the approval route are to be reported online in Part II of form ODI, only after receipt of the e-mail communication/confirmation conveying the UIN.
5. The applications in form ODI for overseas direct investment under the approval route would continue to be submitted to the Reserve Bank in physical form as hitherto, in addition to the online reporting of Part I of the Form as contemplated in A.P. (DIR Series) Circular No. 36 dated February 24, 2010.
6. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
7. The directions contained in this Circular have been issued under Section 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

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





From the Government



REGD. NO. D.L. - 33004/99

# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग III-खण्ड 4  
PART III - Section 4

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

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नई दिल्ली, सोमवार, जून 4, 2012/ ज्येष्ठ 14, 1934

No. 142]

NEW DELHI, MONDAY, JUNE 4, 2012 / JYAISHTA 14, 1934

## MINISTRY OF CORPORATE AFFAIRS

(The Institute of Company Secretaries of India)  
(Constituted under the Company Secretaries Act, 1980)

### NOTIFICATION

New Delhi, the 4<sup>th</sup> June, 2012

No.710/1(M)/2: Whereas the draft regulations further to amend the Company Secretaries Regulations, 1982 were published as required by sub-section (3) of section 39 of the Company Secretaries Act, 1980 (56 of 1980) at pages 1 to 20 in the Gazette of India, Extra Ordinary, Part III, Section 4, vide number 710/1(M)/1 dated the 30th January, 2012 for inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of forty-five days from the date on which the copies of the said gazette containing the Notification as published in the Gazette of India were made available to the public;

And whereas copies of the said Gazette were made available to the public on the 31st January, 2012;

And whereas the objections and suggestions received within the aforesaid period from the public in respect of the said draft regulations have been duly considered by the Council;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 39 of the Company Secretaries Act, 1980 (56 of 1980), the Council, with the approval of the Central Government hereby makes the following regulations further to amend the Company Secretaries Regulations, 1982, namely :-

- (1) These regulations may be called 'The Company Secretaries (Amendment) Regulations, 2012.
- (2) They shall come into force on the date of their final publication in the Official Gazette.

July  
2012



CHARTERED SECRETARY

912

(GN-154)



2. In the Company Secretaries Regulations, 1982 (hereinafter referred to as the said regulations), in regulation 11, in sub-regulation (1), after clause (d), the following clause shall be inserted, namely:-

"(e) A member has not complied with the guidelines issued by the Council from time to time".

3. In the said regulations-

- (1) after the words "Intermediate Examination" wherever they occur, the words "or Executive Programme Examination" shall be inserted.
- (2) after the words "Final Examination" wherever they occur, the words "or Professional Programme Examination" shall be inserted.

4. In regulation 20 of the said regulations, after sub-regulation (2), the following sub-regulation shall be inserted, namely:-

(2A) "A person who has appeared or enrolled himself for appearing in the degree examination in any discipline other than the Fine Arts or an examination recognised by the Central Government as equivalent thereto may be provisionally enrolled for undergoing coaching for the Executive Programme:

Provided that the provisional enrolment for undergoing coaching for the Executive Programme shall be confirmed after satisfactory proof of having passed the aforesaid examination has been furnished by him to the Secretary within a period of six months from the date of provisional enrolment:

Provided further that if such a person fails to produce such proof within the aforesaid period, his provisional enrolment shall be cancelled and no tuition or any other fee paid by him shall be refunded and no credit shall be given for the coaching undergone by him".

5. After Chapter IV of the said regulations, the following Chapter shall be inserted, namely:-

## **"Chapter IV A**

### **Corporate Compliance Executive Certificate - ICSI**

#### **28A. Corporate Compliance Executive Certificate**

- (1) A registered student of the Institute who has passed the Foundation examination and such papers of the Intermediate examination or Executive programme as may be decided by the Council from time to time or exempted therefrom and has completed the training requirements and attended the professional development programmes or such other programmes as may be decided by the Council from time to time may apply for award for the Corporate Compliance Executive Certificate and on his application being accepted by the Secretary and on payment of the requisite fee as may be determined by the Council from time to time, may be awarded Corporate Compliance Executive Certificate of the Institute and shall be entitled to use the descriptive letters 'Corporate Compliance Executive'.
- (2) The student shall have to complete the course of Corporate Compliance Executive Certificate including the training requirements within the registration period.
- (3) The person having awarded the Corporate Compliance Executive Certificate may continue to pursue the regular Company Secretaryship course if he so desires.
- (4) Except to the extent provided in this Chapter or as decided by the Council from time to time, regulations in Chapter IV and VI relating to 'Registered Students' and 'Examinations' shall mutatis-mutandis apply to the 'Corporate Compliance Executive Certificate Course'.



- (5) A student after having awarded the Corporate Compliance Executive Certificate shall secure such number of Programme Credit Hours (PCSH) as the Council may determine from time to time, for renewal of Corporate Compliance Executive Certificate.

28B. Status of holder of Corporate Compliance Executive Certificate

The grant of certificate under regulation 28A shall not confer on the Corporate Compliance Executive the rights of a member, nor entitle him to claim membership of the Institute".

6. In regulation 38 of the said regulations, ---

(1) for sub-clause (ii), the following sub-clause shall be substituted, namely :-

"(ii) Pass in the Foundation Examination of the Institute of Cost and Works Accountants of India or Common Proficiency Test (CPT) of the Institute of Chartered Accountants of India or any other Institution in India or abroad recognised as equivalent thereto by the Council; or"

(2) in sub-clause (iii), for the proviso, the following proviso shall be substituted namely:-

"Provided that a candidate who is seeking exemption from the Foundation Examination under clause (iii) above before becoming eligible for undergoing coaching for the Executive programme or such other equivalent programme or course as may be prescribed by the Institute of Company Secretaries of India from time to time may be required to produce a certificate from the head of the coaching administration (by whatever name designated) to the effect that he has undergone satisfactorily a course of postal or oral tuition (inclusive of electronic mode) for those subject of the Foundation examination which he had not studied at the graduate or post graduate level."

7. In regulation 39 A of the said regulations, for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

"(2) The syllabus for the Foundation examination shall be such as may be approved by the Council from time to time".

8. In regulation 40 of the said regulations, after clause (b), the following clause shall be inserted, namely:-

"(bb) a student registered for Executive Program on or after the 1st September, 2009 shall successfully complete within a period of six months of his registration Student Induction Program for seven days in such manner as may be provided by the Council from time to time or may be exempted there from".

9. In regulation 41B of the said regulations, for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

"(2) The syllabus for the Executive Programme Examination shall be such as may be approved by the Council from time to time".

10. In regulation 44B of the said regulations, for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

"(2) The syllabus for the Professional Programme Examination shall be such as may be approved by the Council from time to time."

11. In regulation 48 of the said regulations, after clause (c), the following clause shall be inserted, namely:-

"(d) a candidate registered for Executive Programme on or after the 1st September 2009 and is required to undergo training under clause (b) or (c) of regulation 48, shall attend and complete successfully Executive Development Programme for eight days and attend Professional Development Programmes for twenty five hours or for such hours as may be approved by the Council from time to time or exempted therefrom".





12. In regulation 50 of the said regulations, in clause (b), for the words "Secretarial modular training programme", occurring at both the places, the words "management skills orientation programme" shall be substituted.
13. In regulation 55A of the said regulations, for the words "Secretarial modular training programme", the words "management skills orientation programme" shall be substituted.
14. In regulation 55S of the said regulations, after Course B, the following Courses shall be inserted, namely:-

## **"Course C: Competition Law Course"**

- (1) The Competition Law Course shall comprise of following two parts namely-

- (a) Part I of the Course shall consist of four papers of 400 marks, and
- (b) Part II of the Course shall consist of Training for 100 Hours in the manner and areas specified by the Council under a Competition Law practitioner, Legal Department of Large Companies particularly Multi National Companies or Practising Company Secretaries firms engaged in Competition Law practice, as may be approved by the Council from time to time.

- (2) The Candidates for Part I examination shall be examined in four subjects consisting of the following papers, namely:-

Paper I	Concept and Economics of Competition	(100 marks)
Paper II	Anti-competitive Agreements and Abuse of Dominance	(100 marks)
Paper III	Regulation of Combinations	(100 marks)
Paper IV	Competition Compliance Programme	( 50 marks)
Paper V	Case Study	(50 marks)

- (3) The syllabus for the Part I of Competition Law Course shall be as provided in Schedule F.

- (4) A candidate successfully completing the Competition Law Course shall be awarded a Diploma Certificate to that effect in the appropriate form by the Institute and shall be entitled to use the descriptive letters and bracket "DCL (ICSI)" to indicate that he has been awarded "Post Membership Diploma in Competition Law" by the Institute of Company Secretaries of India.

## **Course D: Corporate Restructuring and Insolvency**

- (1) The Corporate Restructuring and Insolvency shall comprise of following two modules namely -

- (a) Module A of the Course shall consist of four papers of 100 marks, and
- (b) Module B of the Course shall consist of Compulsory Workshop of one day organised in the manner specified by the Council before the written examination in June or December wherein the candidates shall be required to make presentation on case studies assigned in advance and interact with experts and clarify their doubts about the study during the workshop.

- (2) The Candidates for 'Module A' examination shall be examined in four papers consisting of the following papers, namely:-

Paper 1	Corporate Restructuring, Rescue and Insolvency	100 marks
Paper 2	Strategic Options for Corporate Restructuring	100 marks
Paper 3	Cross Border Insolvency Practice and Procedure	100 marks
Paper 4	Professional and Ethical Practices for Insolvency Practitioners	100 marks

- (3) The syllabus for the Module A of Corporate Restructuring and Insolvency shall be as provided in Schedule G.

- (4) A candidate successfully completing the Corporate Restructuring and Insolvency shall be awarded a Diploma Certificate to that effect in the appropriate form by the Institute and shall be entitled to use the descriptive letters and



## From the Government

bracket "DCRI (ICSI)" to indicate that he has been awarded "Post Membership Diploma in Corporate Restructuring and Insolvency" by the Institute of Company Secretaries of India;"

15. In regulation 55N of said regulations, after the proviso, the following proviso shall be inserted, namely:-

"Provided further that the Council may provide for any other training, workshop or completion of any other requirement in part II of the Post Membership Qualification Courses in addition or in lieu of Dissertation or project report as specified in sub-regulation (1)".

16. After regulation 149 of the said regulations, the following regulation shall be inserted, namely:-

"149A (1) Before the beginning of the next financial year, the Secretary shall cause the annual financial statement (the Budget) prepared including therein all anticipated income and expenditure for the financial year and place the same before the Council for approval.

(2) The Secretary shall take into consideration the requirements of the Regional Council and Chapters while preparing the annual financial statement (the Budget).

(3) The Council shall consider the annual financial statement (the Budget) placed before it and shall approve the same with or without modification before the commencement of the next financial year".

17. For regulation 151 of the said regulations, the following regulation shall be substituted, namely:-

(1) "151(1) The annual accounts of the Institute shall be audited by a Chartered Accountant or the firm or Chartered Accountants.

(2) The Council shall, not less than two months before thirtieth September of each year deliver to the auditor the accounts of the previous year and the auditor shall examine such accounts and report thereon, not later than one month before thirtieth September of that year.

(3) The auditor shall be entitled to ask for any information or explanation regarding the accounts from the Secretary and such information and explanation shall be supplied to him in so far as may be available at that time."

18. After regulation 155 of the said regulations, the following regulation shall be inserted, namely:-

"155A (1) In the event it is brought to the notice of the Council that the accounts of the Institute do not represent a true and actual view of the Institute's finances, the Council shall itself cause special audit to be conducted.

(2) If the information that the accounts of the Council do not represent a true and fair view of its finances is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such action as it considers necessary and shall furnish an Action Taken Report on it to the Central Government".

19. After regulation 157 of the said regulations, the following regulation shall be inserted, namely:-

"157A The employees of the Council and the Institute shall be governed by the Institute of Company Secretaries of India Employees terms and Conditions of Service specified in Schedule F".

20. In the said regulations, after SCHEDULE E, the following Schedules shall be inserted, namely:-

### "SCHEDULE F

the Institute of Company Secretaries of India Service Rules, 1979 as amended by the Council from time to time".



## SCHEDULE G

### Syllabus for Part 1 Post Membership Diploma in Competition Law

1. Overall objective and scope:
2. Capacity building of Company Secretaries in the area of legal, procedural and practical aspects of Competition Law and matters related thereto.
3. The objectives of the Post Membership Qualification Course in Competition Law are that the members who complete the Post Membership Qualification Course in Competition Law should -
  - Appreciate various concepts of competition, economics of Competition including economic theories and policies that influence the aspects of Competition in the market and operation of Competition Law.
  - Gain acumen, insight and thorough knowledge of law governing competition in India, and major overseas jurisdictions.
  - Understand and appreciate the interface between Competition Commission of India and Sectoral Regulators.
  - Understand the Competition Law in practice and in particular procedures involved in various aspects of administration of competition law in India including dealing with Competition Commission of India and Competition Appellate Tribunal.
  - Understand and appreciate the importance and structure of Competition Compliance Programme; its effective implementation, monitoring and evaluation.
  - Be able to apply the knowledge of Competition Law in commercial context.
4. The papers I to IV shall be of three hours duration and shall carry 100 marks each.
5. The medium of writing the examination shall be in English:

Provided that it shall be competent to the Council to permit the use of Hindi as a medium of writing any particular papers.

### SYLLABUS FOR PMQ COURSE IN COMPETITION LAW

#### Part I - Papers (I, II, III and IV)

#### PAPER I CONCEPTS AND ECONOMICS OF COMPETITION LAW (100 MARKS)

1. Definition, nature, rationale and objective of Competition and Competition Law; relation between Competition Law and Policy
2. Theory of Competition : Perfect Competition : Benefits of perfect Competition - Allocative Efficiency; Productive Efficiency; Dynamic Efficiency; Harmful Effect of Monopoly;
3. Economies of Scale and Natural Monopolies : Network effects; Two sided markets; Network Effect and Competition Policy; Particular Sectors; Beneficial restriction of Competition; Ethical issues;
4. Market Definition and Market Power : Market definition; Relevant Product Market; Relevant Geographic Market; Market Power, Market Share and Market Concentration;
5. Development of Competition Law in India: History of Competition Law in India including constitutional provisions and





# From the Government

reports of relevant Committees;

6. Institutional Framework under Competition Act, 2002 : Competition Commission of India (CCI); Duties, Powers and Functions of Competition Commission; Competition Appellate Tribunal; Powers of Appellate Tribunal; Right to Legal Representation; Appeal to Supreme Court; Powers of Central Government; Extra Territoriality and Effect Doctrine;
7. Interface between Competition Commission with Sectoral Regulators: Competition as underlying principle for regulation; Competition Authority and Sectoral Regulator in select jurisdictions; Regulatory framework under Competition Act and laws governing sectoral regulators;
8. History of Competition Law and Competition Law in select countries - US, UK, European Union.

## **PAPER II ANTI-COMPETITIVE AGREEMENTS AND ABUSE OF DOMINANCE**

**(100 MARKS)**

### **Anti-Competitive Agreements**

- Definition of agreement; Agreements and Scope thereof; Prohibition on Anti-Competitive Agreements; Per se and Rule of Reason.
- Types of anti-competitive Agreements : Horizontal Agreements including cartels, Presumption in case of certain Horizontal agreements
- Vertical Agreements
- Procedure for Inquiry by Competition Commission of India
- Exceptions- Joint Ventures; Intellectual Property Rights; Export Exemption
- Orders By Competition Commission and Penalties for Contravention
- Leniency Programme for Cartels

### **Abuse of Dominant Position**

- Definition and determination of Dominance
- Abuse of dominance- exclusionary abuses and exploitative abuses;
- Procedure for Inquiry by Competition Commission of India into Abuse of Dominant Position
- Remedies against abuse of dominant position

## **PAPER III REGULATION OF COMBINATIONS**

**(100 MARKS)**

- Definition of Combinations; types of combinations including mergers, acquisitions, amalgamations, acquisition of control
- Jurisdiction of Competition Commission of India
- Jurisdictional Test - Turnover, Asset, domestic nexus, exemptions
- Notification of Combinations
- Procedure for Inquiry into Combinations
- Test of Appreciable Adverse Effect
- Remedies and Orders in case of Combinations

## **PAPER IV COMPETITION COMPLIANCE PROGRAMME**

**(50 MARKS)**

- Objectives and advantages of Competition Compliance Programme
- Components of Competition Compliance Programme for Enterprises
- Compliance Programme for trade associations
- General Guidelines for Devising a Compliance Programme
- Competition Compliance Programmes in UK, USA and European Union
- Implementation of Compliance Programme - Training, Monitoring and Evaluation.



## CASE STUDY (50 MARKS)<sup>1</sup>

### Anti-Competitive agreements

1. Ahlstrom Osakeyhtiö v. Commission (Wood Pulp) [1993] ECR I-1307, ECJ
2. European Commission v. Volkswagen, Case C-74/04 P
3. Consten and Grunig v. Commission [1966] ECR 299, ECJ
4. Bayer AG v. Commission [2000] ECR II-3383, [2001] 4 CMLR 126
5. Stergios Delimitis v. Henninger Brau AG [1991] ECR I-935, ECJ
6. Federal Trade Commission v. Indiana Federation of Dentists, 476 U.S. 447 (1986)
7. Leegin Creative Leather Products Inc. v. PSKS Inc. 551 U.S. 877 (2007)
8. GTE Sylvania Inc. v. Continental TV Inc. 433 U.S. 36 (1977)
9. E.I. duPont de Nemours Co. v. FTC 729 F.2d 128 (2d Cir. 1984)
10. Tata Engineering and Locomotive Co. Ltd., Bombay Vs. The Registrar of the Restrictive Trade Agreement, New Delhi, AIR 1977 SC 973
11. Director General (I & R) v. Universal Cylinders Ltd. RTP enquiry

### Abuse of Dominance

12. Hoffmann-la Roche and Co. AG v. Commission, Case 85/76, [1979] ECR 461, ECJ; [1979] 3 C.M.L.R. 211.
13. Europemballage Corp. v. Commission (Continental Can), Case 6/72, [1973] ECR 215.
14. United Brands Co. v. Commission, Case 27/76, [1978] ECR 207, ECJ.
15. IstitutoChemioterapicoItaliano SPA v. Commission (Commercial Solvents), Cases 6, 7/73, [1974] ECR 223, ECJ.
16. Radio TelefisEireann v. Commission (Magill), Cases C-241/91P & C-242/91P, [1995] ECR I-743, ECJ.
17. Microsoft Corp. v. Commission, Case T-201/04, [2007] ECR II-1491, CFI.
18. Tetra Pak International SA v. Commission (Tetra Pak II), Case C-333/94P, [1996] ECR I-5951, [1997] 4 CMLR 662.
19. France Telecom SA v. Commission (Wanadoo), Case T-340/03, [2007] ECR II-00107, CFI.
20. Intel Corporation v. Commission, CaseCOMP/C-3/37.990 - Intel.
21. Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, 540 U.S. 398 (2004).
22. Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958)

### Combinations

23. Boeing / McDonnell Douglas (Case No IV/M.877- 97/816/EC)
24. Airtours v. Commission, Case T-342/99, [2002] ECR II-2585, CFI.
25. Bertelsmann AG v. Commission (Impala) Case C-413/06 P, [2008] ECR I-4951 (10th July 2008), ECJ.
26. Tetra Laval BV v. Commission, Cases C-12/03 and C-13/03 P, [2005] ECR I-1113, ECJ.
27. General Electric v. Commission, Case T-210/01, [2005] ECR II-5575, CFI.
28. Federal Trade Commission v. Staples, Inc Civil No. 97-701 (TFH)
29. Hindustan Lever Employees' Union Vs. Hindustan Lever Limited AIR 1995 SC 470

## PART II

100 Hours Training in the manner and areas specified by the Council from time to time."

## SCHEDULE H

Syllabus for Post Membership Course in Corporate Restructuring and Insolvency

1. Overall objective and scope:

<sup>1</sup>The List is illustrative



## From the Government

2. Capacity building of Professionals in the area of legal, practical and application oriented aspects of corporate restructuring, rescue and insolvency and matters related thereto.
  - To enable the candidates to gain acumen, insight and thorough knowledge relating to various aspects of corporate restructuring rescue and insolvency.
  - To provide thorough knowledge of the legal and regulatory framework dealing with corporate rescue and insolvency with help of case studies.
  - To provide expert knowledge and skill sets in management and administration of restructuring process with the help of case studies.
  - To provide thorough insight into legal, procedural and applied aspects of corporate rescue with reference to international best practices.
  - To provide knowledge of global trends and practices so as to have an integrated view of the entire framework for corporate restructuring and insolvency.
  - To equip the candidates with the technical, analytical and application oriented skills in corporate restructuring and insolvency.
  - To provide professional skills to anticipate and provide practical solutions to legal and technical issues involved in restructuring, rescue and insolvency process.
  - To enable candidates to understand and fully appreciate the responsibilities and accountability as insolvency practitioner.
  - To set standards of ethics and best practices.
3. The Papers I to IV shall be of three hours duration and shall carry 100 marks each.
4. The medium of writing the examination shall be in English:

Provided that it shall be competent to the Council to permit the use of Hindi as a medium of writing any particular paper.

### **Syllabus for Post Membership Course in Corporate Restructuring and Insolvency**

#### **Module A - Papers (I, II, III and IV)**

##### **Paper 1 Corporate Restructuring, Rescue and Insolvency (100 marks)**

- The concept of Corporate Restructuring, Rescue and Insolvency : Concept of Insolvency, historical developments, basic concepts and definitions
- Origin of law relating to Corporate Insolvency: History of Bankruptcy Laws in USA, UK and India, Companies Act, 1956, Sick Industrial Companies(Special Provisions) Act, 1985, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Companies Bill, 2009 and any other law.
- Revival, Rehabilitation and Restructuring of Sick Companies : Sick companies and their revival with special reference to the law and procedure relating to sick companies.
- Securitisation and Debt Recovery : Overview of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; process; participants; Special Purpose Vehicle (SPV), Asset Reconstruction Companies (ARCs), Qualified Institutional Buyers (QIB).
- Debt Recovery Act: Overview of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Tribunal, Procedure; compromise and arrangements with banks and creditors.
- Winding up : Concept; modes of winding up; administrative machinery for winding up. Winding up process and procedure; managing stakeholders and parties in liquidation; conducting meetings of shareholders/creditors etc.; dealing with contracts; managing estate; Consequences of winding up; winding up of unregistered companies; dissolution.

##### **Paper 2 Strategic Options for Corporate Restructuring (100 marks)**

Changing World and its effect on Restructuring : Globalisation; Dominance of Services economy; technological and





communication advancement; Expansion of Financing opportunities and Financial Innovations; Expanding role of professionals

Corporate Restructuring in Challenging Times : Financial Mis-governance; Liquidity Crunch, Sub Prime Crises; Global Recession; Solutions for Business Failures.

