

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

> 1244

Appointment of whole-time  
Company Secretary  
under section 383A of the  
Companies Act :  
Some Critical Issues

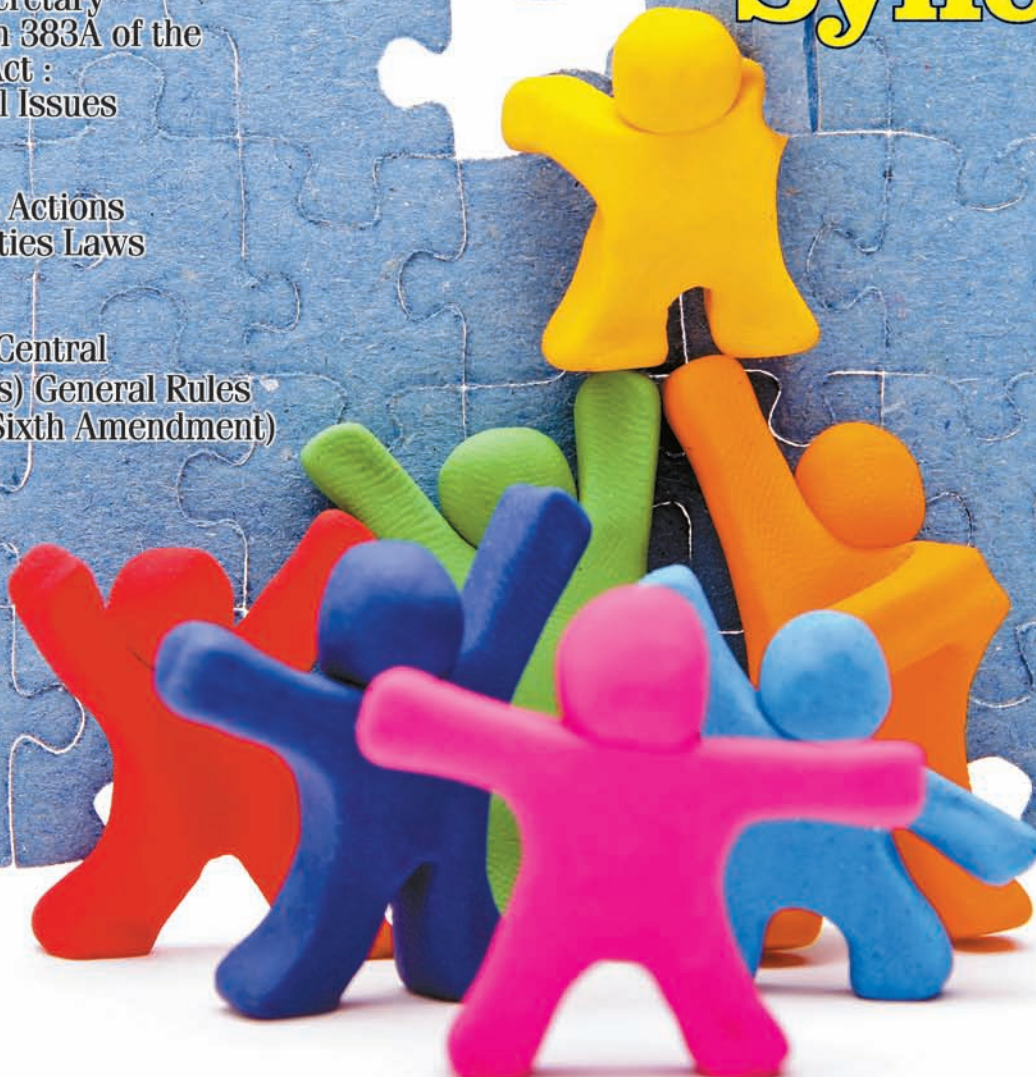
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Companies (Central  
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Rules, 2012

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01 >> Policy Document on Corporate Governance released by Dr. M Veerappa Moily, Hon'ble Minister for Corporate Affairs and Power at the CII 8th International Corporate Governance Summit in Mumbai - Standing from Left: Jyoti Vij ( Chief, Regulatory Affairs, Corporate Governance and Financial Services, CII), Nesar Ahmad (President, The ICSI), R. Gopalakrishnan (Director, Tata Sons Ltd.), Keki Mistry (Vice Chairman, HDFC Bank Ltd.), Bahram Vakil (Partner AZ&B Partners), Prashant Saran (Whole Time Member, SEBI), Dr. M. Veerappa Moily (Hon'ble Minister of Corporate Affairs & Power), Adi Godrej (Chairman, Godrej Group), Chandrajit Banerjee (DG,CII) and Alka Kapoor (JD, ICSI).

02 >> GRI South Asia Conference: Sustainability Reporting for a Sustainable Economy - Opening Plenary - group Photo - Standing from Left: M.K.Chouhan (Chairman - Mahendra & Young Knowledge Foundation), Manfred Haebig (Director, Private Sector Development, GIZ), Aditi Haldar (Director, GRI Focal Point India), Bharat Wakhlu (Resident Director, Tata Sons), Pietro Bertazzi (Manager Policy & Advocacy, GRI), Nesar Ahmad (President, ICSI), Naved Masood (Secretary, MCA), Herman Mulder (Chairman of the Board of Director, GRI), Dr. M. Veerappa Moily ( Hon'ble Union Minister of Corporate Affairs and Power, GOI), Richard Howitt (European Parliament Rapporteur on Corporate Social Responsibility), Jaydeep N Shah (President, ICAI), Ernst Ligteringen (Chief Executive, GRI), Teresa Fogelberg (Deputy Chief Executive, GRI), A. N Raman (Past President, SAFA), Carolyn Ervin (OECD, Paris).

03 >> GRI South Asia Conference - Sustainability Reporting for a Sustainable Economy - A view of the dignitaries, invitees and delegates.

04 >> Meeting of GRI Officials with ICSI (Partner - GRI South Asia Conference) - Standing from Left - Archana Kaul, Banu Dandona, N K Jain ( Secretary and CEO, ICSI), Aditi Haldar (Director, GRI Focal Point India), Nesar Ahmad (President, ICSI), Teresa Fogelberg (Deputy Chief Executive, GRI) and Pietro Bertazzi ( Manager Policy and Advocacy, GRI).

05 >> NIRC - Chandigarh State Conference on Emerging Opportunities for Professionals - Present Economic Scenario - Lighting of Lamp to mark the Inauguration - His Excellency Jagannath Pahadia (Governor of Haryana) and Nesar Ahmad inaugurating the Conference. Among others present in the picture Rajiv Bajaj, Avtaar Singh, Deepak Kukreja, Punit K. Abrol, Ranjeet Pandey, Vineet K. Chaudhary.

06 >> EIRC - Bhubaneswar Chapter - Pujan Ceremony for extended floor of the Chapter building - Nesar Ahmad and N.K. Jain with Managing Committee and other members of the Chapter.

07 >> EIRC - Bhubaneswar Chapter - Full Day Seminar on Revised Schedule VI, XBRL Mode of Filing and Emerging Changes in Service Tax - Nesar Ahmad addressing. Others sitting on the dais from Left: A. Acharya, R.K. Kanodia, N.K. Jain, J.B. Das and D. Mohapatra.

08 >> EIRC - Full Day Seminar on XBRL Under Revised Schedule - VI, E-Voting and E-Conferencing - Lighting of Lamp to mark the Inauguration - Standing among others Dr. Pankaj Srivastava (Director, MCA), B P Dhanuka, Debashish Bandopadhyay, {ROC (WB)}, Ranjeet Kr. Kanodia, J. P. Agarwal (Architect, M/s. Agarwal & Agarwal)

09 >> NIRC - Gurgaon Chapter - Celebration of 2nd ICSI Corporate Governance Week 2012 - Half Day Seminar on Good Corporate Governance & CSR - Sitting on the dais from Left : Punit Chellaramani, Deepak Jain, Dhananjay Shukla and Ranjeet Pandey.







04



05



06



07



08



09



# At a Glance

## Articles (A 398 - 434)

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### Appointment of whole-time Company Secretary under section 383A of the Companies Act : Some Critical Issues

p- 1244

Dr. K. R. Chandratre

Section 383A(1) mandates that every company having such paid-up share capital as is prescribed by the Central Government shall have a whole-time secretary. The words "shall have" were interpreted by the High Court in *State of Gujarat v. Coromandal Investment Pvt. Ltd.* as providing for either employing, or hiring services under a contract for services of, a person who is eligible to be appointed as company secretary. This created an impression that a company secretary need not be in the employment of the company. The learned Judge, however, did not consider the meaning and effect of the expression "whole-time" nor did it attempt to ascertain the true meaning of the expression "shall have a whole-time secretary" having regard to the external aids of interpretation (in view of the ambiguous words "shall have") by applying the rule of "purposive interpretation"; he merely interpreted the words "shall have" by applying the literal rule of interpretation. Had this been done, probably the Judge would not have come to the conclusion which he has come to. The purpose of the provision clearly is, which is the true intention of the Legislature, to enjoin the companies falling within the prescribed share capital bracket to employ a person as company secretary on full-time basis and debarring such person from engaging in any employment, profession or vocation. The Legislature do well to change the language and insert clear and unambiguous words in section 383A to avoid any future calamity of misconstruction.

### Enforcement Actions under Securities Laws

p- 1250

M. S. Sahoo

The Securities are a class of instruments which do not have any thing in common except a bundle of 'insecurities'. These do not have any shape, but move the entire world electronically in fraction of a second. These acquire and lose value in thin air. But the consequences of such valuation are grave; a sharp fall in valuation has the potential to trigger a *great depression*. Securities, the market for securities, its micro structure and the participants are unique in many ways. So are the laws governing the securities markets. Much more unique are the provisions that deal with infractions of law. These provisions have all the ingredients to keep the potential offenders at bay. This article explains the deterrent features the enforcement provisions from the perspective of potential offenders.

### Secretarial Audit (SA) A Better Regulatory Exercise

p- 1256

R Sridharan & R. Sriranjani

Secretarial Audit is the new gen tool of reformation in Corporate Compliances. It helps to discover and check the practices adopted by the Corporates for compliance management. SA enables the law enforcing agencies to take timely corrective actions by bringing to book the guilty. In the times of Corporate Governance epoch, SA would provide comfort to the stakeholders and other regulatory authorities about the Compliances. This Article analyses the concept, impact, role of PCS, scope, process, procedure in SA and other related areas. The enormity of multifarious compliances under the various Laws to be complied by corporates and the impact of Secretarial Audit is listed. The true essence of implementation of Secretarial Audit is brought out in this Article.

### Liability of Reserve Bank of India to pay Dividend Distribution Tax

p- 1265

T.N. Pandey

The author in this article has raised the issue as to whether the RBI should be made liable for Dividend Distribution Tax in respect of the dividends paid by it to Government of India. He has raised the issue of justification of dividend being exempt from tax and has quoted the examples of high income individuals who are receiving dividends in huge sums but not paying a single rupee by way of tax.

### Cloud Computing

p- 1268

Paras Kumar Jain

Cloud computing is a model to procure information technology capabilities on pay-per-use basis using internet and thus saving money on infrastructure and support. There are no laws exclusive to the cloud. However, some legal issues whilst not applying only to cloud, have perhaps become uniquely important to those operating or using the cloud. Cloud contracts can vary depending on provider and type of solution user is seeking. Given the range of offering in cloud, some cloud contracts may be negotiable.

### Service Tax on Directors' Services - Company to Pay

p- 1272

Dr. Sanjiv Agarwal

Service Tax regime has undergone a major change w.e.f. 1 July, 2012 with the introduction of negative list concept. Consequently, all services except the services covered in





negative list (section 66D) and exempted services (Notification No. 25/2012-ST dated 20.06.2012), have been subjected to Service Tax. As a result, the services provided by directors of companies have also been brought under the Service Tax net. However, as per scope of services defined under section 65B (44), the services provided by employees to employers in the course of employment are excluded. As such, services provided by whole time directors under a contract of employment would not be liable to Service Tax. However, services provided by other directors shall attract Service Tax. Vide Notification No. 31/2012 dated 20.06.2012(as amended), Service Tax on the services rendered by directors shall be payable by the companies receiving such services under reverse charge mechanism which has resulted in certain confusions. An attempt has been made here to explain the taxability and valuation aspects of Service Tax on directors by way of question - answers.

## HR Post Retirement Social Responsibility Programme (PRSRP) - New Scenario

p- 1277

Sanjeev Vijayvargia

The menace of aging population, increasing proportion of older persons (those above 60 years) to the total proportion is being faced by many developed countries. The Social and economic implications of aging population on human life is profound and far reaching. It results in shrinkage of proportion of working class in population putting huge pressure on maintenance of resources. To start with organized sector where HR is better equipped should prepare post retirement release strategy for their employees drawing individual specific and society oriented programme. With proper coordination and participation of NGOs, Government agencies and Organized sectors the available timeline of ageing population could be put into use for the benefit of the society at large.

## Legal World (LW 105 - 115)

p- 1282

♦ **LW 88.10.2012** Transfer of pledged shares clearly comes within the definition of transfer under the Income tax Act and such transfer is valid.[Guj] ♦ **LW 89.10.2012** A company cannot be struck off the register under the simplified exit scheme when there is a serious dispute over its paid up capital and ROC should follow the procedure prescribed under section 560.[Cal] ♦ **LW 90.10.2012** When the transferor companies contend that they have no further information to furnish to the Central government, CG and ROC should justify their objection to the sanction of the scheme and the company judge has to consider this and make a decision on merits of the petition and the scheme cannot simply be rejected.[Cal] ♦ **LW 91.10.2012** When SEBI did not supply the publication that alleged to have contained misleading and false information to the accused persons, holding them guilty is untenable. [SAT] ♦ **LW 92.10.2012** When the appeal was filed after a delay of 15 years

delay cannot be condoned. [SAT] ♦ **LW 93.10.2012** In the case of a non-workmen whose services are terminated damages cannot be granted more than one month's pay when the contract of employment provides for one month's notice.[Del] ♦ **LW 94.10.2012** When fraud could not be established, encashment of bank guarantees cannot be stayed. [Del] ♦ **LW 95.10.2012** Rejection of application seeking advance ruling, on the grounds not mentioned under section 96D (2), by the AAR is bad.[Guj] ♦ **LW 96.10.2012** Notice issued to reopen an assessment without complying with section 147 of the Income tax Act is invalid. [Del] ♦ **LW 97.10.2012** Refusal of the transporter to deliver the goods, even after having the consignee copy of the lorry receipt with it, on the ground of non submission of consignee copy is a deficiency of service. [NC]

## From the Government (GN 215 - 236)

p- 1296

♦ Companies (Central Government's) General Rules and Forms (Sixth Amendment) Rules, 2012. ♦ Condition to be imposed for conversion of ordinary Society into Producer Company. Part- IX A of the Companies Act. 1956 ♦ Delegation of powers to Regional Directors u/s 17, 18, 19, 141 and 188 of the Companies Act, 1956 ♦ Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India. ♦ Filling of Balance Sheet and Profit and Loss Account by companies in Non-XBRL for accounting year commencing on or after 01.04.2011. ♦ Constitution of CLB Benches ♦ Printing of Grievances Redressal Mechanism on Delivery Instruction Form Book ♦ Processing of Investor complaints against KRA {KYC (Know Your Client) Registration Agency} in SEBI Complaints Redress System (SCORES) ♦ Application Supported by Blocked Amount (ASBA) facility in public/ rights issue ♦ Steps to re-energise Mutual Fund Industry ♦ Addendum to Circular No. CIR/MRD/DP/21/2012 dated August 02, 2012 on activation of ISIN in case of additional issue of shares/ securities ♦ Know Your Client Requirements ♦ Establishment of Connectivity with both depositories NSDL and CDSL- Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement ♦ Manner of achieving minimum public shareholding requirements in terms of SCRR, 1957 ♦ Amendment of the existing policy on Foreign Direct Investment in Single-Brand Product Retail Trading ♦ Review of the policy on Foreign Direct Investment- allowing FDI in Multi-Brand Retail Trading ♦ Review of the policy on Foreign Direct Investment in the Civil Aviation sector ♦ Review of the policy on Foreign Investment (FI) in companies operating in the Broadcasting Sector ♦ Policy on foreign investment in Power Exchanges

## Other Highlights

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- ♦ Members Admitted/ Restored
- ♦ Certificate of Practice Issued/Cancelled
- ♦ Licentiate ICSI Admitted
- ♦ Payment of Annual Membership and Certificate of Practice Fee
- ♦ News From the Regions
- ♦ Company Secretaries Benevolent Fund
- ♦ CS Quiz

## 1. Reckoning the date of transfer of unpaid / unclaimed dividend to the IEPF Account

**PV : 01.10.2012**

Section 205A of the Companies Act provides that a company shall, within seven days from the date of expiry of the period of thirty days, transfer the total amount of dividend which remain unpaid or unclaimed within the said period of thirty days to Unpaid dividend account. Section 205A (5) further provides that any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C.

Explanation to Section 205C provides that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

### My query is

What should be the date of transfer of unpaid / unclaimed dividend to the Fund - is it to be reckoned from the date of declaration of dividend or the date of transfer to the Unpaid dividend account opened by the company in pursuance of the provisions of the relevant section?

I invite my learned colleagues to share their experience elaborately.

- M.S. VAIDYANATHAN, ACS

## 2. Employees Stock Option Schemes

A company under the provisions of section 81(1-A) of the Companies Act, 1956 issued "Equity Shares" at par in the year 1983 to its employees who completed 5 years of service in the company. Under the terms of the issue of the shares there was lock in period of further 5 years & thereafter the shares could be transferred only to the employees of the company who have completed 5 years of service in the company. The issue of the Shares was objected by the rival group of the company on the ground that book value of the share was several times of the face value. As such Special Resolution could not be passed at the General Meeting but the Ordinary Resolution was passed. The company thereafter applied to the Central Government under Section 81(1-A) (b) saying that the proposal was most beneficial to the company. The Central Government has given the permission to the issue of the shares.

The size of the issue was very small as compared to the issued share capital of the company and was immaterial for holding pattern. The company in its Explanatory Statement Pursuant to Section 173 of the Companies Act 1956 to the Notice of the General Meeting for the issue of the shares states that :

*"In order to encourage creation of affinity & participation of employees in the affairs of the company, it is proposed to issue the shares of Rs.10 each to the employees of the company in the view of growing activities & number of employee of the company. It is felt desirable & in the interest of the company to make such offer."*

The shares of the company are not listed.

### My queries are:

1. What is the relation of the privileged confirmed employees with the company after the issue of such shares to the employees in the course of employment after serving for five years and agreeing to the lock in period of 5 years for sell of the shares? Is it correct to say that on the issue of the shares ordinary relationship of Master and Servant is converted to "Employee owner of the company" as per the various estoppels involved ?
2. Under such circumstances is it necessary to resolve the Service Rules & Regulations of the company for such employee-shareowners by Ordinary Resolution before employee-shareholders' Class Meeting called under section 170 of the Companies Act, 1956 which may include the termination clause for such employees in extra ordinary circumstances.
3. It is correct that the Chairman & Managing Director is not authorized to terminate such employee-shareholder owners unless the employee has other serious stigma?

The Questions are important as many IT & Automobile companies are forcing permanent confirmed employees to resign the services when the top management is unable to get suitable projects / work to the employees.

- N.N. KALE, ACS

## 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.



# Latest From Corporate Governance

## 1. UN Global Compact's CEO Water Mandate Announces Corporate Water Disclosure Guidelines (27 August 2012, Stockholm):



Corporate Water Disclosure Guidelines released in World Water Week (26-31 August 2012) provide the first ever common approach to corporate water disclosure.

Corporate water disclosure is a critical component of a company's water management efforts and water sustainability more generally. The UN Global Compact CEO Water Mandate has released Corporate Water Disclosure Guidelines to help advance a common approach to corporate water disclosure that addresses the complexity of water resources in a comprehensive yet concise and practical manner.

The CEO Water Mandate Corporate Water Disclosure Guidelines support business viability in many ways, from improving a company's understanding of its water challenges and effective responses, to providing an opportunity to demonstrate progress and good practice to external stakeholders and investors, to establishing a dialog and building credibility with key stakeholders - paving the way for future partnerships and achievement of shared water-related goals.

The Corporate Water Disclosure Framework builds on three areas:

1. Company Water Profile - an overview of the company's relationship with water resources, offering a snapshot of water performance, risks, impacts, and response strategies that nontechnical audiences can easily understand.
2. Defining Report Content - a description of the process by which a company determines which water-related content to include in its report. The company assesses the significance of different water topics to the company and its stakeholders, and the extent to which those topics cause, or may in the future cause, adverse impacts to ecosystems and communities.
3. Detailed Disclosure - specific, detailed metrics and qualitative information related to the company's water management as well as to the specific water management programs and projects it implements.

The Guidelines can be downloaded from:

[www.pacinst.org/reports/corporate\\_water\\_disclosure\\_guidelines](http://www.pacinst.org/reports/corporate_water_disclosure_guidelines) or [www.ceowatermandate.org](http://www.ceowatermandate.org).

## 2. Global Reporting Initiative (GRI)- Draft guidance on anti-corruption and draft guidance on greenhouse gas emissions, 5th September 2012

GRI has convened a Working Group to develop recommendations on how to improve the Anti-corruption disclosures in the Reporting Guidelines.

The Anti-corruption Working Group is tasked with developing recommendations regarding changes to the GRI Sustainability Reporting Guidelines to improve the Anti-corruption disclosures.

The Working Group is currently developing its recommendations, to be incorporated into the next generation of GRI Guidelines - G4. The new guidance shall enable companies to report information on their policy, their publicly-stated commitment to zero tolerance of corruption, their training of employees, governance bodies and business partners on anti-corruption, and their collective action initiatives towards combating corruption.

Similarly, GRI has convened a Working Group to develop recommendations on how to improve the Greenhouse Gas Emissions Standard Disclosures in the Reporting Guidelines.

The Greenhouse gas (GHG) Emissions Working Group is tasked with developing recommendations regarding changes to the GRI Sustainability Reporting Guidelines to improve the GHG Emissions Disclosures. Greenhouse gas accounting and reporting is a fast-moving area, and one covered by increasing regulatory requirements. Public interest in this area is growing rapidly, and demands for information about companies' emissions will continue to increase as climate change continues.

The recommendations of both Working Groups are currently available for public comment until 12 November 2012.

Following the Public Comment Period (PCP), the Working Group will review and consider all the comments received and finalize the draft.

Members willing to give a feedback on draft documents may register themselves on GRI Consultation Platform for online consultation or they may send feedback via email at [G4@globalreporting.org](mailto:G4@globalreporting.org). Feedback may also be sent to [alka.kapoor@icsi.edu](mailto:alka.kapoor@icsi.edu).

## GREEN CORNER

### Roof Gardens



1. Gardens are a rare sight in Urban Habitats. Roof Garden is option to increase greenery.
2. Benefits:
  1. Decorative benefit,
  2. Roof plantings may provide food
  3. Temperature control: reduce the overall heat absorption of the building
  4. Architectural enhancement
  5. Habitats or corridors for wildlife
  6. Recreational opportunities
  7. Hydrological benefits

### Good Things Around

South Western Railway division of Indian Railways tied up with Biocrux to provide plastic bottle crushing machine at the Bangalore Railway Station. The machine has been installed at the entrance of the station. Travellers can feed used plastic bottles directly into the machine. This is an effort to make the railway station plastic free.

### Remember

- 1 October International Day of Older Persons
- 2 October- International Day of Non-Violence
- 24 October United Nations Day

### Moments of Thought

"Corporate Social Responsibility is (therefore) increasingly being seen as a fundamental dimension of the Social Contract between human beings and therefore sought to be subject to public disclosure and scrutiny."

*Prime Minister Dr. Manmohan Singh*

*(Speech in the Conference on Economic Growth in Asia and Changes of Corporate Environment)*

## FORTHCOMING EVENTS

**International Conference on Inclusive & Sustainable Growth  
(Roles of Industries, Governments & Civil Society) organised by Institute  
of Management Technology, Nagpur**

**Oct 4-6, 2012,**

**BAIF Development Research Foundation**

**BAIF Bhavan, Pune**

## 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:

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# From the President



Coming together is a beginning,  
staying together is progress, and  
working together is success. ●●

Henry Ford

Dear Professional Colleagues,

**W**e are living in the web of world where nothing works in isolation. Creation of better tomorrow is not an effort of an individual, business or country but the combination of collective wisdom and efforts among businesses, professionals, society and regulators. The businesses merge with other for inorganic goal, interact with professionals to seek advice on business decisions, communicate with regulator to ensure the compliances and give assurance to the society on social obligations. Execution of this network has become a basic survival strategy in the new web of dynamic world. The professionals like Company Secretaries have to create synergies not only between and among the professional colleagues but institutions through sharing the knowledge and resources. In this direction, the Institute has been making efforts through collaborative arrangements for the visibility of the profession and capacity building of the members.

## MOU with CMJ University Meghalaya

The Institute has entered into a Memorandum of Understanding (MOU) with CMJ University, Meghalaya. The MOU inter-alia provides for holding of joint workshops, seminars, continuing education and training programmes for practising professionals and corporate executives, exchange of Journals, course materials, case studies, undertaking joint research and

participation in national and international conferences on reciprocal basis. CMJ University has agreed to recognize Company Secretaryship qualification as equivalent to Masters Degree for the purpose of pursuing Ph.D in the interdisciplinary subjects of Commerce, Business Law and management discipline. The MOU also provides for opening of ICSI representative office at the campus of CMJ University for enrolment of students for Company Secretaryship course and to provide other services to students of ICSI including setting up of Study Centre. You will appreciate that the presence of profession of Company Secretaries is not very visible in the North Eastern States, therefore, I am sure this MOU would provide desired visibility in the State of Meghalaya amongst students, regulatory authorities, government and academic institutions.

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

All arrangements for the 40<sup>th</sup> National Convention have been made, and I look forward to meet you at Aamby Valley. I am sure this Convention would provide you an opportunity to develop new networks and strengthen the existing ones. Besides, thought provoking discussion and deliberations during the technical sessions would provide a clear insight into the path to transform, conform and perform to surpass the expectations of the stakeholders of the profession.

## 12<sup>th</sup> ICSI National Award for Excellence in Corporate Governance

The process of evaluation of participating companies for the ICSI National Award for Excellence in Corporate Governance, 2012 is underway. The evaluation of the First Questionnaire has been completed. Based on the evaluation of First Questionnaire, Second Questionnaire has been sent to short-listed Companies. I urge my professional colleagues in all those companies to which the second questionnaire has been sent, to complete the same and send to the Institute within the prescribed time.

## Policy Document on Corporate Governance

You are aware that the Ministry of Corporate Affairs constituted a Committee to formulate a Policy Document on Corporate Governance under the Chairmanship of Shri Adi Godrej, Chairman, Godrej Group of Industries. The Committee after extensive deliberations formulated policy document on corporate governance which was submitted to Dr. M Veerappa Moily, Hon'ble Minister of Corporate Affairs and Power at the CII 8<sup>th</sup> International Corporate Governance Summit on September 18, 2012.

The Committee had representation from the professional bodies, i.e. the Institute of Chartered Accountants of India, The Institute of Company Secretaries of India and the Institute of Cost Accountants of India, Indian Institute of Corporate Affairs, Industry associations - CII, FICCI, ASSOCHAM and eminent



persons from the trade and industry.

## **GRI South Asia Conference**

The First GRI South Asia Conference on 'Sustainability Reporting for a Sustainable Economy' was held on September 26, 2012 at New Delhi. The Conference was organized by the Global Reporting Initiative Focal Point India in collaboration with the Institute of Company Secretaries of India (ICSI) and the South Asian Federation of Accountants (SAFA). Dr. M Veerappa Moily, Hon'ble Union Minister for Corporate Affairs and Power was the Chief Guest and Mr. Naved Masood, Secretary, Ministry of Corporate Affairs was the Guest of Honour. The Conference was attended by delegates from fourteen countries. Sustainability reporting being an area of great value addition towards good Corporate Governance, the Company Secretaries being the governance professionals must develop capacities to provide sustainable solutions to businesses.

## **Annual Conference of ICSA, Nigeria**

You are aware that providing leadership on the global map is one of the top ten goals adopted by the Council of the Institute to be pursued during the period 2011-2014. It was in this direction that I along with my Council colleague, Mr. R Sridharan attended 36<sup>th</sup> Annual Conference of The Institute of Chartered Secretaries and Administrators of Nigeria held on September 27-28, 2012 at Abuja, Nigeria on the theme, "Investing and Sustaining Businesses in Nigeria: Issues of Governance".