Concepts and Strategies : Meaning of corporate restructuring, need, scope and modes of restructuring, historical background, global scenario, national scenario.

Planning, formulation and execution of various corporate restructuring strategies - mergers, acquisitions, takeovers, disinvestments and strategic alliances, demergers and hiving off.

Mergers and Amalgamations : Concept; legal, procedural, economic, accounting, taxation and financial aspects of mergers and amalgamations including stamp duty and allied matters; interest of small investors; merger aspects under competition law; jurisdiction of courts; filing of various forms; Amalgamation of banking companies and procedure related to Government companies; Cross border mergers.

Takeovers : Meaning and concept; types of takeovers; legal aspects - SEBI takeover regulations; procedural, economic, financial, accounting and taxation aspects; stamp duty and allied matters; payment of consideration; bail out takeovers and takeover of sick units; takeover defences; cross border takeovers.

Corporate Demergers and Reverse Mergers : Concept of demerger; modes of demerger - by agreement, under scheme of arrangement; demerger and voluntary winding up; legal and procedural aspects; tax aspects and reliefs; reverse mergers - procedural aspects and tax implications.

Out of Court Restructuring : Corporate Debt Restructuring Mechanism (CDRM), RBI Guidelines for CDRM and other procedural aspects.

Role and Responsibilities of Directors : General fiduciary duties, actions potentially giving rise to liability for directors, Role of Board of Directors under SICA, Companies Act, 1956, Insolvency related liabilities of directors, misconduct in winding up etc., criminal and civil liability of directors.

Funding of Mergers and Takeovers : Financial alternatives; merits and demerits; funding through various types of financial instruments including equity and preference shares, options and securities with differential rights, swaps, stock options; External Commercial Borrowings, funding through financial institutions and banks; rehabilitation finance; management buyouts/leveraged buyouts.

Financial Restructuring: Reduction of capital; reorganisation of share capital, Buy-back of shares - concept and necessity; procedure for buy-back of shares by listed and unlisted companies.

Valuation of Shares and Business : Introduction; need and purpose; factors influencing valuation; methods of valuation of shares; corporate and business valuation.

Post Merger Re-organisation : Factors in post merger reorganization: integration of businesses and operations, financial accounting, taxation, post merger valuation, human and cultural aspects; assessing accomplishment of post merger objectives; measuring post merger efficiency.

Governance Aspects of Restructuring and Insolvency : Domestic and International trends relating to governance practices pertaining to Corporate Restructuring and Insolvency. Shareholder democracy in restructuring process, role of investors,



## From the Government

creditors, role of non-executive directors in restructuring process, regulatory compliances including compliances under the Companies, Act, 1956, Securities Exchange Board of India Regulations, Listing Agreement etc. Case studies on governance failures and restructuring. Practical cases in Corporate Restructuring, approaches to prevent liquidation and insolvency;

### **Paper 3 Cross Border Insolvency Practice and Procedure**

**(100 Marks)**

Cross Border Insolvency; United Nations Commission On International Trade Model Law on Cross Border Insolvency; United Nations Commission On International Trade Legislative Guide to Insolvency Law; World Bank Principles for Effective Insolvency and Creditor, Rights System; Asian Development Bank Principles of Corporate Rescue and Rehabilitation.

### **Paper 4 Professional and ethical practices for Insolvency Practitioners**

**(100 Marks)**

Responsibility and Accountability of Insolvency Practitioners : Functions of Insolvency Practitioners; Duties of Insolvency Practitioners; Permissible or not permissible activities, Professional accountability with respect to mandatory requirements and recommendatory requirements, obligation as fiduciaries, responsibility over properties, fair assessment of competing interest of the stakeholders, statutory or investigatory or reporting obligations, independence, integrity and objectivity in business decisions etc.; Code of Conduct and Ethics.

### **Module B**

Compulsory one day Workshop for candidates in the manner and areas as approved by the Council from time to time."

By order of the Council

N.K. JAIN, Secretary & CEO  
[ADVT 111/4/121/12 Eqty.]

## ATTENTION MEMBERS

### **ICSI National Award for Excellence in Corporate Governance, 2012 - Draft Questionnaires for Comments and Suggestions.**

#### **Dear Members,**

The process of organizing the 12th ICSI National Award for Excellence in Corporate Governance 2012 has commenced. The Award which was instituted in the year 2001 by the Institute of Company Secretaries of India aims to identify corporates which best establish and follow good corporate governance norms in letter and spirit. The award is based on the outcome of concerted and comprehensive process which includes the evaluation of responses of the participating companies to questionnaires designed by the Institute.

The draft First Questionnaire and draft Second Questionnaire that are proposed to be used for evaluation for the year 2012 are placed on the website of the Institute.

**We shall highly appreciate your comments and suggestions on the draft Questionnaires.** These will help us to further improve the process of evaluation of participating companies in the ICSI National Award for Excellence in Corporate Governance.

Comments and suggestions may please be sent at [alka.kapoor@icsi.edu](mailto:alka.kapoor@icsi.edu) to reach before July 16, 2012.

# COMPANY SECRETARIES BENEVOLENT FUND

## HOW TO BECOME THE LIFE MEMBER

Safeguarding and caring for your well being



Company Secretaries Benevolent Fund

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](http://www.icsi.edu)) and should be accompanied by Demand Draft or Cheque (payable at par) for ₹ 7500/- 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 by following the steps given below:

- The member has to visit the portal [www.icsi.in](http://www.icsi.in)
- The member has to login to self profile by selecting the option Member – Associate / Fellow
- The member has to enter his membership number.
- The member has to enter his password in the box provided (The member has to Click on Reset password if creating for the first time and follow the instructions)
- After Logging in the member has to click on the link 'Request for CSBF Membership'.
- The member has to click on Download link to download the Form 'A' i.e. Form for admission as a Member of CSBF.
- The member has to fill up the form complete in all respects.
- The member has to scan the duly filled in form and upload the same.
- After uploading the scanned form the member has to click on 'Proceed for Payment' button for payment through net banking.
- A copy of the Acknowledgement Number generated may be retained by the member for future reference.

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 ₹ 2,00,000; and
- ◆ Upto ₹ 3,00,000 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 ₹ 2,00,000 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 ₹ 60,000/-

#### Financial Assistance for Children's Education (one time)

- ◆ Upto ₹ 20,000 per child (Maximum for two children) in case of the member leaving behind minor children.

For further information/clarification please contact Mrs. Meenakshi Gupta, Joint Director or Mr. J S N Murthy, Administrative Officer on telephone No. 011-45341049, Mobile No. 9868128682 or through e-mail [member@icsi.edu](mailto:member@icsi.edu) or [csbf@icsi.edu](mailto:csbf@icsi.edu)

FOR FURTHER DETAILS PLEASE VISIT : [www.icsi.edu/csbf](http://www.icsi.edu/csbf)





# Institute News



## MEMBERS ADMITTED

Sl. No.	Name	Membership No.	Region
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### FELLOWS\*

1	Sh. Anup Vaibhav C. Khanna	FCS - 6786	WIRC
2	Sh. Devang Maheshkumar Vyas	FCS - 6787	WIRC
3	Sh. Sunil Kumar	FCS - 6788	NIRC
4	Sh. Vinit Kumar	FCS - 6789	NIRC
5	Sh. Rajesh Khandelwal	FCS - 6790	NIRC
6	Sh. Kashi Nath Chaturvedi	FCS - 6791	NIRC
7	Sh. K Duraisami	FCS - 6792	SIRC
8	Sh. Anirban Bhattacharya	FCS - 6793	SIRC
9	Mrs. Jyoti Ravi Sachdeva	FCS - 6794	NIRC
10	Sh. Harender Verma	FCS - 6795	NIRC
11	Ms. Ramakrishnan Bharathi	FCS - 6796	WIRC
12	Sh. Ajay Kumar Trivedi	FCS - 6797	NIRC
13	Sh. Vipin Shukla	FCS - 6798	NIRC
14	Sh. Sandip Kumar Lal	FCS - 6799	NIRC
15	Sh. Prashant Panda	FCS - 6800	EIRC

16	Sh. Deepak Madhav Manerikar	FCS - 6801	WIRC
17	Sh. Sanjay Kumar Agarwal	FCS - 6802	SIRC
18	Sh. V Surya Prakash Bhallamudi	FCS - 6803	SIRC
19	Ms. Rajshree Swadhin Padia	FCS - 6804	WIRC
20	Sh. Vaibhav Goel	FCS - 6805	NIRC
21	Sh. Rajagopal Narasimman Janakiraman	FCS - 6806	SIRC
22	Sh. Rashmikant V Gandhi	FCS - 6807	WIRC
23	Sh. Ashok Naran Ramani	FCS - 6808	WIRC
24	Ms. Pratibha Ajay Vichare	FCS - 6809	WIRC
25	Sh. Dwarka Prasad Agarwal	FCS - 6810	NIRC
26	Ms. Kajal Jain	FCS - 6811	WIRC
27	Dr. Devakumar P S	FCS - 6812	SIRC
28	Sh. Pankaj Jain	FCS - 6813	NIRC
29	Sh. Ranjeet Kumar Verma	FCS - 6814	NIRC
30	Sh. Rajeev Guglani	FCS - 6815	NIRC
31	Sh. Ashish Batra	FCS - 6816	NIRC
32	Sh. Santosh Kumar Sharma	FCS - 6817	NIRC
33	Sh. Percy Eruch Fouzdar	FCS - 6818	WIRC
34	Sh. M K Anandakumar	FCS - 6819	WIRC
35	Ms. Meenal Hemant Abhyankar	FCS - 6820	WIRC
36	Ms. Arundhati A Kulkarni	FCS - 6821	WIRC
37	Sh. Ratan Kumar Gupta	FCS - 6822	NIRC
38	Sh. Gaurav Agrawal	FCS - 6823	NIRC
39	Sh. Israr Khan	FCS - 6824	WIRC
40	Sh. S Kartik	FCS - 6825	NIRC
41	Sh. Kiran Mohan Chapparr	FCS - 6826	SIRC
42	Sh. Debaraj Sahoo	FCS - 6827	NIRC
43	Sh. Tom Antony	FCS - 6828	SIRC
44	Sh. Sham Lal Munjal	FCS - 6829	NIRC
45	Sh. Narayan Jee Jha	FCS - 6830	NIRC
46	Sh. Rakesh Dhawan	FCS - 6831	NIRC
47	Sh. Sudheer Nagavarapu	FCS - 6832	SIRC
48	Ms. Priti Jayant Sheth	FCS - 6833	WIRC
49	Sh. Ujjwal Chakraborty	FCS - 6834	NIRC
50	Sh. K Natesh	FCS - 6835	SIRC
51	Sh. Pradeep Kumar Sharma	FCS - 6836	NIRC
52	Sh. Rishi Dave	FCS - 6837	WIRC
53	Ms. Alka Khemka	FCS - 6838	NIRC

### ASSOCIATES\*

1	Ms. Shilpi Chakraborty	ACS - 30156	EIRC
2	Mr. Nilesh Choudhary	ACS - 30157	NIRC
3	Ms. Varsha Jain	ACS - 30158	EIRC
4	Mr. Bhadra Sen	ACS - 30159	NIRC
5	Mr. Saurav Roy	ACS - 30160	NIRC
6	Mr. Sushil Kumar Sharma	ACS - 30161	NIRC
7	Ms. Varsha Verma	ACS - 30162	NIRC
8	Ms. Arti Nigam	ACS - 30163	NIRC
9	Sh. Raghuveender	ACS - 30164	NIRC
10	Mr. Siddharth Kumar Sharma	ACS - 30165	WIRC

\* Admitted on 21<sup>st</sup> May, 31<sup>st</sup> May, 2012 and 11<sup>th</sup> June, 2012

\* Admitted on 21<sup>st</sup> May, 31<sup>st</sup> May, 2012 and 11<sup>th</sup> June, 2012



11	Mr. Pradeep Kumar Singh	ACS - 30166	EIRC	63	Ms. Sneha Shivaji Suryavanshi	ACS - 30218	WIRC
12	Mr. Satish Joshi	ACS - 30167	NIRC	64	Ms. Avanti Kashinath Rajwade	ACS - 30219	WIRC
13	Sh. Saji V John	ACS - 30168	NIRC	65	Mr. Darshan Hasmukhbhai Soni	ACS - 30220	WIRC
14	Mr. Rachit Tandon	ACS - 30169	NIRC	66	Ms. Dipika Shaileshkumar Soni	ACS - 30221	WIRC
15	Ms. Seema Dua	ACS - 30170	NIRC	67	Ms. Tangirala Lalitha Devi	ACS - 30222	SIRC
16	Sh. Alok Kumar Ghosh	ACS - 30171	WIRC	68	Mr. Alok Singh	ACS - 30223	WIRC
17	Ms. Swati Srivastava	ACS - 30172	NIRC	69	Ms. Manisha Babulal	ACS - 30224	WIRC
18	Mr. Dheeraj Saxena	ACS - 30173	NIRC	70	Mr. Narayanlal Fatelal Shah	ACS - 30225	WIRC
19	Ms. Shikha Pasrecha	ACS - 30174	NIRC	71	Mr. Viral Dinesh Dedhia	ACS - 30226	WIRC
20	Ms. Himani Gupta	ACS - 30175	NIRC	72	Ms. Smita Chowdhury	ACS - 30227	WIRC
21	Mr. Neeraj Kumar Sharma	ACS - 30176	NIRC	73	Sh. Vinay Jadhav	ACS - 30228	WIRC
22	Ms. Megha Baheti	ACS - 30177	NIRC	74	Mr. Maulik Jasani	ACS - 30229	WIRC
23	Mr. Vishal Shankar Patil	ACS - 30178	SIRC	75	Ms. Komal Khadaria	ACS - 30230	WIRC
24	Ms. Pooja Jhunjunwala	ACS - 30179	SIRC	76	Mr. Ashutosh Bhatt	ACS - 30231	WIRC
25	Mr. Vivek Kumar	ACS - 30180	SIRC	77	Mr. Jayram Vachhani	ACS - 30232	WIRC
26	Ms. Shubhangi Venkatesh Baichwal	ACS - 30181	WIRC	78	Mr. Kevin Gala	ACS - 30233	WIRC
27	Ms. Nikita Bhandari	ACS - 30182	SIRC	79	Mr. Sanket Kulkarni	ACS - 30234	WIRC
28	Ms. Keerthi Mundhra	ACS - 30183	SIRC	80	Sh. Rahul Balraj Thakwani	ACS - 30235	WIRC
29	Ms. Shreya Vijay Gandhi	ACS - 30184	WIRC	81	Sh. Karan Mukeshbhai Bhatt	ACS - 30236	WIRC
30	Ms. Maulshri Mahendra Shah	ACS - 30185	WIRC	82	Ms. Dhara Sureshchandra Shah	ACS - 30237	WIRC
31	Sh. Rajan A Siluai	ACS - 30186	WIRC	83	Mr. Delzad Dinyar Jivaasha	ACS - 30238	WIRC
32	Sh. Supreeth Hegde	ACS - 30187	SIRC	84	Sh. Salim Punjani	ACS - 30239	SIRC
33	Mr. Karthikeyan S	ACS - 30188	SIRC	85	Mr. M Sureshchandra Godbole	ACS - 30240	WIRC
34	Ms. Milee Jayant Shah	ACS - 30189	WIRC	86	Mr. Antaryami Sahoo	ACS - 30241	EIRC
35	Mr. V Anand	ACS - 30190	SIRC	87	Mr. Kailash Chand Sharma	ACS - 30242	NIRC
36	Sh. Chander Shekhar Chauhan	ACS - 30191	NIRC	88	Ms. Shipra Khandelwal	ACS - 30243	NIRC
37	Mr. Mohit	ACS - 30192	NIRC	89	Mr. Sourabh Raha	ACS - 30244	EIRC
38	Ms. Meenakshi Aggarwal	ACS - 30193	NIRC	90	Mr. Ankit Gupta	ACS - 30245	NIRC
39	Mr. B Chagan Lal	ACS - 30194	SIRC	91	Ms. Vandana Chopra	ACS - 30246	NIRC
40	Mr. Baburao Maruti Tupare	ACS - 30195	WIRC	92	Mr. Shubham Sharma	ACS - 30247	NIRC
41	Sh. Ajay Kumar	ACS - 30196	NIRC	93	Ms. Prathima Mariya Tellis	ACS - 30248	SIRC
42	Sh. Baga Reddy Mettu	ACS - 30197	SIRC	94	Ms. Sheenam Pitroda	ACS - 30249	WIRC
43	Ms. Shobha J	ACS - 30198	SIRC	95	Mr. Mitesh Jitendra Shah	ACS - 30250	WIRC
44	Mr. Viswanath Pothukuchi	ACS - 30199	SIRC	96	Mr. Uday Anant Sawant	ACS - 30251	WIRC
45	Ms. Archishma Nareshbhai Amin	ACS - 30200	WIRC	97	Ms. Prajakta Thite	ACS - 30252	WIRC
46	Mr. Bhavik Parikh	ACS - 30201	WIRC	98	Ms. Bijal Lalit Jain	ACS - 30253	WIRC
47	Mr. Anoop Kumar Jain	ACS - 30202	WIRC	99	Sh. Prasad Vishnu Shanbhag	ACS - 30254	WIRC
48	Mr. Muniraju C N	ACS - 30203	SIRC	100	Mr. Ajit Prakash Jain	ACS - 30255	WIRC
49	Mr. M Satish Choudhary	ACS - 30204	SIRC	101	Ms. R Geetha	ACS - 30256	SIRC
50	Mr. Sagar Bedre	ACS - 30205	WIRC	102	Ms. Ranjitha Shenoy G	ACS - 30257	SIRC
51	Ms. Khivesara Minal	ACS - 30206	WIRC	103	Ms. Smrity Singh	ACS - 30258	EIRC
52	Ms. Shital Pramod Patankar	ACS - 30207	WIRC	104	Ms. Ruchi Garg	ACS - 30259	EIRC
53	Mr. Srikant Shivadas Nair	ACS - 30208	WIRC	105	Ms. Dipika Verma	ACS - 30260	EIRC
54	Mr. Alpesh Porwal	ACS - 30209	WIRC	106	Ms. Vishani Khemka	ACS - 30261	NIRC
55	Mr. Pavan Rathi	ACS - 30210	WIRC	107	Mr. Mohit Khanna	ACS - 30262	NIRC
56	Mr. Ankur Pravin Gala	ACS - 30211	WIRC	108	Ms. Neeti Chauhan	ACS - 30263	NIRC
57	Ms. Krupa Kedar Shah	ACS - 30212	WIRC	109	Mr. Pradeep Kumar	ACS - 30264	NIRC
58	Ms. Deepali Ramesh Kshirsagar	ACS - 30213	WIRC	110	Ms. Swati Achariya	ACS - 30265	NIRC
59	Ms. Samhita Ravindra Thipse	ACS - 30214	WIRC	111	Ms. Rupal Agrawal	ACS - 30266	WIRC
60	Mr. Avadhut Amareshwar Savant	ACS - 30215	WIRC	112	Ms. Anuradha Savalaram Raikar	ACS - 30267	SIRC
61	Ms. Anagha Dilip Kolhatkar	ACS - 30216	WIRC	113	Ms. Preeti Mehta	ACS - 30268	NIRC
62	Ms. Reema Anil Tayshete	ACS - 30217	WIRC				