A presentation on "Impact of Corporate Governance on Foreign Direct Investment: The Indian Experience" was made by me. Mr. R Sridharan, made a presentation about the Institute and its initiatives in Corporate Governance. The presentations evoked lot of interest among the participants as I also explained about the policy document on Corporate Governance prepared by a Committee constituted by the Ministry of Corporate Affairs to which the Institute is actively involved, myself being the convenor of the Committee.

Mr. Suresh K. Makhijani, Deputy High Commissioner of India was also present during the presentation and appreciated the role and initiatives of the ICSI in promoting good Corporate Governance. During our visit to Nigeria, we had an opportunity to visit the Indian High Commission in Abuja, Nigeria and met Mr. Mahesh Sachdev, High Commissioner of India and apprised him of the role of the Institute and the value added services being rendered by the Company Secretaries to Corporate India. The High Commissioner assured all support to ICSI in promoting good corporate governance, in soft skill development & training in Nigeria through its counterpart ICSAN, Nigeria.

## **Visit of Mr. Kevin Moore, Director, Global Business Development, CISI**

Mr. Kevin Moore, Director, Global Business Development,

Chartered Institute of Securities and Investment (CISI), London (UK), visited ICSI Headquarters on September 11, 2012 along with Mr. Ganesh Iyer, the Country Head of CISI, India. I along with Secretary & CEO, Chief Executive Designate and Senior officials of the Institute discussed the progress of the ICSI MoU with CISI and shared the feedback received from the members of the Institute. It was also agreed to create more visibility about this MoU and to provide value added services to those members of the Institute who have obtained the membership of CISI.

## **Visit to Bhubaneswar and Bhopal**

The infrastructure development of the Regions and Chapters is one of the Top Ten Goals of the Council, and in this direction I visited Bhubaneswar Chapter on the occasion of its Foundation Day and participated in the pooja ceremony for construction of third floor of the Bhubaneswar Chapter building. I also took the opportunity to meet the members, students, the press both print and electronic media during my visit.

I participated in the M. P. State Conference organised by the Bhopal Chapter jointly with WIRC on the theme "Business Governance and Madhya Pradesh" on September 15-16, 2012. The Conference was well attended by the professionals and government officials. I also inaugurated the refurbished office of the Bhopal Chapter and addressed the press conference.

## **CS Benevolent Fund**

I wish to reiterate that the profession of Company Secretaries is a closely knit joint family, where collective welfare is important as wisdom and prosperity. Therefore, it is the responsibility of each one of us to participate in welfare initiatives of the Institute, like CS Benevolent Fund, which is a collective effort towards extending much needed financial support to our members in times of distress. It has always been my endeavour to strengthen the fund and expand its membership so that adequate financial support is made available to all in times of need. I once again appeal to the members who have not yet become member of CSBF, to become member and participate in this noble initiative.

With kind regards,

Yours sincerely,

New Delhi  
September 30, 2012

(CS NESAR AHMAD)  
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## Appointment of whole-time Company Secretary under section 383A of the Companies Act : **Some Critical Issues**

Whether a person who is fully qualified in terms of section 383A of the Companies Act, 1956 and employed in a company, be deputed to another company whether or not a group company, associate company or subsidiary company to act as its company secretary is the important question examined in this article.

In a case that arose recently, A Ltd and B Ltd were two group companies. A Ltd had paid-up share capital of Rs. 4 crores and B Ltd had paid-up share capital of Rs. 20 crores. Mr. X was an executive director & finance controller of A Ltd. He was a member of the Institute of Company Secretaries of India ("ICSI"). The board of directors of A Ltd proposed to depute Mr X to B Ltd to be appointed B Ltd's whole-time company secretary and the remuneration paid to Mr. X from A Ltd would be proportionately shared by A Ltd with B Ltd. There would be no contract between the companies in this regard and no fees or billing or sharing of cost would be done. The board wished that Mr. X should function in both companies in

respective capacities. The company wanted to know whether this arrangement was workable and within the law.

### WHETHER DEPUTATION IS VALID

The first question for consideration is, as a general rule, whether a person in the employment of a company can be deputed to perform duties in another company while continuing in the employment of the first company. This arrangement is not contrary to any provision of either the Companies Act 1956 ('the Act') or any other law. This is a matter of contractual relationship arising out of the arrangement amongst the three parties to it. This arrangement is sometimes referred to as 'loaning of services' of an employee. The Random House Webster's Unabridged Dictionary gives the following as one of meanings of the word 'loan': "temporarily provided or released by one's regular employer, superior, or owner for use by another." The concerned employee is called 'loaned employee' or 'borrowed employee'. The American Heritage Dictionary of the English Language defines it as a temporary transfer to a duty or place away from a regular job. In the Black's Law Dictionary, 8th edition page 564, it is explained in this way: "borrowed employee: An

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



employee whose services are, with the employee's consent, lent to another employer who temporarily assumes control over the employees work."

Therefore, going by the general principle, while acting as an executive director of one company (A Ltd), Mr. X can, with the consent of his employer (A LTD), provide his services to the other company (B Ltd) while he continues to be an employee of A LTD and the two companies can agree to share his remuneration as they mutually determine.

## MUST SECRETARY BE THE COMPANY'S EMPLOYEE?

The next question is whether the arrangement as proposed is in accordance with section 383A of the Companies Act. While A Ltd is not under statutory obligation to appoint a company secretary, B Ltd requires to appoint a whole-time secretary under section 383A(1) which reads as follows:

"(1) Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company."

Then, there is a proviso to sub-section (1) which was inserted by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000 and it reads as follows:

"Provided that every company not required to employ a whole-time secretary under sub-section (1) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such

certificate shall be attached with Board's report referred to in section 217."

Going by the rule of literal construction, reading sub-section (1) of section 383A alone, without the Proviso, indicates that a company need not employ a person as a company secretary because the section contains the words 'shall have'. While the auxiliary verb 'shall' is used to convey that the provision is mandatory in character, the verb 'have' denotes having someone to carry out duties of secretary. The words 'shall have' may simply mean to take assistance of or to hire the services of a company secretary, either under a contract of service or under a contract for service. That is how the Gujarat High Court interpreted sub-section (1) (as it stood before the 2000 amendment), in *State of Gujarat v. Coromandal Investment Pvt Ltd*<sup>1</sup>. In the court's opinion, it is not provided in section 383A that the secretary of a company should be its employee; therefore, if a person acting as a secretary of a company is not in the employment of that company, the provisions of section 383A of the Act are not violated.

The proviso below sub-section (1) was inserted by the Companies (Amendment) Act, 2000, almost ten years after the judgment of Gujarat High Court referred to above, was delivered. The *Proviso* uses the expression "every company not required to employ a whole time secretary", thereby indicating that in the case of a company falling within the purview of sub-section (1), such a company is required to employ a whole-time secretary. Thus sub-section (1) along with its proviso can be interpreted as imposing a statutory obligation of employing a whole-time secretary for a company having the prescribed paid-up share capital (currently Rs. 5 crores) or more. Why the word 'have' was not replaced by the word 'employ' in sub-section (1) by the 2000

<sup>1</sup> [1991] 71 Comp Cas 470 (Guj); [1991] 2 Comp LJ 454 (Guj).





# Articles

Appointment of whole-time Company Secretary under section 383A of Companies Act : Some Critical Issues

■ A reference to external aid of construction such as Statement of Objects and Reasons (SOR) appended to the Bill and Notes on Clauses of the Bill helps to understand the background of the law and the purpose of the law enacted by the Bill. In the modern trend of purposive construction courts invariably refer to and rely on these external aids to ascertain the true intention of the legislature in enacting the law.

Amendment Act when the Gujarat High Court view was known, is a mystery.

A Proviso is a clause in a document making a qualification, condition, or restriction. Black's Law Dictionary<sup>2</sup> defines 'proviso' as follows: "In drafting, a provision that begins with the words provided that and supplies a condition, exception or addition." The Oxford Dictionary of Law defines it as follows: "A clause in a statute, deed, or other legal document introducing a qualification or condition to some other provision, frequently the one immediately preceding the proviso itself. Undoubtedly, it is a rule of construction that a proviso and the main sub-section should be read together to understand the meaning and scope of the Proviso, but it has also been held by courts that the substantive provision controls independent of the Proviso, and not vice versa. As was held in one case, it is not a right method of construction to use a proviso to control or alter the operative effect of the words preceding it. So, there is still the risk of a court reiterating the *Coromandal Investment view*.

## SIGNIFICANCE OF THE EXPRESSION 'WHOLE-TIME'

The Gujarat High Court did not consider the connotation and effect of the expression "whole-time" in section 383A (1), probably because it was not argued. The court focused attention only on one aspect of the section, namely interpretation of the words 'shall have' and hence the only question that the court considered was whether a person who is not in the employment of a company can act its whole-time secretary or not or whether there can be a contractual arrangement (contract for service) between the company and the person who acts as its secretary.

Let us consider the significance of the expression 'whole-time' and ascertain its true connotation. The term 'whole-time' is analogous to 'full-time' and this term has been defined in several dictionaries. The Webster's Third New International Dictionary page 2612 gives the meaning of the words 'whole-time' as full time. The words 'full time' (adj) on page 919 mean employed for or working the amount of time considered customary or standard e.g. full time clerks; involving or operating the amount of time considered customary or standard. e.g. Full time teaching. The

Shorter Oxford English Dictionary, 5<sup>th</sup> Edition page 3633 also gives the meaning of words 'whole time' as full time. According to this dictionary (page 1047) the term 'full time' (adjective) means the total normal working hours. In the American Heritage Dictionary of the English Language it is defined as employed for involving a standard number of working time. The Advance Law Lexicon by P Ramanatha Aiyar, 3<sup>rd</sup> Edition 2005, page 1945, defines 'full time employment' as: long-term employment that entails an employee putting in a full working week.

The phrase "whole-time" was considered by the Bombay High Court in the context of whole-time director and it has been held that the expression "whole-time director" must refer to a director who spends his whole-time in the management of the company<sup>3</sup>.

## PURPOSIVE CONSTRUCTION

The Gujarat High Court also did not go into the purpose of the provision in view of the ambiguous words 'shall have' in section 383A (1) since the word 'have' has several meanings and which of the meanings is relevant and appropriate in the context of the provision in section 383A (1) should be ascertained having regard to the purpose of the provision. It is true that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation, e.g., the mischief rule, purposive interpretation etc., can only be resorted to when the plain words of the statute are ambiguous and lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule<sup>4</sup>.

There is, however, an exception to the 'literal rule' and it is the purposive rule of interpretation (sometimes also referred to as 'mischief rule') which can be resorted to when the words in a statutory provision are ambiguous. A classic exposition of the two rules is the decision in *Sussex Peerage case*<sup>5</sup>. It was said:

"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural

<sup>2</sup> 8th edition, page 1262.

<sup>3</sup> *Ramaben A Thanawala v. Jyoti Ltd.* (1957) 27 Comp Cas 105 (Bom)

<sup>4</sup> *Northern Projects Ltd. v. Blue Coast Hotels and Resorts Ltd.* [2007] 140 Comp Cas 300 (CLB). *Swedish Match AB v. Securities and Exchange Board, India*, AIR 2004 SC 4219.

<sup>5</sup> (1844) 11 Cl&F 85.



and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. *But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute....*" [emphasis supplied]

In *Union of India v. Hansoli Devi*<sup>6</sup> the principle was succinctly summarized:

"It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning which would adhere to the purpose of the statute."

Under the purposive approach, the judge may look beyond the four corners of the statute to find a reason for giving a particular interpretation to its words, and his role is one of active co-operation with the policy of the statute<sup>7</sup>.

As stated by Lord Griffiths in *Pepper v. Hart* [1993] 1 All ER 42, the time has come to change the self-imposed judicial rule that forbade any reference to the legislative history of an enactment as an aid to its interpretation. The ever-increasing volume of legislation must inevitably result in ambiguities of statutory

language which are not perceived at the time the legislation is enacted. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.

Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the Statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the Legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance of a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions<sup>8</sup>.

Maxwell on Interpretation of Statutes (12th Edn., page 228), under the caption 'modification of the language to meet the intention' in the Chapter dealing with 'Exceptional Construction' states the position succinctly: "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute



<sup>6</sup> 2002 AIR SCW 3755.

<sup>7</sup> Cross on Statutory Interpretation, 3rd edition, page 19.

<sup>8</sup> *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co Pvt Ltd* 2010 AIR SCW 4983.





# Articles

Appointment of whole-time Company Secretary under section 383A of Companies Act : Some Critical Issues

Although the Notes on Clauses only stated that a secretary shall work whole-time as such and cannot accept appointment as a secretary in any other company, the same is true about any other appointment in another company.

intractability of the language used."

In *Kirkness v. John Hudson and Co. Ltd* [1955] 2 All ER 345, Lord Reid pointed out that a provision is ambiguous if it contains a word or phrase which in that particular context is capable of having more than one meaning. Now, the question that arises is, are the words 'shall have' ambiguous in the context in which they have been used in section 383A(1)? The answer would seem to be in the affirmative. The context is engagement of a person to provide secretarial services. The words 'shall have' have at least three meanings: (1) to engage a person as an employee under a contract of service; (2) to engage a person under a contract for services (on retainer basis); (3) to hire services of a person on assignment basis as and when required.

Accordingly, the provision in section 383A(1) ought to be interpreted having regard to its purpose.

## REFERENCE TO EXTERNAL AIDS OF INTERPRETATION

A reference to external aid of construction such as Statement of Objects and Reasons (SOR) appended to the Bill and Notes on Clauses of the Bill helps to understand the background of the law and the purpose of the law enacted by the Bill. In the modern trend of purposive construction courts invariably refer to and rely on these external aids to ascertain the true intention of the legislature in enacting the law.

Section 383A was inserted by the Companies (Amendment) Act, 1974. In the SOR it was stated: "The Bill proposes to make it compulsory for companies of a comparatively large size to have secretarial assistance. This will encourage the growth of the profession of Company Secretaries, to which Government is committed. It will also promote a better observance by the companies of the laws relating to trade, industry and commerce". The purpose of section 383A was stated in the Notes on Clauses of the Bill as follows: "In view of the complexities of modern business, and the various laws which the management of a company are required to comply with, reliance upon qualified secretaries is now a common feature of medium-sized and big-sized companies. ... Further, it is also considered necessary to provide that an individual appointed as secretary to any of the companies covered by the proposed new section 383A shall work whole-time as such and cannot accept appointment as a secretary in any other company."

Although the Notes on Clauses only stated that a secretary shall

work whole-time as such and cannot accept appointment as a secretary in any other company, the same is true about any other appointment in another company.

Ordinarily the SOR appended to the Bill is not admissible for construing the section, far less can it control the actual words used. It has been reiterated by the Supreme Court time and again that reference to the SOR is only for understanding the enactment and the purpose is to ascertain the conditions prevailing at the time the Bill was introduced and the objects sought to be achieved by the proposed amendment; it is not ordinarily used to determine the true meaning of the substantive provisions of the statute. As an aid to the construction of a statute, the SOR appended to the Bill, ordinarily must be avoided<sup>9</sup>.

However the SOR can be used for limited purpose for ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to remedy. The SOR may be relevant to find out what is the objective of any given statute passed by the legislature. It may provide for the reasons which induced the legislature to enact the statute. For the purpose of deciphering the objects and purport of the Act, the court can look to the SOR<sup>10</sup>.

Recently, the Supreme Court precisely explained the modern trend in interpreting a statutory provision by referring to the SOR: "It is settled law that the objects and reasons of the Act are to be taken into consideration in interpreting the provisions of the statute. It is incumbent on the court to strive and interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind while applying the provisions of the Act to the facts of the case. It is a cardinal principle of construction of statute or the statutory rule that efforts should be made in construing the different provisions, so that each provision may have effective meaning and implementation and in the event of any conflict a harmonious construction should be given. It is also settled law that literal meaning of the statute must be adhered to when there is no absurdity in ascertaining the legislative intent and for that purpose the broad features of the Act can be looked into."<sup>11</sup>

The SOR of any enactment spells out the core reason for which

<sup>9</sup> *Central Bank of India & Ors. v. Their Workmen* AIR 1960 SC 12; *Princl. Chief Conservator of Forest v. J. K. Johnson* (2011) 10 SCC 794 SC

<sup>10</sup> *Kavalappara v. States of Madras and Kerala* AIR 1960 SC 1080; and *Tata Power Company Ltd. v. Reliance Energy Ltd.* (2009) 16 SCC 659).

<sup>11</sup> *Rasila S. Mehta v. Custodian, Nariman Bhavan* 2011 AIR SCW 3002



the enactment is brought and it can be looked into for appreciating the true intent of the legislature or to find out the object sought to be achieved by enactment of the particular Act or even for judging the reasonableness of the classifications made by such Act.<sup>12</sup>

Where the words of a statute are ambiguous and lead to two meanings, the interpretation which advances the purpose of the statute must be preferred and in such a case it is permissible to refer to external documents such as statement of objects and reasons or notes on clauses explaining the purpose of the statutory provision when it was enacted. Recently, the Supreme Court has referred to the statement of objects and reasons of the Bill by which the Electricity Act 2003 was enacted by the Parliament and by resorting the principle of purposive interpretation, the Supreme Court held that the legislative purpose cannot be permitted to be frustrated by interpreting a provision in a manner not intended by the law and the court would have to apply the principle of purposive interpretation in preference to textual interpretation and adopt it so as to ensure the attainment of the object and purpose of the statute.<sup>13</sup>

Rather than time or hours of work, the expression 'whole-time secretary' is more concerned with a person working only for one employer at a time as a secretary of the company. Thus, even assuming that the words 'shall have' do not contemplate a company secretary must be in the employment of the company under a contract of service and can act on a contractual basis under a contract for service, yet the words 'whole-time secretary' cannot be interpreted to mean that a person who is engaged in some employment, profession, vocation or calling can act as a whole-time secretary while continuing in that employment, etc., whether full-time or part-time as the words 'whole-time'

necessarily envisage the secretary of a company requiring compulsory appointment of a secretary under section 383A must devote the whole of his time exclusively for that company and be not engaged in any other employment or other activity.

Now, let us consider the impact of regulation 82(2) which provides that "a director may be appointed as manager or secretary". This provision has no impact on the interpretation of the words "Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary". Regulation 82(2) merely permits the appointment of a director as secretary, but it cannot override the statutory provision in section 383A. In any case, subject to the provision in subsection (1), that where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company, a company requiring compulsory appointment of secretary is free to appoint a director who holds the prescribed qualification as its whole-time secretary. This cannot result in violation of section 383A if both the offices (director and secretary) are held in the same company.

## Conclusion

To conclude, notwithstanding the words 'shall have', it would not be in compliance with section 383A if a person holding the prescribed qualification for the purposes of section 383A and is in the employment of one company acts as whole-time secretary for another company (whether or not a group company, an associate company or a subsidiary company) if he continues to hold that other employment and render services to that company. Such a person can be deputed to the position of secretary of the other company but he should cease to provide any services to the first company (full time or part time) and act exclusively as the other company's secretary.

<sup>12</sup> *State of Tamil Nadu v. K. Shyam Sunder* 2011 AIR SCW 5014

<sup>13</sup> *Executive Engineer v. Sri Seetaram Rice Mill* 2012 AIR SCW 616.





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## Enforcement Actions under Securities Laws

The Securities Laws empower the SEBI to resort to a number of enforcement actions simultaneously for the same offence. An effective enforcement framework has been evolved over time to meet the changing needs of the market. The unique and deterrent features of this framework have been explained here.

On noticing any *prima facie* contravention of any provision of the securities laws, pending or on completion of the fact finding process, if the Whole Time Member (WTM) of the Securities and Exchanges Board of India (SEBI) considers it necessary, he issues immediately, an *ad-interim*, often *ex-parte*, order directing certain preventive measure(s) to contain further damage. On completion of the fact finding process, he decides the enforcement action(s) appropriate for the alleged contravention, if any. If the contravention has been committed by an intermediary, he may initiate an enquiry proceeding, appoint an enquiry officer (EO) to conduct an enquiry and submit a report to him. Based on the recommendation of the EO, he may suspend/cancel the registration of the intermediary

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concerned. He may initiate an adjudication proceeding and appoint an adjudicating officer (AO) to impose monetary penalty on the delinquent. He may also initiate section 11B proceeding and issue an order directing a wide variety of preventive/remedial measures. In addition, he may initiate prosecution before the competent court. In fact, where ever he considers appropriate, he initiates a combination of these proceedings. While most of the proceedings are closed on merits with appropriate directions, quite a few are settled by a panel of WTMs under the consent procedure. An outline of these proceedings is as under:

Enforcement Action	Authority	Delinquent	Outcome
Section 11(4)-Interim	WTM	Any person	Preventive measures
Enquiry	EO followed by WTM	Intermediaries	Suspension or cancellation of registration
Adjudication	AO	Any person	Monetary penalty
Section 11(4) & 11B	WTM	Any person	Preventive and remedial measures
Prosecution	Court	Any person	Imprisonment and / or monetary penalty
Consent Settlement	Panel of WTMs	Any person	Terms of settlement

The above enforcement framework has evolved over time to meet the changing needs of the market and based on the experience of administering the securities laws and judicial pronouncements. This paper attempts to explain the unique, but deterrent features of this framework from the perspective of the delinquent.

## Creation of offences

Generally, there is a broad separation of powers among the agencies associated with law - the legislature makes the law; the executive and the judiciary respectively administer and enforce it. This provides a system of checks and balances for one another to prevent misuse of power. The securities laws, in contrast, do not follow the strict separation of powers to a large extent. These confer on SEBI and self-regulatory organisations (SROs) substantial quasi-legislative and quasi-judicial powers, in addition to full executive powers to enable them to make and enforce the laws proactively, and preferably, before the harm is done. These agencies, therefore, simultaneously make, administer, and enforce laws. For example, section 15HB of the Securities and Exchange Board of India Act, 1992 (SEBI Act) prescribes a penalty upto Rs.1 crore through adjudication for failure to comply with any provision of the regulations. Similarly, section 24(1) prescribes a penalty of imprisonment upto ten years, or a fine upto Rs.25 crore, or both through prosecution for contravention of any provision of the regulations. The regulations are, however, made by SEBI under section 30 of

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the Act. If SEBI prescribes certain norms through the regulations, non-compliance of the same would attract penalty under section 15HB as well as section 24(1). Thus, for all practical purposes, SEBI prescribes the norms to be followed through regulations, and the penalty for failure to comply with the same. Besides, SEBI creates obligations under the regulations and prescribes the penalties for non-compliance with the same. For example, it has, through the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, listed a variety of penalties that can be levied for different failures under the said regulations. Similarly, the stock exchanges, through their regulations, prescribe norms as well as the corresponding penalties for failure to comply with the same. As a consequence, if SEBI/an exchange considers a particular conduct undesirable, it can within no time outlaw the same through regulations and enforce such regulations. It does not have to wait for the legislature to outlaw any conduct through legislations or create an offence. Nor does it need to seek judicial concurrence for levying a variety of penalties (except prosecution) on the delinquent. While enabling the authorities to deal swiftly with any emerging misdemeanour in the market, this arrangement empowers them to create new offences under the law and adjudicate the same.

## Expansion of Jurisdiction

The securities laws belong to a genre which believes that it is not possible to visualize all possible circumstances and provide for the same in law. The legislations here tend to be skeletal, but have the potential to deal with all possible circumstances. For example, the SEBI Act empowers SEBI to regulate not only the intermediaries listed in the Act, but also such other





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intermediary who may be associated with the securities market in any manner. This allows SEBI to regulate the intermediaries, that are not listed in the Act, in future should the need arise and also the new intermediaries that may emerge in future, without any amendment to the Act. Similarly, SEBI is responsible for administration of the Depositories Act, 1996 (Depositories Act), where 'security' means such security as may be defined by SEBI. This enables SEBI to prescribe a large variety of papers to be 'security', whether these are 'securities' or not under the Securities Contracts (Regulation) Act, 1956 (SCRA) and thereby define its regulatory jurisdiction. Further, the SCRA defines 'securities' to mean shares, bonds, debentures, instruments of similar nature, rights or interests in such instruments, and any other instrument so declared by central government. This enables central government to expand the jurisdiction of SEBI by declaring any instrument to be 'securities'. A large number of plantation schemes came up in 1990s and raised huge amounts from public. SEBI, which had authority to register and regulate collective investment schemes (CIS), stretched the scope of CIS to include plantation schemes within its ambit and started regulating them. A few exchanges in 1990s allowed trading of eximscrips under the regulations made under the SCRA though these are not 'securities'. The scope of listing agreement is being continuously expanded by SEBI and exchanges to cast additional obligations on the listed companies. Thus, the securities laws enable the authorities to expand their jurisdictions to some extent, and enforce their authority over the expanded jurisdiction.

## Time frame

There may be situations where the contravention does not come to notice of the authorities immediately or the delinquent manages to hide the contravention for a long time. If general law of limitation applies, the delinquent goes scot free if the enforcement action is not initiated within the period of limitation. In order to ensure that the delinquent is penalised sooner or later, SEBI is not barred from launching investigation / enquiry and initiating enforcement action against the delinquent for contravention of the securities laws even after lapse of several years. On the other hand, there is no time frame to conclude a particular enforcement action initiated under the securities laws. There are quite a few proceedings initiated more than a decade back waiting for conclusion. In the matter of *Subhkam Securities Private Limited* (Appeal No.73 of 2012), while noting that it had taken SEBI twelve years to complete the proceeding relating to market manipulation, the Securities Appellate Tribunal (SAT) observed that inordinate delay in conducting inquiries and in punishing the delinquent has demoralizing effect on the market players who are ultimately 'not found guilty'. In the matter of *Bankim J. Shah v. SEBI* (Appeal No.164 of 2012), the SAT observed: "We fully appreciate the fact that



no time limit is provided for finalisation of proceedings in the Act or regulations. However, delay defeats justice and causes undue hardship to the delinquent in putting forth timely defence."As a result, the Damocles' sword hangs on the delinquent for years together, he is looked down with suspicion and practically ostracised from the market till conclusion of the proceeding. The waiting for conclusion of the proceeding occasionally becomes more painful than the worst penalty the proceeding may warrant. There are even a few proceedings where the matter has reached the penultimate stage, that is, it has been heard by the WTM, but orders are yet to be passed for years. While disposing of the matter between *Mohit International and another v. SEBI* (Appeal No. 150 of 2012) on 19.07.2012, the SAT noted that though the appellant was heard by SEBI on August 11, 2009, no order has yet been passed. While there is no time limit on the authorities for completion of a proceeding, the delinquent is under a strict time frame for its response(s) as and when called upon under the proceeding. Failure to respond to summons from SEBI within the specified time invites additional penal consequences.

## Multiplicity of Actions

The securities laws empower SEBI to resort to a number of enforcement actions simultaneously for the same offence. For example, section 24 of the SEBI Act provides that without prejudice to any award of penalty by the adjudicating officer, if any person contravenes or attempts to contravene or abets the contravention of the provisions of the Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with



fine, which may extend to Rs.25 crore or with both. This provision allows both adjudication and prosecution for the very same offence, though it is open if this provision is violative of Article 20(2) of the Constitution. There have been cases where SAT has upheld multiple actions by SEBI provided these are initiated under different regulations. For example, in the matter of *Manu Finlease v. SEBI* (Appeal No.15/2003), the SAT held that adjudication under section 15-I for insider trading does not preclude SEBI from holding inquiry under section 11B of the Act for fraudulent trades. This is because the same act may amount to insider trading as well as fraudulent trade and it is possible that contravention of the latter is established where the former is not. Therefore, the WTM has the option to initiate more than one proceeding simultaneously on completion of the fact finding process. Accordingly, an intermediary found guilty of market manipulation can be penalized by suspending or canceling its certificate of registration. The directors or partners of the intermediary can be directed not to deal in securities for a specified period. The contravention can be adjudicated and monetary penalty imposed. Further, the intermediary and its officers can be prosecuted for the same offence. If SEBI is not conscientious, every contravention could attract multiplicity of proceedings and imposition of multiple penalties against the same person for the same offence, though it is not uncommon for these multiple proceedings resulting in conflicting outcomes. This is in addition to penalties levied by self-regulatory organizations such as stock exchanges against the brokers, for example. In the matter of *Kinglet Finlease & Securities Ltd. v. SEBI* (Appeal No.88/2002), the SAT held that the fact that NSE had deactivated the trading terminal of the appellant and that a sum of Rs.29 lakh was debited towards "fines and penalties" does not in any way preclude SEBI exercising its powers under the regulations under the Act. It observed that it is not material as to whether the facts relied on by SEBI and NSE are one and the same. It is even possible for SEBI as well as the exchange concerned to initiate enforcement action for the contravention of the same law, such as contravention of the listing agreement. And, such multiplicity of actions does not constitute double jeopardy and it is perfectly in order to initiate more than one proceeding against the same delinquent for the same irregular activity or contravention of the same law. Further, since the securities laws are in addition to and in derogation of any other law, a delinquent may be subjected to enforcement actions simultaneously under the securities laws as well as other laws.

## Mens Rea

All the three pieces of securities legislation namely, the SCRA, the SEBI Act and the Depositories Act provide for imposition of various civil penalties. It was doubtful for a while if imposition of monetary penalty under the securities laws required evidence of *mens rea*. It is now conclusively settled with a ruling from the Highest Court that the adjudication proceedings are not criminal or quasi-criminal proceedings. These deal with failures

to comply with the statutory civil obligations. Penalty is attracted as soon as the non-compliance with the statutory obligation is established even if there is no *mens rea*. While upholding imposition of monetary penalty in *SEBI v. Shriram Mutual Fund* (2006) 68 SCL 216 (SC), the Supreme Court held: "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such contravention becomes wholly irrelevant..." And, when the state of mind is relevant, what is material is what one does or omits to do and not what he says. In the matter of *Sahara India Real Estate Corporation Limited and Ors. v. SEBI* (CA No. 2011), the Supreme Court observed that a person's inner intentions are to be read and understood from his acts and omissions.

## Amount of Penalty

An amendment in the SEBI Act in 1995 introduced monetary penalties for specified offences. It then provided a ceiling on the amount of monetary penalty that can be levied by an AO. For example, section 15G of the Act provided that a person who indulged in insider trading shall be liable to a penalty not exceeding Rs.5 lakhs. Section 15J of the Act, however, provided that the amount of penalty would be determined, subject to the ceiling, by the AO who would be guided by the factors including the amount of disproportionate gain or unfair advantage made as a result of the default, the amount of loss caused to an investor or any group of investors as a result of default, and the repetitive nature of the default. This made it clear that the penalties prescribed in the Act were maximum and the AO has discretion to impose a lower penalty. The amendment Act of 2002, however, changed the perspective completely. It prescribed that the violator shall be liable to a penalty of the prescribed amount for most of the contraventions. For example, the amended section 15G now prescribes that the person shall be liable to a penalty of Rs.25 crore or three times the amount of profit made out of the insider trading, whichever is higher. This kind of minimum penalties has been replicated by an amendment Act in 2004 in the SCRA and the Depositories Act also. It, therefore, appears that the AO has no discretion but to levy the prescribed penalty irrespective of the gravity of the contravention and intention behind it. However, section 15J has not been repealed or amended giving an impression that the AO can impose a lower penalty taking into account the various factors enumerated therein. It is not very clear if the AO has any discretion or is bound to levy the prescribed penalty. In fact, judicial intervention has been sought to clarify the position. However, from a practical perspective, the AOs have been levying penalties as they consider appropriate and the SAT has been upholding the same while reducing in some cases. Nevertheless, the amount of penalty prescribed under the securities laws is huge and often open-ended. A person failing





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to pay the penalty imposed by AO invites imprisonment upto ten years, or fine upto Rs.25 crores, or both under section 24(2) of the SEBI Act.

## Official Bias

The WTM supervises the operational departments of SEBI. In exercise of this supervision, he, directly or indirectly, orders, guides, monitors and concludes the fact finding process such as inspection, inquiry, audit or investigation. On completion of the fact finding process, he determines the appropriate enforcement action(s) to be initiated. He may decide to initiate a section 11B proceeding and dispose of the matter himself with appropriate directions. In most cases, however, he assigns a matter either to an AO for adjudication or to an EO for enquiry. Under the former proceeding, the AO can at best impose a monetary penalty. The latter may result in recommendation to WTM from the EO to suspend or cancel the registration of an intermediary. There is a possibility of official bias seeping in from executive responsibility to quasi-judicial responsibility, that is, he may be influenced by his official bias which he acquired during the fact finding process while disposing of section 11B proceeding, assigning a particular matter to AO or EO, or deciding on the recommendation of the EO. This occasionally results in the WTM disagreeing with the findings and/or recommendations of the EO and proposing higher penalty than recommended by the EO while issuing show cause notice or supplementary show cause notice.

Further, mind is made up about the type of punishment (not quantity of punishment) to be imposed on the delinquent when the alleged contravention is referred to an AO or to an EO, that is, at a stage when the nature and gravity of the contravention has not been fully ascertained. If a contravention is assigned to an EO, monetary penalty cannot be imposed even if the enquiry findings justify imposition of monetary penalty. Similarly if a contravention is assigned to an AO, the registration cannot be cancelled even if he comes to the conclusion that the contravention warrants cancellation of registration. Even the SAT can't rectify this situation by converting one kind of penalty to another as has been held by the Supreme Court in the matter of *SEBI v. Saikala Associates Ltd.* (Civil Appeal No. 3696 of 2005) with *SEBI v. Shilpa Stock Brokers Pvt. Ltd. & Mehta Vakil Pvt. Ltd.* (Civil Appeal No. 4640 of 2006). Thus, the official bias of a WTM acquired in his executive capacity has potential to determine the nature of enforcement action and the consequential outcome.

## Standard of Proof

The criminal offence requires proof beyond all reasonable doubts. Since the offences under the securities laws are generally civil in nature and it is very hard to have evidence for certain offences like unfair trade practice or insider trading, the preponderance of probability is considered the required level of evidence. Its implication is that if it is in all likelihood that a person has committed a contravention of law, even if there is no clear evidence to establish it, he will be deemed to have violated the law and shall be liable to the prescribed penalty. However, there can be degrees of probability; the higher the gravity of the alleged contravention, the higher must be the preponderance of probabilities required for establishing the same. But it can't be that high as warranted in criminal offences. As a consequence, the available evidence may be adequate to establish fraud if it is tried as a civil offence, but may fail to establish it as a criminal offence. In such cases, SEBI would be tempted to initiate adjudication rather than prosecution. This makes the probability of an offence being established higher in securities laws.

## Innovative Directions

Section 11B of the SEBI Act allows SEBI to issue such directions as are necessary in the interests of investors or orderly development of the securities market. The nature of direction is left to imagination of the WTM issuing directions, and the law does not put any fetters on his imagination except that it is in the interest of investors or the securities market. However, the case laws make it clear that only remedial / preventive measures / directions can be issued under section 11B. It can not be used to impose penalties, though some of the preventive / remedial directions may operate as penalty on the delinquent. The imagination of the WTM has resulted in many innovative directions matching the circumstance. For example, SEBI routinely directs the delinquents to disgorge the



unlawful gains made by them from contravention of law. It restrains them from holding the position of director of any listed company. It directs them to pay interest to investors who received the payment late in public offers. It even directs them to make a public offer to acquire shares from public shareholders at a price to be determined by the stock exchange and acquire the shares offered in response there to. It even declares them as persons not fit and proper for any trade or profession in the securities market. All these directions though operate as punishment occasionally have been upheld by the higher authorities.

## Interim Orders

Section 11(4) allows SEBI to issue a large variety of directions as enumerated therein, either pending or completion of fact finding process, in the interest of investors or the securities market. Most often directions under this section restrain the delinquent from accessing the securities market or from dealing in securities. Such restraint is not violative of Article 19 (1) (g) of the Constitution, which guarantees freedom of occupation, trade or business, as held by the Rajasthan High Court in the matter of *21st Century Entertainment Pvt. Ltd. v. Union of India and others* (D. B. Civil Writ Petition No. 4333/2010) and 20 other related petitions. Most often, such directions are issued by *ad-interim ex-parte* orders without hearing the parties concerned upfront. The Rajasthan High Court also held in the same matter that the provisions of post decisional hearing enshrined in section 11 are consistent with Article 14 of the Constitution. It is, however, doubtful if section 11(4) can be used to issue directions which are penal in the nature, pending completion of the fact finding process. This may amount to penalising a person before conviction in contravention of Article 20(1) of the Constitution. The fact, however, is that the interim order often debars a delinquent from participating in market and it practically operates as a penalty on him. He suffers this penalty till the conclusion of the fact finding process and also the enforcement actions emanating therefrom. And, there is no time limit by which these have to be concluded. Many have sought intervention of the SAT to stay the operations of interim orders particularly when there is inordinate delay in completion of investigation. However, SAT has generally refused to do so, though it has advised SEBI on occasions to complete the investigations expeditiously or within a specified time. In the matter of *Rikhav Securities v. SEBI* (Appeal No. 168 of 2012), the SAT observed that it cannot bind SEBI to complete investigations by a timeframe, but this time has to be a reasonable one, more so when the entities are debarred from dealing in the market which adversely affects their business. It has occasionally directed that if SEBI does not complete the investigation/pass an order within the specified time, the interim order shall stand vacated.

## Cumulative contraventions

The conjunction 'and' is a trend in enforcement actions under

securities laws. The accusations under the securities laws are generally for failure to comply with a large number of legal obligations. For example, if a broker has allegedly indulged in market manipulation, the show cause notice would invariably accuse him of violating section 12A (a), (b), and (c) of the SEBI Act, regulation 3(a), (b), (c) and (d) and regulation 4(1) and 4(2)(e) of the PFUTP regulations and regulation 7 of the brokers regulations. As a consequence the responsibility shifts to the delinquent to prove that it has not violated each of the alleged provisions of law. The delinquent may put up a brave fight, but may not succeed in getting all the charges dropped against him.

## Appeal

The scope for relief through appeals is very limited. A person aggrieved by an order of the WTM or an AO can prefer an appeal before the SAT. However, the SAT normally does grant any relief from interim orders while investigation is on which may take years. Even one kind of penalty can not be converted to another through appeal. Further, there is no second appeal except on a question of law to the Supreme Court arising out of the order of the SAT.

## Consent and Compounding

SEBI settles proceedings through a consent procedure to achieve appropriate sanction without lengthy and costly legal proceedings. It used to settle earlier all kinds of defaults as long as the terms of settlement were appropriate. Now-a-days it does not settle serious FUTP defaults, the ICDR defaults which materially affect the rights of investors, the MF defaults which have resulted in substantial loss to the unit holders, etc. Besides, there is a formula to arrive at the terms of settlement. The formula, however, does not factor in certain factors such as strength of evidence available. If the evidence available is such that the probability of conviction is negligible, the delinquent would never settle the default for the amount derived by the formula. Thus, the option to settle a default under the consent route is limited. This is besides the fact there is a question mark on continuation of the consent mechanism which has been challenged before the Delhi High Court. Further, section 24A allows only offences which are not punishable with imprisonment only, or with imprisonment and fine, to be compounded. However, pursuant to Section 24, every offence under the Act is punishable with imprisonment and, therefore, no offence can be compounded.

Once SEBI notices an undesirable conduct or activity, there is every likelihood that the offender would be punished and, most likely, he would meet the harshest punishment. Given the increasing surveillance and investigation capability of SEBI, these powerful features serve as effective deterrent for potential offenders of securities laws. ■





# Articles

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## Secretarial Audit (SA) A Better Regulatory Exercise

The global financial meltdown coupled with Satyam like corporate dichotomy & failures have amply demonstrated certain inherent weaknesses in Corporate Governance fabric, those emanate from human ethos & values. In order to inculcate & infuse strengths into these weaker roots and establish a 'Stable Corporate India', the Ministry of Corporate Affairs, Government of India has tabled the COMPANIES BILL 2011 in the Parliament. Pursuant to the Bill Corporates are expected to run their business entities with higher ethical standards.

The paramount law governing commercial activity in India is the Companies Act, 1956. Hence any change in law is bound to create wide ripples in the economy. The Companies Bill, 2011 proposes sweeping changes to the existing Law.

### Changing Roles of Company Secretaries under the Companies Bill 2011

Formed and mandated about 30 years ago, Company Secretaries (CS) have been among the most valued professionals in terms of importance and impact.

Despite the name, the role of CS is not a clerical or secretarial one in the usual sense. In fact, a CS is typically the senior managerial personnel in the corporate structure ensuring efficient administration, effective compliance with the applicable provisions of the Act. A CS helps the Company to comply with the legal requirements avoiding failures and penal consequences if any.

### Secretarial Audit & Companies Bill 2011

In December 2009, the Ministry of Corporate Affairs introduced Voluntary Guidelines on Corporate Governance which *inter-alia* prescribed Secretarial Audit. The Parliamentary Standing Committee too in its report recommended Secretarial Audit.

Now, for the first time Secretarial Audit has been included in the Bill 2011. The provisions of the clause relating to Secretarial

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Audit are as follows:

- a. Every Listed Company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a Secretarial Audit Report, given by a Company Secretary in Practice (PCS), in such form as may be prescribed.
- b. It shall be the duty of the Company to give all assistance and facilities to the PCS, for auditing the secretarial and related records of the company.
- c. The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the PCS in his report.
- d. If a company or any officer of the company or the PCS, contravenes the provisions of this section, the company, every officer of the company or the PCS, who is in default, shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

## Concept

Secretarial Audit is the most effective mechanism to ensure the compliance requirements by the corporate enterprises under a host of legislations. With the introduction of concept of 'Secretarial Audit' in Voluntary Corporate Governance Guidelines (CGV) 2009 and the 'Companies Bill 2011', it has gained immense importance.

Secretarial Audit is a new branch of audit. In managing the affairs of a Company, the management has to operate with internal rules and regulations as well as external laws mainly regulated by the Government. While performing the business, the Company has to keep in mind all the rules and regulations relating to the Companies Act 1956, the Income Tax Act, 1961, various Labour Laws, Factories Act, Environmental and Pollution Related Acts and also various other Acts related to the safety and maintenance of Law and Order. In Secretarial Audit, the auditor has to examine whether all the applicable regulatory requirements are being fulfilled or not by a company.

Secretarial Audit postulates verification of records, books, papers and documents to check compliance with the provisions of various statutes, laws, rules & regulations, procedures by a Competent Professional Company Secretary to ensure compliance of legal & procedural requirements & processes. The primary objective of the Compliance Management backed Secretarial Audit is not only to safeguard the interest of the Directors & officers of the companies, shareholders, creditors, employees, customers etc. but also to obviate any legal action being initiated by the law enforcing agencies. Secretarial Audit by & large encompasses benefits to Promoters, Management, Investors, Regulators, Non-Executive Directors and all other stakeholders like Banks, Financial Institutions, Creditors &

Secretarial Audit is the most effective mechanism to ensure the compliance requirements by the corporate enterprises under a host of legislations. With the introduction of concept of 'Secretarial Audit' in Voluntary Corporate Governance Guidelines (CGV) 2009 and the 'Companies Bill 2011', it has gained immense importance.

Consumers. A Secretarial Audit exercise entails conducting the affairs of the company in a manner not prejudicial to the interest of its stakeholder and in total consonance with the provisions of statutes. SA being a Compliance Audit is regarded by the Government as an *efficient tool* for Compliance Management associated with Corporate Laws.

Secretarial Audit is therefore an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. SA helps to accomplish the organisations objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

## Relevance & Impact on Organisation

Good governance is essential for the success of any organisation and is now more important than ever. Board members play a vital role in serving their causes and communities. They bring passion and commitment as well as skills and experience to the organisations they lead. Boards set the long term vision and protect the reputation and values of their organisations. To make a difference a board needs to have proper procedures and policies in place but it also needs to work well as a team and have good relationships within the organisation.

We all know that lack of compliance with good corporate governance has been greatly responsible for some corporate failures. The happenings of the past have called for all companies to strictly imbibe good corporate governance. The backdrop of this necessitated that all companies should incorporate Secretarial Audits in finalizing yearly business activities. It is a proactive measure for compliance with a plethora of rules that will have a positive effect on corporate entity.





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Secretarial Audit (SA) A Better Regulatory Exercise

Secretarial Audit (SA) is all encompassing and highly relevant. It is a form of *Compliance Auditing System* that is used in carrying out total auditing of compliances with all codes and regulatory requirements especially when all other investigators have done their work. It looks into all the books used for a period to check whether they really comply with the various applicable laws and standards.

The need and significance of good Secretarial Audit could be emphasized by the size and influence of corporate. The regulator should not be obsessed with quarterly results of corporate. It should require lengthy reviews and huge efforts especially when the company is large and diversified. Such mandatory requirements would put enormous pressure on companies and could force people to put out information that may not be entirely accurate. Many items to be deliberated upon by company Boards need lengthy review which in normal course become cumbersome and impractical.

Several companies indulge in checklist corporate Governance because of the mere regulatory requirement. For instance, the subject of corporate Governance fall under the supervision of Company Secretaries and therefore the regulator need to utilise the service of Company Secretaries for corporate Governance compliance.

The implications of non-compliance often times are detrimental to the productivity and functionality of an organization. This may sound strange but it is what obtains! SA helps to give management, employees, creditors, shareholders and other stakeholders peace of mind.

## Benefits of Secretarial Audit

Benefits of Secretarial Audit are manifold. A few of them are listed below.

- It can be an effective due diligence exercise for the prospective acquirer of a company or controlling interest or a joint venture partner.
- It assures the owners that management and affairs of the company are being conducted in accordance with requirements of laws, and that the owners stake is not being exposed to undue risk.
- It ensures the Management of a company that those who are charged with the duty and responsibility of compliance with the requirements of law are performing their duties competently, effectively and efficiently.
- It ensures them that the company has complied with the laws and, therefore, they are not likely to be exposed to penal or other liability or to action by law enforcement agencies for non-compliance by the company.
- SA being proactive measure for compliance with a plethora of laws, it will have a salutary effect of substantially lessening



the burden of the law-enforcement authorities.

- It can assist bodies like SEBI, Stock Exchanges, Financial Institutions, Banks, etc. to gauge or measure the levels of compliance and non-compliance by the companies with whom they are concerned.
- To provide comfort to investors that the company has been conducting its affairs in accordance with laws and, therefore, their investment is safe and being taken due care of. SA will help unearth and check these practices and also enable law-enforcing agencies take timely corrective action by bringing to book the guilty. In the era of Corporate Governance, SA will provide comfort to shareholders about the compliance as also to feel secure about their investments.
- Instilling professional discipline and self-regulations.
- Reduces the work load of the regulators due to better and timely compliances.

## The Objectives of Secretarial Audit

The objectives of Secretarial Audit may be briefed as under.

- To check & Report on Compliances
- To Point out Non-Compliances and Inadequate Compliances
- To Protect the interest of the Customers, employees, society etc.
- To avoid any unwarranted legal actions by law enforcing agencies and other persons as well

## SA as a Regulatory Compliance

Today adoption of good governance practices has emerged as an integral element for doing business. It is not only a pre-requisite to face intense competition for sustainable growth in the emerging global market scenario but is also an embodiment of the parameters of fairness, accountability, disclosures and transparency to maximize value of the stakeholders.

Businesses have realized that long term growth and stability can be achieved only by strengthening the foundation. Compliances



are being regarded as value addition measures rather than cost centers. To achieve this level of investor confidence, the corporate leaders need set of tools that provide greater visibility to their organizations and strengthen governance, compliance and corporate performance management. One such effective and efficient tool is 'Secretarial Audit'.

Compliances with regulations has always been a reality of business. Now thanks to a continuing line of corporate scandals, compliance more than ever connects directly to the market performance. And Regulations have seemed to multiply over time. The regulations becoming more complex, regardless of the industry, any failure to comply now bears more serious penalties than ever, including the loss of management integrity and shareholder confidence.

Secretarial Audit understands the complexities of the compliance needs - which is vast, interconnected and vital to the success of any organisation. For this reason SA provides as a regulatory tool which pulls together compliance data from multiple systems and then analyses it, reports on it and delivers the required information to the management and administrators concerned.

## PCS in Secretarial Audit

With greater emphasis on corporate governance today and for better compliance of the prescribed norms, the services of company secretaries can be better utilized. Furthermore, in order to regulate the corporate governance compliance, SEBI and other market regulators, could make use of the services offered by the practicing company secretaries (PCS). The market regulator expects the corporate to comply with the corporate governance norms. Since the number of companies to be monitored is more in number and SEBI has limited resources it can "outsource" to PCS for the purpose. Also for compliance of listing agreement norms too, it can make use of their services.

A Practising Company Secretary, is a member of ICSI (The Institute of Company Secretaries of India) possessing in-depth knowledge & expertise in Corporate Laws, and acquires the core competence through diligent & continuous education & training programs.

*Just as a Chartered Accountant conducts Financial Audit, Cost Accountant conducts Cost Audit, the concept paper spells out a Company Secretary carrying out secretarial assignment & Secretarial Audit.*

Secretarial Audit is meant to be a new and additional service to the Corporate Sector and not a means of creating job opportunities to the practicing members. It is a measure towards greater investor protection. Today the protection of investors' interest has to be accorded top priority and in that direction it is imperative for the Government to take all such measures as

would reduce the chances of investors being taken for a ride. While it is nobody's case that secretarial audit will be a panacea for all the ills afflicting the corporate sector, at the same time one can dare say that Secretarial Auditor has a great potential of developing in to a corporate watch dog, particularly in respect of issues directly affecting the investors. Due to its dynamic nature, Secretarial Audit, perhaps, could provide solution to many of the complex problems being presently faced by the investors.

PCS is the Competent Professional to undertake the onerous task of conducting Secretarial Audit. PCS as an independent auditor, without fear or favour verifies whether various provisions under the applicable laws have been complied with.

## Skills Required in a PCS while conducting Secretarial Audit

### Essentials

A PCS has the professional duty to provide an unbiased and objective view. PCS should be independent from the operations evaluated and report to the highest level in an organisation, the senior managers and the governors, i.e. the Board of Directors or the Board of Trustees, as the case may be.

To be effective the Secretarial audit activity must have qualified and skilled people who have the experience to do things in the right way. Therefore any secretarial auditor or PCS should:

- Ensure that all the right people are engaged in the Audit Process.
- Schedule standing meetings throughout the audit process. Although things may change, period status checks help everyone contribute at the right level.
- Communicate the audit basics to his team. Make sure all parties understand the audit process and are ready to support the process.
- Be open to the audit process.
- Possess sufficient knowledge of the legislations and issues.
- Understanding of the best secretarial practices.
- Be impartial - i.e., not be directly responsible for the area being audited.

The PCS must be satisfied that work is carried out in accordance with the applicable procedure and that the supporting evidence is genuine. The PCS should also possess the following interpersonal skills.

- Patient
- Thorough
- Analytical
- A good Communicator



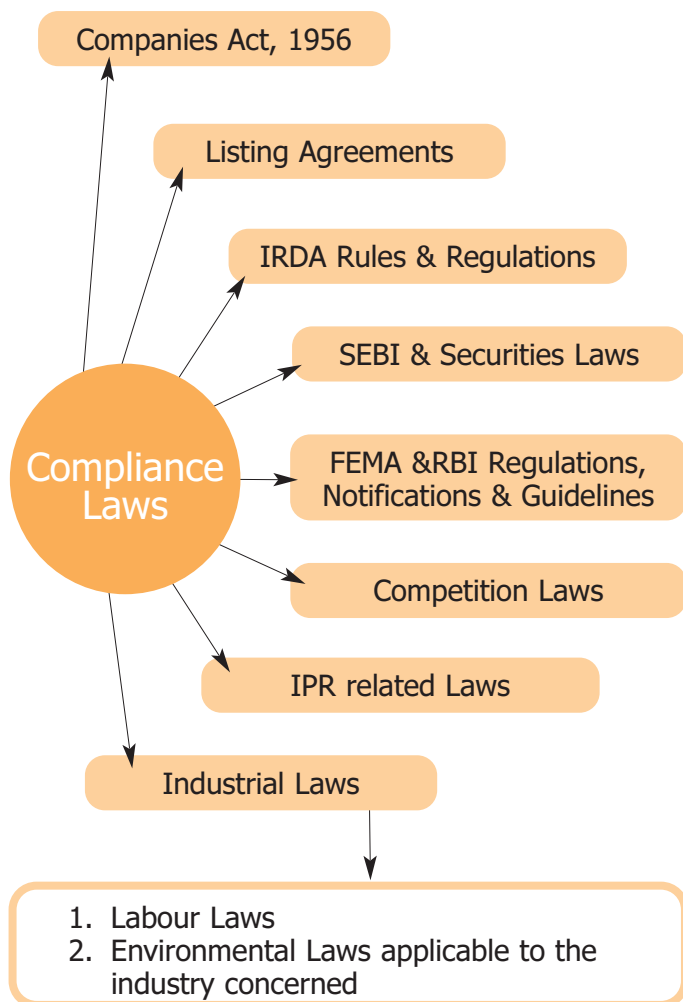


# Articles

Secretarial Audit (SA) A Better Regulatory Exercise

## Scope of Secretarial Audit

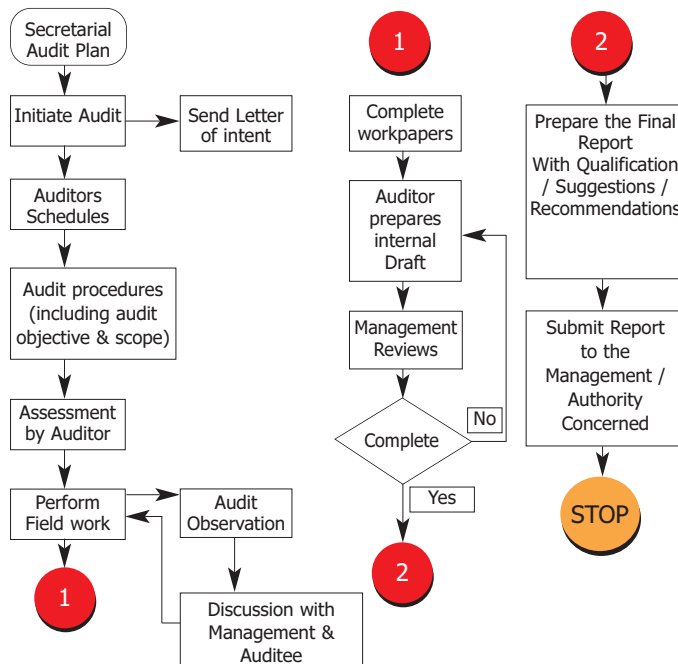
The Scope of SA comprises verification and audit of compliances under the following enactments, rules, regulations, guidelines, etc.



## PCS & Secretarial Audit Process

The ever-increasing complexities of laws and responsibilities of directors (especially non-executive directors) make it imperative that a PCS reports whether or not there exists proper compliance mechanism and systems in the corporate structure. PCS has also to verify whether diverse requirements under applicable laws have been duly complied with or not and if there is a need for any corrective measures or improvement in the system.

## Audit Flow Chart



Although every audit project is unique, the audit process is similar for most engagements and normally consists of four stages: Planning, Fieldwork, Audit Report, and Follow-up Review. Client involvement is critical at each stage of the audit process.

## How an audit is conducted



### Preliminary Discussions/Survey

In this phase the auditor gathers relevant information about the Company in order to obtain a general overview of operations.



The auditor talks with key personnel and reviews reports, files, and other sources of information.

## Planning/Audit Outline

During the planning portion of the audit, the auditor shall notify the client of the audit, discuss the scope and objectives of the examination in a formal meeting with organization management, gather information on important processes, evaluate existing controls, and plan the remaining audit steps.

## Engagement Memo/Announcement Letter

A formal engagement letter from the Management shall be issued to the Auditor. This letter communicates the scope and objectives of the audit. PCS shall then forward a preliminary checklist to the Company that will help the auditor learn more about the company under audit.

## Entrance/Opening Meeting

The opening meeting should include senior management and any administrative staff that may be involved in the audit. The Company should feel free to ask the PCS to review areas that are concerned about. The time frame of the audit will be determined.

## Audit Program/Review

Preparation of the audit program concludes the preliminary review phase. This program outlines the fieldwork necessary to achieve the audit objectives. The PCS shall use a variety of tools and techniques to gather and analyze information about the Company's operations. The review of controls helps the auditor determine the areas of highest risk and design tests to be performed in the fieldwork section.

## Fieldwork

The fieldwork concentrates on informal communications. It is during this phase that the PCS determines whether the controls identified during the preliminary review are operating properly and in the manner described by the Company. Fieldwork typically consists of talking with staff, reviewing procedure manuals, learning about processes, testing for compliance with applicable policies and procedures and laws and regulations, and assessing the adequacy of controls. The fieldwork stage concludes with a list of significant findings from which the auditor will prepare a draft of the audit report.

## Working Papers

Working papers are a vital tool of the audit profession. They are the support of the audit opinion. They connect the management's records and financials to the auditor's opinion. They are comprehensive and serve many functions.

## Observations/Discussions

The detailed commentary describing the findings and recommended solutions shall be summarised and presented for

initial discussions with the management for its insights.

## Preliminary Report/Audit Summary

Upon completion of the fieldwork, the auditor to summarize the audit findings, conclusions, and recommendations necessary in the form of the audit report.