# News from the Institute

114	Ms. Megha Agarwal	ACS - 30269	EIRC	165	Mr. Rahul Rastogi	ACS - 30320	NIRC
115	Mr. Rajesh Y Bhagwat	ACS - 30270	WIRC	166	Mr. Shantanu Bhandary	ACS - 30321	NIRC
116	Ms. Puja Gupta	ACS - 30271	EIRC	167	Ms. Konika Yadav	ACS - 30322	NIRC
117	Ms. Averil Michael Gonsalves	ACS - 30272	WIRC	168	Mr. Nikhil Kalra	ACS - 30323	NIRC
118	Mr. Karthikeyan V	ACS - 30273	SIRC	169	Mr. Arjun Raj P	ACS - 30324	SIRC
119	Mr. Vanol Ajitbhai Mahadevbhai	ACS - 30274	WIRC	170	Sh. Kirana K R	ACS - 30325	SIRC
120	Ms. Ankita Shah	ACS - 30275	WIRC	171	Ms. Komal Naginkumar Gandhi	ACS - 30326	WIRC
121	Mr. Kapil Mahajan	ACS - 30276	WIRC	172	Ms. Meghna Patel	ACS - 30327	WIRC
122	Mr. Zubin Patel	ACS - 30277	WIRC	173	Mr. Shardul Vikram Singh	ACS - 30328	WIRC
123	Ms. Hemangi Trilok Naidu	ACS - 30278	WIRC	174	Ms. Bharathi C	ACS - 30329	SIRC
124	Ms. Jayanti Prafulla Sabnis	ACS - 30279	WIRC	175	Ms. Sailee Krishna Pathak	ACS - 30330	WIRC
125	Ms. Sonavane Nalanda Govind	ACS - 30280	WIRC	176	Sh. Prakash Alwani	ACS - 30331	WIRC
126	Ms. Chital Jayantilal Shah	ACS - 30281	WIRC	177	Mr. Tarlok Chand Sharma	ACS - 30332	WIRC
127	Ms. Siddhi Deepak Desai	ACS - 30282	WIRC	178	Ms. Meenakshi Singh Ahluwalia	ACS - 30333	NIRC
128	Ms. Malavika Sreekumar	ACS - 30283	WIRC	179	Mr. Rabindra Kumar Sabat	ACS - 30334	SIRC
129	Ms. Priyanka Shailesh Doshi	ACS - 30284	WIRC	180	Mrs. Jill Mehul Sangoi	ACS - 30335	WIRC
130	Mr. Prem Kumar Bhattad	ACS - 30285	SIRC	181	Mr. Yatish Kumar Maroo	ACS - 30336	SIRC
131	Mr. Shashidhara S	ACS - 30286	SIRC	182	Ms. Shifali Sitaram Suvarna	ACS - 30337	WIRC
132	Ms. Shrashti Gupta	ACS - 30287	NIRC	183	Mrs. Sarmistha Sinha	ACS - 30338	WIRC
133	Mr. Devansh Garg	ACS - 30288	NIRC	184	Mr. Satish Chandra Sharma	ACS - 30339	NIRC
134	Mr. Nikhil Kalra	ACS - 30289	NIRC	185	Mr. Gyaneshwer Kumar	ACS - 30340	NIRC
135	Ms. Gurleen Kaur Bhatia	ACS - 30290	NIRC	186	Mr. Sumit Mutha	ACS - 30341	NIRC
136	Mr. Manish Durga	ACS - 30291	NIRC	187	Mr. Santosh Kumar Agarwal	ACS - 30342	NIRC
137	Mr. Bhupinder Girdhar	ACS - 30292	NIRC	188	Mr. Ajay Kumar	ACS - 30343	NIRC
138	Ms. Nibedita Mahapatra	ACS - 30293	EIRC	189	Ms. Sutapa Bhattacharya	ACS - 30344	EIRC
139	Mr. Dillip Khadenga	ACS - 30294	EIRC	190	Ms. Vandana Doshi	ACS - 30345	EIRC
140	Ms. Ranjana Handa	ACS - 30295	NIRC	191	Mr. Aakash Kumar Surana	ACS - 30346	EIRC
141	Ms. Deepali Sharma	ACS - 30296	NIRC	192	Ms. Mamta Bisht	ACS - 30347	NIRC
142	Ms. Pinky Kanswal	ACS - 30297	NIRC	193	Ms. Sakshi Vashisth	ACS - 30348	NIRC
143	Ms. Puja Sharma	ACS - 30298	NIRC	194	Mr. Jitender Kumar	ACS - 30349	NIRC
144	Mr. Hemant Kumar Saini	ACS - 30299	NIRC	195	Ms. Antarima Kundu	ACS - 30350	SIRC
145	Mr. Kush Keshri	ACS - 30300	NIRC	196	Ms. Garima Bansal	ACS - 30351	NIRC
146	Ms. Divya Agarwal	ACS - 30301	NIRC	197	Ms. Venkata Naga Lakshmi Sista	ACS - 30352	SIRC
147	Mr. Parmal Singh	ACS - 30302	NIRC	198	Mr. Esaki V	ACS - 30353	SIRC
148	Mr. Mohd Fasih Uz Zaman	ACS - 30303	SIRC	199	Mr. Amit Rathi	ACS - 30354	SIRC
149	Mr. Nns Srikanth	ACS - 30304	SIRC	200	Mr. Brijesh Haresh Thakkar	ACS - 30355	WIRC
150	Ms. Betsy Mary Brinda K	ACS - 30305	SIRC	201	Sh. Ankit Vinod Kumar Bansal	ACS - 30356	WIRC
151	Ms. Shah Ami Jayeshkumar	ACS - 30306	WIRC	202	Mr. Paras Dilip Shah	ACS - 30357	WIRC
152	Mr. Viral Minawala	ACS - 30307	WIRC	203	Ms. Gopika Chatrabhuj Negandhi	ACS - 30358	WIRC
153	Mr. S V Sangamesh	ACS - 30308	SIRC	204	Mr. Vinay Omprakash Chandak	ACS - 30359	WIRC
154	Mr. S Karthik Ramakrishna	ACS - 30309	SIRC	205	Mr. Abhishek Bansal	ACS - 30360	WIRC
155	Ms. Prabhdeep Kaur Makkar	ACS - 30310	NIRC	206	Mr. Ramegowda C G	ACS - 30361	SIRC
156	Mr. Saumayo Jyoti Seal	ACS - 30311	EIRC	207	Ms. Sneha S Wadappi	ACS - 30362	WIRC
157	Ms. Rubina Vohra	ACS - 30312	NIRC	208	Ms. Vijay Laxmi Purohit	ACS - 30363	EIRC
158	Ms. Anushri Lahoti	ACS - 30313	WIRC	209	Ms. Amanpreet Kaur Malhotra	ACS - 30364	NIRC
159	Ms. Keerti Acharya	ACS - 30314	NIRC	210	Mr. Praveen Sharma	ACS - 30365	EIRC
160	Mr. Vikas Bhatnagar	ACS - 30315	NIRC	211	Ms. Pragya Saxena	ACS - 30366	NIRC
161	Ms. Ritu Jain	ACS - 30316	NIRC	212	Mr. Sidharth Sharma	ACS - 30367	NIRC
162	Ms. Neha Gupta	ACS - 30317	NIRC	213	Ms. Monalisa Datta	ACS - 30368	EIRC
163	Ms. Ritu Jain	ACS - 30318	NIRC	214	Mr. Alok Jain	ACS - 30369	NIRC
164	Mr. Vishant Kumar Jain	ACS - 30319	NIRC	215	Mr. Bhanu Bhargava	ACS - 30370	NIRC
				216	Ms. Swati Mittal	ACS - 30371	NIRC





217	Mr. Ashwani Kumar Srivastava	ACS - 30372	NIRC
218	Mr. Amit Kumar	ACS - 30373	NIRC
219	Ms. Meena Kumari	ACS - 30374	NIRC
220	Mr. Nikit Rastogi	ACS - 30375	NIRC
221	Ms. Shweta Sharma	ACS - 30376	NIRC
222	Ms. Pronita Khetan	ACS - 30377	NIRC
223	Ms. Pooja Verma	ACS - 30378	NIRC
224	Ms. Shubhi Mittal	ACS - 30379	NIRC
225	Mr. Deepak Mangal	ACS - 30380	NIRC
226	Ms. Brinda Sethi	ACS - 30381	NIRC
227	Mr. Sahil Grover	ACS - 30382	NIRC
228	Mr. Satyam Tiwari	ACS - 30383	NIRC
229	Mr. Rishi Raj Garg	ACS - 30384	NIRC
230	Ms. Khushboo Khandelwal	ACS - 30385	NIRC
231	Mr. Jose George	ACS - 30386	SIRC
232	Ms. Aruna V	ACS - 30387	SIRC
233	Mr. Ranjith Raj P	ACS - 30388	SIRC
234	Mr. Rajesh Badami	ACS - 30389	SIRC
235	Ms. Nilam Baheti	ACS - 30390	SIRC
236	Ms. S Srilakshmi	ACS - 30391	SIRC
237	Ms. Jyoti Thorve	ACS - 30392	WIRC
238	Ms. Shweta Akash Gokarn	ACS - 30393	WIRC
239	Ms. Bhumika Prafulchandra Jani	ACS - 30394	WIRC
240	Mr. Parkhiya Pankaj Jayantilal	ACS - 30395	WIRC
241	Ms. Thakkar Nikita Yogeshbhai	ACS - 30396	WIRC
242	Mr. Sumit Mukund Kelkar	ACS - 30397	WIRC
243	Mr. Dhruvin Mayur Parikh	ACS - 30398	WIRC
244	Mr. Pravin Appasaheb Ningnure	ACS - 30399	WIRC
245	Ms. Sweta C B K	ACS - 30400	SIRC
246	Ms. Khushaliben Narendrakumar Shah	ACS - 30401	WIRC
247	Mr. Saishwar Dnyaneshwar Dalvi	ACS - 30402	WIRC
248	Ms. Devika Venugopal	ACS - 30403	SIRC
249	Ms. Aparna Shinde	ACS - 30404	WIRC
250	Ms. Shubhangi R Thool	ACS - 30405	WIRC
251	Sh. Swapnil Joshi	ACS - 30406	WIRC
252	Ms. Anjila Dahra	ACS - 30407	NIRC
253	Ms. Vanita Arora	ACS - 30408	NIRC
254	Mr. Kishan Garodia	ACS - 30409	WIRC
255	Ms. Enakshi Roy	ACS - 30410	EIRC
256	Mr. Bikesh Kumar Yadav	ACS - 30411	NIRC
257	Mr. Madhu N Rao	ACS - 30412	SIRC
258	Mr. Sunil Kumar Sharma	ACS - 30413	NIRC
259	Mr. Prasad Raghunath Baraskar	ACS - 30414	WIRC
260	Mr. Balaji Ravi Gopal Ramanathan	ACS - 30415	SIRC
261	Ms. Jasmine Kaur Dhingra	ACS - 30416	NIRC
262	Ms. Deepika Jaiprakash Jaiswal	ACS - 30417	WIRC
263	Mr. Snehankit Sadawarte	ACS - 30418	WIRC
264	Mr. Jigarkumar Dilipbhai Thakkar	ACS - 30419	WIRC
265	Mrs. Priyanka Chinmay Vaishampayan	ACS - 30420	WIRC
266	Ms. Anshul Kumari	ACS - 30421	NIRC
267	Mr. Rejoy Mohan	ACS - 30422	SIRC
268	Sh. Sandeep Kumar	ACS - 30423	NIRC
269	Mr. Sourav Chowdhury	ACS - 30424	EIRC

## RESTORED\*

1.	Ms. Toral Pratap Joshi	ACS-23258	WIRC
2.	Sh. Mandar Mahesh Apte	ACS-16208	WIRC
3.	Sh. Vineet Kumar Sharma	ACS-15087	NIRC
4.	Ms. Shivali Sharma	ACS-16156	NIRC
5.	Ms. Rajani V Dube	ACS-21666	WIRC
6.	Sh. Ashok Haldia	FCS-2407	NIRC
7.	Sh. Dilip Sharma	ACS-14499	WIRC
8.	Sh. Anuj Jain	ACS-7059	NIRC
9.	Sh. P Ranganathan	ACS-7810	SIRC
10.	Sh. P K Madhav	FCS-3852	SIRC
11.	Sh. V J Mathew	ACS-7207	SIRC
12.	Sh. R.S. Hariharan	ACS-2292	SIRC
13.	Sh. Shailesh A Sangavi	ACS-8129	WIRC
14.	Ms. Soma Agarwal	ACS-14256	NIRC
15.	Sh. Naresh Kumar Rana	ACS-10468	NIRC
16.	Sh. R K Lumb	FCS-2819	NIRC
17.	Ms. Simmi Sethi	ACS-10370	NIRC
18.	Ms. Meena Gupta	ACS-15059	NIRC
19.	Sh. Satish Kashi Rajgarhia	FCS-3633	NIRC
20.	Sh. Anil Kumar Bhandari	ACS-17055	SIRC
21.	Sh. Muralikrishnan S P	ACS-22353	SIRC
22.	Sh. Rajendra Jain	ACS-12348	WIRC
23.	Sh. V V Subramanian	ACS-5379	WIRC
24.	Sh. K Sridhar	ACS-13100	SIRC
25.	Sh. Pradeep Rawat	ACS-2577	WIRC
26.	Ms. Sonika Subhash Sunda	ACS-16065	WIRC
27.	Sh. Arun Kumar Paliwal	FCS-2871	NIRC
28.	Sh. S. V. Jagannathan	ACS-15627	SIRC
29.	Ms. Khushboo Bhura	ACS-25678	WIRC
30.	Sh. R Balachandran	ACS-11501	SIRC
31.	Sh. Prashant Mahadeo Manohar	ACS-8284	WIRC
32.	Ms. Gazal Inani	ACS-23246	NIRC
33.	Ms. Shobhna Goyal	ACS-13562	NIRC
34.	Sh. Pawan Kumar Choudhary	ACS-3705	WIRC
35.	Sh. Chandrakant Dattaram Kadam	ACS-8289	WIRC
36.	Sh. Rajeev Chandrakant Ghadi	ACS-14708	WIRC
37.	Sh. Vivek Agrawal	ACS-11809	NIRC
38.	Ms. Shweta Singh	ACS-21544	WIRC
39.	Sh. J B Acharya	ACS-9525	SIRC
40.	Ms Vidhi Soin	ACS-21506	NIRC
41.	Sh. Sanjeev Arora	ACS-13264	NIRC
42.	Sh. Nitin Jain	ACS-16060	NIRC
43.	Sh. Sunil G Prabhu	ACS-7952	WIRC

\* Restored from 21<sup>st</sup> May 2012 to 20<sup>th</sup> June, 2012



# News from the Institute

44.	Sh. Manav Mittal	FCS-4839	WIRC
45.	Sh. Kedar Ram R Laddha	FCS-4550	WIRC
46.	Sh. S J Ahmad	FCS-3951	NIRC
47.	Sh. Rajani Gautam	ACS-10619	WIRC
48.	Sh. Srikar Baljekar	ACS-7723	WIRC
49.	Sh. Gopal Agarwal	ACS-10604	EIRC
50.	Sh. Naresh Kumar Aggarwal	ACS-10845	NIRC
51.	Mr. Narender Kumar Baid	ACS-27052	NIRC
52.	Sh. Om Prakash Agarwal	FCS-1385	WIRC
53.	Sh. Karthik Krishnan	ACS-23261	SIRC
54.	Sh. V Thiagarajan	ACS-11055	SIRC
55.	Sh. Rakesh Kumar Gupta	ACS-4139	NIRC
56.	Ms. Archana Sharma	ACS-12332	NIRC
57.	Sh. Narendra Kumar Ambawat	ACS-13718	WIRC
58.	Sh. Rajendra Kumar Arora	FCS-3040	NIRC
59.	Sh. Tirumal Kumar Bhavaraju	ACS-8070	SIRC
60.	Ms. Payal Singh	ACS-13745	NIRC
61.	Sh. Bharat Bhushan	ACS-6300	NIRC
62.	Ms. Anjali Sivaramakrishnan	ACS-13383	NIRC

14	Mr. Vaibhav Sharma	ACS - 30041	10831	NIRC
15	Ms. Rachana Kalyan Kabra	ACS - 29629	10832	WIRC
16	Mrs. Jyothirmai Sarang Patel	ACS - 25332	10833	SIRC
17	Mr. Vivek Kakati	ACS - 29406	10834	SIRC
18	Mrs. Jalpa Gaurang Bhatt	ACS - 23390	10835	WIRC
19	Ms. Janki Shah	ACS - 29657	10836	WIRC
20	Mrs. Ankita Varun Shah	ACS - 29099	10837	WIRC
21	Mr. Jayesh Ratan Ahire	ACS - 29775	10838	WIRC
22	Mrs. Payal Chowdhary	ACS - 18029	10839	EIRC
23	Ms. Sapna Jain	ACS - 28869	10840	NIRC
24	Ms. Geeta Jha	ACS - 30014	10841	NIRC
25	Sh. Pankaj Pabaiya	FCS - 5857	10842	WIRC
26	Ms. Shallu Sharma	ACS - 30040	10843	NIRC
27	Sh. Abhijit Nagesh Gaonkar	ACS - 26731	10844	WIRC
28	Ms. Priti Shailesh Shah	ACS - 26082	10845	WIRC
29	Ms. Aarti Gupta	ACS - 29883	10846	NIRC
30	Ms. Shipra Aggarwal	ACS - 28206	10847	NIRC
31	Ms. Radhika Rathi	ACS - 28835	10848	NIRC
32	Sh. Rajeev Chawla	ACS - 29575	10849	NIRC
33	Mr. Mitul Jain	ACS - 29811	10850	EIRC
34	Ms. Kushmanjali Sharma	ACS - 29483	10851	NIRC
35	Sh. Vinay Harishanker Verma	ACS - 26787	10852	WIRC
36	Sh. Prashant Gupta	ACS - 29853	10853	NIRC
37	Ms. Swati Arora	ACS - 25038	10854	NIRC
38	Mr. K Gaurav Kumar	ACS - 29688	10855	SIRC
39	Mr. Mukesh Kumar Sarswat	ACS - 28618	10856	WIRC
40	Ms. Rasika Sudhir Wagh	ACS - 29578	10857	WIRC
41	Sh. Praful Nanjibhai Vekariya	ACS - 21367	10858	WIRC
42	Mrs. Smita Vinayak Prabhu	ACS - 22408	10859	WIRC
43	Ms. Radhika Anand	ACS - 27696	10860	NIRC
44	Ms. Deepti Srivastava	ACS - 29703	10861	NIRC
45	Sh. D Praveen Kumar	FCS - 6706	10862	SIRC
46	Mr. Mahesh N	ACS - 26506	10863	SIRC
47	Mr. Devdutta Dilip Khire	ACS - 30048	10864	WIRC
48	Ms. Pratibha Bafna	ACS - 29743	10865	EIRC
49	Ms. Shilpi Jain	ACS - 18336	10866	NIRC
50	Sh. Kashi Nath Nevatia	FCS - 2839	10867	WIRC
51	Sh. K Selva Kumar	ACS - 21975	10868	SIRC
52	Sh. Swapnil Bhimrao Patole	ACS - 26274	10869	WIRC
53	Mr. Ram Kumar Bhargav	ACS - 28395	10870	NIRC
54	Sh. Akshit Gupta	ACS - 22963	10871	NIRC
55	Sh. G Sriram	ACS - 26217	10872	SIRC
56	Mr. Dinesh Lohia	ACS - 29566	10873	EIRC
57	Archana Shanbaug	ACS - 25630	10874	WIRC
58	Ms. Smita Gupta	ACS - 28893	10875	NIRC
59	Ms. Nilakshi Sharma	ACS - 29597	10876	EIRC
60	Ms. Priyanka Bhutani	ACS - 29938	10877	NIRC
61	Ms. Divya Jain	ACS - 29847	10878	NIRC
62	Ms. Tripti Shyamsundar Rathi	ACS - 27515	10879	WIRC
63	Ms. Apoorva Singh	ACS - 28646	10880	NIRC
64	Ms. Swati Singhal	ACS - 29487	10881	NIRC

## CERTIFICATE OF PRACTICE

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

### ISSUED\*

1	Sh. Ramesh Kumar Kochar	ACS - 6715	10818	NIRC
2	Mr. Mayank Dubey	ACS - 29935	10819	NIRC
3	Ms. Shubhanjali Tewari	ACS - 28780	10820	NIRC
4	Sh. Sandeep Kumar	ACS - 29777	10821	NIRC
5	Mr. Saurabh Awasthi	ACS - 27643	10822	NIRC
6	Ms. Ramadevi R Iyer	FCS - 4592	10823	WIRC
7	Mrs. Harshita C Kochhar	ACS - 21662	10824	NIRC
8	Ms. Neha Jain	ACS - 29956	10825	EIRC
9	Mr. Nishant Nayan	FCS - 6737	10826	NIRC
10	Sh. Raj Narayan Navik	FCS - 3857	10827	NIRC
11	Mr. Surya Kant Gupta	ACS - 29849	10828	NIRC
12	Sh. Pawan Kumar Kumawat	ACS - 25377	10829	NIRC
13	Ms. Veena Umashankar Iyer	ACS - 26839	10830	SIRC

\* During the month of May, 2012

July  
2012



CHARTERED SECRETARY

928



65	Ms. Ekta Khandelwal	ACS - 29601	10882	NIRC
66	Ms. Monika Chechani	ACS - 30143	10883	WIRC
67	Ms. Aditi Renukadas Joshi	ACS - 30080	10884	WIRC
68	Mr. Dhiraj Kumar Jha	ACS - 29838	10885	EIRC
69	Ms. Neelam Rangwala	ACS - 27698	10886	WIRC
70	Sh. Rahul Kumar Tandon	ACS - 20931	10887	NIRC
71	Ms. Ritika Singh	ACS - 22516	10888	WIRC
72	Sh. Sivaramakrishnan Vasudevan	ACS - 7803	10889	SIRC
73	Ms. Sheetal Jain	ACS - 28168	10890	NIRC
74	Sh. Gaurav Sinha	ACS - 25923	10891	NIRC
75	Sh. Arun Kumar Singhal	ACS - 22039	10892	NIRC
76	Sh. Manish Shukla	FCS - 6704	10893	NIRC
77	Ms. Swati Babbar	ACS - 29947	10894	NIRC
78	Ms. Disha Dugar	ACS - 25244	10895	EIRC
79	Sh. Sudhanshu Kumar Singh	ACS - 17588	10896	NIRC
80	Sh. Madhwesh K	ACS - 21477	10897	SIRC
81	Mr. Vishal Shankar Patil	ACS - 30178	10898	SIRC
82	Mr. Muniraju C N	ACS - 30203	10899	SIRC
83	Mr. Pavan Rathi	ACS - 30210	10900	WIRC
84	Mr. Vijay Harikishanji Baheti	ACS - 29133	10901	WIRC
85	Mrs. Gesu Nathani	ACS - 28705	10902	NIRC
86	Sh. Rakesh Dhawan	FCS - 6831	10903	NIRC
87	Mr. Sonu Nehra	ACS - 30122	10904	NIRC
88	Mr. Sumit Kumar Gururani	ACS - 22421	10905	NIRC
89	Ms. Kajal Jayant Mehta	ACS - 29151	10906	WIRC
90	Mr. Sagar Bedre	ACS - 30205	10907	WIRC
91	Ms. Chaitali Sheth	ACS - 29998	10908	SIRC
92	Ms. Noopur Sharma	ACS - 24276	10909	SIRC
93	Ms. Anita Agarwal	ACS - 16291	10910	NIRC

## CANCELLED\*

1.	Ms. Rashmi Kumari	ACS-28768	10617	NIRC
2.	Ms. Shashi Bala	ACS-27912	10218	NIRC
3.	Ms. Devika Sathyanarayana	ACS-16617	10504	SIRC
4.	Ms. Neha Saluja	ACS-20986	9489	NIRC
5.	Sh. Arun Kumar Mittal	FCS-5165	4164	NIRC
6.	Sh. Prashant D Shedbal	ACS-24647	8963	SIRC
7.	Ms. Khushboo	ACS-25872	9301	EIRC
8.	Ms. V Parimala	FCS-6685	7167	WIRC
9.	Ms. S Rathna Prabha	ACS-14852	9797	SIRC
10.	Ms. Anubha Pant	ACS-27830	10077	NIRC
11.	Mrs. Pooja Arora	ACS-25776	9213	NIRC
12.	Ms. Monika Sachdeva	ACS-17940	9909	NIRC
13.	Sh. Rajender Kumar Gupta	FCS-6331	6732	NIRC
14.	Sh. Ranjit Kumar Bhattacharya	ACS-3	2487	NIRC
15.	Ms. Neha Dewan	ACS-24010	10442	NIRC
16.	Ms. Neha Garg	ACS-21400	8747	NIRC
17.	Karmbir Singh	ACS-27551	9850	NIRC
18.	Ms. Kavita Parmar	ACS-26622	9595	NIRC
19.	Sh. Ashok Kumar Shukla	ACS-29673	10726	NIRC

## LICENTIAE ICSI

Sl. No.	Name	Licentiate No.	Region
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### ADMITTED\*\*

1.	Sh. Sanjay P. Sangtani	6356	WEST
2.	Ms. Ritika Rajkumar Fatehpuria	6357	WEST
3.	Sh. Abhishek Kumar	6358	NORTH
4.	Sh. Anchit Jain	6359	NORTH
5.	Sh. Vikram U	6360	SOUTH
6.	Sh. Prathamesh Deshpande	6361	WEST
7.	Sh. Vishal Kumar Garg	6362	SOUTH
8.	Sh. Anant Kashliwal	6363	EAST
9.	Sh. Atulkumar Kirtibhai Siddhpura	6364	WEST
10.	Sh. P. Dilip Sakhlecha	6365	SOUTH
11.	Sh. Deepak Arora	6366	WEST
12.	Sh. Praveen P.	6367	SOUTH
13.	Sh. Nrupang Bhunitra Dholakia	6368	WEST
14.	Sh. Sandesh H.S.	6369	SOUTH
15.	Ms. Hirini Vijayakumar	6370	SOUTH
16.	Sh. Saravana Raja K.	6371	SOUTH
17.	Sh. Ankit Mittal	6372	NORTH
18.	Sh. Ankit Kamlesh Gadia	6373	WEST
19.	Ms. Meetu Jain	6374	NORTH
20.	Sh. Lovneesh	6375	NORTH