## Exit Meeting

A closing meeting to be held so that everyone can discuss the audit report and review management responses. This is an opportunity to discuss how the audit went and any remaining issues to be scrutinized.

## Audit Report

The auditor shall prepare the final report based on the field work and working papers to present the audit findings and discuss recommendations for improvements, if any. The Final report shall contain the opinion on the statutory compliances examined by the auditor and shall state whether in his opinion the Company is carrying out / not carrying out due compliances of the applicable provisions of the Various corporate laws. The final report shall be provided with or without qualifications.

## Review/Follow up

Finally, as part of Secretarial Audit's self-evaluation program, the PCS may request the Company to list the actions taken by the Company to resolve the audit report findings. Unresolved findings will also appear in the follow-up report and will include a brief description of the finding, the original audit recommendation, the client response and the current condition.

The above is by no means an exhaustive process of a Company Secretarial Audit; this will of course vary in some ways from Company to Company.

## Sample List of Documents to be verified

### 1. REGISTERS AND RECORDS

#### 1.1 Statutory Registers

- a) Register of investments under Section 49
- b) Register of deposits
- c) Register of charges under Section 143/Copies of instruments creating charges
- d) Register & Index of members
- e) Register & Index of debenture holders
- f) Foreign registers of members of debenture holders
- g) Registers and returns under Section 163
- h) Minutes book of meetings
- i) Minutes book of class meeting / creditors meeting
- j) Books of accounts & cost records



# Articles

Secretarial Audit (SA) A Better Regulatory Exercise

- k) Register of contracts
- l) Register of directors, MD, manager & secretary
- m) Register of directors' shareholding
- n) Register of investments of loans made, guarantee given or security provided
- o) Register of renewed & duplicate certificates
- p) Register of destruction of records/documents

## 1.2 Other register

- a) Register of directors' attendance
- b) Register of shareholders' attendance
- c) Register of proxies
- d) Register of Transfer
- e) Register of fixed assets
- f) Register of documents sealed

## 2. CLOSURE OF ROM OR REGISTER OF DEBENTURE HOLDERS

### 2.1 Paper Advertisement Copies

## 3. FORMS, RETURNS AND DOCUMENTS

### 3.1 Periodical Returns

- a) Annual Returns
- b) Annual Accounts/Reports

### 3.2 Other Important Returns

- a) Return of allotment
- b) Notice of redemption of preference shares, consolidation, division, increase in share capital, cancellation of shares and increase in number of member
- c) Notice of situation/change in situation of registered office
- d) Court/CLB orders
- e) Registration of resolution & agreements
- f) Return of appointment of managing director/whole-time director/manager
- h) Particulars of appointment of directors, managing director, manager or secretary & changes made
- i) Return of deposits under section 58A
- j) Particulars of beneficial interest in shares
- k) Registration of creation/modification/satisfaction of charge

## 4. MEETING BOARD/COMMITTEES/GENERAL MEETINGS AND MINUTES

- a) Meetings of directors/Committee Members
- b) Minutes book of meetings of directors/committee members
- c) AGM/EGM/deemed Meeting minutes
- d) Proof of despatch of notices to members

## 5. SHARE CERTIFICATES, TRANSFER / TRANSMISSION

## OF SHARES, DIVIDEND, BOARD'S REPORT

- a) Copies of Endorsed shares certificates and other securities
- b) Transfer Deeds and transmission request letters etc.
- c) Declaration, payment and transfer of dividend
- d) Board's report
- e) Transfer of unpaid amounts to the IEPF

## 6. CONTRACTS

- a) Details of related parties
- b) Copies of Disclosure forms under section 299(3)(b)
- c) Details of transactions/contracts entered into
- d) Entries made in Register of contracts

## 7. NOTICES

- a) Copies of Show cause notices/default notices etc. received by the company if any.

## 8. COMPLIANCES WITH SEBI / STOCK EXCHANGES

- a) Correspondences exchanged with stock exchanges for complying with listing agreement clauses.
- b) Returns and intimations submitted with exchanges
- c) Shareholding Pattern

....The list of documents to be verified would be very exhaustive depending upon the Scope & in depth Coverage of the Audit.

## Specimen Secretarial Audit Report to the Board

### The Board of Directors

XYZ CO LTD

We have conducted, the Secretarial Audit of M/s. XYZ CO LTD ("the Company") bearing Corporate Identification Number (CIN) xxxxxxxxxx for the financial year ended 31st March 20XX of the Compliance of applicable statutory provisions and the adherence to the good corporate practices by the Company. The Secretarial Audit was conducted in a manner that provided us a reasonable basis for evaluating the statutory compliances and expression of our opinion thereon.

We examined the registers, records and other related documents maintained by the Company according to the provisions of -

- The Companies Act, 1956, and the Rules made under the Act.
- The provisions contained in the Memorandum and Articles of Association.
- Companies (Central Government's) General Rules and Forms, 1956;
- Companies (Disqualification of Directors under Section 274(1)(g) of the Companies Act, 1956) Rules, 2003.
- Companies (Issue of Share Certificates) Rules, 1960.





- Companies (Disclosure of Particulars in the Report of Board of Directors) Rules, 1988.
- Companies (Director Identification Number) Rules, 2006.
- Companies (Electronic Filing and Authentication of Documents) Rules, 2006.
- Companies (Transfer of Profits to Reserves) Rules, 1975.
- Companies Unpaid Dividend (Transfer to General Revenue Account of the Central Government) Rules, 1978.
- Investor Education and Protection Fund (Awareness and Protection of Investors), Rules 2001
- The Depositories Act, 1996, Regulations and Bye-laws made under the Act.
- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
- Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.
- Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.
- Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- The Equity Listing Agreement with National Stock Exchange Ltd., Bombay Stock Exchange Ltd., and Madras Stock Exchange Ltd.
- RBI Directions, Norms, Notifications, Guidelines as applicable to Non-Banking Financial Companies.

We have also examined the compliance with applicable clauses of the following:

- (i) Secretarial Standards issued by the Institute of Company Secretaries of India.
  - (ii) Corporate Governance Voluntary Guidelines, 2009 issued by the MCA, GOI.
1. Based on our examination and verification of the registers, records, books, papers, forms, returns filed and other documents produced to us and according to the information and explanations given to us by the Company and its officers, we report that the Company has, in our opinion, complied with the provisions of the Companies Act, 1956, ("the Act") and the Rules made under the Act and the Memorandum and Articles of Association of the Company, with regard to:
    - a) Maintenance of statutory registers/documents and making necessary entries there in.
    - b) Filings of requisite forms, returns, documents and resolutions with Registrar of Companies and other authorities prescribed under the Act.
    - c) Service of documents by the Company on its Members, Debenture Holders, Debenture Trustees and the Registrar of Companies.
    - d) Closure of Register of Members.
    - e) Notice convening and holding of the meetings of

Secretarial Audit understands the complexities of the compliance needs - which is vast, interconnected and vital to the success of any organisation. For this reason SA provides as a regulatory tool which pulls together compliance data from multiple systems and then analyses it, reports on it and delivers the required information to the management and administrators concerned.

Directors, its Committees thereof and of the shareholders as well as relating to minutes of the proceedings thereof including passing of resolutions by circulation.

- f) Approval of the Members, the Board of Directors, the Committees of Directors and government authorities, wherever required.
  - g) Constitution of the Board of Directors/Committees of directors and appointment, resignation, retirement and re-appointment of Directors including Managing Director and their remuneration.
  - h) Appointment and Remuneration of Statutory and Internal Auditors.
  - i) Transfers and Transmissions of the Company's shares and debentures, issue and allotment of shares and debentures and issue and delivery of original and duplicate certificates of shares and debentures.
  - j) Declaration and payment of dividends.
  - k) Creation, Modification and Satisfaction of Charges on the assets of the Company complying with applicable laws.
  - l) Form of Balance Sheet as prescribed under Part I of Schedule VI to the Act and requirements as to Profit and Loss Account as per Part II of the said Schedule.
  - m) Contracts, common seal, registered office and publication of name of the Company
  - n) Transfer of amounts as required under the Act to the Investor Education and Protection Fund (IEPF).
  - o) Investment of the company's funds including inter corporate loans and investments.
  - p) Payment of all its statutory dues and other necessary arrangements made for arrears of any such dues.
  - q) Generally, all other applicable provisions of the Act and the Rules made under that Act.
2. We further report that:
    - a) The Directors have complied with the disclosure requirements in respect of their eligibility of appointment, independence and compliance with the Code of Conduct for Directors and Management Personnel.



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Secretarial Audit (SA) A Better Regulatory Exercise



- b) The Directors have complied with the requirements as to disclosure of interests and concerns in contracts, arrangements, shareholdings/debenture holdings and directorships/interest in other entities.
  - c) The Company has altered the provisions of the Memorandum and Articles of Association during the financial year and subsequent amendments to the Memorandum & Articles of Association of the Company and complied with the provisions of the Act.
  - d) The Company has allotted shares on preferential basis in accordance with SEBI ICDR Regulations, after obtaining shareholders approval.
  - e) The Company has not accepted any deposits during the financial year and necessary resolution to that effect was passed at the Board meeting held in the first quarter of the financial year and the same has been filed with Reserve Bank of India (RBI) within the stipulated time period.
  - f) There was no prosecution initiated against or show cause notice received by the company/directors/officers and no fines or penalties were imposed on the company during the financial year.
3. We further report that the company has complied with:
- a) The requirements of Equity & Debt Listing Agreements entered into with the Stock Exchange Ltd.
  - b) The Company has complied with the provisions of the Depositories Act, 1996 and the Bye-laws framed there under by the Depositories with regard to dematerialisation/rematerialisation of securities and reconciliation of records of dematerialized securities with all securities issued by the Company as per the information received from the Registrar & Share Transfer Agents of the Company.
  - c) The provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 including the provisions with regard to disclosures and maintenance of records required under

the Regulations as amended from time to time.

- d) The provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 including the provisions with regard to disclosures and maintenance of records required under the Regulations (as per the Company rule, quarterly disclosures must be given in case of any purchase or sale of securities in the company).
4. We further report that -
- a) The Company has complied with the provisions of the Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, to the extent possible and is in the process of examining the possibilities of implementation of remaining guidelines in appropriate manner.
  - b) The Company has followed the Secretarial Standards issued by the Institute of Company Secretaries of India to the extent possible.
  - c) The Company has adequate systems and processes to commensurate with the size and operations of the business to monitor and ensure compliance of applicable laws, rules, regulations, directions and guidelines.

For RSA Company Secretaries

Sd/-

CP..... / FCS.....

Date:.....

## Conclusion

Secretarial Audit thus entails auditing of relevant documents to conclude as to whether a company has complied with corporate governance requirements. Organizations are advised to be mindful of their obligations to remain committed to safeguarding the existence of their business through transparent best practices fashioned along local and international standards. SA will look into the statutory/operational books of organizations including the reports of all other investigators to check whether they comply with Compliance requirements.

In the Indian situation, unless issues relating to weaknesses prevailing in corporate governance are well addressed, it would be futile to expect good standards of governance. As far as the legal and administrative frame work is concerned, it is felt that SEBI and ICSI must introduce new measures, as there is no clear legal framework for punishing erring companies that fail to follow guidelines, Governance practices and code of conducts. Further, with a view to promote the best corporate governance practices, secretarial audit should be made mandatory for all the institutions. This casts immense responsibility on PCS and poses a great challenge to justify fully, the faith and confidence reposed. PCS should therefore take adequate care while conducting the 'Secretarial Audit' and also adhere to the highest standards of professional ethics and excellence in providing services. ■



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# Liability of Reserve Bank of India to pay Dividend Distribution Tax

While RBI has been exempt from income tax, wealth tax and service tax, no such exemption has been provided in respect of dividend distribution tax but despite that dividend distribution tax is not imposed on RBI. Either the RBI Act/Income Tax Act be amended to exempt RBI from dividend distribution tax or the RBI be subjected to this levy.

**T**axation of 'dividends' from companies has been a matter of considerable debate not only in India but in other countries too. The argument had been that since it is paid out of taxed profits of a company to the shareholders, taxing the same in their hands amounts to double taxation of the same income. In such claims it is conveniently forgotten that the company and its shareholders are two different legal entities. This position has been undisputedly accepted by courts in India and abroad and by jurists such as Lord Halsbury. In India, the separate legal entities of the company and the shareholders have been accepted by the Supreme Court in the case of

*Mrs. Bacha F. Guzdar v. CIT* (1955) 27 ITR 1, where the court has said that "the company is a juristic person and is distinct from the shareholders...". 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 different from the shareholders. Hence there cannot be any injustice and hardship, if the two separate entities are taxed separately.

## Exemption of Dividend Income

However, despite the legal position being clear and the fact that there could be no double taxation if the taxed income of companies is considered for taxation in the hands of the shareholders who are separate taxable entities distinct from the companies where they are shareholders. Yet, bowing down to the demand of high income taxpayers for exemption

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





# Articles

Liability of Reserve Bank of India to pay Dividend Distribution Tax

Even Government is practising discrimination in the levy of DDT as this levy is not imposed on the Reserve Bank of India wholly owned by the Government of India! Though exemption to RBI from Income-tax, Wealth-tax, Service-tax has been secured in respective legislations, no such exemption from DDT has been given under the Income-tax Act, 1961.

of dividend income in shareholders hands, dividend income was made tax-free by the Finance Act, 1997 without giving any justification for doing so. The FM merely said, while exempting dividends from tax, in para 100 of the budget speech that an area of vigorous debate over many years relates to the issue of tax on dividends and he wishes to end this debate. Hence, he abolished tax on dividends in the hands of the shareholders. A major decision cannot be taken merely with such observations!

## Resort to more Rigorous Double Taxation - Dividend Distribution Tax (DDT)

However, the new scheme ended in a worst form of double taxation by levy of Dividend Distribution Tax (DDT), which is presently levied @ 16.225% on the dividends distributed, with surcharge and education cess. This is imposed on the amount of dividends distributed by the companies. Earlier, the tax on distributed dividends and on corporate incomes was paid by two different entities, but now the tax on distributed dividend is paid by the same entity - the company - firstly when the income is earned by a company and again when out of such taxed income, dividend is distributed, which is subjected to tax again. Thus, double taxation in the existing system is more blatant and the argument given to justify exemption of dividend income on the ground of avoidance of double taxation by imposition of DDT falls flat.

The inequity of the system of taxation in the case of the companies and exempting shareholders from dividend income as introduced by the Finance Act of 1997 was accepted by the FM, Shri Yashwant Sinha, while presenting the Finance Bill for 2002-03. He said:

"....There is also an inherent inequity in the present

system, which allows persons of high-income groups to be taxed at much lower rates than the rates applicable to them. These issues have been troubling me over the past four years and I am now convinced that the existing system must go. Such income (meaning the dividend income) will henceforth be taxed in the hands of the recipients at the rates applicable to them....".

Thus, the old system of taxing company (on its income) and shareholders (for dividends) incomes was restored. But, the change remained operative for one year only. Shri Sinha's successor, Shri Jaswant Singh, next year reverted to the old system without assigning any reasons and it is continuing since then.

## Regressive Regime for Taxation of Non-Companies Taxpayers

The present system of exempting dividends is prima facie unfair, as it taxes earned income, like wages, salary, pensions, income from business/professions, etc. rather rigorously and exempts unearned incomes like dividends without any limits. The present position is that the number of persons are becoming rich and super-rich, without contributing according to the canon of 'ability to pay' to the tax kitty of the country. The persons earning high incomes from dividend are using the untaxed income from dividends in unproductive areas like gifting aeroplanes to wives or constructing high-rise buildings to live. The present system only helps the persons to grow richer year-after-year as the shares and securities, yielding dividends are also exempt from Wealth Tax.

## Exemption of dividends immensely benefit Rich/ Super-Rich

According to a media report, published in an economic daily of 16.09.2011, the payout of dividends to some promoter/shareholders for the period 2010-11 has been as under:

	Amount of dividend paid (in excess) (Rs. in Crores)	Percentage increase vis-à-vis last year
Azim Premjee (Wipro)	1345.1	67.8%
Mukesh Ambani (RIL)	1240.75	14%
Rahul Bajaj (Bajaj Group)	917.4	75.7%
Anil Agarwal (Vedanta)	790.02	29.3%
Kesho Mahindra (M&M)	312.02	26.2%
Gautam S. Adani	304	112.7%

Such incomes have not been taxed since last 10 years because of exemption of dividend income. DDT's impact is



felt by small and medium level shareholders as dividends get reduced consequent to cash go out by way of DDT from the companies.

## Discrimination in the levy of DDT

Be that as it may, even Government is practising discrimination in the levy of DDT as this levy is not imposed on the Reserve Bank of India wholly owned by the Government of India! Though exemption to RBI from Income-tax, Wealth-tax, Service-tax has been secured in respective legislations, no such exemption from DDT has been given under the Income-tax Act, 1961.

Section 45 of the Wealth Tax Act, 1957(Act) with the heading 'Act not to apply in certain cases' enumerates cases of persons exempt from Wealth Tax (WT). This list did not have the name of RBI. Vide Finance Act 2012, an addition has been made to such wealth tax free institutions by adding the name of Reserve Bank of India to this list w.e.f. 01.04.1957 - the date from which Act came into force. This implies that RBI did not enjoy any special status in regard to liability for wealth tax and was liable for such tax from the date the Wealth Tax Act came into force but has not been subjected to such tax since then. This lacunae has been removed by exempting RBI from wealth tax with retrospective effect.

Likewise, continuing the exemption to RBI from service tax by the Finance Act, 2006, the new scheme of taxation of services comprehensively also provides that the services by RBI will not be liable to service tax by including services by the RBI in negative list in section 66D.

## DDT still payable by the RBI

However, RBI is still liable for DDT. Accepting that RBI enjoyed no special status for WT, the amendment has been thought necessary. Similar amendment has been made concerning service tax. However, similar amendment is necessary to free the RBI from DDT which has not been done so far.

## Section 115-O of the IT Act, 1961

Section 115-O of the IT Act, 1961 provides for payment of tax, at prescribed rate, by a domestic company for any assessment year on "any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after 1st day of April, 2003 whether out of current or accumulated profits". This tax is payable "notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of the Income-tax Act". The tax so paid is to be treated as final in respect of dividends declared, distributed or paid and no credit for the same can be availed of by the company distributing such dividends. This section does not provide for any exemptions from payment of this tax to any

one including the RBI.

## RBI's liability for such a Tax

Service-tax provisions in the Finance Bill 2005 ensured that RBI does not pay service-tax. The same situation exists in regard to income-tax by the RBI Act, 1934 (RBI Act). Similar exemption to RBI has now been secured under Wealth Tax Act. But there is no exemption in regard to Dividend Distribution Tax as far as RBI is concerned. Sub-section(2) of section 115-O, as mentioned earlier, clarifies that notwithstanding that no income tax is payable by a domestic company on its total income.... The tax on the distributed profits under sub-section(1) shall be payable by such company.

## Status of RBI

RBI has been established by RBI Act 1934 (subsequently amended by Act 23 of 1997). Sub-section (2) thereof states that "the bank shall be a body corporate by name of the Reserve Bank of India, having perpetual succession and common seal, and shall by the said name sue and be sued". Section 48 of the RBI Act exempts it only from income-tax. The main shareholder of the RBI is Government of India to whom the RBI is annually paying dividend, but the IT Department is not subjecting the RBI to tax on dividends paid in terms of section 115-O of the IT Act.

The Income-tax Department too seems to be winking at such liability because it relates to RBI. It could be argued that Dividend Distribution Tax by the RBI would be a mere formality because all the profits of RBI belong to Govt. of India and it should not matter whether it is paid as 'dividend' or as 'DDT'. But such a view cannot absolve RBI from payment of dividend distribution tax. Over the years, the judicial view had been that if the person sought to be taxed comes within the letter of law, he must be taxed. As per Rowlatt J. in *Cape Brandy Syndicate v. IRC*, 1 KB 64, in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

The view mentioned earlier gets fortified by the clarificatory amendment to section 45 of the WT Act (*supra*).

Therefore, either the RBI should pay DDT (with interest for past years) or the RBI Act may be amended retrospectively to exempt RBI from payment of DDT also in the manner it has been done for income-tax, wealth- tax and service-tax. The non-payment of this tax by the RBI does not augur well for the first Bank of the country and also for the IT Department which is not subjecting RBI to such a tax! ■



# Articles

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## Cloud Computing

Through cloud, software, platform and infrastructure services are usually provided over a network. There are certain unavoidable risks associated with using cloud. An attempt has been made in this article to analyse the legal issues surrounding cloud and provide an indicative checklist to assist potential user of cloud in contract negotiation.

Cloud computing ("cloud") in a nutshell is a model to procure information technology capabilities on pay-per-use basis using internet and thus saving money on infrastructure and support. Basically, cloud purges the challenge of hosting software and hardware on individual computers, by providing a platform from which such capabilities can be used through an internet connection. Three types of services viz., software as a service (eg.: salesforce.com, Ramco OnDemand ERP), platform as a service (eg.: salesforce.com, microsoft window azure) and infrastructure as a service (eg.: aws, gogrid) are available over cloud. Thus for businesses desktops, servers, application development tools, enterprise resource planning solutions etc., are all available on cloud.

### Issues

Depending on the type of business and technology involved, in negotiating or offering cloud services,

following challenges are likely to arise from legal perspective with varying degrees of importance.

### Data Privacy & Security

Cloud services involve processing and storage of the data that is often commercially sensitive, confidential, and personal. Thus, moving the data to cloud means losing direct control over the data and in some cases this data is stored in a different territory. Data in cloud may be located anywhere in the World and even in multiple data centres in multiple copies worldwide. Thus, storing and processing customer data at remote data centres gives rise to potentially complex data protection issues which need to be addressed in order to avoid customers and suppliers breaching applicable regulations. Cognizance should be taken of the following :

**Export of Data:** While India has no specific law on this subject, in many jurisdictions including European Union, the export of data to other jurisdictions is either prohibited or subject to onerous restrictions.

**Data Handling:** Personal data stored in cloud is required to be handled in accordance with the customer's instructions or contractual obligation and the service provider is under an obligation to take appropriate measures to keep the data secure;





**Regulated Businesses:** Businesses operating in regulated industries such as financial services or healthcare may be subject to even more stringent data protection obligations given the financial value or sensitivity of data such as bank details and medical records.

## Governing Laws and Jurisdiction

There are no laws exclusive to the cloud. However, some legal issues whilst not applying only to cloud, have perhaps become uniquely important to those operating or using the cloud. Cloud may not be fixed to any particular location but this is clearly not the case with the legislations of each country. Every country has its own set of legislations regarding data protection and privacy and some are dramatically more stringent than others. Further, complying with data protection regulations will be complicated if the data is split up and stored by the supplier in different data centres all over the world. Such data are potentially subject to: (i) the data protection laws of every jurisdiction in which it is stored; and (ii) inspection by local law enforcement authorities (e.g. under anti-terrorism legislation).

## Intellectual Property Rights

Data is critical intellectual property for any user. When data and services move to cloud, there could also be intellectual property rights issues, for both cloud computing providers and users to consider. These are complex matters, and a comprehensive discussion is beyond the scope of this article. Some of the issues could be (i) who would be the owner of intellectual property created using cloud or the processes vital to cloud?; and (ii) to what extent user would be held liable in case the provider's service infringes any third party's intellectual property rights.

## Applicable Indian Laws

The relevant Indian legislations which may govern cloud are the Constitution of India and the Information Technology Act, 2000, the Indian Penal Code, 1860, Indian Contract Act, 1872, Consumer Protection Act, 1986, Copyrights Act, 1957,

Specific Relief Act, 1963. In addition to the above, the Reserve Bank of India has prescribed certain guidelines to be followed by the Banks while outsourcing their financial services to a third party. Applicable provisions have been analyzed in brief herein below:

## Constitution of India

The courts have in few cases held that the right to privacy is implicit in fundamental right to life and liberty guaranteed by Article 21 of the Constitution of India.

## Information Technology Act, 2000

Section 43 of this Act stipulates payment of damages by way of compensation for unauthorized access or downloading or extracting data stored in computer systems or networks. Section 43A of the ITA stipulates payment of damages by way of compensation where a body corporate was negligent in implementing and maintaining reasonable security practices and procedures while possessing, dealing or handling sensitive personal data or information in a computer resource which it owns, controls or operates. Section 66C of the ITA stipulates a fine of Rs.1,00,000 or imprisonment for a term which may extend to three years or with both for identity theft i.e., fraudulent or dishonest use of the electronic signature, password or any other unique identification feature of any other person. Section 72 of ITA stipulates fine of Rs.1,00,000 or imprisonment for a term which may extend to two years or with both for breach of confidentiality and privacy. Section 72A of the ITA stipulates a fine of Rs. 5,00,000 or imprisonment for a term which may extend to three years or with both for disclosure of information without the consent of the person concerned and in breach of the lawful.

## Indian Penal Code, 1860

Penal law in our country is codified in Indian Penal Code, 1860 being the substantive law and Code of Criminal Procedure is the procedural law. Criminal breach of trust is defined in Section 405 and punishable under Section 406, IPC with sentence for a period upto three years or with fine or with both. It may be noted that every breach of trust is not criminal. Criminal liability must be strictly proved by establishing *mens rea*, and something more than breach of trust is necessary to bring a case within the purview of a criminal Court. Every case in which there may be civil liability in damages for breach of trust does not, in the absence of *mens rea*, amount to criminal breach of trust.

## Indian Contract Act, 1872

This Act deals with general principles relating to contractual relationship. Agreed rights and duties can be enforced in



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Cloud Computing

accordance with the applicable provisions of the Contract Act. Section 73 stipulates compensation for any loss or damage caused to a party to the contract by the breach of the contract committed by the other party. Section 74 stipulates compensation for breach of contract where penalty is agreed in the agreement. Section 75 stipulates right to claim compensation to that party who rightfully rescinded the contract. Section 125 stipulates rights of a promisee in a contract of indemnity.

## Specific Relief Act, 1963

Section 10 of this Act enumerates cases in which specific performance of contracts is enforceable and *inter alia* stipulates that specific performance of the contract may in the discretion of the Court be enforced when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done or when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. Section 20 deals with discretion and powers of the Court and *inter alia* stipulates that the jurisdiction to decree for specific performance is discretionary and that the Court is not bound to grant such relief merely because it is lawful to do so. It also enumerates situations in which the Court may properly exercise discretion not to decree specific performance. Section 23 stipulates that a contract may be specifically enforced though a sum be named in it as the amount to be paid in case of its breach, if the Court is satisfied that the same was named only for purposes of securing the performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance. Section 37 deals with temporary injunction and Section 38 deals with perpetual injunction. Section 40 deals with damages in lieu of, or in addition to, injunction.

## Consumer Protection Act, 1986

This Act aims to protect consumers from unfair and undesirable practices of business. This Act is in addition to and not in derogation of the other consumer protection laws. Section 14 stipulates that in an event of deficiency in services, the adjudicating authority shall have the power to award amongst other things, compensation for the loss or injury suffered and or punitive damages. Section 27 stipulates that if any person fails or omits to comply with order made by the adjudicating authority, such person shall be punishable with imprisonment for a term not less than 1 month extendable upto 3 years, or with fine which shall not be less than Rs.2,000 extendable upto Rs. 10,000, or with both.

## Copyrights Act, 1957

Breach of Copyright may attract civil and criminal penalties.

Section 55 of this Act stipulates that owner of the copyright shall be entitled to remedies by way of injunction, damages, accounts or otherwise for the infringement of the rights. For knowingly infringing or abetting copyright in a work, Section 63 stipulates penalty in the form of imprisonment for term not less than 6 months extendable upto 3 years with fine not less than Rs. 50,000. For making use of infringing copy of computer programme, Section 63B stipulates a penalty in the form of imprisonment for a term not less than 7 days extendable upto 3 years with fine of Rs. 50,000 extendable upto Rs. 2,00,000.

## Cloud Contracts

Cloud contracts can vary depending on the provider and type of solution user is seeking. Not all cloud contracts are negotiable. Given the range of offering in cloud, some cloud contracts may be negotiable. Cloud contract shall be drafted and negotiated to ensure that it meets all legal requirements, mitigates associated risks, and addresses required operational and governance concerns. The questions below are designed to assist a potential user in thinking through some general issues surrounding cloud contracts and to develop a checklist for effective contract negotiations:

## Data Storage

- What type of data is going to be stored?
- How and in what form data would be stored?
- Where would the data be stored?
- Whether storage of such data in other jurisdictions requires compliance of any legal or contractual obligation?

## Security

- Has the due diligence been done on the vendor to ascertain adequacy of security measures in place?
- Does the contract provide for compliance of any policies, procedure or standards? If yes, does the contract provide for periodic audit to ascertain compliance and security certifications thereof?
- What representations have been provided by the provider on physical protection and encryption of the data?
- What warranties have been provided by the provider on data back up obligation?
- What are confidentiality obligations of the provider?
- How will the security breach be handled?

## Intellectual Property Rights

- Does the contract provide that data belongs to the user and that the provider has no rights or licenses on it?
- What are other rights and responsibilities of the parties with respect to the intellectual property issues? Who is the owner of hardware and the software?

## Performance Management

- Does the contract provide for scaling up and down of



Not all cloud contracts are negotiable. Given the range of offering in cloud, some cloud contracts may be negotiable. Cloud contract shall be drafted and negotiated to ensure that it meets all legal requirements, mitigates associated risks, and addresses required operational and governance concerns. The questions covered in this article are designed to assist a potential user in thinking through some general issues surrounding cloud contracts and to develop a checklist for effective contract negotiations:

service depending on requirements of the user?

- Is there any service level agreement (SLA)? If yes, what are performance measurement criteria and are they auditable?
- Whether SLA provides for incentive as bonus for performance and service credit as penalty for disappointing performance?
- Have the parties agreed to business continuity and disaster recovery plan?
- What is the amount of agreed 'uptime'? What is the response time in the event of 'downtime' or failure of service? What are the consequences for any failures to meet uptime requirement?
- What are other protections in the contract to ensure uninterrupted access to the services?
- Upgrading of services by the provider as and when new services are offered? What is the procedure for such upgradation? What are the costs of such upgradation?
- Who would be responsible for compliance of applicable regulations?

## Representation and Warranties:

**Does the contract provide:**

- for warranty from the provider that the service would be provided in accordance with agreed specifications and that it does not infringe any third-party intellectual property rights?
- for other necessary representations and warranties by the provider?

## Indemnity

**Does the contract provide for indemnity by the provider to user and its officers from:**

- loss or misuse of data
- breach of agreement
- infringement of third party rights (privacy and intellectual property rights) due to use of services

## Liability

- If there is a liability cap on the provider, is such cap sufficient enough to cover the liability arising out of breach of contract by the provider excluding consequential and indirect losses?

## Modification/Termination

**Does the contract provide:**

- for consent of the user in the event service conditions are to be modified by the provider? What is the procedure for changing service conditions?
- right to user to terminate the contract for default (even during the lock in period) if the provider fails to meet the agreed requirements?
- a right to the user to terminate the contract in case the modifications proposed by the provider are not acceptable to it?
- under what circumstance the provider can terminate the contract?
- for notice period in the event of termination?
- disengagement and transition plan?
- for migration or transition assistance by the provider to the replacement provider?
- that provider would not delete the data at the end of the tenor and during the transition period?
- that provider will destroy the data once transition is completed?
- for prohibition on the provider from using the data post termination?

## Governing Law & Dispute Resolution

- Does the contract provide for governing law and dispute resolution provisions?

## Conclusion

It is not too far when cloud would make its way to India Inc through paperless board rooms. Use of cloud for corporate governance would revolutionise the way management interacts and communicates with independent directors. I would leave the readers to ponder whether independent directors can use cloud as a tool to establish duty of care or diligence? ■







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## Service Tax on Directors' Services - Company to Pay

With the introduction of the concept of Negative List in the realm of service tax with effect from 1 July, 2012 the services rendered by company directors in their capacity as directors have become taxable. This article presents a set of FAQs and their answers clarifying the various aspects relating to directors' services and the service - tax implications.

**W**ith Service Tax regime migrating to negative list approach w.e.f. July 1, 2012, almost all the services except those in negative list (section 66D) and exempted services (Notification No. 25 2012-ST dated 20.06.2012) have become exigible to service tax. Thus, services rendered by company directors in the capacity of director have also become taxable w.e.f. 1.7.2012 and are now liable to Service Tax. The remuneration they get for attending board meetings shall be subjected to Service Tax. However, Central Board of Excise and Customs has recently amended the provisions of reverse charge under section 68(2) read with Rule 2(i)(d) (EE) of Service Tax Rules so as to provide that Service Tax on Services rendered by the directors shall be payable by the companies under the

reverse charge mechanism. Here are few frequently asked questions (FAQs) to clear certain doubts and confusions in relation to taxability of directors' services and liability to pay Service Tax on such services.

### **1. Who is a director?**

According to section 2(13) of the Companies Act, 1956, 'director' includes any person accepting the position of the director, by whatever name called, i.e., he should be a member of the Board of Directors of the company. If he is not a board member but designated as director in any functional capacity, he is not a director of company under section 2(13).

### **2. What is the relationship between a company and its directors?**

Although a company is a legal entity, it cannot act by itself but can do so only through its Directors, thus establishing a relationship of principal and agent. Moreover, Directors are in fiduciary position vis-à-vis the company and, to that extent, they are also deemed to be trustees of the properties and assets of the company.



### 3. Whose services are liable to Service Tax- directors or board of directors?

Under the Companies Act, 1956, all the powers vested in directors are exercisable by them only collectively. As an individual director, no director has the power to act on behalf of the company unless such powers have been delegated to him by the Board.

### 4. Whether Board of Directors can be asked to pay Service Tax as an Association of Persons (AOP)?

No. Though technically individual directors are collectively called as board of directors, the board exercises its power under sections 291 and 292 of the Companies Act, 1956. The board is responsible to shareholders. Individually directors provide services to the company but are collectively responsible as a board under the Companies Act to the company/its shareholders. The scheme of Service Tax stipulate levying of tax on directors on the services rendered by them to the company in their individual capacity. The company also compensates to the individual board members and not to the board as a single unit. The board of directors cannot be asked to pay Service Tax as a body of individuals or association of persons.

### 5. What type of directors is covered for the purpose of Service Tax?

A company director can be of any of the following types or called by the following names -

- promoter director
- whole time director (Joint MD, Deputy MD etc.)
- managing director (MD & CEO)
- executive director
- foreign director
- nominee director (banks, government, finance partners, private equity representatives, collaborators etc.)
- Independent/non-official directors

The directors (generally whole time/managing/executive directors) who are under contractual employment with the company and receive salary or remuneration from the company will not be covered as they shall be considered as employees of the company. All such directors who are not in employment with the company shall be considered as providing services to the company which shall attract Service Tax.

### 6. Whether service tax is applicable on director's services of public companies only?

No. The services of directors of companies, whether public limited or private limited, whether listed or unlisted, and whether government company or a section 25 company, service tax would be levied on services of directors rendered to any type of company on whose board they are the directors.

### 7. Whether directors of Section 25 companies be exempt from levy of Service Tax ?

No such exemption exists in Notification No. 25/2012-ST which governs the exemptions under Service Tax. As such, Service Tax shall be payable by all companies in respect of their non-whole time directors irrespective of the category of company.

### 8. Why are the services of whole-time directors not covered under Service Tax?

Section 65B(44) defines 'service' which means any activity for consideration carried out by a person for another but excludes a service provided by an employee to an employer in the course of employment. In case of whole-time directors, it is a contractual employment and is governed by the provisions of the Companies Act, 1956 which also require Government's approval in certain cases. As such, they fall outside the scope of section 64B(44) of the Finance Act, 1994 (as amended).



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Service Tax on Director's Services -Company to Pay

## 9. Whether the services of director who attends and participates in the board meeting by any means shall be liable to Service Tax?

Yes, why not. The mode of rendering the service does not govern the scope of Service Tax. The services rendered by director by any means shall be liable for Service Tax.

It could be -

- physical presence in board/committee meetings
- participation through video conference
- participation through alternate director

## 10. Are all directors employees of a company?

No. All directors are not employees of the company, but where they are in service or employment of the company, they will be treated as an employee. If a director is also in employment of the company, he would be certainly an employee and entitled to claim the rights given to employees as such but his rights relating to directorship are distinct and separate.

## 11. Whether a designated partner of a limited liability partnership (LLP) will be considered as a director for the purpose of Service Tax?

No. Though as per the LLP Act, 2006, LLP is considered as a body corporate, for the purpose of Service Tax, LLP shall be considered as a firm only in terms of Rule 2(1)(c d) of Service Tax Rules which defines partnership firm to include a LLP. In Income Tax also, LLPs are assessed as firms.

## 12. Whether whole-time directors are covered under negative list or any exemption under Notification No. 25/2012-ST.

Whole-time directors are neither covered under negative list nor are included in mega exemption notification. Their services are not covered in the scope of 'service' itself by virtue of specific exclusion in the definition of service under section 65B(44) of the Finance Act, 1994 (service provided by employee to employer).

## 13. Whether Service Tax will be applicable on services provided by directors/governing body members/members of non-corporate entities?

Such services may also be liable to levy of Service Tax. Examples could be director of a scientific institution or director of a hospital, director of institutes like IIM, AIIMS, IITs or trustee of a trust. In such cases, directors or trustees will be liable to pay Service Tax and Service Tax will not be payable under reverse charge as reverse charge applies to 'company' only.

## 14. Whether service tax shall be applicable on directors of entities which are not limited Companies under the Companies Act, say

## public sector banks?

Yes. The directors of body corporates shall also be covered for the purpose of service tax and service tax payable on services of directors of such body corporates.

Body corporate includes a company. However under entry No 5A of Notification No 30/2012-ST dated 20.6.2012 which governs the reverse charge mechanism as also in the service tax rules, the word used is 'company' and not the 'body corporate'. As such, strict interpretation would lead to the conclusion that though service tax is applicable, it would be payable under reverse charge only by companies. CBEC should clarify that any body corporate would also be covered under reverse charge method of payment of service tax. Till then, directors alone would be liable to pay service tax in case of body corporates.

## 15. What type of charges shall be liable to Service Tax?

Since all the services provided by directors in their capacity of directors shall be covered under scope of Service Tax, the gross charges payable to them by the company shall be liable to Service Tax. It may be in the form of any one or more of the following -

- sitting fee
- commission
- bonus
- share in profit
- benefit in form of ESOPs etc.

## 16. Whether sitting fee paid to directors for attending board meetings only are taxable or any amount paid as fees whether for board meetings or committee meetings will be taxable?

All amounts paid as remuneration except salary to directors shall be liable to Service Tax, whether for attending board meetings or committee meetings or for any other service rendered in the capacity of a director. If an employed director gets sitting fee for attending the meeting, it may be liable to Service Tax as Department is likely to view it that way. There is need for clarification on this issue.

## 17. What amounts received by directors from the company will not attract Service Tax?

The following amounts received by the directors from the company will not attract Service Tax as such amounts do not represent service provided by directors-

- i) interest on loan by director to company
- ii) dividend on shares
- iii) other professional charges on account of services not rendered as a director (in professional capacity).

## 18. What shall be the taxability of services in case of managing director or whole time





## **directors who also receive commission etc., besides salary ?**

In case of any remuneration, by whatever name called, accruing to persons employed by the company as managing director or whole time directors, entire gross amount shall not be taxable as it is earned in the course of employment and is not covered within the scope of service at all. If the service itself is not taxable, there is no question of Service Tax being payable on the remuneration which is a part of contract of employment. On the other hand, even if the remuneration is termed as salary for a part-time / non-official/ independent director, it shall be subject to levy of Service Tax.

## **19. Whether reimbursement of expenses incurred by the director be liable to Service Tax?**

Perhaps No. Directors are considered to be agent of the company and as such expenses are reimbursed to them as an agent. Moreover, taxability shall be subject to the valuation rules and criteria of 'pure agency' shall have to be satisfied.

## **20. Who is liable to pay Service Tax in case of services provided by directors?**

Service Tax is payable under reverse charge by the companies who receive services from their directors who are not in employment in terms of Rule 2(i)(d) (EE) of Service Tax Rules and Entry No. 5A of Notification No. 30/2012-ST dated 20.06.2012 (as amended by Notification No. 45 and 46/2012-ST dated 7.8.2012).

## **21. Where a person is a director in more than one company, whether all the companies in which he / she is a director, will have to pay Service Tax under reverse charge basis ?**

Yes, though the service provider is the same person (non-employed director himself), all the companies in which he is a director and are paying remuneration to him, shall be liable in their respective capacity to pay service tax on director's remuneration on reverse charge basis. This would also apply to subsidiary companies of the holding company.

## **22. Can a director request the company to pay Service Tax himself rather than the company paying under reverse charge mechanism?**

Nobody stops him from requesting the company but the law, as it stands is very clear. Service Tax has to be paid by the person liable to pay in terms of section 68(1) and 68(2) and there cannot be any deviation from the statutory provisions. However, there have been instances where Tribunal have held that Service Tax cannot be demanded twice on the same service [Refer *Navyug Alloys Pvt. Ltd. v. CCE & C* (2008) 17 STT 362 (Cestat, Ahmedabad); *Invincible Security Services v. CCE* (2009) 13



STR 185 (Cestat, New Delhi).

## **23. Whether reverse charge will be applicable even when director is a non-individual?**

Only individuals can become directors as per section 253 of the Companies Act, 1956. No body corporate, association or firm shall be appointed director of a company and only an individual shall be so appointed. However, individuals can be nominees of any company, association or any other entity including Government.

## **24. Who is liable to pay Service Tax in respect of services rendered by a foreign director?**

Like in case of any Indian director, the services of any foreign director are also liable to Service Tax which shall be discharged by the company itself under reverse charge mechanism.

## **25. If any Indian is a director of a foreign company and attends a meeting abroad, what will be tax liability?**

Where any Indian person is a director of a foreign company and meeting is held outside India, in such case, there will be no Service Tax liability as place of provision of service shall be in non-taxable territory, besides service recipient being located outside taxable territory. Place of Provision of Services Rules, 2012 shall have to be kept in mind.

## **26. Who is liable to pay Service Tax in case of a nominee director nominated by any other agency/company in representational capacity?**

A director may be appointed either in an individual capacity or to represent an entity (including government) who has either invested in the company or is otherwise authorized to nominate



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Service Tax on Director's Services -Company to Pay

a director. When a director receives payment in his personal capacity, the same is liable to be taxed in the hands of the director. However, where the fee is charged by the entity appointing the director and is paid to such entity, the services shall be deemed to be supplied by such an entity and not by the individual director.

## **27. Who has to pay Service Tax in case of a Government nominee director?**

In the case of Government nominees, the services shall be deemed to be provided by the Government and liable to be taxed under the exclusion sub-clause (iv) of clause (a) of section 66D of the Finance Act, 1994 i.e. support services by Government to business. Such services are liable to be taxed on reverse charge basis.

## **28. What percentage of Service Tax is payable under reverse charge by the company?**

Entire amount (100 percent) of Service Tax shall be payable by the company under reverse charge mechanism.

## **29. What will be the taxability of director's services between July 1, 2012 and 6 August, 2012?**

During the period from 1.7.2012 to 6.8.2012 (both days inclusive), the liability to pay Service Tax has to be discharged by the concerned director himself and not by the company. However, he/she shall be eligible for threshold exemption of Rs. 10 lakh in terms of Notification No. 33/2012-ST dated 20.06.2012.

## **30. For the relevant period of July - August 2012, whether directors should obtain Service Tax registration.**

Yes, if their services are exigible to Service Tax, they should obtain Service Tax registration which is a precondition for payment of Service Tax.

## **31. Whether the companies required to pay service tax on director's services should obtain service tax registration, if not already registered?**

Yes. Companies shall have to register themselves under service tax before making payment of service tax on services provided by directors under reverse charge mechanism.

## **32. Should directors raise a bill for the services rendered?**

Ideally yes. Any service provider providing taxable services should raise a bill, invoice or challan. However, in case of directors, a practical way could be that company itself prepares and get the invoice signed by the concerned director while



making payment in ordinary course. This will ensure compliance as well as facilitate allow/ability Cenvat Credit, if any. However, Service Tax payment challan shall also be a valid document for claiming Cenvat credit.

## **33. Whether payment to directors shall be considered as input service and Cenvat credit claimed?**

Yes. Services rendered by the directors to the company should be considered as input services and Service Tax paid by the company should be eligible for Cenvat credit subject to Cenvat Credit Rules, 2004.

## **34. Since there is a monetary limit on payment of remuneration to directors beyond which it requires approval of the Central Government under section 309 or 310 of the Companies Act, 1956, whether Service Tax paid by the company under reverse charge shall be deemed to be a part of such remuneration?**

Under the scheme of Service Tax, though taxable services are rendered by the directors, the burden of payment of Service Tax has been shifted on the companies on whose board, such directors serve. In certain cases which are already at the top of the ceiling, payment of Service Tax by company will result in exceeding the monetary limit of 1 percent or 3 percent of net profit, as the case may be. Ministry of Corporate Affairs (MCA) has vide General Circular No. 24/2012 dated 9.8.2012 clarified that for the financial year 2012-13, any increase in remuneration solely as a result of application of Service Tax on commission shall not require Central Government's approval (though deemed to be a part of remuneration as per Income Tax) under section 309 or 310 of the Companies Act, 1956. It may be noted that this relaxation is only for the financial year 2012-13 and only applies to non-whole time director's remuneration. ■



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## HR Post Retirement Social Responsibility Programme (PRSRP) - New Scenario

The social and economic implications of aging population on human life are profound and far reaching. It results in shrinkage of proportion of working class in population causing substantial pressure and maintenance of resources. This discussion throws light on post retirement social responsibility programme.

**H**uman resource planning and its development activities are focused around the active tenure of the employees. Organizations see employees not only as valuable resource but also instrumental to use other resources. Today in a knowledge based economy modern management weighs employees as the most important resource behind the success or otherwise of any organization. It is quite often seen that similar physical production units deliver significant variables in performance metrics due to variables in quality of human resources in their respective possession. Business organizations are controlled and run by human beings and consider them as most important resource. Managements are taking considerable efforts and drawing various programmes for

continuous development and enrichment of human resource. Excellence and continuous development







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HR Post Retirement Social Responsibility Programme (PRSRP) - New Scenario

Organizations see employees not only as valuable resource but also instrumental to use other resources. Today in a knowledge based economy modern management weighs employees as the most important resource behind the success or otherwise of any organization. It is quite often seen that similar physical production units deliver significant variables in performance metrics due to variables in quality of human resources in their respective possession.

of human resources, to meet business challenges of growth, are the key elements in almost every organization's visionary statement.

Right from the time of joining, an employee is subjected to various training, development and study programmes during his tenure to equip him to meet job requirements. Programmes are being designed and conducted by keeping in mind the current and future requirements of the business organizations. Organizations may conduct programmes focusing on personality development and personal wellness of the employees. However the present HR methodology of training and development does not look beyond the active tenure of employment of employees.

Post retirement, the present system does not provide any unified programme to keep people engaged in some way or other for constructive cause in an organized way. A lot of otherwise willing and available resources in terms of man hours remain idle due to lack of outlet where these can be channelized and put to use.

## Brewing dilemma

The current demographic profile of State is a natural outcome of its past posture and doings and their social, political and ethical

stand. Some of them are controlled and planned like gender ratio through education and awareness programme; others may be difficult like ratio of ageing population in total population. Today countries like Japan and many European nations are facing challenges of growing number of ageing population. The health and living standards of these countries are good and this increases the average life tenure of the population. The challenges all such countries confront are that ageing population stop contributing in generation of goods and services but they remain consumers of goods and services for rest of the life.

## New facts and trend

The demographic trends are disturbing and unprecedented. A UN study reveals that proportion of older person (those aged 60 years and over) are growing faster. Though developed regions are first affected by population aging phenomena and about 20% population of developed region is 60 and over it is pervasive and the UN study points out that developing region are expected to have by 2050 one fifth population aged 60 and above while at that time developed region are likely to have one third population aged 60 and above. The document further underlines that population aging is irreversible. The social and economical implication of ageing population on human life is profound and far reaching. Resulting shrinkage of proportion of working class in population put huge pressure on maintenance resources.

The study of Economics and Social Affairs Group of WTO has suggested that by 2050 India will face the same problem what we see in many of the western countries at present. The truth is that it cannot be reverse and it is set to happen. Developing countries like India should look forward and prepare itself to meet the nemesis of ageing population which is inevitable. The problem is likely to be more severe for us as values and family structure are fast changing and joint family social protection support system give way to nuclear families.

## Tough time give scope for new possibilities

The new challenge for countries will be how to manage the burden of such huge ageing population who become only consumers of resources being past the age of production. It will bring heavy burden on scarce resources by not creating suitable avenues for utilizing the services of ageing population. Particularly when there is huge shortage of man hours and burden on social maintenance structure.

There is a need to have progressive and pragmatic approach. One has to understand the individual remainder potential and how it can best be used for the benefit of society and the concerned individual. During their working life span most of the people are obsessed and driven by organizational and professional, requirements. Daily chores and work pressure left him with little time and energy to spend and give to other people



around and to participate on the functioning and working of society. The consequence of this is that it becomes post retirement blue for even many of most active employees how to link, relate with others and participate in his due role.

Time has come for induction and other such programmes undertaken by commercial and other organizations for the development and orientation of employees. There should be a proper design and documented employee release programmes and focus on post retirement avenues.

In social responsibility programmes there should be a comprehensive release training programme for the employees subject to retirement during their last year of employment. The training programme is designed to equip, prepare and train the employees for post retirement life keeping in view the current and future requirement of the society.

## High fences and low motivation

The present HR system in general does not focus on the usefulness and possibilities left out in persons attaining the age of retirement. It gives a send off and closes the chapter. Though it cannot be ruled out that some of them may be left with little vitality to look beyond, many of them are still left with sufficient energy and desire to go on further. For an average individual it is difficult to come out the post retirement syndrome and think differently. Practically many of them are left with oil to light hundreds of lamps. They are aged but not weak, tend to be bit slow but not broken, time made them more endured and mature to deal with challenges. Yes it is true that it is time for them to slow down and get aside for younger ones take the place.

During all his working life an employee is primarily focused and committed towards career development and build relationship and interaction predominantly in and around, fail to see beyond. Once he is retired most of the interaction and relationships which

are work based lose in no time and carry no other value.

## Expanding for unorthodox solutions

To start with post retirement ageing population programme should be drawn up for the working class who are in organized sector as they are comparatively well off compared to unorganized sector employees. Initially as a voluntary scheme employers from organized sector be used for training and development of retiring employees. The focus is to prepare and ready them for post retirement life. The one month programme could be conducted in three - four tranches and it should cover not only individual needs and requirements but also provide direction through which he can use his available time and energy for the society services by doing voluntary work which he may enjoy. In return he gets an esteem feeling of importance in the society for his work. There should be a system in place where after retirement a person gets an outlet and opportunity to engage himself constructively beyond personal goals till his body is fit physically and mentally. It gives scope to remain relevant in the society by his voluntary contribution and give an esteem feeling of importance.

## Scope and drawing PRSR programmes

A HR post retirement social responsibility programme, can be ideally divided into two categories - Individual specific and humanity oriented.

**Individual specific** - In this category HR training orientation is towards Individual specific post retirement needs of an employee. It starts with assessment of physical and mental health of the employee. This becomes the basis to draw individual specific required health guidance, yoga and pranayama training etc, discourse on useful common herbs and other home remedies and its application, acupuncture training etc. The family members are also asked to join in this programme where they can understand the physical and mental requirements of old age and train them to help each other. Psychiatric and Psychotherapy services are essential parts of all such family meeting to help and address individual family understanding and expectations. Some specific number of days is allotted for Individual specific category.

**Society oriented** - The objective of this programme is to prepare and motivate an individual to engage and contribute voluntarily to society work. It will start with some basic questions about Individual likeliness and mindset and about his post retirement objectives. What he wants to do; how he wants to spend time; where he will finally settle; what does he enjoy doing most; what are the works or things he always wanted to do in life but for busy work routine. This process gives a lot of insight into



# Articles

HR Post Retirement Social Responsibility Programme (PRSRP) - New Scenario

The present HR system in general does not focus on the usefulness and possibilities left out in persons attaining the age of retirement. It gives a send off and closes the chapter. Though it cannot be ruled out that some of them may be left with little vitality to look beyond, many of them are still left with sufficient energy and desire to go on further. For an average individual it is difficult to come out the post retirement syndrome and think differently. Practically many of them are left with oil to light hundreds of lamps. They are aged but not weak, tend to be bit slow but not broken, time made them more endured and mature to deal with challenges. Yes it is true that it is time for them to slow down and get aside for younger ones take the place.

individual preferences and likings. Once the individual preferences and likings after post retirement are written down it has to relate with social programme where he can fit. They should be given proper details of what services in community they can do, what role they can play and what skill, knowledge and information are needed. The details are area specific where the person is decided to settle down.

The problems faced by most of retirees are not known. They soon develop an inertia and reluctance and end up with prison of their own shell. The life of a retiree becomes monotonous due to limited exposure. They will be missing the excitement and joy of freshness in life.

In the humanity oriented training programme once a person's interest is identified the next step is training on extra skills and acquaintance with specific attitude required for performance. Training involves an opportunity for direct interaction with NGO's and Service groups with whom he would associate to help him to develop interaction and understanding before he actually starts rendering voluntary services. However one must understand that the service is voluntary and not forced upon; this activity gives an opportunity to the retiree as to how he can devote some of his available time for humanity cause and keep himself occupied. By doing this they can earn respect and special recognition in the society. The NGOs and service groups meet their nominal out of pocket expense incurred during performance of services. There should be centralized data base for NGOs and Service groups who are willing to participate.

## Foster relationship for noble cause

Many social and community services face acute shortage of manpower. Recently the Tata Cancer Hospital gave a call to social workers and retirees to join them as they are facing huge shortage of manpower for many activities. Here one thing that needs to be underlined is that many of the services run by

government whether State or Centre like health services, law enforcement, and municipality consume significant portion of resources by way of salaries. Further because of work complexity significant time of staffs is spent on administrative aspects. Take the example of police department which is one of the most overburdened department in public services and if a detailed analysis of daily time spent by policemen in their duty is made out it could be seen that much of their time is spent in administrative and clerical work instead crime prevention and finding the offenders and criminals. The trend is more or less same in most of the government functions coupled with budget constraint resulting in deterioration in the quality of performance. In many of administrative, monitoring, reporting work and even some of functional work of many of the Government activities involving direct and indirect public interface at ground level voluntary involvement of retired workforce would be of great help.

To achieve this there is need to develop a social working programme by involvement of retired people to participate voluntarily as per their interest and knowledge through NGOs and Social groups. In addition some NGOs and social groups may be specially developed to take care of aged persons.

The Social responsibility of training and development can be best managed by teaming and pooling of organization resources under common umbrella to have better and cost effective results. The government has to play the role of initiator and coordinator to bring various agencies, NGOs and Service groups to come together to work and share the expertise and resources for the well being of the mankind.

## Conclusion

The world is evolving and changing dynamics throw new challenges and opportunities. The ageing population is truth and one can not deny, but face it. The old approach of treating retired population as of little economic value has to change. One has to look at them as important supplementary reinforcement force for the welfare and social causes. Organization HR Departments have an important role by undertaking post retirement social responsibility programmes for employees by harnessing remainder potential for social as well employees' cause.



# Online Services available to Members



## Attention Members !

Members of the Institute are informed that online services are already available to members for making applications/requests for Membership and other related issues. The process of ACS/FCS admissions/Issue of Certificate of Practice/Renewal of Certificate of Practice have since been made online and the members can generate their letter of admission of ACS/FCS/issue of certificate of practice/Renewal of Certificate of Practice on their own through Institute's portal [www.icsi.in](http://www.icsi.in). The details of the same are given below:

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- ◆ Restoration/Cancellation of Membership
- ◆ Renewal/Restoration/Cancellation of Certificate of Practice
- ◆ Approval of Proprietorship Concern/Partnership Firm Name of Company Secretaries in Practice
- ◆ Enrolment as Life Member of CSBF
- ◆ Issue of Transcripts

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- i. Login to portal [www.icsi.in](http://www.icsi.in)
- ii. Login to self profile by entering the membership number and password
- iii. Once logged in, the member has to click on the Link 'Change of Address'
- iv. A window will be displayed with the buttons 'Professional' and 'Residential'
- v. Click on the relevant Button i.e. Professional or Residential and change the details and click on 'go' button
- vi. A screen will be displayed with the options 'Existing details as per records' and 'Enter change details'
- vii. Change the details as required and press on 'submit' button
- viii. The details will be automatically updated once authenticated by Membership Section

### D) Automation of ACS/ FCS Admission letters and Issue of Certificate of Practice letters/Renewal of Certificate of Practice Letters.