## LIST OF LICENTIATES

who have not paid the Licentiate Subscription for 2011-12 and disintitled for using the descriptive words 'Licentiate - ICSI'

Sl. No.	Lice. No.	Regt. No.	Name
1	5525	CG0321590/03/2002	Anand Shyam Sunder Kankani
2	5526	NG0202680/05/1999	Puja Gupta
3	5527	SG0093122/08/1998	Anusha Raghunathan
4	5528	SR0238058/08/2002	Prashanth R
5	5531	CG0319614/09/2001	Channa Basavaraja C.
6	5533	EG0141501/02/2001	Anil Kumar Khemka
7	5537	WG0217560/08/2000	Dipali Govind Wadhvani
8	5538	WG0189150/02/2000	Shailesh Sajjan Saraf

\*\* During the period 01<sup>st</sup> May 2012 to 31<sup>st</sup> May, 2012





# News from the Institute

9	5544	EG0110261/08/1999	Amrita Gupta	65	5702	ER0190975/08/2003	Rimjhim Jagnani
10	5550	CG0311011/08/1998	Venkata Kesava Rao Gadamsetty	66	5705	NR0446931/05/2005	Manish Temani
11	5553	NR0267298/08/2000	Prafull Mitra	67	5706	ER0214008/02/2005	Lokesh Chandak
12	5555	CG0327985/04/2005	Umesh Kumar	68	5709	SR0336940/08/2005	Dinesh H
13	5558	EG0143159/02/2001	Abhishek Mohta	69	5710	NR0388725/08/2003	Ashish Ghiya
14	5559	EG0148351/08/2001	Manish Kumar Agarwal	70	5714	NR0441443/02/2005	Amit Aggarwal
15	5560	SR0207749/10/2001	C Sudha	71	5723	ER0214029/02/2005	Hitesh Jain
16	5561	CG0324440/06/2003	Vikash Surana	72	5725	ER0222602/08/2005	Poonam Jain
17	5562	WG0171722/08/1999	Mansi C Pardiwalla	73	5728	CR0323536/01/2003	Suparna Lall
18	5564	CG0326063/03/2004	Asha Ashok Bhawnani	74	5733	ER0224063/08/2005	Jyoti Shyamsukha
19	5566	CG0327713/02/2005	U Deepak Kumar	75	5734	ER0213988/02/2005	Sharad Mundra
20	5569	CG0321118/03/2002	Himanshu Vijay Pandya	76	5735	ER0213751/02/2005	Sumit Bhartia
21	5571	CG0326813/08/2004	Murali Balasubramanian	77	5736	ER0214316/02/2005	Raunak Bhैया
22	5573	EG0038800/09/1997	Narayan Kumar Agarwal	78	5737	ER0213993/02/2005	Ashok Kumar Mahawar
23	5575	CG0321983/06/2002	T G Paul	79	5738	ER0215259/02/2005	Rahul Chowdhary
24	5577	WR0312551/02/2003	Gaurav Vijayvergiya	80	5741	ER0215849/02/2005	Ashok Kumar Sharda
25	5579	WG0230951/05/2001	Vikrant Vijay Kelkar	81	5743	NR0450731/07/2005	Nikunj Agarwal
26	5580	WG0232403/05/2001	Hemant Vishanji Jain	82	5744	NR0442711/02/2005	Chinmay Jain
27	5582	WG0248003/08/2001	Kishore Babulal Purohit	83	5746	ER0148471/08/2001	Shekhar Agarwal
28	5583	WR0321794/05/2003	Kevin Rohit Bhai Daftary	84	5747	CR0331473/05/2007	Ravi Khandelwal
29	5585	WR0312422/02/2003	Keval Mukesh Rawal	85	5748	ER0169491/08/2002	Dau Dayal Mall
30	5587	WR0260481/01/2002	Vipul Narendra Vakkani	86	5749	ER0168477/08/2002	Amit Daga
31	5594	SG0139359/10/1999	Sangeetha M.	87	5753	WR0395891/05/2005	Tirath Thacker
32	5606	SR0264511/05/2003	K Stany Saminath Prasana	88	5757	SR0329167/08/2005	Maheshraj M R
33	5610	SR0300372/06/2004	Rajesh Pai	89	5758	NR0447263/05/2005	Abhishek Goyal
34	5611	CR0328099/04/2005	Sudipta Kar	90	5763	WR0312805/02/2003	Aparna Balkrishna Bhartia
35	5614	SR0149861/02/2000	Jayanthi G	91	5770	WR0414562/08/2005	Saharsh Gandhi
36	5616	SR0239411/08/2002	Harish S K	92	5771	WR0404878/08/2005	Abhishek Mandhanja
37	5617	SR0200379/08/2001	Ravi Seshadri P L	93	5772	WR0398606/05/2005	Suhrud Lele
38	5618	WR0312135/02/2003	Vishal Sharma	94	5773	NR0451998/08/2005	Amit Gupta
39	5619	SR0290427/02/2004	Vijay Gilda	95	5774	NR0451982/08/2005	Sachin Gupta
40	5623	SR0214201/02/2002	Vishnu Maheshwar M	96	5775	NR0451961/08/2005	Naveen Jain
41	5627	WR0335486/08/2003	Sachin Vikramrao Ghayal	97	5776	ER0214711/02/2005	Richa Jain
42	5631	NR0404899/02/2004	Sameer Mahajan	98	5777	ER0214704/02/2005	Nidhi Palan
43	5633	EG0117781/11/1999	Amit Patwari	99	5779	WR0397291/05/2005	Rupesh Chokshi
44	5634	SR0195342/08/2001	Shilpa S Malhotra	100	5780	WR0341801/08/2003	Supriya Laxminarayan Gupta
45	5635	CR0328602/09/2005	Ravindra Balraj Ellagaru	101	5782	CG0326826/08/2004	Murtuza Zoeb Munim
46	5639	NR0415049/05/2004	Krishan Kalra	102	5788	NR0401968/11/2003	Sanket Parwal
47	5640	SR0284209/10/2003	Aditya Rathi	103	5789	WR0295978/08/2002	Ratanlal Ashok Kumar
48	5642	SR0177161/11/2000	Bharath Ram Venkataraman	104	5793	CR0327873/03/2005	Pratik Kumar Gupta
49	5648	SR0292340/02/2004	Chetan Ranka	105	5794	CG0327959/04/2005	Rajesh Ranjan
50	5654	NR0382931/08/2003	Rahul Gupta	106	5796	NR0447630/05/2005	Mukesh Soni
51	5661	EG0080613/08/1998	Rajiv Sharma	107	5799	ER0215163/02/2005	Mukesh Balasia
52	5662	NR0399921/11/2003	Amit Kumar Jugia	108	5801	SR0275441/08/2003	Gnanasambandham N S
53	5664	SR0240040/08/2002	C Kavitha	109	5803	NR0446811/05/2005	Ashok Kumar Agrawal
54	5665	ER0199414/02/2004	Gaurav Rathi	110	5807	WR0406786/08/2005	Subitha Pallithara
55	5669	CR0319538/09/2001	Ravi Mahadevan	111	5808	WR0397199/05/2005	Bhargav Atul Patel
56	5673	SR0241749/08/2002	Srinivasan Nandakumar	112	5809	NR0475125/02/2006	Rajiv Kumar
57	5674	NR0409405/02/2004	Ruchika Aggarwal	113	5812	SR0347642/02/2006	B S Nagaraj
58	5677	NR0412325/04/2004	Tanuj Agrawal	114	5813	ER0231109/02/2006	Himanshu Maroo
59	5681	ER0212965/02/2005	Naveen Pachisia	115	5816	WR0369274/07/2004	Reshma Prakash Shanbhag
60	5690	ER0213027/02/2005	Ankit Agarwal	116	5818	ER0231008/02/2006	Saurav Tibrewal
61	5693	NR0345898/08/2002	Naveen Jain	117	5819	NR0453521/08/2005	Nikhil Bansal
62	5694	ER0185987/08/2003	Basant Gadhyan	118	5824	WR0344083/08/2003	Sarita Madhav Thakur
63	5696	ER0187178/08/2003	Vishal Agarwal	119	5828	ER0215158/02/2005	Aditya Sureka
64	5701	SR0335486/08/2005	Rajeshwari Patil	120	5830	NR0484636/05/2006	Meenakshi Agarwal
				121	5831	SR0351968/05/2006	Karthikeyan Murthy
				122	5836	CR0320906/02/2002	Manish Lal Shrestha



123	5838	NR0374852/05/2003	Prakash Chand Kothari	181	5954	SR0336935/08/2005	B Chandra Sekhar
124	5839	NR0472671/01/2006	Bharat Kumar Mandot	182	5956	SR0294694/02/2004	Hemamalini Aravamudhan
125	5840	NR0445870/05/2005	Sindhu Kumari	183	5957	420482000/05/2007	Shubham Girish Chand Goyal
126	5842	SR0341168/11/2005	Jayaraja P P	184	5962	WR0437765/06/2006	Virendra Digambar Firahe
127	5847	SR0323406/05/2005	N Ravi Shankar	185	5970	WR0433869/05/2006	Ajay Jain
128	5848	NR0458529/08/2005	Manish Goyal	186	5973	420481789/05/2007	Shah Pratik Gunvantkumar
129	5852	WR0404857/08/2005	Mahendra Bhalodiya	187	5974	SR0239676/08/2002	S Hemanth
130	5855	ER0213321/02/2005	Khushboo Gupta	188	5976	SR0298947/05/2004	G Sairam
131	5858	NR0419093/08/2004	Pawan Chauhan	189	5977	WR0456525/08/2006	Nikhil Jaju
132	5859	WR0407041/08/2005	Varun Rathi	190	5980	WR0442997/08/2006	Sureshkumar Kanabar
133	5861	WR0399192/06/2005	Atul Hurkat	191	5983	NR0485824/05/2006	Yashvi Kumar Sancheti
134	5863	NR0406011/02/2004	Vinod Lalvani	192	5984	WR0425259/02/2006	Pankaj Agrawal
135	5864	WR0454685/08/2006	Rakesh Ramdava Gaud	193	5987	220336122/07/2002	Himansu Srivastava
136	5869	WR0420674/11/2005	Jayesh Mansukhlal Rabadia	194	5990	NR0501244/08/2006	Manish Kumar Agarwal
137	5871	WR0433651/05/2006	Richa Rameshchandra Gandhi	195	5992	420483166/06/2007	Girish Sureshchandra Saboo
138	5872	WR0416773/08/2005	Lokesh Keswani	196	5993	520326445/03/2004	Niraj Kumar Sinha
139	5873	WR0433961/05/2006	Mukti Jayeshkumar Raval	197	5999	420482171/05/2007	Patel Kushal Yogeshkumar
140	5877	SR0367171/08/2006	Vasundra Veni K J	198	6004	320418267/02/2008	B Karthik
141	5881	ER0215142/02/2005	Abhishek Sureka	199	6010	NR0502655/08/2006	Gautam Kumar Malchandka
142	5883	WR0433731/05/2006	Sohil Keshavani	200	6011	NR0495688/08/2006	Shruti Gupta
143	5885	SR0341189/11/2005	Sriram S	201	6012	220561686/08/2007	Dharmendra Singh Mohta
144	5886	WR0458959/09/2006	Seema Anmol Chhoriya	202	6013	320397183/08/2007	Subachandran M
145	5894	SR0356516/06/2006	Vijayagiri E	203	6020	520332408/11/2007	Krishnam Raju Adavi
146	5895	WR0429209/02/2006	Balasaheb Ekatpure	204	6023	220577881/02/2008	Nishu Kansal
147	5898	NR0483721/05/2006	Swati Mittal	205	6025	320338641/10/2005	Murulikrishna R
148	5899	WR0442854/08/2006	Mitul Kumar Shah	206	6026	NR0523572/02/2007	Nisha Choudhary
149	5900	NR0510877/11/2006	Ritesh Raj Pariyani	207	6027	WR0425419/02/2006	Gourav Mehta
150	5901	WR0428541/02/2006	Tushar Patel	208	6030	WR0353956/02/2004	Swati Balkrishna Bhartia
151	5903	SR0367681/08/2006	Ananthakrishnan P R	209	6032	NR0479749/02/2006	Samridhi Kothari
152	5904	SR0368575/08/2006	Ganesh B	210	6033	420519767/02/2008	Jitendra Rameshbhai Sanghani
153	5905	SR0293008/02/2004	Subramanian Balajee	211	6038	WR0473981/02/2007	Punita Dinesh Joothawat
154	5906	SR06SR032/05/2005	Sudarsan Shanmugam	212	6039	420503721/08/2007	Dhiraj Ramnath Bhandari
155	5907	NR0448606/05/2005	Punit Shah	213	6040	320399533/08/2007	Ganesh Ramachandran
156	5908	WR0458247/08/2006	Pawan Bhagwandas Lohiya	214	6042	420528021/02/2008	Abhishek Vikrambhai Patel
157	5909	WR0429113/02/2006	Gopal Prasad Gupta	215	6046	CR0330048/08/2006	S Vijayaraghavan
158	5911	NR0450550/07/2005	Ishwar Haswani	216	6047	NR0477910/02/2006	Rajiv Kumar Bansal
159	5912	WR0440483/07/2006	Amol Kabra	217	6050	320421495/02/2008	Rohit Kumar Jain S
160	5914	NR0485911/05/2006	Vivek Vijay	218	6051	220552161/08/2007	Rajan Yadav
161	5915	SR0307274/08/2004	K R Sindhu	219	6056	ER0214995/02/2005	Motrayee Bhattacharya
162	5917	NR0483575/05/2006	Rajkumar Agarwal	220	6057	NR0473774/02/2006	Gaurav Bhardwaj
163	5918	ER0221891/08/2005	Hemant Patni	221	6059	220576651/02/2008	Ravi Wadhawan
164	5919	CR0331601/06/2007	Gurunath Huchappa Gaddadavara	222	6060	220538814/07/2007	Ravi Atul Farsaiya
165	5920	NR0442694/02/2005	Garima Jain	223	6067	WR0265433/02/2002	Manasi Achyut Gokhale
166	5924	ER0227276/11/2005	Amit Goyal	224	6070	120260396/08/2007	Naveen Purba
167	5926	NR0490908/08/2006	Mohit Mahajan	225	6071	SR0366524/08/2006	S Sree Madavan
168	5930	WR0395844/05/2005	Abhishek Shah	226	6074	320395068/08/2007	Rajeshwari H M
169	5932	NR0481519/03/2006	Arun Purohit	227	6075	420511475/10/2007	Ankit Vijay Agrawal
170	5933	NR0523955/02/2007	Shobhit Bansal	228	6076	420487955/07/2007	Girish Nirmal Nagpal
171	5936	WR0365618/06/2004	Bharat Zanvar	229	6077	320420000/02/2008	Jagdish Prasad Sharma
172	5937	SR0367451/08/2006	Richa Khatri K	230	6079	320381106/02/2007	Niveetha S
173	5938	NR0501712/08/2006	Bishnoi Pratap Bagruram	231	6080	320405801/09/2007	Nagaraja M R
174	5941	NR0493334/08/2006	Om Prakash Kasera	232	6083	320379947/02/2007	Mohanraj P
175	5942	NR0487812/05/2006	Vikas Gupta	233	6084	ER0213081/02/2005	Neha Ganeriwal
176	5943	CR0332848/03/2008	Sachin Aggarwal	234	6085	220560052/08/2007	Rahul Garg
177	5944	SR0329821/08/2005	Aruna V	235	6086	WR0463947/11/2006	Sujata Kumari
178	5947	420481848/05/2007	Mehta Jaymit Amitkumar	236	6091	WR0322446/05/2003	Mangesh Madhukar Sabne
179	5949	ER0247090/11/2006	Shuvodip Paul	237	6095	420472220/02/2007	Piyush Arvind Bothra
180	5952	WR0461901/11/2006	Ulhas Shivnath Borse				



# News from the Institute

238	6097	SR0368411/08/2006	Niranjan Babu R
239	6098	220497984/08/2006	Arvind Kumar Ray
240	6099	220517540/02/2007	Darshan Inani
241	6100	WR0463947/11/2006	Sujata Shiv Prabhakar
242	6101	ER0214417/02/2005	Priyatama Khawala
243	6107	WR0328447/06/2003	Ratan Dhirajlal Chawda
244	6111	420530522/02/2008	Niranjan Shreerang Gohad
245	6116	320403185/08/2007	Sriram S
246	6117	SR0374417/11/2006	Anup Kumar Biswal
247	6120	320392525/07/2007	Srinivasan R
248	6124	120266482/09/2007	Priya Ranjan Chakraborty
249	6136	220503601/08/2006	Pravin Kumar Kasera
250	6137	220503699/08/2006	Prashant Bansal
251	6140	WR0386396/11/2004	G Aditya
252	6141	CR0330048/08/2006	S Vijayaraghavan
253	6143	420434371/05/2006	Pankaj Vishnu Hadade
254	6147	420482084/05/2007	Mitresh Kiranbhai Modi
255	6148	520335089/09/2009	Shipra Gupta
256	6151	220621243/08/2008	Vineet Agarwal
257	6172	320423946/02/2008	Uma M
258	6174	420581018/08/2008	Rathin Amishbhai Majmudar
259	6175	120258930/08/2007	Sumit Rustogi
260	6177	SR0365261/08/2006	Ajay G Prasad

261	6179	CR0331421/04/2007	Shoukat Ganiso Kalot
262	6180	220626258/08/2008	Akhilesh Kangsia
263	6182	SR0371389/10/2006	Kumaran K C
264	6185	WR0422413/11/2005	Nitin Madhusudanji Mantri

## ATTENTION MEMBERS !

### CONDUCT OF POST MEMBERSHIP QUALIFICATION

(PMQ) EXAMINATION IN 'CORPORATE GOVERNANCE'

The Council in its 208<sup>th</sup> meeting held on 8<sup>th</sup> and 9<sup>th</sup> June, 2012 had decided that henceforth the Post Membership Qualification (PMQ) Examination in "Corporate Governance" will be held only once in a year in the month of June.





# Guidelines for Setting up and Conversion of Firms of PCS into LLPs

In exercise of powers conferred by Clause (1) of Part II of Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2011, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-

These Guidelines shall be called, Guidelines for Setting up and Conversion of Firms of PCS into LLPs.

These guidelines shall come into effect from 9th June, 2012.

1. An existing CS firm desirous to convert itself into LLP shall be required to follow the provisions of Chapter-X of the Limited Liability Partnership Act, 2008 read with Second Schedule to the said Act containing provisions of conversion from existing firms into Limited Liability Partnership (LLP) as well as provisions of the Company Secretaries Act, 1980.
2. In terms of Rule 18(2) (xvi) of LLP Rules, 2009, if the proposed name of LLP includes the words 'Company Secretary' or such similar words as indicative of the profession of Company Secretaries, as part of the proposed name, the same shall be allowed only after obtaining approval from the Council of The Institute of Company Secretaries of India (ICSI).
3. If the proposed name of LLP of CS firm resembles with any other non-CS entity in terms of Section 15 of the Limited Liability Partnership Act, 2008 and the Rules made thereunder, the proposed name of LLP of CS firms may include the word 'Company Secretary' or 'Company Secretaries', as the case may be in the name of the LLP itself and the Registrar of LLP may allow that name, subject to the provisions of Rule 18(2) (xvi) of LLP Rules as referred above.
4. For the purpose of registration of LLP with ICSI under Regulation 169 of the Company Secretaries Regulations, 1982, the partners of the firm shall apply in ICSI Form No. 'I' along with copy of name registration received from the Registrar of LLP and submit the same with the Directorate of Membership of the ICSI. This Form shall contain all details as well as the particulars with the signatures of all partners or designated partner of the proposed LLP.
5. The names of the CS firms approved by the ICSI shall remain reserved for the partners as one of the options for LLP names subject to the provisions of LLP Act, Rules and Regulations made thereunder.
6. The following guidelines relating to seniority and other criteria shall be followed for approval of LLP with ICSI:
  - (i) Where two similar or identical or nearly similar or identical firm names (whether the partners of such firms are same or not) have been approved by ICSI,

under the proposed LLP, only one such firm name shall be approved and remaining firm approved by ICSI, either desires to convert into LLP or not, a change in the firm name shall be required.

- (ii) The name of the LLP may be like 'A & Co. LLP' or 'A & Associates LLP' and no other suffix shall be approved and registered by ICSI.
  - (iii) The newly converted LLPs approved by ICSI shall be allowed to work only in terms of Section 2(2) of the Company Secretaries Act, 1980 and the object of LLP to be incorporated in Form-2 and Form-17 of the LLP Rules, 2009 or in LLP agreement, shall be in the nature of Professional Services allowed under Section 2(2) of the Company Secretaries Act, 1980. LLP shall be subject to the same regulations, as if they were in partnership firm. Mere conversion into LLP does not give any additional privileges, which were not earlier with the CS firms.
  - (iv) Inter-se seniority among the firms shall be given to LLP as per existing policy of the ICSI. In other words, LLPs shall carry the same seniority, as the firm shall otherwise have under the existing policy of ICSI. In case of merger of two LLPs, same rules as applicable to firms merging shall apply.
  - (v) The non converted firms shall also remain on the same position of seniority in relation to converted LLPs as the converted LLPs shall have the same *inter-se* seniority as the firms had earlier to conversion.
7. These guidelines for conversion of CS firms into LLP shall also be applicable to the conversion of Proprietorship concern of Company Secretary into LLP subject to the provisions of LLP Act, Rules and Regulations made thereunder.
  8. The unique code number of LLP with ICSI, shall remain the same Unique Code Number (UCN) allotted to the firm by the ICSI before the conversion.
  9. The incorporation of LLP shall not affect the existing regulations and guidelines in force as regards the name allotment to Company Secretaries firms.
  10. In case there is a merger of a firm and conversion with LLP and vice-versa, seniority may be provided to the surviving entity as per the policy of the ICSI.
  11. The provisions of the Company Secretaries Act, 1980 (as amended), the Company Secretaries Regulations, 1982 (as amended), shall be applicable to all partners of the converted CS firms into LLP jointly and severally.
  12. These Guidelines shall be read in conjunction with the Guidelines for Approval of Firm Names issued by the ICSI.