The newly admitted ACS/FCS members and Certificate of Practice Holders can generate their letter of admission confirming their ACS/FCS number and date of admission and letter confirming their issue of Certificate of Practice number/Renewal of Certificate of Practice by creating/resetting their password at Institute's portal [www.icsi.in](http://www.icsi.in) by following the steps given below:

- i. Login to portal [www.icsi.in](http://www.icsi.in)
- ii. Login to your profile by entering the membership number and password
- iii. Once logged in, the member has to click on the Link 'Letters'
- iv. A window will be displayed with the dropdown list 'ACS/FCS Letter/Issue of Certificate of Practice Letter'
- v. Click on the relevant option i.e. 'ACS/FCS Letter/Issue of Certificate of Practice Letter/Renewal of Certificate of Practice Letter' and press on 'Submit' button
- vi. Letter in PDF format will be displayed (Make sure that pop up blocker is not on in Internet Explorer Browser)

Members are requested to utilize the aforesaid online services available on Institute's portal [www.icsi.in](http://www.icsi.in) for availing realtime services and provide their feedback on the same to Mrs. Meenakshi Gupta, Joint Director at email id [meenakshi.gupta@icsi.edu](mailto:meenakshi.gupta@icsi.edu) or Mr. Santosh kumar Jha, Programmer at email id [santosh.jha@icsi.edu](mailto:santosh.jha@icsi.edu). In case of any difficulty in availing the online services, please contact the said officials on telephone numbers 011-45341048/62/24636467.



## Corporate Laws



**LW 88.10.2012**

### ASSISTANT COMMISSIONER OF INCOME-TAX v. BIRAJ INVESTMENT (P) LTD [GUJ]

Tax Appeal No. 260 of 2010

Akil Kureshi & Harsha Devani, JJ.

[Decided on 07/08/2012]

**Section 108 of the Companies Act, 1956 read with Section 2(47) of the Income Tax Act, 1961 - transfer of shares - assessee transferred pledged shares and showed capital gains as well as loss - AO rejected the claim on the ground that pledged shares cannot be transferred - whether tenable - Held, No.**

#### Brief facts

During the previous year to the relevant assessment year 1993-94, the assessee had sold certain shares of Ruston Spinners Ltd and had shown a long term capital gain of Rs. 1,46,792/- and short term capital gain of Rs. 7,41,563/- on sale of such shares. The assessee had also sold 80,200 equity shares of Ruston Mills and Industries Ltd for total consideration of Rs. 4,01,000/-. On such sale of shares, the assessee had claimed long term

capital loss of Rs. 8,38,798/-. The Assessing Officer noted that the shares of Ruston Mills and Industries Ltd which the assessee sold were pledged with the IDBI Bank. The original share certificates were also lying with the said Bank. The assessee had also handed over duly executed transfer forms to IDBI. The Assessing Officer was of the opinion that transfer of shares would be complete only when the share certificates along with duly executed transfer forms are delivered. In the present case, this was not done. Share certificates were lying with IDBI who had lien over such shares. The shares therefore could not have been validly transferred. He was of the opinion that full transaction was intended for creating loss to the assessee so that its capital gains resulting from sale of shares of Ruston Spinners can be set off.

The assessee carried the matter in appeal which was dismissed. The assessee carried the matter further in appeal before the Tribunal. The Tribunal by the impugned order reversed the orders passed by the Revenue Authorities, by placing reliance on a decision of the Madras High Court rendered in the case of *A.M.P. Arunachalam v. A.R. Krishnamurthy*, 49 Comp Cas 662 (Mad).

The Tribunal on the basis of such decision concluded that merely because the physical possession of the shares was with IDBI, it would not automatically follow that the person who is entitled to legal possession, that is, the assessee would be deprived of his right to deal with such goods until he secures the cooperation of the third party. The Tribunal was of the opinion that the assessee had the right to transfer the shares because legal title vested in the assessee.

**Decision:** Appeal dismissed.

#### Reason

Having thus heard the learned counsel for the parties, we find that the relevant facts are not in dispute. The respondent assessee sold shares of Ruston Mills and Industries Ltd for a sum of Rs. 4,01,000/- on which transaction, the assessee claimed long term capital loss of Rs. 8,38,790/-. During the same period, the assessee also sold certain shares of Ruston Spinners Ltd. and showed long term capital gain of Rs. 1,46,792 and short term capital gain of Rs. 7,41,563/-. It is also not in dispute that the shares of Ruston Mills and Industries Ltd. were pledged by the assessee with IDBI Bank. The original share certificates along with the transfer form duly signed by the assessee were in possession of the IDBI Bank. The assessee had also undertaken not to transfer such shares.

Despite such facts, we are of the opinion that the assessee having entered into the agreement dated 24th March 1993 with the purchaser Company and further having given power of attorney dated 30th March 1993 and received the full sale consideration from the purchaser company, by virtue of section 2(47) of the Act for the purpose of income tax, transfer of share was complete.

It may be that by virtue of pledging of shares with IDBI, having



handed over the original share certificates to such financial institution along with the duly signed transfer forms, in so far as the assessee's relation with IDBI is concerned, there would be a serious question of validity of such transaction. We are, however, in the present proceedings, not concerned with such internal possible dispute between the assessee and the said financial institution. It may also be that if the purchaser Company desired to have such shares transferred in its name, such attempt would run into serious road block.

Primarily, without the original share certificates in possession of the purchaser company, which was in possession of the IDBI Bank, the Company would not, in view of section 108 of the Companies Act, be able to register such transfer. Sub-section (1) of section 108 provides that a company shall not register a transfer of shares in or debentures of, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and further fulfilling the procedural requirements specified therein has been delivered to the company along with the certificate relating to the shares or debentures along with the letter of allotment of shares or debentures. Therefore, it would not be difficult to envisage that if the purchaser company had tried to register the same in its name by virtue of the present transfer, such attempt would be met with stiff resistance from IDBI Bank. In the present proceedings, however, we are not concerned with such internal disputes. We are primarily concerned with the question whether by virtue of the agreement dated 24th March 1993, and the irrevocable power of attorney given by the assessee to the purchaser company on 30th March 1993, and also having received the full sale price of the shares, section 2(47) of the Act apply. In our opinion, the assessee did transfer whatever rights it had in the shares to the purchaser company. If such transfer is not recognized by the IDBI and there are other legal implications of breach of undertaking given to IDBI, such issue would have to be thrashed out between the concerned parties. Insofar as income tax proceedings are concerned, we are of the opinion that by virtue of section 2(47) of the Act, the assessee was entitled to claim that upon transfer of shares or interest thereon, it had suffered long term capital loss which it was entitled to set off against the capital gain on sale of shares during the same previous year.

In the result, we answer the questions in the affirmative, i.e. in favour of the assessee and against the Revenue. Tax Appeal is accordingly dismissed.

**LW 89.10.2012**

**BASANTI COTTON MILLS (1998) PRIVATE LIMITED v. ROC, WEST BENGAL [CAL]**  
C.P. No. 432 of 2010

I.P. Mukerji, J.

[Decided on 08/08/2012]

***Companies Act, 1956 - Sections 3 (3), 3(5) and 560 - company - striking off the register - Dispute as to paid up capital - company's name struck off under simplified exit scheme as its paid up capital was Rs.7000/- based on the application of one group - rival group claimed paid up capital to be more than one lac-whether the striking off is justified-Held, No.***

## Brief facts

Section 560 of the Companies Act, 1956 is involved in this case. The company whose name was struck off by the above process was Basanti Cotton Mills (1998) Pvt. Ltd. The name of this company had been struck off the register by an order of the Registrar of Companies, West Bengal, on 27th January 2006 on an application submitted by Mr. Gopal Navinhhai Dave, Mr. Nikhil Vasantlal Merchant and Mr. Paresch Vasantlal Merchant claiming to be the directors and shareholders of the company and that the paid up capital of the company is less than Rs.1 lac (under simplified exit scheme).

The applicant, through Mr. Narendranath Kar, had challenged that decision in 2010 claiming that he is in control of the company and that the paid up capital of the company is more than Rs.1 lac. The Central Government filed an affidavit in that application to the effect that the procedure under Section 560 of the Act had not been followed by them.

**Decision: Petition allowed.**

## Reason

Undisputedly, the procedure mentioned in Section 560 of the said Act was not followed. The decision was made on Section 3(5) of the Act. The applicants in that affidavit mentioned that the company's paid up capital was Rs. 7,000/- . The Registrar of Companies, West Bengal accepted this assertion and on the basis of these two provisions of the said Act struck off the name of the company. I do not know whether he was made aware of the disputes which have come to surface in this application.

For the application of this provision, the satisfaction of the Registrar of Companies is necessary. The satisfaction is to the effect that a particular company is not doing any business or is not in operation. Thereafter he issues two notices to the company to controvert this satisfaction. The Company may reply by saying that it is not doing business or may not reply at all. In either of these two cases, the Registrar may strike off the name of the Company, after publishing the proposal in the Official Gazette.

According to the records the Registrar of Companies, West Bengal did not take recourse to sub sections (1), (2), (3) and (5) of Section 560, at all. The foundation of his decision were sub Sections (3) (4) and (5) of Section 3 of the Companies Act. They lay down that if the paid up capital of a private company was less than Rs. 1 lakh after two years of commencement of the





Companies (Amendment) Act, 2000, it would be deemed to be a defunct company within the meaning of Section 560. Its name had to be struck off. The effect of the subsections, upon a plain and ordinary interpretation thereof, is that if the paid up capital of a private company falls below Rupees 1 lakh on and after the above date, then, without any further act it becomes a defunct company. As a matter of course the Registrar of companies is to strike off its name from the register.

This course has been followed by the Registrar by accepting the declaration in the application made before him by way of an affidavit that the paid up share capital of the company was only Rs. 7,000/- . In my understanding and interpretation of these two sub-sections the existence of the paid up capital below Rupees one lakh has to be undisputed. It is a question of fact. Therefore, in order to be deemed to be a defunct company the paid up capital must be less than Rs. 1 lakh admittedly or undisputedly. These words have to be read into those sub-sections. Otherwise this section may be misused or work injustice. In this kind of a small company there is often a dispute regarding shareholding, paid up capital, directorship, control of the company and so on. This is not to say that these issues are absent in big companies. Therefore, before striking off the name of a company, in all cases, a proper procedure has to be followed by the Registrar of Companies, by giving notices as contemplated in Section 560 of the Act. Response to the notice would show whether a company is admittedly defunct.

There are serious conflicting claims regarding paid up capital. Mr. Nirendra Nath Kar says it is more than rupees one lakh whereas, Mr. Dave and the two Merchants say it is Rs. 7,000/- . In such a situation there is no question of treating the company as defunct, as its paid up capital is in dispute.

I would add that, on reading sub sections (1), (2), (3) and (5) of Section 560, it does seem to me that a company can only be defunct, if it does not reply to the notice or says in reply that it does not carry on any business or is not in operation. If it asserts to the contrary, it cannot be struck off at all. Hence striking off is on the admission by the Company that it is defunct. The same principle applies in the application of Section 3 (3), (4) and (5) of the Act. It necessarily follows that if there is any dispute regarding the paid up capital or whether the Company does business, it cannot be declared defunct. Moreover, the petitioner, claiming to be a shareholder and director had sufficient *locus* to file this application.

The order of the Registrar of Companies dated 27th January, 2006 is set aside. The Company be put back in the Register of Companies immediately, by the Registrar of Companies, West Bengal.

**LW 90.10.2012**

**BHAGYRAAJ VYAPAAR PVT LTD v. REGIONAL**

## DIRECTOR MINISTRY OF CORPORATE AFFAIRS [CAL]

A.P.O. No. 292 of 2012 and C.P. No. 630 of 2011

Ashim Kumar Banerjee & Shukla Kabir Sinha, JJ.

[Decided on 14/08/2012]

***Companies Act, 1956 - Section 391-394 - scheme not sanctioned as the companies were not supplying the required information to the Central Government - judge ordered investigation of the affairs of the company - In appeal companies told they had nothing more to offer -directions issued to ROC/CG and matter remanded.***

## Brief facts

The three companies viz. Saffron, Promai and Jalaram had agreed to enter into a scheme of amalgamation by which they agreed to merge with Bhagyraaj. The scheme was framed under Section 391 of the Companies Act, 1956. Accordingly, an advertisement was published inviting all concerned connected with this company to support or oppose the scheme to appear before the Company Judge the time of final sanction of the same. The Central Government initially filed affidavit stating that the Company was not co-operating by replying to all the queries made to them. As a result, the Registrar was not in a position to submit his final report on the scheme.

When the reply was not forthcoming, the Central Government raised objection. It is at that juncture, the learned Judge vide order dated July 2, 2012 observed that it was a fit case for the Directorate of Revenue Intelligence to conduct an enquiry. The Company Judge adjourned the matter and directed the revenue authority to submit report. Being aggrieved, the appellants preferred the instant appeal.

**Decision: Appeal disposed of with directions.**

## Reason

We have considered the rival contentions. It is true that the Court should be slow in rejecting a scheme of amalgamation declining to sanction the same *de hors* the wishes the majority of the shareholders. In Corporate Jurisprudence majority holds the field. Once the scheme was sanctioned by the majority of the shareholders it would be for the Court to examine and sanction the same. The scope of examination would ordinarily be restricted to the objections raised by the shareholders/creditors and all concerned including the Central Government who has vital role to play. In the instant case, despite advertisement being published none approached His Lordship. His Lordship asked the Central Government to submit their views. The Central Government on two occasions filed supplementary affidavit saying that they would not be in a position to do so in absence of assistance being extended by the applicants on two issues as



referred to above. Hence, His Lordship was compelled to direct further investigation. If the applicants' intention was *bona fide*, they should have dispelled all the doubts that had arisen in the mind of the Registrar of Companies.

Having not sent any reply, the applicants complicated the situation for which the learned Judge should not be blamed. Today at the end of the day, the applicants would contend that they did not have any further information to offer. Hence, the Registrar of Companies must proceed on that basis and if he was not satisfied with the particulars he would be free to say so in his affidavit to be filed before the learned Judge. If the Registrar of Companies would require further investigation through any agency they might conduct such independent examination that would be within their power to do so in accordance with law. Court's blessing was not required.

We were told that investigation had already been carried out. If it was so, the Central Government through the Registrar of Companies may consider the same while preparing their affidavit before His Lordship. In our view, the Central Government must file their affidavit dealing with the scheme on merit and is not entitled to avoid the same on one plea or the other. That would have an onerous duty to assist the Court by pointing out the illegalities and/or irregularities, if any, found on scrutiny of the same.

With these observations, we dispose of the appeal without however any order as to costs.

**LW 91.10.2012**

## **BANKIM J. SHAH v. SECURITIES AND EXCHANGE BOARD OF INDIA [SAT]**

Appeal No.164 of 2012

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

[Decided on 18/09/2012]

***Sections 11(B) and 19 of the SEBI Act, 1992 read with Regulation 5 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 - allegation of publishing false and misleading information - accused persons were not provided with the copies of the publication - whether sentencing them is correct - Held, No.***

### **Brief facts**

The appellants were directors of Denim Enterprise Limited (the company). In the present appeal, challenge is against an order passed by the whole time member of the Board by which the appellants were restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities directly or indirectly for a period of two years.

The Board conducted investigations in the dealings in the scrip of the company for the period November 1, 1999 to March 30, 2000. During the investigation period one Aushim Khetrapal was the chairman and managing director of the company. The appellants were directors of the company during the relevant period. The scrip of the company registered a phenomenal increase from Rs.7 on November 1, 1999 to Rs.267.25 on March 31, 2000. According to the Board, the investigation pointed to publication of false/misleading information about the company by the directors which created artificial increase in the price of the scrip. A show cause notice was issued to the appellants on April 23, 2009 to show cause why suitable directions under section 11 of the Act should not be passed against them for publication of false and misleading information in newspapers/publications. The case of the Board was that the appellants allegedly violated regulation 5 of the FUTP Regulations by way of publication of false and misleading information aimed at creating investor interest in the scrip leading to artificial increase in the price. The appellants were given a personal hearing when satisfactory reply was not forthcoming from them. During personal hearing the appellants denied the allegations raised in the show cause notice. It was highlighted by both the appellants that they were not involved in the day to day affairs of the company and had no role whatsoever in the alleged publication of misleading information in the newspapers. The whole time member, after considering the submissions of the appellant and the material gathered by him, passed a restraint order under section 11 of the Act as mentioned hereinabove.

**Decision:** Appeal allowed.

### **Reason**

This order will dispose of two Appeals no.144 and 164 of 2012. The whole time member of the Securities and Exchange Board of India (for short the Board) has passed a common order in respect of the two appellants and so the appeals filed by the two appellants are disposed of by way of a common order.

Both the appellants, while admitting the connection with the promoters and other directors of the company, submitted that they had no role in the manipulations of the scrip which resulted in artificial price increase.

We have considered the rival submissions. The impugned order dwells at length on the alleged manipulation of the scrip of the company and the connection among the various entities belonging to the promoter group and the directors. However, the charge leveled against the appellants relates to violation of regulation 5 of the FUTP Regulations. So it is not necessary to consider the issue regarding manipulation of the scrip by way of collusion or connivance of the parties involved therein. Suffice it to say that as far as the appellants are concerned, what is crucial is their role in the publication of the alleged misleading news



items in the newspapers/journals.

It is worthy of mention that none of the news items on which reliance is placed by the Board had been given to the appellants for their comments. It is submitted by appellants' learned counsel that they had no chance to peruse the material, namely news items, appearing in the Express publications. It is also submitted that they were not provided with copies of the news items referred to in the impugned order. Since the respondent Board has relied heavily on the above mentioned news items in the impugned order, it was incumbent on it to provide the appellants with copies of the same and elicit their reaction before coming to the conclusion that the news items emanated from the appellants.

We are making this observation in the light of the specific provision in regulation 5 of the FUTP Regulations which is the foundation of the charge in the present case. The regulation is person specific and publication specific. The regulation makes it clear that no person shall make any statement or disseminate any information which is false or misleading as mentioned in the regulations above. So, when a person is charged with violation of the said regulations, it is necessary to establish that the delinquent has violated the regulation by making a statement or disseminating any information by himself. In the present case, even though reference is made to certain news items appearing in newspapers/journals in the show cause notice, no attempt has been made in the impugned order to connect the same to the appellants so as to establish their positive involvement in their dissemination. On the one hand, the Board has not provided the appellants with copies of the news items relied upon. On the other hand, it has been able to produce only two news items during the hearing of the appeal wherein there is no material pertaining to the role of the appellants.

On a consideration of the facts and evidences on record we have to conclude that the Board has not established that the appellants involved themselves or were responsible for making any statement or disseminated any information which is false or misleading. There is considerable discussion in the impugned order about the manipulation in the price of the scrip and the connection among the parties. However, as regards the appellants, the charge is not one of collusion or connivance. The charge of violation of regulation 5 of the FUTP Regulations cannot be said to have been proved with necessary evidence in the impugned order.

In view of the discussion above, we hold that the appellants cannot be held guilty of violating regulation 5 of FUTP Regulations. The order of the whole time member is set aside. In the result the appeals are allowed with no order as to costs.

**LW 92.10.2012**

**DUSHYANT DAYALDAS v. SEBI & ANR [SAT]**

Miscellaneous Application No.125 of 2012 and Appeal No. 176 of 2012

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

[Decided on 18/09/2012]

***Securities and Exchange Board of India Act, 1992 - Section 15(T) - market manipulation - order to impound the auction proceeds - appeal preferred after delay of 15 years - whether maintainable - Held, No.***

## Brief facts

The Board conducted investigation into the alleged price manipulation in the equity shares of Jyoti Resins and Adhesives Ltd. in respect of transactions carried out in the year 1995. After considering the investigation report and having come to the conclusion that there was market manipulation in the price of the scrip of the company, the Board directed the stock exchanges that as far as the auction proceeds are concerned the difference between the auction price and the standard rate which have been retained by the stock exchanges earlier, shall be impounded. In the process, an amount of Rs.68,28,850 was impounded from the appellant and the same was directed to be deposited in the investors protection fund. Thereafter, the appellant vide its letter dated May 15, 1997 requested the Board not to deposit the said amount in the investors protection fund as it will be a loss to the appellant. It is the case of the appellant that it has not received any reply to its repeated representations to the Board.

**Decision:** Appeal dismissed.

## Reason

The matter pertains to the year 1995 in which final decision was taken by the Board way back in 1997. No plausible explanation has come from the appellant which may persuade us to condone the delay of more than 15 years. In his application for condonation of delay, the appellant has stated that there is no specific order/communication impugned in the present appeal. Instead the appellant has impugned the inaction of the Board in passing order on the representations and reminders sent by the appellant. If that be so, all the more there is a reason that this appeal cannot be entertained because under section 15T of the SEBI Act (the Act) the Tribunal can entertain an appeal only against "an order" that may be passed either by the Board or an adjudicating officer acting under the Act. Proviso to sub-section (3) of section 15T of the Act empowers the Tribunal to entertain appeal after the expiry of 45 days if it is satisfied that there was sufficient cause for not filing the appeal within the period specified. Repeated representation to the authorities to review its decision is not a ground on which the delay can be condoned. The amount impounded has been credited to the investors protection fund way back in 1997.





In the facts and circumstances of the present case, the appellant has been totally negligent in pursuing its remedy before the appropriate forum. No cause, much less a sufficient cause has been shown in the application which may persuade us to consider condonation of delay in filing the appeal.

For the reasons stated above, we do not find any merit in the application for condonation of delay. The application for condonation of delay is rejected. Accordingly, the appeal also stands dismissed. There is no order as to costs. ■

Gurgaon and no work was assigned to him on his joining at Gurgaon though he was paid salary for January and February, 2002 and his services were terminated by means of the termination letter dated 28.2.2002. The respondent filed a suit for damages which was decreed in his favour whereunder the respondent was directed to pay the compensation amount of Rs. 10,87,294/- for unlawful termination of services. The amount of damages which were calculated were one month's salary for each year of balance services till the date of retirement of the respondent/plaintiff, and which was found to be 26 years as the respondent/plaintiff was about 34 years of age when his services were terminated and the retirement age was 60 years. Employer company challenged this decree in appeal.

**Decision:** Appeal allowed.

## Reason

In my opinion, the trial court has clearly misdirected itself inasmuch as wherever parties are strictly governed by contractual rights and obligations i.e. the employment is purely a contractual one, i.e. not being under the Government or "State" under Article 12 of the Constitution of India, and also not of an employee covered under the Industrial Disputes Act, 1947 the contractual employment can always be terminated in terms of the contract. Also, even assuming the termination is not as per the contract, at best the entitlement will be to claim damages which naturally flow out of the breach i.e. of the illegal termination of contract.

In the present case, admittedly no evidence at all has been led by the respondent/plaintiff as to steps taken by him to get alternative employment when he was terminated at the age of 34 years. Further, as per the admitted contractual terms contained in the letter of appointment dated 21.4.1998, Ex.P9, the services of the respondent/plaintiff could be terminated by a one month's notice.

Whatever may be the language of the prayer clauses of the plaint, and whatever be the ground of cause of action pleaded, the sum and substance of the cause of action in the plaint is for re-employment and continuation of employment with service benefits till the age of 60 years. In effect, therefore there is sought specific performance of the contractual services and which is impermissible in law. I may note that the contracts of personal service are only enforceable where the employer is a Government company or an arm of the State as per Article 12 of the Constitution of India. As per Section 14(1)(b) of the Specific Relief Act, 1963, a contract for personal service cannot be enforced.

In fact, the subject suit was also barred by Section 14(1)(c) of the Specific Relief Act, 1963 which provides that the contract which is in its nature determinable, cannot be specifically enforced. I have referred to the fact that the contract was

# General Laws

**LW 93.10.2012**

**GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD v. TARUN BHARGAVA [2012 (190) DLT 185]**

Miscellaneous Application No.125 of 2012 and Appeal No. 176 of 2012

Valmiki J. Mehta, J.

[Decided on 20/03/2012]

***Contractual employment - employee not a workman - termination of services - claim for damages - Notice pay clause in the appointment letter - Trial court granted damages for the balance period of services - whether correct - Held, No.***

## Brief facts

The respondent/plaintiff was appointed as Business Officer with M/s Shri Ram Fibres Finance Ltd. in the year 1990. After completion of probation, the services of respondent were confirmed on 15.1.1991. The services of the appellant were subsequently governed by the terms and conditions of the appointment letter dated 21.4.1998 issued by the subsequent employer i.e. M/s. GE Capital Transportation Financial Services Ltd. The respondent/plaintiff had to do some interior work in his flat and for which he took leave in November, 2001, which leave was never refused. On return from leave to the Ludhiana office on 21.1.2002, he was asked to join at



determinable by a one month's notice as per clause 7 of the terms and conditions of the letter dated 21.4.1998 and therefore the contract which was determinable by one month's notice cannot be specifically enforced. What cannot be done directly cannot be done indirectly i.e. if there cannot be specific performance of the contract, there cannot be declaration and injunction to continue such a service contract. Section 41(e) of the Specific Relief Act, 1963 provides that injunction will not be granted to prevent breach of the contract, performance of which could not be specifically enforced.

Therefore, looking at the matter from the point of view of the contract of personal service not being enforceable under Section 14(1)(b) of the Specific Relief Act, 1963, the contract being determinable in nature and hence cannot be enforced as per Section 14(1)(c) of the Specific Relief Act, 1963 or that injunction could not be granted to prevent breach of a contract which cannot be specifically enforced, the suit was clearly barred and not maintainable. The judgment of the trial Court does not refer to the binding provisions of Sections 14(1)(b), (c) and 41(e) of the Specific Relief Act, 1963. To complete the discussion on this aspect, I would once again refer to the recent judgment of the Supreme Court in the case of *Binny Ltd.* (2005) 6 SCC 652 and which specifically provides that in private contracts i.e. in strict contractual matters, there does not arise the issue of applicability of Administrative Law principles.

I have already stated above that even presuming there was breach of contract, at best reasonable damages can be granted and once there is a clause for termination of services by one month's notice, it can only be one month's notice which can be treated as reasonable damages inasmuch as parties understood the period for obtaining of an alternative employment as a one month's notice period-vide *SS Shetty's* case (AIR 1958 SC 12).

Appeal is therefore accepted. Impugned judgment and decree dated 31.1.2004 is set aside. Suit of the respondent/plaintiff will stand decreed only for one month's salary alongwith interest thereon @ 9% per annum simple till today.

**LW 94.10.2012**

**BHEL v. MASS GLOBAL INVESTMENT COMPANY & ORS [DEL]**

I.A.No.4049/2010 and I.A.No.2852/2011 in CS (OS) No.583/2010

V.K. Shali, J.

[Decided on 31/08/2012]

**Code of Civil Procedure, 1908 - Order 39 Rules 1 and 2 -**

***turnkey contract to execute project - plaintiff furnished bank guarantees to defendant - disputes arose - defendant sought to encash bank guarantees - plaintiff opposed - whether BG could be encashed - Held, Yes.***

## Brief facts

The plaintiff BHEL had entered into a contract with MGI (Defendant No.1) a Jordan company for the execution of a turnkey project in Jordan and furnished 3 bank guarantees issued by SBI (defendant No.2) to MGI. During the execution of the contract disputes arose between the parties as to the completion of the project and MGI threatened to encash the BGs. BHEL filed the present suit against MGI and moved an interim application (IA 4049/2010) seeking stay against MGI from encashing the BGs. Defendant MGI opposed the application.

**Decision : Application dismissed.**

## Reason

It is well settled that the bank guarantee is an independent contract, the invocation of which, especially if it is unconditional guarantee, ought not and cannot be stayed by the Court. This principle admits only two exceptions in allowing an application for injunction i.e. fraud and irretrievable injury and there is no third exception. Illegality in invocation, breach of faith, misuse of guarantee by failing to act in accordance with the purpose for which it was given, failure of consideration of contract, threatened call for unconscionable ulterior motive, lack of honest or *bona fide* belief by the beneficiary that the circumstances such as poor performance against which performance bond provided actually exists have all been rejected as grounds for injunction.

The Bank Guarantees in the present case are unconditional demand guarantees explicitly stated to be governed by the ICC Uniform Rules on Demand Guarantees (URDG), payable upon the signed statements in the form set out in the guarantees.

The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer



at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would over ride the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. The two grounds are not necessarily connected, though both may coexist in some cases.

It is equally well settled in law that bank guarantee is an independent contract between the bank and the beneficiary thereof. The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and of no consequence.

What is relevant are the terms incorporated in the guarantee executed by the bank. On careful analysis of the terms and conditions of the guarantee in the present case, it is found that the guarantee is an unconditional one. The respondent, therefore, cannot be allowed to raise any dispute and prevent the appellant from encashing the bank guarantee. The mere fact that the bank guarantee refers to the principal agreement without referring to any specific clause in the preamble of the deed of guarantee does not make the guarantee furnished by the bank to be a conditional one.

The essential question which arises is whether the present case comes within the purview of the definition of fraud as stated above. The Apex Court in more than one decision took the view that fraud, if any, must be of an egregious nature as to vitiate the underlying transaction. On a thorough perusal of the pleadings, neither there are any specific allegations made by the Plaintiff which can be attributed as a fraudulent conduct on the part of the Defendant No. 1 nor any conditions laid down in the definition of fraud as postulated in Section 17 of the Indian Contract Act are made out. Only vague allegations and submissions have been made in the plaint, which do not establish the element of fraud in the invocation of bank guarantees by the Defendant No. 1. In the absence of any specific allegation of fraud much less the fraud of an egregious nature so as to vitiate the entire transaction, the first exception is not made out in the instant case.

On the question of irretrievable injury, it has to be of the nature noticed in the *Itek* case (*supra*). In that case an exporter in the U.S.A. entered into an agreement with the Imperial Government of Iran and sought an order terminating its liability on standby letters of credit issued by an American bank in favour of an Iranian Bank as part of the contract. The relief was sought on account of the situation created after the Iranian revolution when the American Government cancelled the export licences in relation to Iran and the Iranian Government had forcibly taken 52 American citizens as hostages. The U.S. Government had blocked all Iranian assets under the jurisdiction of United States and had cancelled the export contract. The court upheld the contention of the exporter that any claim for damages against the purchaser if decreed by the American Courts would not be executable in Iran under these circumstances and realization of the bank guarantee/Letters of credit would cause irreparable harm to the plaintiff. This contention was upheld. To avail of this exception,

therefore, exceptional circumstances which make it impossible for the guarantor to reimburse himself if he ultimately succeeds, will have to be decisively established. Clearly, a mere apprehension that the other party will not be able to pay, is not enough. In the *Itek* case (*supra*), there was a certainty on this issue. Secondly, there was good reason, in that case for the court to be *prima facie* satisfied that the guarantors i.e. the bank and its customer would be found entitled to receive the amount paid under the guarantee. The Supreme Court in *U.P. State Sugar Corporation's* case (*supra*), *Himadri Chemicals's* case (*supra*) has reiterated the principles applicable in the *Itek* case (*supra*) that an exceptional circumstance must be made out which would make it impossible for the guarantor to reimburse himself if he ultimately succeeds. On a meticulous examination of the facts of the present case, the plaintiff has failed to plead or establish any exceptional circumstance where it cannot recover any monies if it ultimately succeeds. All the pleas taken by the Plaintiff regarding irretrievable injury seem to be vague and not supported by any evidence.

In my considered opinion, the plaintiff has not been able to show any of the contingencies, namely, that any fraud has been committed in encashing the 3 Bank Guarantees from the defendant no.1 or that there is an irreparable injury which will be caused to the plaintiff in case the 3 Bank Guarantees are invoked and accordingly, the plaintiff is not entitled to any injunction on that score. Accordingly the application bearing IA No.4049/2010 of the plaintiff deserves to be dismissed. ■

## Tax Laws

**LW 95.10.2012**

**M/S GSPL INDIA TRANSCO LIMITED v. UNION OF INDIA [GUJ]**

Special Civil Application No.6914 of 2012 and 6869 of 2012

V.M.Sahai & N. V. Anjaria, JJ.

[Decided on 22/08/2012]

**Advance ruling under service tax law with respect to availing CENVAT credit - Petitioners are step-down subsidiaries of**





***principal holding company all of them are separate government companies - AAR rejected the application that they are not entitled to apply as government company and also by exercising its discretion overlooking the statutorily available grounds for rejecting an application - whether tenable - Held, No.***

## Brief facts

The petitioners GSPL India Transco Ltd and GSPL India Gasnet Ltd. are subsidiary companies of Gujarat State Petronet Ltd which is a subsidiary company of Gujarat State Petroleum Corporation Ltd. The petitioners are Government Companies under the provisions of the Companies Act, 1956 and have obtained service tax registration.

The petitioners proposed to provide service that would be taxable under the category of "Transport of goods through pipeline or other conduit service" and also proposed to avail the CENVAT credit of excise duty of the pipes and valves paid by it to the contractors used for bringing into existence the desired pipeline in accordance with the provision of the CENVAT Credit Rules, 2004 and utilising the same for discharging its output service tax liability. In this regard they made separate applications to the AAR seeking advance ruling.

The AAR exercising its discretionary power by order dated 30.3.2012 rejected the application filed by the petitioners under Section 96C as not maintainable on the ground that an identical issue was pending before the CESTAT in the case of the petitioners' holding company on account of which, if the contention of the petitioners is accepted then it would lead to incongruous situation. In the opinion of AAR, any order passed by it could lead to incompatible decision by different authorities on an identical transaction and identical issue. Challenging the above decision of the AAR the petitioners approached the High court under its writ jurisdiction.

**Decision : Petition allowed.**

## Reason

The first question which arises for consideration in these writ petitions is whether a subsidiary to subsidiary company of a Government Company would also be a Government Company. If yes, then a further question arises that whether such subsidiary to subsidiary company could maintain an application under section 96C of the Finance Act?

In the affidavit in reply it is not disputed by the respondents that the petitioners are Government Companies. However, from the statutory illustration and section 4(1)(c) read with section 617 of the Companies Act, 1956, it is clearly established that the petitioners are Government Companies being subsidiaries of Gujarat State Petronet Ltd. The holding company and each subsidiary company are separate and distinct legal entities and every company has an independent right to file an application before the AAR for pronouncement of an advance ruling on the questions raised in the

applications. Section 96A(b)(ii) and (iii) support the case of the petitioners that a joint venture company could be an applicant. Further a resident falling within the class mentioned in sub-clause (iii) could also maintain an application. The petitioners fall within the ambit of section 96A(b)(iii), therefore, we hold that the petitioners being a step-down subsidiary company of a Government Company are covered within the definition of the "applicant" in terms of section 96A(b) of the Finance Act. The applications filed by the petitioners before the AAR under section 96C were maintainable.

We may now take up the second question whether the AAR had been conferred with any discretionary power to either allow or reject the application on the ground other than those prescribed by the proviso to sub-section (2) of section 96D of the Finance Act or the AAR should have decided the applications filed before it under section 96C if the embargo contained in the proviso to section 96D(2) were absent?

The question arises that where either of the two conditions laid down in proviso to section 96D(2) barring the jurisdiction of the AAR is absent whether the AAR could reject the application filed under section 96C under its discretionary power, even though there were no exceptional circumstances? We have already held that the petitioners and the holding company were separate and distinct legal entities and had independent rights and the AAR does not possess absolute discretionary power. Under section 96D(2) proviso (a) the important words used are, in the applicant's case, which clearly explains that if in the applicant's own case any matter is pending or had been decided then the AAR could dismiss the application. It is not disputed by the AAR in the impugned order that in the instant case the question raised in the applications filed by the petitioners under section 96C were either pending in the petitioner's own case before any Central Excise Officer, Appellate Tribunal or any Court or the question raised in the applications filed by the petitioners had been decided by the Appellate Tribunal or any Court. Therefore, the embargo mentioned in the two clauses of the proviso to section 96D(2) were not existing which could oust the jurisdiction of the AAR. The questions raised by the holding company or the transaction details of the holding company or the records of CESTAT were not available with the AAR. Merely because the proposed business of the petitioners was similar to that of the holding company, it would not give rise to an inference that the proposed transaction of the petitioners would be identical to that undertaken by the holding company. The AAR has completely lost sight of the fact that the petitioners had not yet entered into any transaction till date. Therefore, in our considered opinion, the AAR was required to decide the questions raised by the petitioners in their application. Merely because the questions, if answered by AAR would bind the petitioner and the tax authorities only or the CESTAT might give a different decision in the matter of petitioners holding Company could not result in passing incompatible decision by the AAR as the decisions of AAR under the scheme of the Finance Act and section 6E is binding only between the petitioner and the tax authorities. The finding of the AAR that its decision could be ignored by the CESTAT defeats and frustrates the very object of establishing the Authority for Advance Rulings. The AAR committed



an error of fact in coming to the conclusion that there were two identical transactions which may lead to two incompatible decisions on the same question, is not based on any material on record as the petitioner has not yet entered into any transaction. We are also of the considered opinion that the view taken by the AAR is not supported by material on record and the questions raised by the petitioners in their applications were liable to be decided by the AAR as there was no exceptional circumstance under which the AAR could have exercised its discretion to reject the application of the petitioners on unspecified grounds. The petitioners neither abused the legal process, nor if the AAR would have taken a decision would have resulted in incompatible decisions concerning the same parties. Further, the decision of the AAR would not have resulted in anomalous situations. The questions raised in the applications of the petitioners were required to be decided by the AAR.

For the aforesaid reasons, we are of the considered opinion that the applications filed under Section 96C by the petitioners were rejected by the AAR on non-existent grounds. We are further of the considered opinion that the bar created by the proviso to section 96D(2) were absent and therefore, the petitioners applications filed under section 96C for advance ruling was maintainable before the AAR. The order of the AAR deserves to be set aside and a direction is liable to be issued to the AAR for deciding the applications of the petitioners filed under Section 96C at the earliest.

## LW 96.10.2012

### QUALCOMM INCORPORATED v. ASISTANT DIRECTOR OF INCOME TAX [DEL]

W.P.(C) No.7959/2010

Badar Durrez Ahmed & Siddharth Mridul, JJ.

[Decided on 29/08/2012]

***Income Tax Act, 1961 - Section 147 and 148 - reopening of assessment - conditions prescribed under section 147 not followed - whether tenable - Held, No.***

## Brief facts

Initially, the petitioner had not filed any return in respect of the assessment year 2003-04. The petitioner's claim was that it was not liable to pay any income tax in India. However, the stand of the revenue was that the petitioner was liable to pay income tax on the royalty that it received. Consequently, the Assessing Officer issued a notice under Section 148 of the said Act on 29.03.2007. The reasons for the issuance of the said notice under Section 148 of the said Act were also provided to the petitioner. The said notice and the reasons therefor were objected to by the petitioner in view of the petitioner's objections dated 14.09.2007. After considering the above objections, the Assessing Officer passed an order on 30.11.2007 holding that the petitioner should cooperate in the assessment proceedings and submit the details/information as

called for by the notices issued during the assessment proceedings under the said Act. Subsequent to the above order, the assessment proceedings were continued and it culminated in the assessment order dated 31.12.2007. It is relevant to note that after considering the submissions made on behalf of the petitioner and examining all the details of the case before her, the Assessing Officer assessed the total income of the petitioner and the tax on the royalty portion was assessed @15%, evidencing that the submissions made by the petitioner with regard to the petitioner not having any permanent establishment in India was accepted and it is for this reason that the lower rate of 15% was employed and not the higher rate of 20%.

The matter rested there for some time, that is, till 30.03.2010, when the Assessing Officer, once again, issued a notice under Section 148 of the said Act (which is impugned). The petitioner submitted its objections on 26.07.2010, wherein the petitioner, *inter alia*, took the specific plea that the re-assessment proceedings were barred by limitation. However, the AO rejected the objections vide order dated 27.10.2010 holding that the petitioner had failed to disclose fully and truly all material facts with regard to the allegation that the petitioner had a PE in India. Being aggrieved by the said notice dated 30.03.2010 and the order dated 27.10.2010, the petitioner has filed this writ petition seeking the quashing of the same.

**Decision :** Petition allowed.

## Reason

In this factual backdrop, we have to decide as to whether the impugned notice dated 30.03.2010 and the impugned order dated 27.10.2010 can be sustained in law or not. From what has been mentioned above, it is evident that the question of the petitioner having a permanent establishment in India had been gone into in the first round. This is apparent from the reasons dated 29.03.2007 read with the objections dated 14.09.2007 and the order dated 30.11.2007 and ultimately the assessment order dated 31.12.2007, wherein the lower rate of tax of 15% was employed. We have already indicated that throughout the proceedings in the earlier round, one of the questions that had been raised was with regard to the petitioner having a permanent establishment in India. Once that aspect of the matter had been gone into in the earlier round, it was not open to the Assessing Officer to re-agitate it in the second round without any other/fresh material. No such other or fresh material has even been alleged in the reasons in the second round. It has also not been indicated as to how the petitioner has failed to fully and truly disclose all material facts with regard to the question of the petitioner having a permanent establishment in India. Whatever information was required from the petitioner in the first round by the Assessing Officer on this question of permanent establishment, has been given by the petitioner. It is obvious from the assessment order dated 31.12.2007 that the submissions of the petitioner that it did not have a permanent establishment in India



had been accepted and that is the reason why the petitioner was subjected to the lower tax rate of 15% and not the higher tax rate of 20%, which might have been the case, if the petitioner had a permanent establishment in India.

It is well settled that re-opening of assessments cannot be done merely on the basis of change of opinion. It is also a settled position in law that unless and until the conditions stipulated in the proviso to Section 147 are fully satisfied, such re-opening cannot be done beyond the period of four years from the end of the relevant assessment year. In the present case, we find that not only is there a change of opinion but also the re-opening is barred by limitation inasmuch as the condition that the escapement of income must have resulted from the failure on the part of the petitioner to fully and truly disclose all material facts, has not been satisfied. The impugned order dated 27.10.2010 merely glosses over the objections raised by the petitioner with regard to limitation. As we have already observed above, there is no finding in the order dated 27.10.2010 that there was a failure on the part of the petitioner to fully and truly disclose all material facts particularly in connection with the issue of the petitioner having a permanent establishment in India. On the contrary, the above facts reveal that the issue of permanent establishment was specifically raised and dealt with in the first round which culminated in the assessment order dated 31.12.2007. The issue of permanent establishment having been addressed in the first round, the allegation that the petitioner had not fully and truly disclosed the material particulars in relation thereto has no basis. Consequently the condition stipulated in the proviso to Section 147 is not satisfied and, therefore, the notice dated 30.03.2010, being admittedly beyond four years from the end of the relevant assessment year (i.e., 2003- 04), is barred by limitation.

As a result of the foregoing discussion, the impugned notice dated 30.03.2010 and the impugned order dated 27.10.2010 cannot be sustained in law. Resultantly, the same are quashed. So, too, all proceedings pursuant to the said notice dated 30.03.2010. The writ petition is allowed. There shall be no order as to costs. ■

Revision Petition No. 1826 of 2012

J.M. Malik, Presiding Member & Vinay Kumar, Member.

[Decided on 12/09/2012]

***Consumer Protection Act, 1986 - Deficiency of services - refusal to deliver the goods by transporter - consignee copy of the LR was with the transporter - whether tenable - Held, Yes.***

## Brief facts

Hawa Singh Meel, the complainant in this case desired to purchase the seeds of Ashwagandha (Winder Chery) from M/s Adinath Trading Company [OPNo. 2]. OP No. 2 was to supply the seed through Transport Corporation of India [OPNo.1]. The delivery was to be given by the OP No. 1 to the complainant. The complainant got issued a bank draft in the sum of Rs. 2625/- dated 07.03.2003 at Chhanibari. The complainant approached the godown of OPNo. 1 at Hissar to get the delivery of seed. But the OP No. 1 refused to give the delivery of the seed on the ground that the copy, which the complainant was having, was not the consignee copy. The OP No.1 asked him to bring the consignee copy. The complainant made a telephone call to the OP No.2 and the OP No.2 promised the complainant that the consignee copy would be sent immediately. Despite various requests, the OP No.2 failed to furnish the above said consignee copy. It was explained that the same was lying with the OPNo. 1 at Hissar. The complainant was to purchase 75-kilogram seeds of Ashwagandha for sowing in 5-hectare land. The complainant had made preparation and spent money towards the cultivation, ploughing etc. Since the seeds were not delivered, a complaint was filed before the District Forum which allowed the complaint and awarded a sum of Rs. 50,000/- as compensation against Opposite Party No. 1. The State Commission dismissed the appeal. Aggrieved by the order the present revision petition has been filed.

**Decision :** Petition dismissed.

## Reason

We are of the view that the finding given by the District Forum and the State Commission that the OP No. 1 failed to deliver the goods to the complainant after obtaining the demand draft and thus the deficiency of service on the part of the OP No.1 clearly stands established is without any flaw. The OP No.1 could not explain why it had not given the consignee copy to the complainant. This was not denied that the OP No.1 had received the demand draft. The complainant had also placed the billty which showed that M/s Addinath Trading Company, Mandi Prangan, Neemuch (M.P.) sent the bag containing seed to the OP No.1 for the complainant. The complainant rightly refused to take the seed in the month of November as the sowing season was already over. The revision petition is without merit and therefore the same is dismissed. ■

# Consumer Laws

LW 97.10.2012

**TRANSPORT CORPORATION OF INDIA v. HAWA SINGH MEEL & ANR [NCDRC]**



Brief of professional or other misconduct case filed against the member in which the Disciplinary Committee of the Institute has found him guilty and has decided to remove the name from the Register of Members vide its Order dated 25th August, 2012.

### Complaint of Professional or other misconduct against Mr. R R Mallar, FCS - 1029 (CP No. 3439)

The Institute had received a complaint against Mr. R R Mallar alleging that he while holding Certificate of Practice of the Institute is also engaged in other profession as a lawyer/advocate which is in contravention of provisions under Regulation 168 of the Company Secretaries Regulations, 1982.

The Committee after considering the *prima-facie* opinion of the Director (Discipline), the material on record and after providing the opportunity of being heard to Mr. R R Mallar, came to the conclusion that Mr. R R Mallar is 'guilty' of violating clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980, as he, while holding the Certificate of Practice of the Institute is also engaged as Lawyer /Advocate. The Committee decided to remove the name of Mr. R R Mallar from the register of the Members of the Institute for a period of 180 days vide its order dated 25th August, 2012. The said order shall be effective after expiry of the 30 days of issue of the order.

## ATTENTION MEMBERS !

### IDENTITY CARDS FOR MEMBERS

Members who are yet to get the Identity Card issued from the Institute are requested to apply for the same along with their latest two coloured passport size photographs in the format given below (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003. For queries, if any, contact on -

Phone No. 011 45341061

Mobile No. + 91 9868128682

Email Ids [member@icsi.edu](mailto:member@icsi.edu) / [acs@icsi.edu](mailto:acs@icsi.edu)

#### Request for issue of Member's Identity Card

Please send latest two coloured passport size photographs mentioning your name & membership no. on the reverse of the photograph alongwith the following details:

Membership No. ACS/FCS .....

Name .....

( in block letters) (First Name) ( Middle Name) ( Surname)

Date of birth .....

Phone: Office: ..... Residence: .....

Mobile No. ....

E-mail address .....

Passport  
size coloured  
photograph

Signature with date



From the Government

# Corporate Laws



## 01 Companies (Central Government's General Rules and Forms (Sixth Amendment) Rules, 2012.

Issued by the Ministry of Corporate Affairs vide F.No. 17/160/2012-CL V Dated 21.09.2012.]

In exercise of the powers conferred by sub-section (1) of section 642 read with section 610B 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 (Sixth Amendment) Rules, 2012.
- (2) They shall come into force with effect from the 30<sup>th</sup> September, 2012.
2. In the Companies (Central Government's) General Rules and Forms, 1956, in Annexure 'A' for Forms 23AC and 23ACA, the following Forms shall be substituted, namely:

### FORM 23AC

[See section 220 of the Companies Act, 1956 and Rule 7B]

Form for filing balance sheet and other documents with the Registrar

#### Note-

- All fields marked in \* are to be mandatorily filled.
- Figures appearing in the eForm should be entered in Absolute Rupees only. Figures should not be rounded off in any other unit like hundreds, thousands, lakhs, millions or crores.

Authorised capital of the company as on the date of filing (in Rs.)

Number of members of the company as on the date of filing

#### Part A

##### I. General information of the company

1. (a) \*Corporate identity number (CIN) of company  Pre-fill
- (b) Global location number (GLN) of company
2. (a) Name of the company
- (b) Address of the registered office of the company
- (c) \*e-mailID of the company
3. (a) \* Financial year to which balance sheet relates  
From  (DD/MM/YYYY) To  (DD/MM/YYYY)

(b) \*Date of Board of directors' meeting in which balance sheet was approved  (DD/MM/YYYY)

(c) Details of director(s), Managing Director, manager, secretary of the company who have signed the balance sheet

**Following details are to be entered only in case date of balance sheet is on or after 1st July 2007**  
Provide Director identification number (DIN) in case of director, Managing Director and Income-tax permanent account number (Income-tax PAN) in case of manager, secretary

(I) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of balance sheet  (DD/MM/YYYY)

(II) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of balance sheet  (DD/MM/YYYY)

(III) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of balance sheet  (DD/MM/YYYY)

(IV) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of balance sheet  (DD/MM/YYYY)

(V) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of balance sheet  (DD/MM/YYYY)

4. (a) \*Date of Board of directors' meeting in which Board's report referred  (DD/MM/YYYY) to under section 217 was approved
- (b) Details of director(s), Managing Director who have signed the Board's report

**Following details are to be entered only in case date of Board of directors' meeting is on or after 1st July 2007**

(I) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of Board's report  (DD/MM/YYYY)

(II) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of Board's report  (DD/MM/YYYY)

(III) DIN or Income-tax PAN  Pre-fill Designation   
Name   
Date of signing of Board's report  (DD/MM/YYYY)

5. \*Date of signing of reports on the balance sheet by the auditors  (DD/MM/YYYY)



6. (a) \*Whether annual general meeting (AGM) held ☐ Yes ☐ No  
 (b) If yes, date of AGM  (DD/MM/YYYY)  
 (c) \*Due date of AGM  (DD/MM/YYYY)  
 (d) Date of AGM in which accounts are adopted by shareholders  (DD/MM/YYYY)  
 (e) \*Whether any extension for financial year or AGM granted ☐ Yes ☐ No  
 (f) If yes, due date of AGM after grant of extension  (DD/MM/YYYY)

7. Service request number (SRN) of Form 66

8. (a) \*Whether the company is a subsidiary company as defined under section 4 ☐ Yes ☐ No  
 (b) CIN of the holding company, if applicable  Pre-fill  
 (c) Name of the holding company

(d) Section under which the company has become a subsidiary

9. (a) \*Whether the company has a subsidiary company as defined under section 4 ☐ Yes ☐ No  
 (b) If Yes, then indicate number of subsidiary company(s)

CIN of subsidiary company   
 Name of the subsidiary company   
 Section under which the company has become a subsidiary   
 Whether particulars of subsidiary company has been attached in pursuance of Section 212(1) of the Companies Act, 1956 ☐ Yes ☐ No ☐ Not Applicable  
 If yes, period of annual accounts From  (DD/MM/YYYY) To  (DD/MM/YYYY)

Pre-fill all

10. \*Number of auditors

(I) (a) \*Category of auditor ☐ Individual ☐ Auditor's firm  
 (b) \*Income-tax PAN of auditor or auditor's firm   
 (c) \*Name of the auditor or auditor's firm   
 (d) \*Membership number of auditor or auditor's firm's registration number   
 (e) \*Address of the auditor or auditor's firm  
 Line I   
 Line II   
 \*City  \*State   
 Country  \*Pin Code

(f) Details of the member representing the above firm  
 Name   
 Membership number  (g) \*SRN of Form 23B

(II) (a) \*Category of auditor ☐ Individual ☐ Auditor's firm  
 (b) \*Income-tax PAN of auditor or auditor's firm   
 (c) \*Name of the auditor or auditor's firm   
 (d) \*Membership number of auditor or auditor's firm's registration number   
 (e) \*Address of the auditor or auditor's firm  
 Line I   
 Line II   
 \*City  \*State   
 Country  \*Pin Code

(f) Details of the member representing the above firm  
 Name   
 Membership number  (g) \*SRN of Form 23B

11. (a) In case of a government company, whether Comptroller and Auditor-General of India (CAG of India) has commented upon or supplemented the audit report under section 619(4) of the Companies Act, 1956 ☐ Yes ☐ No  
 (b) Provide details of comment(s) or supplement(s) received from CAG of India  
  
 (c) Director's reply(s) on comments received from CAG of India  
  
 (d) Whether CAG of India has conducted supplementary or test audit under section 619(3)(b) ☐ Yes ☐ No

12. (a) \*Whether schedule VI of the Companies Act, 1956 is applicable ☐ Yes ☐ No  
 (b) \*Type of Industry

Note: In case the type of industry is other than Banking or Power or Insurance or NBFC, then select Commercial and Industrial (C&I).  
 Part - B I. BALANCE SHEET (As per Schedule VI to the Companies Act, 1956 applicable for the financial year commencing on or after 1.4.2011)

Particulars	Figures as at the end of (Current reporting period) (in Rs.) <input type="text"/> DD/MM/YYYY	Figures as at the end of (previous reporting period) (in Rs.) <input type="text"/> DD/MM/YYYY
<b>I. EQUITY AND LIABILITIES</b>		
(1) <b>Shareholders' funds</b>		
(a) Share capital		
(b) Reserves and surplus		
(c) Money received against share warrants		
(2) <b>Share application money pending allotment</b>		
(3) <b>Non-current liabilities</b>		
(a) Long-term borrowings		
(b) Deferred tax liabilities (net)		
(c) Other long term liabilities		
(d) Long term provisions		
(4) <b>Current liabilities</b>		
(a) Short-term borrowings		
(b) Trade payables		
(c) Other current liabilities		
(d) Short-term provisions		
<b>TOTAL</b>		
<b>II. ASSETS</b>		
(1) <b>Non-current assets</b>		
(a) Fixed assets		
(i) Tangible assets		
(ii) Intangible assets		
(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		
(2) <b>Current assets</b>		
(a) Current investments		
(b) Inventories		
(c) Trade receivables		
(d) Cash and cash equivalents		
(e) Short-term loans and advances		
(f) Other current assets		
<b>TOTAL</b>		

## Part B I. BALANCE SHEET (Applicable for financial year commencing before 01.04.2011)

Particulars	Figures as at the end of (Current reporting period) (in Rs.) <input type="text"/> DD/MM/YYYY	Figures as at the end of (previous reporting period) (in Rs.) <input type="text"/> DD/MM/YYYY
Sources of funds		
Paid-up capital		
Share application money (pending allotment)		
Reserves and surplus		
Secured loans		
Unsecured loans		
Deferred tax liabilities (Net)		
Others (Please specify) <input type="text"/>		
<b>TOTAL</b>		





# From the Government

Application of funds		
Gross fixed assets (including intangible assets)		
Less: depreciation and amortization		
Net fixed assets		
Capital work-in-progress		
Investments		
Deferred tax assets (Net)		
Current assets, loans and advances		
(a) Inventories		
(b) Sundry debtors		
(c) Cash and bank balances		
(d) Other current assets		
(e) Loans and advances		
Less: Current liabilities and provisions		
(a) Liabilities		
(b) Provisions		
Net current assets		
Miscellaneous expenditure to the extent not written off or adjusted		
Profit and loss account		
Others (Please specify)		
TOTAL		

## II. Detailed Balance sheet items (Amount in Rs.) as on balance sheet date (Applicable in case of Revised Schedule VI- that is for financial year commencing on or after 01.04.2011)

### A. Details of long term borrowings (unsecured)

Particulars	Current reporting period	Previous reporting period
Bonds/debentures		
Term Loans		
- From banks		
- From other parties		
Deferred payment liabilities		
Deposits		
Loans and advances from related parties		
Long term maturities of finance lease obligations		
Other loans & advances		
Total long term borrowings (unsecured)		
Out of above total, aggregate amount guaranteed by directors		

### B. Details of short term borrowings (unsecured)

Particulars	Current reporting period	Previous reporting period
Loans repayable on demand		
- From banks		
- From other parties		
Loans and advances from related parties		
Deposits		
Other loans and advances		
Total short term borrowings (unsecured)		
Out of above total, aggregate amount guaranteed by directors		

### C. Details of long term loans and advances (unsecured, considered good)

Particulars	Current reporting period	Previous reporting period
Capital advances		
Security deposits		
Loans and advances to other related parties		
Other loans and advances		
Total long term loan and advances		
Less: Provision/allowance for bad and doubtful loans and advances		
From related parties		
From others		
Net long term loan and advances (unsecured, considered good)		
Loans and advances due to directors/other officers of the company (refer note 6.L.(iv) of Schedule VI)		

### D. Details of long term loans and advances (doubtful)

Particulars	Current reporting period	Previous reporting period
Capital advances		
Security deposits		
Loans and advances to related parties		
Other loans and advances		
Total long term loan and advances		
Less: Provision/ allowance for bad and doubtful loans and advances		
- From related parties		
- From others		
Net long term loan and advances (doubtful)		
Loans and advances due to directors/other officers of the company (refer note 6.L.(iv) of Schedule VI)		