# News from the Institute



## List of Companies Registered for Imparting Training During the Month of May 2012

Region	Training Period	Stipend (Rs.)
<b>Eastern</b>		
<b>Richifield Financial Services Ltd.</b> 33, Brabourne Road, 5th Floor Kolkata 700001 <i>rfs/shares@gmail.com</i>	15 Months Training	3500/-
<b>Janmangal Consultants Private Ltd.</b> 17, Gamesj Chandra Avenue, 5th Floor, Kolkata- 700013 <i>janmangal@speedindia.com</i>	3 Months Practical Training	3500/-
<b>Shree Bahubali International Ltd.</b> 12, India Exchange Place, 3rd Floor, Kolkata-700 001	15 Months & 3 Months Practical Training	3500/-
<b>RDB Regent Retail Ltd.</b> 116F, B.T. Road NTC Compound, Kamarthati Kolkata-700058 <i>infi@regentstation.com</i>	15 Months Training	3500/-
<b>KYS Sponge Iron Pvt. Ltd.</b> 2, C.H. Area (N.E) Jamshedpur-831 001 <i>Kys_group@sify.com</i>	3 Months Practical Training	3500/-
<b>Lovely International Pvt. Ltd.</b> Anuj Chambers Unit-3B, 24, Park Street Kolkata-700 016 <i>info@lovelygroup.in</i>	15 Months Training	3500/-
<b>Thirdwave Financial Intermediaries Ltd.</b> 302 F, Kamalalaya 156A Lenin Sarani, Kolkata-700 013 <i>Investor.thirdwave@gmail.com</i>	15 Months Training	3500/-
<b>Vedika Credit Capital Ltd.</b> 406, Shrilok Complex 4th Floor, H.B. Road Ranchi-834 001 (Jharkhand) <i>vikramjain_vedika@hotmail.com</i>	15 Months Training	3500/-

**Vibgyor Allied Infrastructure Ltd.**  
46 D, Rafi Ahmed Kidwai Road  
Satyam Building, 6th Floor  
Kolkata-700016  
15 Months & 3 Months Practical Training  
3500/-

### Northern

**Mahle Filter Systems India Ltd.**  
1, Sri Aurobindo Marg,  
New Delhi 110016  
15 Months Training  
3500/-

**Spaze Towers Private Ltd.**  
18, Community Centre Mayapuri  
Phase 1, New Delhi 110064  
*vipul.srivastava@spaze.in*  
15 Months Training  
3500/-

**Pacific Development Corporation Ltd.**  
3rd Floor, Pacific Mall  
Site IV, Shibabad Ind. Area  
Ghaziabad, UP- 201010  
*info@pacificindia.in*  
15 Months Training  
3500/-

**Mahima Real Estate Pvt. Ltd.**  
F 1 Govind Marg  
Opp. Petrol Pump, Rajapark  
Jaipur 302004  
*info@mahimagroup.org*  
15 Months & 3 Months Practical Training  
3500/-

**ONGC Petro Additions Ltd.**  
8th Floor, Mohan Dev Building  
13 Tolstoy Marg  
New Delhi 110001  
3 Months Practical Training  
3500/-

**Hindustan Media Ventures Ltd.**  
18-20 Kasturba Gandhi Marg  
New Delhi 110001  
15 Months Training  
3500/-

**Lloyd Rockfibres Ltd.**  
M-13 Connaught Place  
New Delhi 110001  
*lloyd\_abd@dataone.in*  
15 Months Training  
3500/-

**Fair Consulting India Pvt. Ltd.**  
B 36-37 First Floor  
IDC Mehrauli Gurgaon Road  
Opposite Sector 14, Gurgaon 122001  
15 Months Training  
3500/-

**Kushal Infraproject Industries (India) Ltd.**  
209 Uday Plaza, 16A Uday Park  
New Delhi 110049  
*kushalinfrapro12@gmail.com*  
15 Months & 3 Months Practical Training  
3500/-

**Rosmerta Technologies Ltd.**  
137 Udyog Vihar Phase I  
Gurgaon 122016  
*contact@rosmertatech.com*  
15 Months & 3 Months Practical Training  
3500/-

**C & C Constructional Ltd.**  
Plot No 70 Institutional  
Sector 32, Gurgaon-122001  
*candc@candcinfrastructure.com*  
15 Months Training  
3500/-



<b>A2Z Infrastructure Ltd.</b> Plot No.44, Sector 32 Institutional Area Gurgaon-122001, Haryana (India) <i>ankit.jain@a2zemail.com</i>	15 Months & 3 Months Practical Training	3500/-	<b>Shri Kalyan Holdings Ltd.</b> D-25 Lal Bahadur Nagar East J.L.N.Marg, Jaipur-302017 (Rajasthan) <i>ashok@shrikalyan.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>Far East Marketin Private Ltd.</b> 1/7, West Patel Nagar New Delhi-110008	15 Months Training	3500/-	<b>Rosmerta Technologies Ltd.</b> 137 Udyog Vihar Phase I Gurgaon 122016 <i>contact@rosmertatech.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>IL&amp;FS Technologies Ltd.</b> 3rd Floor Ambience Corporate Tower, Ambience Island N.H 8, Gurgaon-122001 <i>info@ilfstechologies.com</i>	15 Months Training	3500/-	<b>Pacific Development Corporation Ltd.</b> 3rd Floor, Pacific Mall Site IV, Sahibabad Ind.Area Ghaziabad, UP- 201010 <i>info@pacificindia.in</i>	15 Months Training	3500/-
<b>Almondz Insurance Brokers Pvt. Ltd.</b> 2nd Floor, Sucheta Bhawan 11-A, Vishnu Digamber Marg New Delhi-110002	15 Months & 3 Months Practical Training	3500/-	<b>Southern</b>		
<b>PNB Housing Finance Ltd.</b> 9th Floor , Antriksh Bhawan 22 Kasturba Gandhi Marg New Delhi-110 001 <i>pnb@pnbhfl.com</i>	15 Months & 3 Months Practical Training	3500/-	<b>Karvy Computershare Pvt. Ltd.</b> Mutual Fund Services Registry House :H.No.8-2-596 Avenue 4, Street No.1 Banjara Hills, Hyderabad 500034 <i>support@karvy.com</i>	15 Months Training	3500/-
<b>Ekam Leasing &amp; Finance Co. Ltd.</b> Finance Company Limited IInd Floor,11,Rani Jhansi Road, New Delhi-11 <i>info@ekamleasing.com</i>	15 Months & 3 Months Practical Training	3500/-	<b>IFMR Rural Channels and Services Pvt. Ltd.</b> IITM Research Park A1, 10th Floor, Kanagam Village Taramani, Chennai 600113	15 Months Training	3500/-
<b>Ace Edutrend Ltd.</b> 1st Floor A-7/6, Jhilmil Industrial Area Near Dilsad Garden Metro Station Shahadara, Delhi-110 095 <i>csdharam@gmail.com</i>	15 Months & 3 Months Practical Training	3500/-	<b>Emhart Teknologies (India)</b> Private Limited 5th Floor, Apex Towers No.54, II Main Road , RA Puram, Chennai-60002	15 Months & 3 Months Practical Training	3500/-
<b>Extramarks Education Pvt Ltd.</b> 506 ,Surya Kiran Building, 19,K.G , Marg, Connaught Place New Delhi-110001	15 Months Training	3500/-	<b>Janalakshmi Financial Services Pvt. Ltd.</b> Rajashree Saroja Plaza 34/1 Andree Road Shanthinagar, Bangalore-560027 <i>mahadevprakash.mj@janalakshmi.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>SVP Builders (I) Ltd.</b> 17, Kiran Enclave Main G.T. Road Ghaziabad-201001 (India) <i>customercare@svpgroup.in</i>	15 Months Training	3500/-	<b>Western</b>		
<b>RNB Merchantile Pvt. Ltd.</b> RNB House, 1, Shivaji Enclave Main Road Near Raja Garden, New Delhi - 110027	15 Months Training	3500/-	<b>Phadnis Infrastructure Ltd.</b> Kalpavruksha, 2nd Floor Sr.No.46/1C/1, 100 Ft. DP Road Next To Suryadatta Institute Karvenagar, Pune 411052 <i>vrushali.eksambekar@phandnisgroup.com</i>	15 Months Training	3500/-
<b>Umang Boards Private Ltd.</b> "Umang House" 7- B Bharatmata Path Jamna Lal Bajaj Marg C-Scheme, Jaipur-302 001 <i>info@umanboards.com</i>	15 Months & 3 Months Practical Training	3500/-	<b>Madhya Pradesh State Tourism Development Corporation Ltd.</b> Paryatan Bhawan, Bhadbatha Road, Bhopal-462003	15 Months & 3 Months Practical Training	3500/-





# News from the Institute

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



<b>BCB Finance Limited</b> 1204, P.J.Towers Dalai Street Mumbai 400001 <i>bfpmbai@gmail.com</i>	15 Months Training	3500/-
<b>Edelweiss Tokio Life Insurance Co. Ltd.</b> Edelweiss House, Off C.S.T.Road Kalina, Mumbai 400098	15 Months Training	3500/-
<b>Allanasons Limited</b> Allana House Allana Road Colaba Mumbai-400 001 <i>allanasons@allana.com</i>	15 Months & 3 Months g Practical Training	3500/-
<b>Suchak Trading Ltd.</b> 29/A Nalanda Shopping Centre, Station Road, Goregaon (West) Mumbai-400062 <i>suchaktrading@rediffmail.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>Unijules Life Sciences Ltd.</b> B - 35&36, MIDC Industrial Area Kalmeshwar-441501 Nagpur (M.S) <i>support@unijules.com</i>	15 Months Training	3500/-
<b>Sagar Deep Alloys Ltd.</b> 205,Pittalia Bamba, Ghee -Kanta, Near Madhuram Cinema Ahmedabad-380001 Gujarat(India) <i>sadalloys@gmail.com</i>	15 Months Training	3500/-
<b>H.S.India Ltd.</b> A-1, Manish Kaveri, Building No.18 Manish Nagar J.P.Road Andheri(West) Mumbai-400053	15 Months Training	3500/-
<b>Garlock India Private Ltd.</b> Plot No.21, S-Block M.I.D.C, Bhosari Pune-411026 (Maharashtra)	15 Months Training	3500/-
<b>Nhava Sheva International Container Terminal Pvt. Ltd.</b> Operations Center, Sheva Navi Mumbai-400707	15 Months Training	3500/-
<b>Tata Capital Financial Services Ltd.</b> One Forbes Dr.Vb.Gandhi Marg, Fort , Mumbai 400001	15 Months Training	3500/-

<b>MS. UMA LODHA</b> Company Secretary in Practice The Ruby, 9th Floor Senapati Bapat Marg Dadar (West) Mumbai- 400 028	PCSA -2975
<b>MR. RAJ KUMAR GOYAL</b> Company Secretary in Practice 60 / 310- A/1, Kheria Mode Agra- 282 001	PCSA -2976
<b>MR. JAYARAJ KRISHNA DAMGRE</b> Company Secretary in Practice D1&2, Krishna EHS., Subhash Road Vile Parle (E) Mumbai -400 057	PCSA -2977
<b>MS. KHUSHBOO GOENKA</b> Company Secretary in Practice 204, Ram Krishna Samadhi Road 1st Floor, Kolkata -700 054	PCSA -2978
<b>MR. AMBER AHMAD</b> Company Secretary in Practice 34, Ganesh Chandra Avenue 3rd Floor Room No.-12 Kolkata - 700 013	PCSA -2979
<b>MS. PRIYANKA SAXENA</b> Company Secretary in Practice A-158, 2nd Floor, Surya Nagar Opp. Vivek Vihar Ghaziabad -201 011	PCSA -2980
<b>MR. YATISH BHARDWAJ</b> Company Secretary in Practice S-557, Ground Floor, Hira Complex School Shakarpur New Delhi -110 092	PCSA -2981
<b>MR. LOVENEET HANDA</b> Company Secretary in Practice D-112, Shyam Park Extension Sahibabad, Ghaziabad -201 005	PCSA -2982
<b>MR. RONAK S. SHAH</b> Company Secretary in Practice 9, Parth Tower Opp. Purshottamnagar New Bajaj, Ahmedabad - 380 013	PCSA -2983



<b>MR. ASHISH P. TRIPATHI</b> Company Secretary in Practice 24, Atul Apartment, Nr. Hasmukh Colony Vijaynagar Road, Naranpura Ahmedabad -380 013	PCSA -2984	<b>MR. ASHISH GOVINDLAL SHAH</b> Company Secretary in Practice 73, Keshavnagar Society Subhashbridge Ahmedabad - 380 027	PCSA -2995
<b>MS. KANUBHA JAIN</b> Company Secretary in Practice Opp. Govt. College Of Education 2nd Floor, Lodowali Road Jalandhar City, Punjab -144 001	PCSA -2985	<b>MR. BIRENDRA N. BANKA</b> Company Secretary in Practice Shop.No. -1, Mewara Kunj Baralal Street, Upper Bazar Ranchi - 834 001	PCSA -2996
<b>MS. NAGULAVARI VANITHA</b> Company Secretary in Practice 6-3-347./22/2, Flat No :10 4th Floor, Aiswarya Nilayam Dwarakapuri Colony, Panjagutta Hyderabad- 500 082	PCSA -2986	<b>MS. KALPANA CHAUHAN</b> Company Secretary in Practice 401, Janhavi Meadows Begur Koppa Main Road, Yelanahalli Bangalore -560 068	PCSA -2997
<b>MR. P. P. AGARWAL</b> Company Secretary in Practice C-5/6A, 1st Floor, DDA Flats East Of Kailash New Delhi - 110 065	PCSA -2987	<b>MS. SUJATHA M. NAIR</b> Company Secretary in Practice 401, Janhavi Meadows Begur Koppa Main Road Yelanahalli Bangalore -560 068	PCSA -2998
<b>MR. VINEET CHOPRA</b> Company Secretary in Practice 17 B, Goyal Nagar Kanadia Road Indore - 452 001	PCSA -2988	<b>MR. ANSHU PARIKH</b> Company Secretary in Practice 496, Gangari Bazar Opp. Vishnu Marg Jaipur -302 001	PCSA -2999
<b>MOHD. NAZIM KHAN</b> Company Secretary in Practice "Sankalp", C-227, GF, Westend Marg Nr. Garden Of Five Senses Paryavaran Complex New Delhi -110 030	PCSA -2989	<b>MS. ANCHAL PIPLANI</b> Company Secretary in Practice C-965, Super Shopping Centre Faizabad Road Lucknow -226 006	PCSA -3000
<b>MR. A.KUMAR REDDY</b> Company Secretary in Practice New No. -16, 2nd Floor Pari Street, Choolaimedu Chennai -600 094	PCSA -2990	<b>MS. SHEFALI KHANDELWAL</b> Company Secretary in Practice 209, Baba Harish Chandra Marg Chandpole Bazar Jaipur - 302 001	PCSA -3001
<b>MS. RADHA VIJAYARAGHAVAN</b> Company Secretary in Practice 6, M.G. Ramachandran Road Kalak Shetra Colony Basant Nagar Chennai - 600 090	PCSA -2991	<b>MR. MANIAR SIDDHARTH NITIN BHAI</b> Company Secretary in Practice B/5, Sankalp Flats Ambawadi Bazaar Ellis Bridge Ahmedabad - 380 006	PCSA -3002
<b>MR. DHIRENDRA R. MAURYA</b> Company Secretary in Practice Shop No -5 Jay Rudra Apt. J.P. Thakur Marg, Opp. Post Office Bhayander (West) Thane: 401 101	PCSA -2992	<b>MR. MOHIT NEHRA</b> Company Secretary in Practice G-83/104, 1st Floor Laxmi Nagar Delhi -201 010	PCSA -3003
<b>MS. SULEKHA DATTA</b> Company Secretary in Practice Flat No. -402, 12, Sitalatala Lane, Makhla, Uttarpura Hooghly- 712245	PCSA -2993	<b>MR. L.V. SHYAM SUNDER</b> Company Secretary in Practice No.-15, Gangai Amman Koil Street 1st Floor, Above Silver Sky Super Market Kodamabakkam Chennai -600 024.	PCSA -3004
<b>MS. RADHIKA RATHI</b> Company Secretary in Practice 403, Bhavya Tower D-157, A/C Kabir Marg, Bani Park Jaipur - 302 016	PCSA -2994	<b>MS. RICHA RAJGARIA</b> Company Secretary in Practice Room No. 56, Krishna Niwas 496, Kalbadevi Road Nr. Edward Cinema Mumbai -400 010	PCSA -3005



# News from the Institute

**MR. HARSHAD DILIP MANE**  
Company Secretary in Practice  
A-402, Shree Samarpan Natwar  
Nagar Roadno -4, Jageshwari  
East Mumbai -400 060

PCSA -3006

**MS. MIDHUNA K.C**  
Company Secretary in Practice  
18/21 (16) 2nd Floor, Fort Centre  
Stadium Bege Pass Junction  
Palakkad -678 001

PCSA -3007

**MR. PAVAN KUMAR G**  
Company Secretary in Practice  
No-92, Kumar Mansions  
4th Floor, 21st Main Road  
BSK, 2nd Stage  
Bangalore -560 070

PCSA -3008

**MR. DARPAN DEEPAK POPAT**  
Company Secretary in Practice  
210, 2nd Floor, Popular Plaza  
Above Kutch Kala  
Plot No.-14, Sector 1A  
Gandhidham - 370 201

PCSA -3009

**MR. VINAY DATTARAM ANGANE**  
Company Secretary in Practice  
C/1101, R N A Complex, Sunder Nagar  
Kalina, Santacruz(E)  
Mumbai -400 098

PCSA -3010



## Company Secretaries Benevolent Fund

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



Sl. No.	LM No.	Name	Mem No.	City
<b>EIRC</b>				
1	9747	Ms. Khushboo Anil	ACS - 25872	PATNA
2	9775	Mr. Amar Kumar Nayak	ACS - 29989	BHADRAK
<b>NIRC</b>				
3	9749	Mr. Ratnesh Kumar Pandey	ACS - 30053	JHAJJAR DISTT.
4	9752	Mr. Ajeet Singh Verma	ACS - 30102	NEW DELHI
5	9756	Sh Sunil Kumar	FCS - 6788	DELHI
6	9763	Mr. Diwaker Dubey	ACS - 30119	KANPUR

7	9767	Sh. Bajrang Lal Bajaj	FCS - 2765	DELHI
8	9768	Mrs. Reetu Malik	ACS - 20916	GURGAON
9	9769	Ms. Anjna Makhija	ACS - 28936	GURGAON
10	9770	Sh. Manish Kumar	FCS - 6663	MUZAFFARNAGAR
11	9771	Mr. Yashpal Singh	ACS - 29917	NOIDA
12	9772	Ms. Pavitra Agarwal	ACS - 29922	JAIPUR
13	9774	Mr. Amit Kumar Gupta	ACS - 29988	DELHI
14	9776	Ms. Geeta Jha	ACS - 30014	NOIDA
15	9777	Mr. Deepak Jain	ACS - 30074	BANSWARA
16	9778	Mr. Rajeev Mundra	ACS - 30094	JODHPUR

### SIRC

17	9743	Mr. S Ganesh	ACS - 29965	SECUNDERABAD
18	9744	Mr. C N Kranthi Kumar	ACS - 30028	HYDERABAD
19	9745	Ms. Srilakshmi Meruga	ACS - 30056	HYDERABAD
20	9751	Ms. Maruthi Padmaja P.	ACS - 30146	HYDERABAD
21	9754	Mr. Karthikeyan V	ACS - 30273	COIMBATORE
22	9755	Mr. Nns Srikanth	ACS - 30304	HYDERABAD
23	9757	Mr. S V Sangamesh	ACS - 30308	BANGALORE
24	9758	Ms. Nikita Bhandari	ACS - 30182	HYDERABAD
25	9759	Mr. Viswanath Pothukuchi	ACS - 30199	HYDERABAD
26	9760	Sh. Salim Punjani	ACS - 30239	HYDERABAD
27	9761	Ms. Pooja Jhunjhunwala	ACS - 30179	SECUNDERABAD
28	9762	Mr. M Satish Choudhary	ACS - 30204	HYDERABAD
29	9764	Ms. Ranjitha Shenoy G	ACS - 30257	BANGALORE
30	9773	Ms. Sapna U R	ACS - 29925	MYSORE

### WIRC

31	9746	Mr. Agnelo Anthony Fernandes	ACS - 30029	MUMBAI
32	9748	Mr. Chaitanya Zaveri	ACS - 22185	MUMBAI
33	9750	Sh. Punit Pradip Shah	ACS - 20536	MUMBAI
34	9753	Ms. Malavika Sreekumar	ACS - 30283	MUMBAI
35	9765	Ms. Kshanika Mukhija	ACS - 30010	SHIVPURI
36	9766	Mr. Hemen Joshi	ACS - 30069	AHMEDABAD

\* During the period 01<sup>st</sup> May 2012 to 20<sup>th</sup> June, 2012

July  
2012



CHARTERED SECRETARY

938





# News From the Regions

## ■ Eastern India Regional Council

### Half day Workshop on Predicting Sickness in Indian Industrial Companies a New Approach and Advance Concept in Capital Expenditure Decision

On 19.5.2012 the EIRC of the ICSI organized a half-day Workshop on the above topics. The Guest Speakers were Dr. Dilip Kr Dutta, Director & CEO, Sayantan Consultants Pvt. Limited and Prof. J N Mukhopadhyay, Dean, Globsyn Business School.

Ranjeet Kr Kanodia, Chairman in his welcome address mentioned about the professional activities and various training programmes being conducted by the Regional Council from time to time for the benefit of the students. He also mentioned that due to growing competition and changing international economic environment often there are incidence of corporate failures in developed economies. Being a professional we need to predict where the probability of the firm being sick is high. In this line he also gave concept of Capital Expenditure and said that Capital Expenditures are defined as investments to acquire fixed assets from which a future benefit is expected. Such expenditures represent an organization's commitment to produce and sell future products and engage in other activities. Therefore, Capital expenditure decisions form a foundation for the future profitability of a company. Arun Kr. Khandelia, Vice-Chairman, at the outset, introduced the theme of the Workshop.

Dr. Dilip Kr Dutta dealt with "Predicting sickness in Indian Industrial Companies a new approach". In his address he stated that the industries are not performing in desired manner. The cause of weakness of the existing industries are basically due to corporate failure. He felt the necessity to convert turned around performer into performer. He also touched upon the background of good performing group of industries.

Prof. J N Mukhopadhyay, Dean, Globsyn Business School deliberated on the topic "Advance concept in Capital Expenditure decision". In his address he dealt with Project classification, R & D

Project. Through PPT he explained in detail Pay back up and Back up period and Discounted Payback up period. He also touched upon modified IRR, Limitations, Real options and Net present value.

### BHUBANEWSWAR CHAPTER

### ICSI Capital Markets Week - 2012

The Chapter celebrated the ICSI Capital Markets Week - 2012 at its premises. On 24.04.2012, the Chapter organized a lecture meet on "Yoga Therapy, Meditation, and Heart". L.K. Palit, Vivekananda Yoga Therapy Research Institute, Bhubaneswar addressed the gathering on the subject with practical exercises and provided tips for a better life. About 30 members and students of the Chapter attended this programme.

On 25.04.2012, the Chapter organized Investor Awareness Programme - How to rebuild investors' confidence. While CS K.N. Ravindra, Company Secretary, M/s. NALCO, Bhubaneswar addressed the general public about the role of investors, how to redress their grievances at various forums, role of SEBI, Stock Exchanges etc., CS J.B. Das, Secretary, M/s. The OMC Ltd, Bhubaneswar spoke about the objective of the Government for organizing Investor Awareness Programme at different parts of the country. He also said that every citizen has a right to know well about the Company & its viability before investing. This programme was sponsored by IEPF, MCA, Govt. of India. More than 80 investors including, academicians, members and students of the Institute, house wives and general public attended the programme and provided their valuable suggestions.

On 28.04.2012, the Chapter arranged an evening seminar on Capital Market Related Issues. While CS L.D.Sahoo, Advocate, Odisha High Court & Consultant (Corporate Law & Tax), Cuttack addressed on Buy Back of Securities & Private Placement of Securities and various issues in the Indian Capital Market, CA Sashi Ranjan Das, Advisor to the Odisha Govt. on State PSU reforms highlighted various projects and its finances.

During the week long programme, posters received from the Institute were displayed at various places information and participation of all in the programme. CS J.B. Das, Chairman, CS A. Acharya, Vice Chairman, CS D. Mohapatra, Secretary, CS P. Nayak, Treasurer, CS Sunita Mohanty, Regional Council Member EIRC, other members of the Managing Committee actively participated in this week long programme for its success. Officials of the Chapter also made valuable contribution for its success.

Interactive Session with Immediate Past RoC, Cuttack, Odisha.

On 12.05.2012, Bhubaneswar Chapter arranged an interactive session with B. Mohanty, ROC, Cuttack, Odisha, ordered for transfer to Ranchi. B. Mohanty addressed the members and students of the Chapter about the profession & role of Registrar of Companies, professional ethics and also thanked the ICSI for its active participation in conducting various programmes for Corporate Governance.



# News from the Institute & Regions

## **NORTH EASTERN CHAPTER Study Circle Meeting & Professional Development Programme**

On 19.5.2012 the North Eastern Chapter of EIRC of The ICSI (Guwahati) organized a Study Circle Meeting and Professional Development Programme on 'Quality Certification' at Guwahati. The meeting was attended by thirty-one CS Members and eleven PDP Students.

P.K. Bagchi, Proprietor, Bureau of Patents and Trademarks, Guwahati was the speaker on the occasion. He was honoured by CS Chandra Sekhar Sharma, practicing Company Secretary from Guwahati. P.K. Bagchi in his address explained with power point presentation about Quality Certification, the importance of Quality Certification and the criteria to be fulfilled for obtaining Quality Certification. He also explained in detail about 'ISO' (International Standard Organization) and the variety of certificates issued by ISO and the importance of such certification. CS Biman Debnath, then Chairman, Study Circle Committee, NE Chapter of EIRC of the ICSI presided over the meeting. ■

## **Northern India Regional Council**

### **South Zone Study Group Meeting**

On 11.5.2012 a programme on Recent Developments in FEMA Regulations on Inbound Investment (FDI) and Outbound Investment (ODI) was organized. CS Vijay Gupta was the speaker.

### **Meeting of Company Secretaries in Practice**

On 14.5.2012 a programme on Technical Scrutiny of Balance Sheets was organized. CS S. Koley was the speaker.

### **Study Circle Meeting on SME Listing**

On 18.5.2012 a Study Circle Meeting on SME Listing was organized. Harbinder Singh Sokhi of BSE was the speaker.

### **West Zone Study Group Meeting on ESOP**

On 20.5.2012 at the West Zone Study Group Meeting on ESOP, CS Uma Shankar Acharya was the speaker.

### **East Zone Study Group Meeting on Consolidated FDI Policy**

On 26.5.2012 at the East Zone Study Group Meeting on Consolidated FDI Policy, CS P. Baranwal was the speaker.

### **North Zone Study Group Meeting on Oppression and Mismanagement**

On 27.5.2012 at the North Zone Study Group Meeting on

Oppression and Mismanagement, Hemant Sharma, Senior Associate, Dhir & Dhir Associates was the speaker.

## **BHILWARA CHAPTER**

### **National Seminar on Role of Infrastructure Development in Economic Growth**

*Inaugural Session:* On 27.5.2012 the Bhilwara Chapter of NIRC of the ICSI organized a National Seminar on the Role of Infrastructure Development in Economic Growth at Town Hall, Bhilwara. The Chief Guest was Dr. C.P. Joshi, Hon'ble Minister of Road and Transport & National Highways, Government of India. Besides him, Prof. I. V. Trivedi, Vice Chancellor, MLS University; Udaipur, CS Hitender Mehta, Past Chairman, NIRC of the ICSI and Sr. Partner of Vaish Associates, Dr. Bharat Chhaparwal, former Vice Chancellor, Devi Ahilya University, Indore, Prof. Ashok Nagar, MLS University, Udaipur, Ram Lal Jat, Former State Minister, industrialists, businessmen, senior politicians, professionals, professors and various other dignitaries attended the programme. The programme was anchored by CS Asma Sheikh and Prof. Reema Dashora.

The welcome address and brief about Bhilwara Chapter of ICSI was given by CS RK Jain, Chairman, Bhilwara Chapter of NIRC of the ICSI. CS Nitin Mehta, Secretary, Bhilwara Chapter introduced the dignitaries followed by introduction of the theme by Prof. R.M. Kochita.

Prof. I.V.Trivedi addressed on the role of infrastructure's contribution in GDP and development in India. After that Ram Lal Jat, former Minister of Govt. of Rajasthan, expressed his view on infrastructure developments and its importance in the Indian economy. He also highlighted problems faced by it as well as developments done in this field.

Dr. Bharat Chapparwal drew attention on various remarkable achievements done by the Government in this field since long and also upcoming problems in their implementation.

Dr. C.P. Joshi, Hon'ble Union Minister of Road Transport and National Highways, Government of India and Chief Guest of the National Seminar emphasized on need of participation of all the citizens in the overall economic development and growth of the country. He also added that the status of common man is required to be changed. He enumerated that previously 5.75% of GDP was being invested in the infrastructure development which is increased to 8% in the eleventh plan. He further told that Public Private Partnership has become the buzz word in the field of infrastructure and Public Private Partnerships have been given responsibility of 35,000 km. length of road by the Indian Government. He told that 46 lacs km. length of road exists in India out of which 76000 km. are national highways. He also highlighted the need for development in this field by pointing out that for faster growth in the country, fast work is needed as still 70000 km. roads are single lane. Road Project support scheme's fund contains Rs. 23,000 crores. He also stressed on the requirements of economic development viz. roads should be given priorities, promotion of SEZs, supply of electricity



and water in the industries, development of human resources, social responsibilities of industrialists and policy formation by State Government.

**Second Technical Session:** The Second Technical Session was presided over by Prof. Susheel Lalwani who enlightened the participants about Public Private Partnership (PPP) which is a sustainable Model for Infrastructure Development in Rajasthan and explained various logistics of it. He also added various taxation and legal aspects to the explanations given by him.

Sahil Arora imparted knowledge on Prospects of Infrastructure Development of Mewar Region which proved to be of great help to the CS students to utilize the knowledge grabbed by them in their surroundings.

**Third Technical Session:** This session was presided over by Mahima Bhandari who explained various concepts of Takeout Finance Scheme - Innovative Infrastructure Financing Solutions. She also explained about employment opportunities in this field and various other technical aspects.

Thereafter CS Hitender Mehta imparted perfect logistic knowledge about SEZ. He drew attention on various legal aspects and opportunities in SEZ dealings and its taxation aspects. He enlightened various remarkable and indispensable aspects of SEZ and its dealings at various levels.

## CHANDIGARH CHAPTER Times Education Boutique 2012

On 19 & 20.5.2012 the Chandigarh Chapter of NIRC of the ICSI participated in Times Education Boutique 2012 organised by Education Times (Times of India) at Chandigarh.

G.S. Sarin, Chapter Secretary along with Chapter staff informed the students about the mode of registration in CS course, syllabus/structure of the course, detailed procedure of admission, cut off dates for admission, the procedure for appearing in examinations and also the avenues available after completion of the company secretaries course both in employment as well as in practice. Pamphlets explaining career in company secretary ship were distributed to the students. Career prospects of a company secretary were highlighted. The queries of students/parents were also replied. The CDs on "Career as a company secretary" were screened/displayed at the CS stall. ■

## ■ Southern India Regional Council

### 12th Management Skills Orientation Programme (MSOP)

On 13.6.2012 the 12th MSOP was inaugurated at ICSI - SIRC House, Chennai. Henry Richard, Registrar of Companies, Tamil Nadu, Chennai inaugurated the programme. Sarah Arokiaswamy, Joint Director, ICSI - SIRO welcomed the participants and explained the guidelines of the programme. She requested the

participants to interact with the faculty members, who have rich experience in their chosen areas.

CS Dr. Ravi B, Member, ICSI - SIRC introduced the Chief Guest and delivered the special address to the participants. He also advised the participants to make best use of the faculties. He urged the participants to come prepared with questions and points to be clarified for the session.

CS Dr. Ravi B concluded by saying that practice only makes a man perfect and so the participants should continuously update their knowledge on the latest happening / changes in corporate laws.

In his inaugural address, Henry Richard congratulated the participants on passing the professional programme successfully. He observed that young company secretaries have important role to play in the years to come. Henry Richard advised the participants that ethics are compulsory and not optional; hence it has to be followed strictly. He urged them to keep updated with latest happenings and initiatives of the MCA. Henry Richard concluded by advising the participants to work on their communication skills.

CS Ramasubramaniam C, Member, ICSI - SIRC advised the participants to be more attentive in the sessions and gain maximum advantage from attending this programme.

## World Environment Day Celebrations

On 4.6.2012 the ICSI - SIRC celebrated the World Environment Day in a grand manner. CS Marthi S S, Chairman, ICSI - SIRC along with CS Dr. P V S Jagan Mohan Rao, Past President, The ICSI and Sarah Arokiaswamy, Joint Director, ICSI - SIRO visited the following personalities and presented them with plant saplings:

1. P B Sampath, Secretary and Director, TAFE Limited, Chennai.
2. S Senthamarai Kannan, Chief Commissioner of Income Tax - II, Chennai.
3. Mahesh Kuvadia, Regional Director, Southern Region, MCA, Chennai.
4. E Selvaraj, Regional Director, South East Region, MCA, Chennai.
5. Henry Richard, Registrar of Companies, Tamil Nadu, Chennai.
6. Dr. M Manuneethi Cholan, Registrar of Companies, Coimbatore.
7. Arvind Shukla, Official Liquidator, Chennai.
8. M Narendra, Chairman & Managing Director, Indian Overseas Bank, Chennai.
9. S Balaji, Member Secretary, Tamilnadu Pollution Control Board, Chennai.

On 5.6.2012, the Chairman, ICSI - SIRC along with Sarah Arokiaswamy met Kanthi Narahari, Member, Company Law Board, Chennai and presented him with plant saplings. On the same day, the Chairman, ICSI - SIRC along with CS Ramasubramaniam C, Member, ICSI - SIRC met the following personalities and presented them with plant saplings:

1. L Ganesh, Chairman and Managing Director, RANE Limited, Chennai.
2. D Lily, Director, Finance, Chennai Petroleum Corporation Limited, Chennai.

On 5.6.2012 an elocution competition was conducted for the students of ICSI on the topic, 'Climate change and its impact on environment'. Around 30 students participated in groups in the competition. The winners and runners were presented with certificates and plant saplings.



# News from the Institute & Regions

The ICSI - SIRC organized a programme on the world environment day. CS Dr. P V S Jagan Mohan Rao, Past President, The ICSI was the speaker. The Guest of Honour was Richard Henry, Registrar of Companies, Tamil Nadu, Chennai. The Chief Guest of the function was K Raghavendra Rao, Founder - Chairman and Managing Director, Orchid Chemicals and Pharmaceuticals Limited, Chennai. Raghavendra Rao a member of the ICSI was also awarded the 'Padma Shri' by the Government of India. In his address, CS Jagan Mohan Rao, Past President, The ICSI presented an elaborate picture of the changing climatic conditions and its impact on environment. He emphasized that the members can play a vital role in creating awareness about the environmental issues. Henry Richard, ROC, Tamil Nadu, narrated various initiatives of the MCA in go - green era.

In his address, Raghavendra Rao complimented the SIRC, for organizing a programme on the World Environment Day. He emphasised that it is the duty of all of us to give more to mother earth than what we took from her. He also briefly explained the various initiatives taken by his company in protecting the environment. Rao informed that his organization has planted nearly 20,000 trees in their industrial areas. Rao further requested the members to put positive pressure on CSR to the organization in which they are employed.

CS K Chandrasekaran, Past Chairman of the ICSI - SIRC also spoke on the occasion. He appealed to the members and the students to the ways to protect the environment.

## Study Circle Meeting on Salaries - Tax Planning

On 30.5.2012 S Sriram, Chartered Accountant, Chennai was the speaker of the Study Circle Meeting on Salaries - Tax Planning. Sriram threw light on the tax provision both from the employer and employee perspective. He spoke on the various sections under which salary can be structured so as to minimize the tax burden. He further deliberated on the components of the salary and explained the tax impact and the exemptions that can be availed. The members actively interacted with the speaker.

## Half - day Seminar on Demystifying the Takeover Code

On 25.5.2012 a half-day seminar on Demystifying the Takeover Code was organized. The speaker was Shailashri Bhaskar, (Former DBM, SEBI), Company Secretary in Practice, Mumbai. CS Dr. Ravi B, Chairman, Professional Development Committee, ICSI - SIRC in his welcome address also introduced the theme of the seminar.

Shailashri spoke eloquently on the New Takeover Code. She informed that the New Takeover Code came into effect from 22nd October 2011 and is applicable to direct and indirect acquisitions of the listed companies. Shailashri clarified that the holder who had more than 25%, but less than 75% of the paid up capital of the

company, can acquire up to 5% in a financial year. She explained further that the individual acquisitions also will be considered for purpose of activating, irrespective of aggregate holding of group and cannot make a delisting offer for a period of 12 months after closure of offer. The seminar evoked a number of queries from members which was ably clarified by the speaker. CS Sriram P, Company Secretary in Practice and Member, Professional Development Committee, ICSI - SIRC summed up the proceedings of the seminar.

## BANGALORE CHAPTER

### 9th Management Skills Orientation Programme (MSOP)

On 1.5.2012 the Bangalore Chapter of SIRC of the ICSI organised the inaugural function of the 9th Management Skills Orientation Programme (MSOP). Dr. Rekhakala A.M., Professor of Finance, Alliance University, Bangalore was the Chief Guest who inaugurated the programme. Twenty-two participants attended the programme who then introduced themselves.

The Chief Guest in her inaugural address advised the participants to strive to achieve perfection in every work they do and to be abreast with the changing economy and regulations so as to create value addition to the assigned tasks, she also advised the participants to have commitment towards values and have ethical integrity and transparency in the profession. She emphasized on networking and diversified role of Company Secretary and advised the participants to work with great sense of commitment and strive to achieve a trustworthy position in the work place.

On 17.5.2012 at the valedictory session CS C.P. Sounderarajan, Chief Secretarial Officer, GMR Group Bangalore was the Chief Guest who in his address stated that the most important role of Company Secretary is to bring in compliance and integrity in the organization and advised to hone their leadership skills. Above all this he stated was the need to enjoy one's work, maintain high levels of integrity and honesty and learn to be a team player and add value to any work undertaken. The Chief Guest then distributed the Best Participant award to Manjula R and prizes for the Best Project to the team comprising Namita V, Sweetie Murarka and Vanita Mahabal Kunder for the Project on "Performance Appraisal". He also distributed the Course Completion Certificates to the Participants. Namitha V and Sandeep Kumar G, Participants, shared their feedback about the MSOP Programme.

### Half-day Programme on Morphing with MAP for Professional Excellence

On 19.5.2012 the Bangalore Chapter of SIRC of the ICSI organised a half-day Programme on Morphing with M A P for Professional Excellence at The Institute of Agricultural Technologist, Bangalore. V. Narayanan, Director, Academy for Consultancy and Empowerment Strategy, Consultant and Corporate Coach, Bangalore was the speaker. V. Narayanan in his presentation on





Morphing with M A P for Professional Excellence highlighted the Fundamentals of Success viz. Motivation, Attitude and Passion and explained how to work at the strategic initiatives of the organization using the fundamentals of success which enables one to face the changing scenarios by re-inventing and repositioning themselves in the organization and also helps in facing challenges of the Indian industries which have been benchmarked with the international standards. He then explained in brief on how to manage and work on projects while juggling the regular job responsibilities in order to be successful. The Programme was well attended by 27 Members and Students.

## HYDERABAD CHAPTER

### Health Programme on Ayurveda for Every One

On 20.5.2012 the Chapter jointly with Institute of Public Enterprises organized Health Programme on Ayurveda for Every One by renowned Speaker Pandit Elchuri Venkata Rao at Institute of Public Enterprises campus. CS Shujath Bin Ali, Chapter Chairman in his welcome address informed about the importance of the Ayurveda and also spoke about the Institute, the Chapter and profession of CS for the benefit of the general public and also emphasized on health and work management. He highlighted the need for fitness and good health in day to day life.

SriJohn, Managing Director, TV7 was the Guest of Honour who in his address spoke on why he started the Health Planet TV7 and also spoke on optimal management of home, health and wealth. Pandit Elchuri Venkata Rao was the speaker for the day and while explaining Fitness & Health stressed on the need for evaluating health, strength, Training and supplementation. He said that knowledge workers suffer from various ailments such as BP, high cholesterol, Insomnia and diabetes due to a sedentary life style with no physical activity. He explained the correctives required in the life style in such cases. He also gave many tips to prepare medicines at home for use. The programme was very well organized which was appreciated by the participants. Nearly 250 participants attended the programme which included general public as well.

## MADURAI CHAPTER

### Capital Markets Week - 2012

Madurai Chapter organised the Capital Markets week 2012 as per headquarters Guidelines. On 26.4.2012 at Chapter premises lectures on Initial Public offer was delivered by. S.Paramasivan, Chapter Secretary. On 27.4.2012 Professional Development Programme was conducted on Challenges and Opportunities, Innovation of Capital Markets. The speaker was M. Subramanian, Asst. Professor, MBA Department, Thyagarajar School of Management, Madurai.

On 28.4.2012 the Chapter organised Investor Awareness Programme under the aegis of Ministry of Corporate Affairs, Government of India, as a part of celebrations of the Capital

Markets Week 2012 at Tamil Nadu Chamber of Commerce, MEPCO Mini Hall, Madurai. S. Kumararajan, Chairman, in his welcome address expressed the importance of the investor awareness on the risks associated with the investment in capital markets. The programme was inaugurated by N.Jegatheesan, President, Tamil Nadu Chamber of Commerce, Madurai and he in his address appreciated the Chapter for conducting regularly these type of programmes useful to investors, traders, public and volunteered to organise the joint programmes with the Chamber of Commerce. A detailed presentation of various topics such as Investment avenues in Equity Market Opportunities, Commodity Trading and Wealth Management was also made. The speakers were S.Alagupandi, M.Muthuraja, M.Devarajan of M/s India Nivesh Securities, Madurai and G.Balakrishnan, Director, Temple City Financial Services, Madurai. Around 100 participants including Investors, professionals and students participated.

## MANGALORE CHAPTER

### Full Day Programme

On 16.6.2012 the Mangalore Chapter of SIRC of the ICSI conducted a full-day programme at Mangalore. The programme was inaugurated by the office bearers of the Mangalore Chapter of the ICSI.

In the First Technical Session Chethan Nayak, Managing Committee Member of the Chapter spoke about Foreign Trade Policy and Procedures. He started his presentation by stating the key features of the policy. He explained that Foreign Trade Policy is a policy that is reviewed by the Central Government periodically over a period of 5 Years. It is usually announced after the Union Annual Budget & it covers matters relating to Imports and Exports. Thereafter the resource person explained various promotional measures under the current policy. He explained about the benefits of Export Park, Equity participation, Special Focus Initiative, EPCG Scheme, Vishesh Krishi Grama Udyoga Yojana & other related schemes. After explaining various promotional measures the resource person then explained the benefits that are available to various sectors under the current policy. Sectors such as Agricultural and village Industry, Handlooms/Handicrafts/Leather Footwear, marine sector etc. are provided various facilities in the form of scripts, duty drawback, cash credit & other facilities in order to encourage exports. He concluded his presentation by briefly explaining the latest changes in the Import & Export procedures. The resource person then replied the queries raised by the participants.

Thereafter CS Ullas Kumar Melinamogaru began his presentation on e-Filing of Forms under the Companies Act, 1956. The resource person started his presentation by explaining the History of e-forms & the advantages of e-filing over physical mode. Thereafter he explained the gathering that there are basically two types of e-forms which are as follows: Periodical Forms which are filed on a yearly



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basis for example e-Form 20B i.e. form for filing annual return which is filed within 60 days from the conclusion of AGM every year. Event based Forms which are filed on the Occurrence of certain events for example e- Form 8 i.e. form for registration/modification of Charges. Thereafter he explained the following matters in greater details: The various purpose for which the e-forms are filed, the particulars that are needed to be filled in various e-forms, various attachments required while submitting the e-forms, digital signature that needs to be affixed by various managerial personnel, pre-certification requirements by various professionals.

The resource person concluded his presentation by explaining the recent changes introduced by the Ministry of Corporate Affairs and thereafter replied the queries raised by the participants.

CS Prasanna Patil, Assistant Company Secretary, The Karnataka Bank Limited thereafter commenced his presentation on Review on SAST Regulations, 2011. He started off his presentation by explaining briefly the defects in the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the reasons behind the implementation of the new legislation. Thereafter, he explained in greater detail the three main changes which were introduced in the new legislation which are: 1. Abolition of separate non-compete fees for promoters. 2. Increase in the level of share ownership pattern from 15% to 25% and 3. Once the above level is reached, an acquirer needs to make a minimum open offer of 26% of the shareholding of the company, which is an increase from the 20% that was stipulated previously. He concluded his presentation by explaining the recent changes in the stock market regulations. The resource person then replied the queries raised by the participants.

Karunya Sagar Dasa, President - ISKCON, Arya Samaj Road, Mangalore & Unit President, The Akshaya Patra Foundation, Mangalore commenced his presentation on the topic The Art of Self-Management. The resource person stated that the art of self management basically involves two basic principles which are: Looking after the physical wellbeing and Looking after the emotional wellbeing. While physical well being can be maintained by maintaining a healthy diet, relaxation & exercises, it is the emotional well being that matters the most. The resource person stated that in this fast ever changing world of globalization where change is the order of the day it is quite natural for a person to be stressed with his daily toil. This according to the resource person is the main reason for the increase in the number of suicides all over the world. So it is very much important for a person not to ignore his emotional state of mind. The resource person concluded his presentation by advising the participants to lead a disciplined life as same will help a person to solve a majority of his problems. Before conclusion he also replied successfully the queries raised by the participants.

## THIRUVANANTHAPURAM CHAPTER

On 11 and 12.6.2012 Nesar Ahmad, President, along with N.K Jain, Secretary and CEO of the ICSI visited the Thiruvananthapuram

Chapter of the ICSI. The President and the Secretary & CEO along with the management committee members of the Chapter, interacted with various dignitaries in and around the City, details of which are as under:

### Activities on 11.06.2012 Meeting with Hon'ble Chief Minister of Kerala

The ICSI delegation visited the office of Oommen Chandy, Hon'ble Chief Minister of Kerala and submitted the representation for recognizing the profession appropriately and equally and subject to code of conduct at par with Chartered Accountants for conducting Audit of Accounts under Section 42(1) of the Kerala Value Added Tax Act, 2003. Nesar Ahmad established the stand of the Institute on ensuring the level playing field to the Company Secretaries at par with the Chartered Accountants and Cost Accountants. He stressed the importance of getting recognized under Kerala Value Added Tax Act and requested for necessary amendments in the Act and rules made thereunder authorizing the Practicing Company Secretaries to undertake audit under the said Act. The delegation also submitted the memorandum containing a request for providing adequate area of land, at a nominal cost, in Thiruvananthapuram and Cochin for setting up of research centres in both these places. Oommen Chandy appreciated the efforts put in by the delegation to develop the profession of Company Secretaries in the State of Kerala and assured all support of the Government for such proactive measures. He further forwarded the requests to the respective Departments for due consideration and suggested the delegation to meet the Finance Minister and also advised to follow up the matter with the concerned officers of the Government.

### Telephonic discussion with the Hon'ble Finance Minister of Kerala

As per the arrangements made by the Hon'ble Chief Minister of Kerala, the ICSI President's delegation contacted the Hon'ble Finance Minister of Kerala. Due to preoccupation the Finance Minister could not meet the President's delegation but had a fruitful discussion over phone with the President with regard to VAT audit and other budding areas of Practicing Company Secretaries in Kerala.

### Meeting with Secretary, Housing and Taxes, Government of Kerala

The ICSI delegation under the leadership of Nesar Ahmad, President visited the office of A Ajith Kumar, IAS, Secretary-Housing and Taxes, Government of Kerala and discussed the matters with regard to getting recognition under Kerala Value Added Tax Act and requested to recommend the Government of Kerala for incorporating necessary amendments in the said Act and Rules made thereunder authorizing the Practising Company Secretaries to undertake the VAT audit under the said Act.

### Meeting with President of Trivandrum



## Management Association (TRIMA)

As a part of brand building exercise and to enable professional Development in the region, the ICSI President visited the office of Babu Thomas, President of Trivandrum Management Association along with the CEO and the Management Committee Members. During the discussions, it was agreed to enter into a Memorandum of Understanding between ICSI and TRIMA for associating in various levels of management activities and to conduct professional development programmes on mutually agreed terms. The meeting was very much interactive and useful and provided right direction to the activities of the Thiruvananthapuram Chapter of the ICSI.

## Meeting with the Members and Students of the Chapter

The President and the Secretary & CEO, the ICSI interacted with the Members and Students of the Chapter and during the session, briefed the gathering about the new vision and mission of the ICSI, top ten goals of the Institute for the period 2011-14, New Syllabus for students, initiatives for the development of the profession, etc. The meeting was well attended by Members and Students numbering around 55.

## Press Conference

The press meet was well attended by representatives of print and television media. Nesar Ahmad while addressing the press conference stated that "ICSI has taken various initiatives towards growth and development of the members, students and the profession by undertaking extensive career orientation, professional development programmes, brand building, extensive research, re-organisation, infrastructure development as well as globalisation of the profession". He was pleased to inform that the Council of the Institute has recently formulated new Vision and Mission of the Institute which strongly desires Company Secretaries to lead Corporate India as Governance Professionals. He further stated that the Council of the Institute had detailed deliberations and brainstorming to formulate the Top Ten Goals for the period 2011 - 14 and that the Council Members were conscious of their responsibilities and committed to provide best of the services in all spheres. He opined that "Students are the life line of the Institute and the profession. Besides strengthening the existing infrastructure for rendering value added services and support to the students, we need to focus our foremost attention on budding Professionals. It is in this direction the Institute has introduced a new syllabus for CS Foundation Programme (Stage I) with effect from 1st February 2012. The CS Foundation Programme consists of four papers viz., Business Environment and Entrepreneurship; Business Management, Ethics and Communication; Business Economics; Fundamentals of Accounting and Auditing. Corporate compliance is one of the key corporate functions in any organization. In order to provide professional support to corporates, the Council of the Institute has introduced Corporate Compliance Executive Certificate for the students who have partially qualified the Company Secretaries Course and have undergone training but

not yet completed Company Secretaries Course in totality. Draft Regulations have been notified in the Gazette for consultation process and afterwards will be finalised. This will definitely enhance the employment opportunities of CS students, opined Ahmad. President, the ICSI, informed that, "Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the interests of the customers, employees, revenue, environment and the directors and officers of the company and to avoid any unwarranted legal actions by law-enforcing agencies and other persons as well."

He stated that the Institute of Company Secretaries of India has prepared a Referencer on Secretarial Audit. The New Companies Bill, 2011 also prescribes certain types of companies to conduct Secretarial Audit, he added.

The president spoke about the initiatives of MCA in mandating all companies listed in India and their subsidiaries, all companies having a paid up capital of Rs.5 crores or above, all companies having a turnover of Rs. 100 crores or above, excluding Banking companies, insurance companies, power companies and non-banking finance companies to file their Balance Sheets and Profit & Loss Account and other documents required under section 220 of the Companies Act, 1956 with the Registrar of Companies using XBRL taxonomy with e-form No. 23AC-XBRL & 23ACA-XBRL. The Institute has taken several initiatives in order to apprise and educate the members about the methodology towards filing documents in XBRL Mode.

## Exclusive Interview with Jaihind TV

An exclusive 30 Minutes interview with Jaihind TV, a prominent Malayalam Current Affairs TV Channel was telecast on 17.6.2012 at 6.00 PM. In the said interview the President detailed about the importance of propagating the scope of the profession of company secretaries among the student community of Kerala.

## Meeting with President, Trivandrum Chamber of Commerce

On 12.06.2012 as a part of expanding the activities of the Institute in the region and to create more visibility to the profession, the ICSI President visited the office of E M Najeeb, President of Trivandrum Chamber of Commerce, who is a prominent figure in social and business life of Trivandrum, along with the Management Committee Members. Najeeb has extended all support for the activities of the Chapter and insisted the importance of conducting joint programmes which is beneficial to the business community in particular. During the discussions, it was agreed to enter into a Memorandum of Understanding between the ICSI and Chamber of Commerce for associating in various levels of activities and to conduct professional development programmes on mutually agreed terms. The meeting was very much interactive and useful and has provided right direction to the activities of the Thiruvananthapuram Chapter. ■



## Western India Regional Council

### Seminar on Foreign Direct Investment, ECB, FCCBs & Private Equity Funding

WIRC of the ICSI organized a Seminar on Foreign Direct Investment, ECB, FCCBs & Private Equity Funding. Aditya Gaiha, DGM, RBI, the Chief Guest delivered a thought provoking address on intricacies of regulation of Foreign Transactions. Atul Mehta, addressed the delegates in the inaugural session. Speakers were Arvind Salvi, Former Deputy Manager, RBI; Ajay Vaidya, Company Secretary, Kotak Mahindra; P Ramesh, AGM, RBI; Sudha G Bhushan, Chartered Accountant; Rama Subramaniam, EX GM, RBI. There were 75 delegates for the programme.

### Seminar on SME Listing - A Big Opportunity

On 26.5.2012 WIRC organized a Seminar on SME Listing - A Big Opportunity at Cricket Club of India (CCI). In the inaugural session, the dais was shared by Ashish Chauhan, Interim CEO, BSE; Prashant Saran, Former Whole Time Director SEBI; S N Ananthasubramanian, Vice President, the ICSI; Mahavir Lunawat, Chairman, WIRC of the ICSI; Sanjay Gupta, PDC Chairman and Ragini Chokshi, Secretary, WIRC of the ICSI. S N Ananthasubramanian discussed the key challenges in getting the listing of SME which needs to be addressed. He also informed the audience about the due diligence reporting mechanism which ICSI has been working along with SEBI and Stock Exchange. He highlighted the role of governance for investor confidence to fructify the benefit of listing. Mahavir Lunawat, in his inaugural address remarked that, "One of the fundamental needs of SMEs is growth capital. Because of its typical issues and environment, raising funds through debt is very costly for SMEs. Financing burden and timely servicing of debt adversely affect flexibility in business operations of SMEs. Lunawat also dealt with Budget provision of tax neutrality on offer for sale in an IPO and desired that the same should cover SME IPO as well to boost PE funding in SMEs. Prashant Saran presented his perspective of global practices of SME and shared some of the success stories of SMEs. Murli Dhar Rao briefed about the SEBI initiatives and guidelines for SME listing. Ashish Chauhan emphasized on the benefits of SME listing and BSE initiatives for SME. He also emphasized some of the key challenges faced by the exchange in getting listing of SME. After the inaugural session, the other speakers were Dharmji, Chief General Manager, SIDBI focusing on Capital for financing projects; Murlidhar Rao, CGM, SEBI focusing on Listing Compliances. There was also an investor awareness session, where Sudipto Pal, Joint Director, WIRC deliberated on the role option, derivative and future in capital market.

### Conclave on Corporate Restructuring

On 4 & 5.5.2012, WIRC of the ICSI organized a two-day Residential Conclave on Corporate Restructuring at Lagoon Resort, Lonavale. Speakers were Dr. K R Chandratre, Haresh Buch, Parag Ved & Shailshree Bhaskar. There were interesting and informative discussions on the subjects by all the senior faculty members. Around 100 delegates attended the programme.

### Seminar on Joint Venture, Foreign Collaboration & Overseas Acquisition

On 16.6.2012 ICSI - WIRC & ICSI - CCGRT jointly organized a seminar on Joint Venture, Foreign Collaboration & Overseas Acquisition at CCGRT. David Gerald, Founder, President & CEO of Securities Investors Association (Singapore) or "SIAS" inaugurated the programme. Speaker like Hetan Patel, CA, Senior Partner, PHD & Associates covered the topic of Inbound Investments in Joint Ventures - India; Sharad Abhyankar, Partner, Khaitan & Co. covered Outbound Investments; Inderpreet, AVP, Intellivite Capital covered Foreign Collaborations and Arvind Salvi, Former Dy General Manager, RBI covered FEMA Compliances. More than 100 delegates attended the programme.

### Health Check UP Camp

On 28.4.2012 ICSI - WIRC jointly with Ministry of Corporate Affairs organized a first of its type "Health Camp" in Mumbai at MCA Office. Many members took the benefit of Nephrologist, Cardiologist, Gynaecologist, Dentist & Ophthalmologist by this Health Check up Camp. Renowned Doctors conducted the check-up. There was a lot of participation from MCA office.

### Study Circle Meeting

On 29.4.2012 ICSI - WIRC organized a Study Circle Meeting at Andheri. Speaker CS C V Sajeevan, Bench Officer CLB addressed the delegates and covered the topic Prevention of Oppression and Mismanagement (Sections 397 & 398); Shifting of Registered Office (Section 17) With Case Studies.

### Dadar Study Circle Meeting

On 2.6.2012 ICSI-WIRC organised a Study Circle Meeting at the premises of ESSAR Group. Speaker CS Mahavir Lunawat addressed on SEBI Takeover Code, 2011. Nearly 43 delegates attended the programme.

### Borivali Study Circle Meeting

On 10.6.2012 the meeting of the Borivali Study Circle of WIRC of the ICSI was held at Borivali (West), on Mutual Fund Compliances. Pramod Shah, (Former Chairman WIRC & Ex- Central Council Member of the ICSI) was the Chief Guest. The speaker for the meeting was Ashutosh Naik, Compliance Officer & Company Secretary, IIFL Mutual Fund. He enlightened the members on the structure and functioning of Mutual Fund and various compliances of Mutual Fund. His colleague Anshu Garg explained various compliances pertaining to Sales, Material and Advertisements of





Mutual Fund. The meeting was attended by 75 participants.

## **AHMEDABAD CHAPTER**

### **Study Circle and Lecture Meet**

On 22.6.2012 Sardar Patel Institute of Public Administration (SPIPA), Ahmedabad, in association with FICCI - Gujarat State Council, conducted a Lecture Meet at the Auditorium, SPIPA, Ahmedabad. The Members of Company Secretaries like Central Council Member - Umesh Ved, WIRC Vice Chairman Hitesh Buch, Chairman Ahmedabad Chapter- Rajesh Parekh, PCS Committee Chairman Ahmedabad Chapter - Rutul Shukla and other CS Members also attended the lecture on "Competition, Economic Policy & Common Man" by Ashok Chawla - Chairman, Competition Commission of India. The CS Member participants were granted 1PCH.

Again on 23.6.2012 the Ahmedabad Chapter organized a Study Circle Meet on Revised Schedule VI. Guest Speaker Pradeep Tulsian, Chartered Accountant addressed the participants and briefed them about the recent additions on the subject matter. Around 50 members were present at the meeting and were granted 1PCH each.

### **Career Awareness Programme (CAP)**

On 9.6.2012 a Career Awareness Programme was conducted at Gandhinagar. CS Yagnavalkya Joshi, Chairman, TEFC of Ahmedabad Chapter and CS Urnil Ved, Practising Company Secretary were the speakers. A good number of students participated in the CAP from Gandhinagar and nearby villages and towns. The Institute representatives conducted an interactive session and guided the students to shape their career considering the profession of Company Secretaries.

## **PUNE CHAPTER**

### **Study Circle Meeting on ESOP**

On 19.5.2012 the Pune Chapter of WIRC of the ICSI organized a Study Circle Meeting on ESOP which was held at the Chapter premises. The programme was attended by around 40 delegates. Sarang Deshpande was the faculty for the programme. All the sessions were very informative and well appreciated by the gathering.

### **Study Circle Meeting on an Overview of Corporate Restructuring - Legal Provisions**

On 26.5.2012 the Chapter organized a Study Circle Meeting on an Overview of Corporate Restructuring which was held at the Chapter premises. The programme was attended by around 50 delegates. CS C S Kelkar was the faculty for the programme. All the sessions were very informative and well appreciated by the gathering.

### **Programme to Welcome the RoC, Pune**

On 17.5.2012 a welcome programme was organized by the

Chapter to welcome Vijaykumar Khubchandani who took over the charge as the Registrar of Companies Maharashtra Pune w.e.f. 8.5.2012.

CS Pawan Chandak, Chapter Chairman welcomed Khubchandani with the traditional Puneri Pagadi and a memento and assured him all support from the members as well as the Pune Chapter of the ICSI. Among others CS Atul Mehta, Central Council Member and CS C S Kelkar, WIRC Member expressed their views and welcomed the new RoC, Pune.

While discussing the future plan of action as RoC, Khubchandani, expressed that, he would definitely help members from Pune, wherever they will need the guidance and will support the professionals.

### **Half Day Seminar on Charitable Institutions and FDI in India**

On 2.6.2012 the Chapter organised a half-day Seminar on Charitable Institutions and FDI in India. Charitable Institutions - Covering formation and compliances under the Income Tax Act. The topic was explained by CS Amit Atre, Senior Executive, Corporate Secretarial & Manager Operations, Persistent Foundation and a Managing Committee Member of the Chapter.

*FDI in India* - Covering entry routes, eligibility, pricing guidelines, sectoral policy, issue of shares, transfers and reporting under FEMA. This technical session was headed by Jayant Keskar, DGM, Head IDBI Bank, Trade Finance Dept., Pune.

### **Participation in Career Fair - Sakal Edugain 2012**

From 18.5.2012 to 20.5.2012 Sakal Group organized an education fair at New Agricultural Ground, Behind E-Square, Pune. The Pune Chapter of WIRC of the ICSI participated in the said fair with a view to enhance the visibility of the profession and a move towards brand building. Many students and professors from different areas and colleges visited the stall at the said education fair.

## **RAIPUR CHAPTER**

### **Study Circle Meeting**

On 2.6.2012 the Raipur Chapter of WIRC of the ICSI organized a Study Circle Meeting in Raipur on "Cost Audit". CS. S.G. Kankani, Founder Chairman of the Chapter was the main Speaker who elaborated in his address all the recent developments relating to Cost Audit, its applicability for maintenance of Cost records and for Cost Audit, object and utility of Cost Audit, provisions relating to time lines for appointment of Cost Auditor, disclosure relating to appointment of Cost Auditor in the Directors' Report, time lines for submission of Cost Audit Report and Cost Compliance Report, Cost Accounting Standards and Cost Accounting principles. Some of the clarifications issued by the Institute of Cost Accountants of India were also discussed and elaborated by CS Satish Sharma. A good number of members were present and the queries raised by the members were discussed and clarified by the Speaker.



# News from the Institute & Regions

## VADODARA CHAPTER Press Meet

On 11.5.2012 CS Nesar Ahmad, President, CS S N Ananthasubramanian, Vice-President, the ICSI and CS Umesh Ved, Central Council Member, the ICSI visited Vadodara. On the occasion the Chapter organised a Press Conference. During the Press Conference, CS Nesar Ahmad interacted with media representatives and informed about the Vision, Mission and latest Initiatives of the ICSI.

CS S N Ananthasubramanian, CS Umesh Ved, CS Suresh Kabra - Chairman, Vadodara Chapter, CS Swati Bhatt - Vice-Chairperson, CS Nisha Hindocha, Treasurer, and other committee members of Vadodara Chapter were also present during the Press Conference.

## Discussion on Contemporary Issues with President and Vice-President

On 11.5.2012 the Chapter organised a programme to discuss Contemporary Issues with President and Vice-President of the ICSI

at the Chapter premises. The Guests of the programme were CS Nesar Ahmad, President, the ICSI, CS S N Ananthasubramanian, Vice-President, the ICSI and CS Umesh Ved, Central Council Member, the ICSI. Lots of discussions concerning the profession were held. The queries inter-alia included the issues like: a) Future prospects of the profession in the light of recent changes in the professional world; b) What is the status of proposed Companies Bill and when it is likely to see the light of the day?; c) Questions on the Competition Act & Competition Commission vis-a-vis the prospects of the Profession of Company Secretaries; d) What efforts are being made at international level to increase this profession's visibility - so on and so forth? The queries were deliberated and replied by the dignitaries present. Thereafter, The President, the Vice-President and the Central Council Member highlighted the efforts being put in by the Council of the Institute towards the growth of the profession of Company Secretaries as well as efforts to attract more and more students. President and Vice-President also advised the members present to try their best to meet up the expectations of regulators. A large number of students were present at the programme. ■

## KIND ATTENTION MEMBERS!

On the advise of the Editorial Advisory Board of Chartered Secretary, it has been decided to commence a new column by the name Company Secretaries' Diary wherein concerns of company secretaries with hands on experience as company secretary/practising company secretary will be featured. Members having such experience may narrate the same through this column.

All such narratives/write-ups/articles be forwarded to the Editor, Chartered Secretary for consideration by the Board for publication in the journal.

## ATTENTION MEMBERS!

Members who are yet to get the Identity Cards issued from the Institute are requested to apply for the same by sending the request in writing indicating Name, Membership Number and Date of Birth along with their latest two coloured passport size photographs (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at **ICSI House**, 22 Institutional Area, Lodi Road, New Delhi -110003. For queries, if any, contact on -

Phone No. 011 45341061  
Mobile No. +91 9868128682  
Email Ids [member@icsi.edu](mailto:member@icsi.edu) / [acs@icsi.edu](mailto:acs@icsi.edu)

## KIND ATTENTION! MEMBERS

### Prize Query Scheme

#### Enhancement of the Prize Amount

MEMBERS will be glad to know that the prize money for replies to prize queries published in Chartered Secretary has now been enhanced to Rs. 1000 in cash for each of the two best answers for the prize query published from July 2012 issue and onwards. The names of the winners and their replies will also be published in the journal.

The decision of the Board will be final and binding on the members and no query will be entertained once a decision is finalized about the prize winners. Further the Board has all the inherent powers to cancel any particular month's prize query scheme if sufficient number of responses are not received to make it a healthy competition.



## ICSI - CCGRT

### Foundation Day Lecture

On 2.6.2012 the Foundation Day Lecture of the Centre for Corporate Governance, Research and Training (CCGRT) of ICSI saw a host of dignitaries and eminent members of the Institute, gracing the dais. G.N.Bajpai, Ex-Chairman of SEBI, was the Chief Guest on the occasion. Other dignitaries on the dais were B. Narasimhan, Central Council Member, the ICSI; S.N. Ananthasubramanian, Vice President, the ICSI; Atul Mehta, Central Council Member & Chairman of CCGRT Management Committee and Mahavir Lunawat, Chairman, ICSI-WIRC. Lunawat while introducing G.N.Bajpai stated that he is a person who has been recognized for his vision and leadership skills during his stint as the Chairman of the Securities and Exchange Board of India (SEBI). Bajpai continues to contribute to the corporate world, by acting in the capacity of independent director on the boards of several well known corporates.

Atul Mehta made a power point presentation on the journey of CCGRT. The presentation took the participants back to the day when the foundation stone was laid for the Centre, and brought back sweet memories for some of the senior members of the Institute, who were instrumental in setting up CCGRT and bringing it to the level it is today.

The Foundation Day Lecture on the Theme Corporate Governance - Emerging Trends was delivered by G.N.Bajpai, who was initially hesitant to speak on the topic as he has been away from the regulatory framework for more than 7 years, but his ample knowledge and experience were reflected in his lecture, an excerpt of which is as follows.

Excerpts from the talk by G.N.Bajpai: The concept of Corporate Governance has come into existence due to rapid changes in the economy. The trends of corporate governance are evolving and it is very difficult to keep pace. When economies are progressing and there is high growth, there is no time to ponder, but when there is an economic slowdown, that is the point when the realization dawns, that there is a need to set up a proper regulatory mechanism for good economic growth, free from malpractices. The concept of corporate governance, can be illustrated with the help of the pillars of corporate governance like (a) Sustained Internalization - whereby such practices are adopted by the company, which although are difficult to put into practice by the corporate, but they instil a sense of faith among the investors. A company commands a higher valuation in the global market if it has sound corporate governance policies. (b) Use of Technology-Increase in use of internet has contributed and has led to the growing trend of corporate advisory services. Advisory services are now easily accessible, and are provided in the shortest time possible to avoid any instances of non-compliance. (c) Increase in

Shareholder activity: the third pillar of corporate governance is a global phenomenon, whereby the shareholders and stakeholders of various companies have become extremely cautious and well aware about their rights, interests and voting rights. (d) Harmonization of accounting standards or financial reporting standards has contributed in a big way to the development of corporate governance.

Going back towards the history of the corporate world, till the year 1980, organizations and corporate were represented by their own management. Post 1980 there were a lot of failures on part of the promoters and people who held the reins of the company. The concept of wealth creation or wealth management brought on the advent of having managers being appointed in organizations who were solely responsible for looking after the interests of the shareholders/stakeholders. Optimization of wealth management indicates good corporate governance, and this sole goal led to the concept of 'managers being the trustees of the organization'. Good Corporate Governance and Quality of corporate governance practices was the need of the hour, as in the current set up, promoters or senior level management of the company are in a position to manage, manipulate or misuse the money of shareholders. Corporate Governance helps keep a check on the malpractices indulged.

In the current scenario, it is a good practice to disclose every aspect of the functioning of the business and its activities and a little more information than what is required as per the current norms. Corporate Governance has proved to be one of the most effective tools to curb and prevent undue profits, gathered by indulging in insider trading practices. In India there are two broad types of corporate governance practices.

1. Practice of separation/segregation: the practice of separating every function of the organization and supervision of the same by members of the board.
2. Appointment of Independent Directors: Independent Directors act as the eyes of the shareholders, and in the current set up they are appointed on the board of a company inter alia, to act as trustees of the shareholders funds.

To conclude, as human ingenuity is increasing day by day, changes in corporate governance will take place at the speed of the light. Bottom line is that people who have the privilege of running a company/corporate body should work and function in a manner that ensures the health of the company is sustained for generations to come and it grows in a systematic manner, keeping in mind the shareholders and their investments.

The participants were enthralled by the clear and crisp way the concept of Corporate Governance and its changing trends in India



were highlighted in the most effective manner possible.

B. Narasimhan then requested the dignitaries on the dais to celebrate the occasion by the traditional cake cutting. A joyous occasion like celebrating Foundation day brings back a lot of memories for everyone attached with the Institute and makes them proud when they look back at the marvel they have helped set up, which we commonly know as CCGRT.

## **Seminar on Corporate Governance & Investors**

On 15.6.2012 the ICSI-CCGRT in association with BSE Brokers' Forum and Investor Education Welfare Association organised a seminar on Corporate Governance & Investors at BSE International Convention Centre, Mumbai. The seminar was sponsored by the BSE Investors Protection Fund. The speakers for the programme were David Gerald the founder President and CEO of Securities Investors Association Singapore "SIAS". Prashant Saran former whole time member SEBI, Kishor A Chaukar, Managing Director of Tata Industries Limited (TIL), Navnitlal Bhatia, Founder President of Investor Education & Welfare Association (IEWA), Siddharth J. Shah, Chairman BSE Brokers' Forum.

N.L. Bhatia in his welcome address raised concerns on three major issues affecting the investors' interests, namely aggressive pricing of IPOs and their subsequent fall resulting in large losses to the investing community, the concern for high volatility alerting the investors of the insecurity, and confirming the fact that Indian markets were no longer insulated particularly for the institutional players. The third concern highlighted was that of the unaware and uninformed investors being lured into the highly dynamic derivative segment, which compounds risk for the investor.

Prashant Saran former whole time member, SEBI the first among the eminent speakers for the day talked to the audience about the evolution of the various theories of corporate governance, firstly he explained about Corporation - The Game Changer and explained the possible reasons for its change like Renaissance v. religious orthodoxy, Excellence of Master Craftsmen, Military Excellence, Democracy and Industrial Revolution. According to him the reason was the birth of Corporation in 1600 AD. Saran later enlightened the participants about the greatness of corporation which is Limited Liability, and Perpetual Succession. Theoretical Framework was illustrated, highlighting the pitfalls of each of the theories. Defining and redefining the concept of Corporate Governance with the changing paradigms of business environment.

David Gerald, the key note speaker enthralled the participants with his eloquent style about SIAS, its role in Investor Education Programme, Improving Corporate Governance through Shareholder Activism, Role of Independent Director- Protecting Investor Rights, Whistle-blower Policy and Class Action. He enlightened about its key activities of Promoting & Protecting

Investor Rights, Tracking & Promoting Corporate Governance, Educating and Informing Investors, Settling Disputes between Companies and Shareholders. Participants were asked what is good Corporate Governance and why is it important to shareholders? Explaining why good Corporate Governance is important to shareholders, Gerald indicated that, it translates in to better corporate performance. Gerald substantiated this with an example: A 2008 study of listed companies in Asia undertaken by Assoc. Prof. Jeremy Goh, Lee Kong Chian School Of Business, Singapore Management University, found in Asia: Good Corporate Governance practices does result in long term better corporate performance. The study is consistent with many international studies in USA and Europe which also supports this finding. Further, he defined "Shareholder activism involves any action taken by minority investors to improve the governance of companies, ensure fair treatment of all shareholders and raise company value over time" - Asian Corporate Governance Association (Hongkong). He specified that shareholder activism does matter, in Singapore, retail investors are making a difference in improving Corporate Governance. Management of shareholder issues by SIAS: holds a unique position - voice of investors, voice of reason. He stressed that issues should be managed with co-operation of the "in the boardroom and not the courtroom". Which is a win-win situation. Dialogue Session between company & shareholders, Pre-AGM Meetings with the Company, Online Q&A, and Web-casting of Interviews with Board/Senior Management. To make it much clearer few examples of shareholder activism according to Singapore model was given. But even this policy had some common reasons for disputes like Lack of communication with shareholders, little or no flow of information, unwillingness to meet shareholders or SIAS unwillingness to compromise and lastly lack of investor relations strategies to manage crisis.

Thereafter, Ashok Churiwala through the hands of Atul Mehta, requested Prasant Saran to release reading material on Corporate Governance, comprising paper presented at the conference organized by ICSI-CCGRT on Corporate Governance and reading material on 'Insider Trading' prepared by R. Balakrishnan for ICSI - CCGRT's programme by David Gerald.

Finally, Kishor Choukar, Managing Director of Tata Industries illustrated the relevance of the stakeholder welfare for corporate governance. Choukar in his inevitable humorous style, enlightened the participants on the conceptual understanding of Corporate Governance urged the investors to study information on risk management practices followed by companies, insist on disclosure and transparency, and encourage companies with good culture and code of conduct. Evaluate the leadership behaviour before investing, track the change in leadership, along with understanding the structures of functioning, and finally monitor the degree of compliance.

The sessions were widely appreciated by more than 500 participants who attended the seminar. ■





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

CENTRE FOR  
CORPORATE  
GOVERNANCE,  
RESEARCH &  
TRAINING (CCGRT)

## **Announces!!!** **Annual Membership Scheme (2012 - 2013)**

### **An invitation to attend a variety of Professional Development Programs organized by ICSI-CCGRT**

ICSI-CCGRT proposes its new schemes of Annual Membership for the Professional Development / Participative Programs organized by us.

The Scheme has been introduced keeping in view the convenience of making payment / taking approval at one time to attend different professional development programs organized during the period.

The New Annual Membership Schemes with its salient features are:

#### **Scheme - I**

- » Membership @ ₹ 5,000/-
- » Entitled to attend 05 programs at CCGRT
- » Validity of 06 Months from the month of registration

*Only participants attending the program would be entitled to the background material*

#### **Scheme - II**

- » Membership @ ₹ 10,000/-
- » Entitled to attend 12 programs at CCGRT & Mumbai
- » Validity of 12 Months from the month of registration

#### **Scheme - III**

- » Membership @ ₹ 18,000/-
- » Entitled to attend unlimited programs anywhere
- » Validity of 12 Months from the month of registration
- » Bulk Registration for more than 02 membership would be @ ₹ 15,000/- per membership

Any Clarifications, please call

**Shri K C Kaushik**, Asst Director  
on - 09769133686

Or

**Shri Ranjith Krishnan**, Asst. Edu Officer  
on - 02241021504

#### **Scheme - IV**

- » Only for Outstation Members i.e. other than Mumbai, Navi Mumbai & Thane
- » Membership @ ₹ 8,000/-
- » Entitled to attend 05 programs held at CCGRT
- » Validity of 12 months from the month of registration
- » Accommodation at CCGRT will be complimentary subject to availability

Fees will be accepted by way of Cash, D.D or Local cheque payable at Mumbai to be drawn in favour of **"ICSI-CCGRT A/c"**. Cheque may be sent to Dean, **ICSI - CCGRT** at the address given below:

**ICSI - CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)**

Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai 400 614.

Phone No. :022 - 2757 7814 /15, 41021515 Fax: 022 - 27574384 e\_mail : [ccgrrt@icsi.edu](mailto:ccgrrt@icsi.edu) website <http://www.icsi.edu/ccgrrt>

**Headquarters:** ICSI House, 22 Institutional Area, Lodi Road, New Delhi - 110 003 Website: [www.icsi.edu](http://www.icsi.edu)



Program on  
**SERVICE TAX**

**(In the light of Budgetary Change)**

PCH - 4

PDP - 8

<b>Background</b>	<p>The Budget of 2012 has made some significant changes in the scheme of service tax, as follows:</p> <ul style="list-style-type: none"> <li>Services will be taxed now, on the basis of the negative list, unlike in the past. This will expand the scope &amp; coverage of service tax in the country. Earlier 119 well-defined services were subjected to tax; now 17 well-defined services will remain in the negative list &amp; all other services will be subjected to tax. "How will the government administer this vast pool of assesseees" is as relevant as "How will the assessee know his place in the service tax regime".</li> <li>All major exemptions have been trimmed &amp; replaced by a mega notification; Coupled with this, the definition of "Service" makes interesting reading.</li> <li>Regulations in respect of "Import" &amp; "Export" of services are being fine tuned with the concept of "Place of Provision of Service".</li> <li>The scheme of reverse charge mechanism is revamped to ensure full tax recovery for the government. How will the scheme work?</li> <li>Abatements are an important part of service tax law. Failure to apply these correctly could lead to either a higher tax burden or non-compliance. Documentation?</li> </ul>
<b>Day, Date &amp; Time</b>	<p>Saturday 28th July, 2012</p> <p>10.00 a.m. - 06.00 p.m. with lunch and background material</p>
<b>Venue</b>	<p>ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614</p>
<b>Proposed Focus of Coverage</b>	<ul style="list-style-type: none"> <li>Registration</li> <li>Exemptions from service tax</li> <li>Maintenance of Invoices</li> <li>Writing Cenvat Credit Register</li> <li>ePayment of Tax - GAR7 Challan</li> <li>Submission of statutory returns (ST-3)</li> <li>Penalties</li> <li>Appeal Procedures</li> </ul>
<b>Principal Faculty</b>	<p><b>Shri Smitesh Amul Desai</b>, Director, Lex4Biz and Practising Company Secretary, Valsad</p>
<b>Fees :</b>	<p>₹ 800/- per participant for Students of ICSI ₹ 1250 /- per participant for Members of ICSI ₹ 1500 /- per participant for Others to cover the cost of program kit, background materials, lunch and other organizational expenses. <b>Annual Members of CCGRT can attend this program free of cost</b></p>

**For 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 The Dean, ICSI-CCGRT, Plot No. 101, Sector -15 Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

Phone No. : 022 - 41021504, 022 - 2757 7814/15, Fax : 022 - 27574384, email : [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu)

# APPEAL TO THE MEMBERS

## CS Ravi Gour

With profound grief, we inform the sad demise of **CS Ravi Gour** ACS-29682 on 3rd May, 2012 in a road accident on way to home at Kaithal, Haryana.

Ravi was born on 4th November, 1990 and became the member of ICSI in February, 2012. Ravi hailed from Kaithal and started his professional pursuit from NIRC Library Prasad Nagar, New Delhi. He passed away in a car accident when he was going to his home. Before the sudden, untimely and sad demise of late Ravi Gour he was working with M/s. Sanjay Grover & Associates, Company Secretaries, New Delhi. He was the only son of his parents with one sister.

## CS Brijesh Nandini Raghav

With profound grief, we inform the sad demise of **CS Brijesh Nandini Raghav** ACS-19178 on 16th May, 2012 in Gurgaon, Haryana.

Nandini was born on 31st August, 1975 and completed her CS in the year 2005. She lost her mother when she was five years old and has left her twin daughters behind who are just five years old. She was suffering from thyroid problem and was taking medication for a long period of time, eventually reducing her immunity level. Before the untimely and sad demise of Nandini she was working as the Company Secretary & Manager Accounts with M/s. Emkay Automobile Industries Limited, Gurgaon.

These mis-happenings reaffirm that future is uncertain. However, with our help we can to some extent secure the future of the bereaved family members of our both friends. Unfortunately, both the deceased members were not the members of Company Secretaries Benevolent Fund (CSBF). These incidences highlight the need for all of us to become CSBF members.

Let us unite together and help the families of Late Ravi Gour and Late Brijesh Nandini Raghav in this hour of distress.

NIRC of the ICSI calls upon all the members to come forward and generously help the families of the two deceased members.

### **The members may send the donations by way of :-**

- a) The donor may draw Cheque / DD in favour of '**Company Secretaries Benevolent Fund**';
- b) The Cheque / DD may be payable at the place of RC / Chapter where the donor wants to submit it or the donor can send the Cheque / DD, payable at Delhi, directly to the HQ;
- c) The donors are requested to write name, address, PAN No. and **purpose of donation** (donation for the family of Late Ravi Gour or for the family of Late Brijesh Nandini Raghav) on the reverse of the cheque / DD and send the Cheque / DD to the HQ/ Regional Council / Chapter ;
- d) Receipt u/s 80G would be issued by CSBF and sent to the concerned Donors at the address given on the reverse of the Cheque / DD under intimation to the concerned Regional Council/ Chapter.

The names of the donors will be published in the next issue of Chartered Secretary as a token of our acknowledgement.

# Know Your Client (KYC) Norms

## Know Your Client (KYC) Norms

Client Information as well as due diligence on clients has become a necessity for professionals in today's complex business scenario. Such an exercise can be made possible in a structured way. Many professional bodies today advise their members to have KYC about their clients so that professionals can freely exercise and deliver their professional services in the best suited way.

However, these norms are recommendatory in nature and every Company Secretary in Practice carrying out attestation function is encouraged to follow them.

<b>1 Client Information</b>	
(a) Name of Entity	
(b) CIN / Registration No.	
(c) Date of Incorporation / Registration No.	
(d) Type of Entity	
(e) Business Description	
(f) Address of Registered Office	
(g) Address of Corporate Office	
(h) Address(es) of Branch Office(s)	
(i) PAN No. and Name & Address of Income Tax Circle	
(j) Email id	
(k) Telephone No (s)	
(l) Fax No (s)	
(m) Banker(s) of the Entity	
(n) Major Client customers information	
<b>2 Corporate Structure</b>	
(a) Shareholding pattern (with details of holding of more than 25%)	
(b) Name of parent company	
(c) Name of subsidiaries	
(d) Details of Chain holding , if any	
(e) Details of associate / JVs	
<b>3. Permissible Business information as per Memorandum of Association</b>	
<b>4. Board Structure/ Organization Structure</b>	
<b>5. Transaction with Business entities in which Directors are interested</b>	
<b>6. Details of Loans and Guarantees Details of Loans and Guarantees in which director(s) are interested</b>	
<b>7. Creation, modification and satisfaction of charges</b>	
<b>8. FOREX Exposure and overseas borrowings</b>	

<b>9. Payment status of statutory dues and arrears</b>	
<b>10. Name of the CEO, CFO &amp; Company Secretary</b>	
<b>11. Engagement Information</b>	
(a) Details of assignment proposed by the Entity	
<b>12. Proceedings against the company or any of its director</b>	
(a) Details of proceedings pending or commenced, etc.	
(b) Details of prosecution, if any, pending or commenced or resulting in conviction in the past against the director and /or the company or its parent company or any of its subsidiaries	
(c) Details of criminal prosecution, if any, pending or commenced or resulting in conviction in the past against the director	
(d) Whether any of the director(s) of the company attracts any of the disqualifications envisaged under Section 274 of the Companies Act, 1956?	
(e) Has any director and /or the company or its parent company or any of its subsidiaries at any time been found guilty of violation of rules/ regulations / legislative requirements by customs / excise / income tax / foreign exchange / other revenue authorities, if so give particulars	
(f) Whether any director at any time has come to adverse notice of a regulator such as SEBI, RBI, IRDA, MCA	
(g) Default in repayment of Public Deposits and unsecured loans, debentures, loans from banks, financial institution	
<b>6 Other Information</b>	
(a) Details of last IPO/FPO/Rights Issue	
(b) Name, address and CoP No. of Statutory Auditor	
(c) Name, address and CoP No. of Secretarial Auditor	
<b>7 Undertaking to be obtained from the client</b> I confirm that the above information is to the best of our knowledge and belief true and complete. I undertake to keep the PCS informed, as soon as possible, of all event which take place subsequent to his engagement which are relevant to the information provided above.	
Place:	
Date:	For.....  Signature of client
<b>8 Remarks (if any)</b>	

Min. Annexure to be given:

- Annual Report
- AoA and MoA
- Details of any major tie-up arrangements

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# 40<sup>th</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

## Days & Dates

**Thursday-Friday-Saturday**

October 4-5-6, 2012

## Venue

**Aamby Valley, Mumbai**

## Theme :

### **Vision 2020 :**

Transform, Conform  
and Perform

## Sub Themes

- (i) Economic Volatility and Risk Management
- (ii) CS - Whistle Blower or Conscience Keeper
- (iii) Financial Markets – Engine for Economic Growth
- (iv) Challenges and Opportunities in SME Sector

## Papers for Discussion

Members who wish to contribute papers for publication in the souvenir or for circulation at the Convention are requested to send the same preferably through email [sudhir.dixit@icsi.edu] (with one hard copy to Dr. S K Dixit, Director (Academics), The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi 110003) on or before August 31, 2012. The paper should not normally exceed 15 typed pages. The Articles Screening Committee will consider the articles so received and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects. An honorarium of Rs. 2,500 will be paid by the Institute for each paper selected for publication in the souvenir or circulation at the Convention.



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
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## CAREER OPPORTUNITIES

The ICSI, a premier professional body constituted under an Act of Parliament, offers excellent career opportunities & invites applications for the following post :-

Name of the Post	No. of Posts & Place of Posting	Max. Age (as on 01.07.2012)	Compensation (Rs.)
Programmer (On Retainership Basis for one year )	3 posts at Noida	35 years	Rs 29,000/- p.m (Consolidated-Approximately)

For further details viz. qualification, experience, procedure for submission of application, etc., please visit our [website www.icsi.edu/career](http://www.icsi.edu/career) with effect from **2<sup>nd</sup> July, 2012**. Interested candidates must **apply only through electronic application form (On-line)**. Last date for submission of application (On-line) is **12<sup>th</sup> July, 2012**. Reservation Policy as adopted by the ICSI in its Service Rules.



# Our Members

## CONGRATULATIONS

**Shri Dhan Raj, ACS,**  
on his promotion to the post of Member  
(Technical) of Company Law Board  
(CLB) w.e.f. 16.05.2012 at  
New Delhi Bench.



**Shri Nesar Ahmad, FCS,**  
President, The ICSI on assuming the  
office of the President of Chartered  
Secretaries International Association  
(CSIA) w.e.f. 01.07. 2012.



**Shri Pritesh Nirajan Majmudar, FCS,**  
on his being conferred the Doctor of Philosophy  
(Ph.D) Degree in Law from University of Mumbai.

## ELEVATION

**SHRI RAJIV BAJAJ, FCS,**  
on his being appointed as Associate Director-  
Company Secretary & CFO of Panasonic  
AVC Networks India Co. Ltd. Noida. Earlier  
he was working as Company Secretary &  
CFO of the Company.

**S. RAVI IYER, FCS,**  
on his promotion from Chief Legal  
Officer & Company Secretary to Executive  
Director (Legal) & Company Secretary of  
Maruti Suzuki India Limited.

## READERS' WRITE

The erstwhile **PONITS OF VIEW** column of  
Chartered Secretary has been re-captioned as  
**READERS' WRITE**. Members are invited to  
send in their queries and views for consideration  
for publication in this column for soliciting  
views/comments from other members of  
the Institute.

## CS QUIZ

### Prize query

A cheque was issued by Shri Krishan to Shri Govind for  
Rs. 20,000.00 for goods supplied. The cheque was  
dishonoured. Shri Govind lodged a complaint against  
Shri Krishan under the Negotiable Instruments Act, 1881.  
Through the said complaint can Shri Govind ask for  
compensation also?

### Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8<sup>th</sup> August, 2012.
- 3] Two best answers will be awarded Rs. 1000 each in cash and  
the names of the contributors will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query July,  
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.

## OBITUARIES

"Chartered Secretary" deeply regrets to record the sad demise  
of the following members:

**SHRI GOVIND PRASAD SHARMA, FCS**  
(15.07.1935 - 17.04.2012), a Fellow Member of the Institute  
from Kolkata.

**SHRI H P KRISHNA MURTHY, ACS**  
(26.12.1936 - 03.06.2012), an Associate Member of the Institute  
from Dharwad.

**SHRI KISHAN LAL SURANA, FCS**  
(24.01.1951 - 17.05.2012), a Fellow Member of the Institute from  
Kolkata.

**SHRI NAGARATNAM SANKARAN, FCS**  
(23.12.1941 - 31.05.2012), a Fellow Member of the Institute  
from Coimbatore.

**SHRI PRASANTA KUMAR MUKHERJEE, ACS**  
(17.10.1929 - 29.05.2012), an Associate Member of the Institute  
from Kolkata.

**SHRI RAVI GOUR, ACS**  
(04.11.1990 - 03.05.2012), an Associate Member of the Institute  
from Kaithal Distt (Haryana).

**SHRI VENKATESH SHRINIVAS GALGALI, FCS**  
(28.12.1938 - 10.05.2012), a Fellow Member of the Institute from Pune.

May the almighty give sufficient fortitude to the bereaved family  
members to withstand the irreparable loss.

May the Departed Souls rest in peace.



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