### E. Details of trade receivables

Particulars	Current reporting period		Previous reporting period	
	Exceeding six months	Within six months	Exceeding six months	Within six months
Secured, considered good				
Unsecured, considered good				
Doubtful				
Total trade receivables				
Less: Provision/ allowance for bad and doubtful debts				
Net trade receivables				
Debt due by directors/other officers of the company (refer note 6.m.iii.iii of Schedule VI)				

## III. Financial parameters - Balance sheet items (Amount in Rs.) as on balance sheet date (unless specified otherwise)

- \*Amount of issue allotted for contracts without payment received in cash during reporting period
- \*Share application money given
- \*Share application money given during the reporting period
- \*Share application money received during the reporting period
- \*Paid-up capital held by foreign company  percent
- \*Paid-up capital held by foreign holding company and/ or through its subsidiaries  percent
- \*Number of shares bought back during the reporting period
- \*Deposits accepted or renewed during the reporting period
- \*Deposits matured and claimed but not paid during reporting period
- \*Deposits matured and claimed, but not paid
- \*Deposits matured, but not claimed
- \*Undaunted matured debentures
- \*Debentures claimed but not paid
- \*Interest on deposits accrued and due but not paid
- \*Unpaid dividend
- \*Investment in subsidiary companies
- \*Investment in government companies
- \*Capital reserve
- \*Amount due for transfer to Investor Education and Protection Fund (IEPF)
- \*Inter-corporate deposits
- \*Gross value of transaction as per AS-18 (if applicable)
- \*Capital subsidies or grants received from government authority(s)
- \*Calls unpaid by directors
- \*Calls unpaid by others
- \*Forfeited shares (amount originally paid-up)
- \*Forfeited shares reissued
- \*Borrowing from foreign institutional agencies
- \*Borrowing from foreign companies
- \*Inter-corporate borrowings - secured
- \*Inter-corporate borrowings - unsecured
- \*Commercial Paper
- \*Conversion of warrants into equity shares during the reporting period
- \*Conversion of warrants into preference shares during the reporting period
- \*Conversion of warrants into debentures during the reporting period
- \*Warrants issued during the reporting period (In foreign currency)
- \*Warrants issued during the reporting period (In Rs.)
- \*Default in payment of short term borrowings and interest thereon
- \*Default in payment of long term borrowings and interest thereon
- \*Whether any operating lease has been converted to financial lease or vice-versa Provide details of such conversions  ☐ Yes ☐ No



40. Net Worth of the company
41. Number of shareholders to whom shares allotted under private placement during the reporting period
42. \*Secured Loan
43. \*Gross fixed assets (including intangible assets)
44. \*Depreciation and amortization
45. \*Miscellaneous expenditure to the extent not written off or adjusted

#### IV. Share capital raised during the reporting period (Amount in Rs.. )

	Equity shares	Preference shares	Total
(a) Public issue			
(b) Bonus issue			
(c) Rights issue			
(d) Private placement arising out of conversion of debentures/preference shares			
(e) Other private placement			
(f) Preferential allotment arising out of conversion of debentures/preference shares			
(g) Other preferential allotment			
(h) Employee Stock Option Plan (ESOP)			
(i) Other			
(j) Total amount of share capital raised during the reporting period			

#### V. Details of qualification(s), reservation(s) or adverse remark(s) made by auditors

1. \*Whether auditors' report has been qualified or has any reservations or contains adverse remarks ☐ Yes ☐ No

- 2 (a) Auditor's qualification(s), reservation(s) or adverse remark(s) in the auditors' report

- (b) Director's comments on qualification(s), reservation(s) or adverse remark(s) of the auditors as per Board's report

#### VI. Details w.r.t Companies (Auditor's Report) Order, 2003 (CARO)

1. Whether Companies (Auditor's Report) Order, 2003 (CARO) applicable ☐ Yes ☐ No

2. Auditor's comment on the items specified under Companies (Auditor's Report) Order, 2003 (CARO)

Particulars	Auditor's comments on the report
Fixed assets	<input type="text"/>
Inventories	<input type="text"/>
Loans given or taken by the company	<input type="text"/>
Section 301	<input type="text"/>
Acceptance of Public Deposits	<input type="text"/>
Maintenance of Cost records	<input type="text"/>
Statutory dues	<input type="text"/>
End use of borrowed funds	<input type="text"/>
Special statute - chit fund companies	<input type="text"/>
Nidhi/ mutual benefit fund - special aspects	<input type="text"/>
Financing companies - special aspects	<input type="text"/>
Term loans	<input type="text"/>
Preferential allotments	<input type="text"/>
Disclosure of end use of funds	<input type="text"/>
Others	<input type="text"/>

#### VII. Details related to cost audit of principal products or activity groups under cost audit

1. \*Whether maintenance of cost records by the company has been mandated under any Cost Accounting Records Rules notified under section 209(1)(d) of the Companies Act, 1956 ☐ Yes ☐ No
2. \*Whether audit of cost records of the company has been mandated by Central Government under section the 233B of the Companies Act, 1956 ☐ Yes ☐ No
3. If yes, names of the product or activity groups under cost audit

#### Attachments

- \*Copy of balance sheet duly authenticated as per section 215 (including Board's report, auditors' report and other documents) (in pdf converted format)
- Statement of subsidiaries as per section 212
- Statement of the fact and reasons for not adopting balance sheet in the annual general meeting (AGM)
- Statement of the fact and reasons for not holding the AGM
- Approval letter for extension of financial year or AGM
- Supplementary or test audit report under section 619(3)(b)
- Optional attachment(s) - if any

List of attachments

Remove attachments

#### Verification

I confirm that all the particulars mentioned above are as per the attached balance sheet and other related documents, all of which are duly signed and authenticated as required under the Companies Act, 1956. To the best of my knowledge and belief, the information given in the form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution number \*  dated \*  (DD/MM/YYYY) to sign and submit this form.

#### To be digitally signed by

Managing Director or director or manager or secretary of the company

\*Designation

\*DIN of the director or Managing Director; or

Income-tax PAN of the manager; or

Membership number, if applicable or income-tax PAN of the secretary

(secretary of a company who is not a member of ICSI, may quote his/ her income-tax PAN)

#### Certificate

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of

and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form.

- ☐ Chartered accountant (in whole-time practice) or ☐ Cost accountant (in whole-time practice) or ☐ Company secretary (in whole-time practice)

\*Whether associate or fellow ☐ Associate ☐ Fellow

\*Membership number or certificate of practice number





This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company

## FORM 23AC

Form for filing Profit and Loss account and other documents with the Registrar

See section 220 of the Companies Act, 1956 and Rule 7B

#### Note -

- All fields marked in \* are to be mandatorily filled.
- Figures appearing in the eForm should be entered in Absolute Rupees only. Figures should not be rounded off in any other unit like hundreds, thousands, lakhs, millions or crores.

Authorised capital of the company as on the date of filing (in Rs.)

Number of members of the company as on the date of filing

#### Part A

##### I. General information of the company

- 1 (a) \*Corporate identity number (CIN) of company
- (b) Global location number (GLN) of company

- 2 (a) Name of the company
- (b) Address of the registered office of the company

- 3 (a) \*Period of profit and loss account From  (DD/MM/YYYY) To  (DD/MM/YYYY)



# From the Government

(b) \*Date of signing of report on the annual accounts by the auditors \_\_\_\_\_

4. (a) \*Whether schedule VI of the Companies Act, 1956 is applicable ☐ Yes ☐ No (DD/MM/YYYY)

(b) \*Type of Industry \_\_\_\_\_

Note: In case the type of industry is other than Banking or Power or Insurance or NBFC, then select Commercial and Industrial (C&I).

## Part- B

### I. STATEMENT OF PROFIT AND LOSS (As per Schedule VI to the Companies Act, 1956 applicable for the financial year commencing on or after 1.4.2011)

	Particulars	Figures as at the end of (Current reporting period) (in Rs.)	Figures as at the end of (previous reporting period) (in Rs.)
		From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
(I)	<b>Revenue from operations</b>		
	Domestic turnover		
	(i) Sale of goods manufactured		
	(ii) Sale of goods traded		
	(iii) Sale or supply of services		
	Export turnover		
	(i) Sale of goods manufactured		
	(ii) Sale of goods traded		
	(iii) Sale or supply of services		
(II)	Other income		
(III)	<b>Total Revenue (I+II)</b>		
(IV)	<b>Expenses</b>		
	Cost of materials consumed		
	Purchases of stock in trade		
	Changes in inventories of finished goods, work-in-progress and stock in trade		
	Employee benefit expense		
	Managerial remuneration		
	Payment to Auditors		
	Insurance expenses		
	Power and fuel		
	Finance cost		
	Depreciation and amortization expense		
	Other expenses		
	<b>Total expenses</b>		
(V)	<b>Profit before exceptional and extraordinary items and tax (II-IV)</b>		
(VI)	Exceptional items		
(VII)	<b>Profit before extraordinary items and tax (V-VI)</b>		
(VIII)	Extraordinary items		
(IX)	<b>Profit before tax (VII-VIII)</b>		
(X)	<b>Tax Expense</b>		
	(1) Current tax		
	(2) Deferred tax		
(XI)	<b>Profit/(Loss) for the period from continuing operations (IX-X)</b>		
(XII)	<b>Profit/(Loss) from discontinuing operations</b>		
(XIII)	Tax expense of discontinuing operations		
(XIV)	<b>Profit/(Loss) from discontinuing operations (after tax) (XII-XIII)</b>		
(XV)	<b>Profit/(Loss) (XI+XIV)</b>		
(XVI)	<b>Earnings per equity share</b>		
	(1) Basic		
	(2) Diluted		

## Part B

### I. STATEMENT OF PROFIT AND LOSS (Applicable for financial year commencing before 01.04.2011)

Particulars	Figures for the period (in Rs.) (Current reporting period)	Figures for the period (in Rs.) (previous reporting period)
	From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
Domestic turnover		
(i) Sale of goods manufactured		
(ii) Sale of goods traded		
(iii) Sale or supply of services		
Export turnover		
(i) Sale of goods manufactured		
(ii) Sale of goods traded		
(iii) Sale or supply of services		
Other income		
<b>Total income</b>		
Raw material consumed (see note 1)		
Purchases made for re-sale (see note 2)		
Consumption of stores and spare parts (see note 3)		
(Increase) or decrease in finished goods work-in-progress		
Salaries, wages and bonus		
Managerial remuneration		
Payment of auditors		
Interest		
Insurance expenses		
Power and fuel		
Depreciation and amortization		
Other expenditure		
Total expenditure		
Net Profit or Net Loss (before tax and appropriation)		
Income tax including deferred tax		

Note 1: Raw material consumed is to be given as per following calculation -  
Opening stock of raw materials + purchases of raw materials - closing stock of raw materials

Note 2: Purchases made for re-sale is to be given as per following calculation -  
Opening stock of goods traded + purchases of goods traded - closing stock of goods traded

Note 3: Consumption of stores and spare parts to be given as per following calculation-  
Opening stock of stores and spares + purchases of stores and spares - closing stock of store and spares

### II. Detailed Profit and Loss. items (Amount in Rs.) (Applicable in case of Revised Schedule VI- that is for financial year commencing on or after 01.04.2011)

#### A. Details of earning in foreign exchange

Particulars	Current reporting period	Previous reporting period
Export of goods calculated on FOB basis		
Interest and dividend		
Royalty		
Know-how		
Professional & consultation fees		
Other income		
Total Earning in Foreign Exchange		

#### B. Details of expenditure In foreign exchange

Particulars	Current reporting period	Previous reporting period
Import of goods calculated on CIF basis:		
(i) raw material		
(ii) component and spare parts		
(iii) capital goods		
Expenditure on account of		
Royalty		
Know-how		
Professional & consultation fees		
Interest		
Other matters		
Dividend paid		
Total Expenditure in foreign exchange		

### III. Financial parameters- Profit and loss account items (Amount in Rs. ) during the reporting period

- \*Proposed Dividend  per cent
- \*Earning per share (in Rs.) Basic  Diluted

October  
2012



CHARTERED SECRETARY

1300 (GN-219)





3. \*Income in foreign currency
4. \*Expenditure in foreign currency
5. \*Revenue subsidies or grants recieved from government authority(s)
6. \*Rent paid
7. \*Consumption of stores and spare parts
8. \*Gross value of transaction with related parties as per AS-18 (if applicable)
9. \*Bad debts of related parties as per AS-18 (if applicable)

#### IV. Details related to principal products or services of the company

Total number of product/services category(s)

(i)	Product or service category code (ITCI NPCS 4 digit code)	<input type="text"/>
	Description of the product or service category	<input type="text"/>
	Turnover of the product or service category (in Rs.)	<input type="text"/>
	Highest turnover contributing product or service code (ITC/NPCS-8-digit code)	<input type="text"/>
	Description of the product or service	<input type="text"/>
	Turnover of highest contributing product or service (in Rs.)	<input type="text"/>

**Note** - Please refer to 'Indian Trade Classification' based on harmonized commodity description and coding system issued by the Ministry of Commerce & Industry for Product Codes and National Product Classification for Services (NPCS) for Services codes issued by Ministry of Statistics & Programme Implementation, Government of India.

#### V. Details of qualification(s), reservation(s) or adverse remark(s) made by auditors.

1. \*Whether auditors' report has been qualified or has any reservations or contains adverse remarks ☐ Yes ☐ No

2(a) Auditor's qualification(s), reservation(s) or adverse remark(s) in the auditors' report

(b) Director's comments on qualification(s), reservation(s) or adverse remark of the auditors as per Board's report

#### Attachments

1. \*Copy of Profit and Loss Account duly authenticated as per section 215 (in pdf converted format)

Attach

2. Statement of subsidiaries as per section 212

Attach

3. Optional attachment(s) - if any

Attach

List of attachments

Remove attachments

#### Verification

I confirm that all the particulars mentioned above are as per the attached profit and loss account and other documents, all of which are duly signed and authenticated as required under the provisions of the Companies Act, 1956.

To the best of my knowledge and belief, the information given in the form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution number\*  dated \* (DD/MM/YYYY) to sign and submit this form.

#### To be digitally signed by

Managing Director or director or manager or secretary of the company

\*Designation

\*Director identification number of the director or Managing Director; or Income-tax permanent account number (income-tax PAN) of the manager; or Membership number, if applicable or income-tax PAN of the secretary

(secretary of a company who is not a member of ICSI, may quote his/her income-tax PAN)

#### Certificate

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of

and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form.

- ☐ Chartered accountant (in whole-time practice) or ☐ Cost accountant (in whole-time practice) or ☐ Company Secretary (in whole-time practice)

\*Whether associate or fellow ☐ Associate ☐ Fellow

\*Membership number or certificate of practice number

Modify

Check Form

Prescrutiny

Submit

This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.

**Renuka Kumar**  
Joint Secretary

## 02 Condition to be imposed for conversion of ordinary Society into Producer Company. Part- IX A of the Companies Act. 1956.

Issued by the Ministry of Corporate Affairs vide F.No. 17/63/2012-CL-V General Circular 29/2012 Dated 10.09.2012.]

- The question of acceptance of documents by the Registrar of Companies for conversion of a Cooperative Society (not registered as the Multi State Society) under Section 581 J(5) of the Companies Act has been examined in the Ministry. I am desirous to say that:-
- Consequent upon the receipt of such an application/form seeking conversion of a Cooperative Society (society not registered as the Multi State Society) into a Producer Company, the ROCs will seek a written consent from the local Cooperative Department of the concerned State certifying that the Society desirous of being converted into Producer Company, under part IX A of the Companies Act, 1956, has no dues payable to the State at the time of such conversion and the Cooperative Department has 'no objection' to its being converted into a Producer Company under the Companies Act, 1956. Further, the ROCs must satisfy themselves fully that the applicant society has indeed extended its activities outside the State where it is registered as a Cooperative Society under the local/State level law governing Cooperative Societies which are not inter-State Cooperative Societies.
- In case of any doubt a reference may be made to the Ministry for further guidance before Incorporation under Section 581 J(5).
- This circular shall be effective from the date of issue of circular.

**Sanjay Shorey**  
Joint Director



## 03 Delegation of powers to Regional Directors u/s 17, 18, 19, 141 and 188 of the Companies Act, 1956

Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2003-CL V (Pt. file) Dated 30.08.2012.]

I am directed to refer to this Ministry's letter of even no. dated 31.7.2012 on the subject cited above and say that wherever fee on pending cases under section 17, 18, 19, 141 and 188 of the Companies Act, 1956 have already been paid by the companies/stakeholders at the time of filing of petition, consequent upon the transfer of applications/petitions from Company Law Board to the concerned Regional Directors, which is on account of operation of law, the company/stakeholders need not pay fee for the same petitions. Further, all pending cases before CLB under these sections stand transferred to Regional Directors. Lastly, objections, if any, received by CLB with respect to these petitions shall be forwarded to the concerned RDs by the Secretary, CLB in writing.

**Sanjay Shorey**  
Joint Director

## 04 Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India.

Issued by the Ministry of Corporate Affairs vide F.No. 11/08/2012-CL-V, Circular No. 27/2012 Dated 29.08.2012.]

In continuation of this office O.M. of even number dated 23.08.2012 the undersigned is directed to say that Special Secretary/Additional Secretary of this Ministry shall be the nominee of the Ministry of Corporate Affairs in the Committee for Reforming the Regulatory Environment for doing Business in India. Further, the name 'Shri Madhu Tandon' referred in the said Committee may be read as "Shri Madhu Karman. Head Business Development, Tata Sons Limited" Lastly, Director General & CEO, Indian Institute of Corporate Affairs will be the convenor of the Committee.

**Sanjay Shorey**  
Joint Director

## 05 Filling of Balance Sheet and Profit and Loss Account by companies in Non-XBRL for accounting year commencing on or after 01.04.2011.

Issued by the Ministry of Corporate Affairs vide

F.No. 17/160/2012-CL-V, General Circular No. 28/2012 Dated 03.09.2012.]

Reference : General Circular No 21/2012 vide File No. 17/160/2012-CL-V dated 02.08.2012

This Ministry had issued General Circular No.21/2012 dated: 02.08.2012 for extending time for filing eform 23AC and 23ACA (non-XBRL) as per revised Schedule VI without any additional fees/penalty upto 15.09.2012 or within 30 days from the date of their AGM, which ever later. It is to inform you that with approval of competent authority, the filing of eform 23AC and 23ACA (non-XBRL), is now extended upto 15.10.2012 or within 30 days from the date of AGM, which ever is later.

**J. N. Tikku**  
Joint Director

## 06 Constitution of CLB Benches

Issued by the Company Law Board vide Order Dated 06.09.2012.]

In exercise of the powers conferred by Sub-Section 4(B) of Section 10(B) of the Companies Act, 1956 (1 of 1956) read with Regulation 4 of the 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).
3. Shri Dhan Raj, Member (Technical).

### KOLKATA BENCH

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

### MUMBAI BENCH

1. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
2. Smt. Vimla Yadav, Member (Technical).
3. Shri A. K. Tripathi, Member (Judicial).

### 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 st 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) All matters relating to sections 247, 250, 269 and 388B of the Companies Act, 1956 shall be dealt in the **Principal Bench at New Delhi** by Justice Shri Dilip Raosaheb Deshmukh, Chairman.

## NEW DELHI BENCH

- (2) Matters relating to Sections 111/111A, 235, 237B, 284, 304, 307, 614 and all matters arising under Chapter VI (prevention of oppression and mismanagement) of the Companies Act, 1956 falling within the State of Delhi, Uttar Pradesh, Punjab, Himachal Pradesh and Union Territory of Chandigarh shall be dealt by the **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).
- (3) All Matters relating to Sections 43, 49, 58A, 58AA, 79/80A, 113, 117B, 117C, 118, 144, 163, 167, 186, 196, 219, 225, 614 and 621A of the Companies Act, 1956 and section 45QA of the R.B.I. Act, 1934 shall be dealt by the **New Delhi Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri Dhan Raj, Member (Technical).
- (4) Matters relating to Sections 111/111A, 235, 237B, 284, 304, 307, 614 and all matters arising under Chapter VI (prevention of oppression and mismanagement) of the Companies Act, 1956 falling within the State of Haryana, Rajasthan, Uttarakhand and Jammu & Kashmir shall be dealt by the **New Delhi Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri Dhan Raj, Member (Technical).

## KOLKATA BENCH

- (5) Excepting matters under sections 247, 250, 269 and 388B, all matters under the Companies Act, 1956 and section 45QA of the R.B.I. Act, 1934 shall be dealt by the **Kolkata Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri Amalesh Bandopadhyay, Member (Technical).

## MUMBAI BENCH

- (6) Matters relating to Sections 111/111A, 235, 237B, 284, 304, 307, 614 and all matters arising under Chapter VI (prevention of oppression and mismanagement) of the Companies Act, 1956 falling within the State of Maharashtra shall be dealt by the **Mumbai Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri Ashok Kumar Tripathi, Member (Judicial).
- (7) All matters relating to Sections 43, 49, 58A, 58AA, 79/80A, 113, 117B, 117C, 118, 144, 163, 167, 186, 196, 219, 225, 614 and 621A of the Companies Act, 1956 and section 45QA of the R.B.I. Act, 1934 shall be dealt by the **Mumbai Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Smt. Vimla Yadav, Member (Technical).
- (8) Matters relating to Sections 111/111A, 235, 237B, 284, 304, 307, 614 and all matters arising under Chapter VI (prevention of oppression and mismanagement) of the Companies Act, 1956 falling within the State of Goa, Gujarat, Chhattisgarh, Madhya Pradesh and Union Territories of Dadra and Nagar Haveli and Daman & Diu shall be dealt by the **Mumbai Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Smt. Vimla Yadav, Member (Technical).

## CHENNAI BENCH

- (9) Excepting matters under sections 247, 250, 269 and 388B, all matters under the Companies Act, 1956 and section 45QA of the R.B.I. Act, 1934 shall be dealt by the **Chennai Bench** consisting of anyone of the following:
  - a. Justice Shri Dilip Raosaheb Deshmukh, Chairman.
  - b. Shri. Kanthi Narahari, Member (Judicial).
- 2. Company petition, if any, in which upon conclusion of final hearing order has been reserved by a Member prior to the date of commencement of this order, such Member would pass order in such company petition after due notice to the parties.
- 4. This Order shall come into force with effect from 10.09.2012.

By Order of the Company Law Board

P. K. Malhotra  
Secretary





## 07 Printing of Grievances Redressal Mechanism on Delivery Instruction Form Book

Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/DA/25/2012 dated 21.09.2012.]

1. Please refer to SEBI circular no. SEBI/MRD/DOP/Cir-22/2004 dated July 14, 2004 which specified the information regarding grievance redressal mechanism to be printed on the inside back cover of the Delivery Instruction Form Book issued by all Depository Participants.
2. The contents to be printed in the Delivery Instruction Form Book have been revised in line with recent initiatives taken by SEBI and are enclosed at Annexure A.
3. The Depositories are advised to:-
  - a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above, as may be applicable/necessary ;
  - b) bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website.
4. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

**Maninder Cheema**  
Deputy General Manager

### Annexure A

In case you have grievances against a listed company or intermediary registered with SEBI, you should first approach the concerned company or intermediary against whom you have grievance. If you are not satisfied with their response, you may approach SEBI or other regulatory bodies. You can approach SEBI for following types of grievances :

Listed Companies	Brokers and stock exchanges
<ul style="list-style-type: none"> <li>● Refund/Allotment /Bonus/ Dividend/Rights/Redemption/ Interest</li> <li>● Prelisting offer documents (shares).</li> <li>● Prelisting offer documents (debentures and bonds).</li> <li>● Delisting of Securities</li> <li>● Buyback of Securities</li> <li>● Takeover and Restructuring</li> <li>● Corporate Governance and Listing Conditions</li> </ul>	<ul style="list-style-type: none"> <li>● Stock brokers</li> <li>● Sub brokers</li> <li>● Portfolio managers</li> <li>● Stock exchanges</li> </ul>

<b>Registrar and Transfer Agents Mutual Funds</b>	<b>Other entities</b> Collective Investment Schemes Debenture Trustees Merchant Bankers Bankers to Issue Credit Rating Agencies Custodian of Securities Foreign Institutional Investors Underwriters Venture Capital Funds KYC Registration Agency(KRA) Alternative Investment Fund
<b>Depository and Depository participants</b>	
<b>Information to SEBI:</b> <ul style="list-style-type: none"> <li>● Price Manipulation</li> <li>● Insider trading</li> </ul>	
<p>You can file your complaints online at <a href="http://scores.gov.in">http://scores.gov.in</a> or alternately send your complaints to Office of Investor Assistance and Education of SEBI at Mumbai or Regional Offices at the following addresses:</p> <ul style="list-style-type: none"> <li>● <b>Office of Investor Assistance and Education</b>, SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 021 Tel : 022-26449188 / 26449199 (<a href="http://scores.gov.in">http://scores.gov.in</a>)</li> <li>● SEBI, Northern Regional Office, 5th Floor, Bank of Baroda Building,16, Sansad Marg, New Delhi - 110 001 Tel : 011-23724001-05 (<a href="http://www.sebinro@sebi.gov.in">www.sebinro@sebi.gov.in</a>)</li> <li>● SEBI, Eastern Regional Office, L&amp;T Chambers, 3rd Floor, 16, Camac Street, Kolkata - 700 016 Tel : 033-23023000. (<a href="http://www.sebiero@sebi.gov.in">www.sebiero@sebi.gov.in</a>)</li> <li>● SEBI, Southern Regional Office, 7th Floor, Overseas Towers, 756-L, Anna Salai, Chennai – 600 002 Tel : 044-24674000 / 24674150 (<a href="http://www.sebisro@sebi.gov.in">www.sebisro@sebi.gov.in</a>)</li> <li>● SEBI, Ahmedabad Regional, Office Unit No: 002, Ground Floor, SAKAR I, Near Gandhigram Railway Station, Opp. Nehru Bridge Ashram Road, Ahmedabad - 380 009 Tel : 079-26583633-35 ( <a href="http://www.sebiaro@sebi.gov.in">www.sebiaro@sebi.gov.in</a>)</li> </ul>	
<b>For more information visit our website - <a href="http://scores.gov.in">http://scores.gov.in</a></b>	

## 08 Processing of Investor complaints against KRA {KYC (Know Your Client) Registration Agency} in SEBI Complaints Redress System (SCORES)

Issued by the Securities and Exchange Board of India vide CIR/MIRSD/12/2012 dated 21.09.2012.]

1. SEBI has commenced processing of investor complaints in a centralized web based complaints redress system, "SCORES". The salient features of this system are:
  - Centralised database of all complaints,
  - Online movement of complaints to the concerned KRA,
  - Online upload of Action Taker Report (ATRs) by the concerned KRA, and
  - Online viewing by investors of actions taken on the complaint and its current status.



2. Accordingly, all complaints pertaining to KRAs will be electronically sent through SCORES at <http://scores.gov.in/Admin>. You are hereby directed to view the pending complaints and submit the ATR along with supporting documents electronically in SCORES. Please note that updation of action taken would not be possible with physical ATRs. Hence, submission of physical ATR will not be accepted for complaints lodged in SCORES.
3. The user id and password for logging into SCORES at <http://scores.gov.in/Admin> are being communicated separately to KRAs.
4. KRAs shall take adequate steps for redressal of grievances within one month from the date of receipt of the complaint and keep the investor and SEBI duly informed on the action taken thereon. Failure to comply with the said requirement will render the KRA liable for penal action.
5. KRAs are advised to :
  - a. develop the monitoring mechanism through internal audit and inspections.
  - b. encourage investor to use SCORES for lodging their grievances.
6. This Circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

**A.S.Mithwani**  
Deputy General Manager

## 09 Application Supported by Blocked Amount (ASBA) facility in public/ rights issue

Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/12/2012 dated 13.09.2012.]

1. This has reference to SEBI Circular No. SEBI/CFD/DIL/ASBA/1/2009/30/12 dated December 30, 2009, on the captioned subject.
2. It has come to our notice that some banks while making applications on own account using ASBA facility are doing so without having clear demarcated funds and that some banks are marking lien against credit limits / overdraft facility of their account holders' for ASBA applications.
3. Self Certified Syndicate Banks (SCSBs) are hereby advised to ensure that for applications made by any investor using ASBA facility, the SCSBs shall block the application amount only against/in a funded deposit

account and ensure that clear demarcated funds are available for ASBA applications.

4. SCSBs are also advised to ensure that for making applications on own account using ASBA facility, they should have a separate account in own name with any of the SEBI registered SCSBs. Such account shall be used solely for the purpose of making application in public issues and clear demarcated funds should be available in such account for ASBA applications.
5. This circular shall come into force with immediate effect.
6. This circular is issued in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Issues and Listing".

**Harini Balaji**  
Deputy General Manager

## 10 Steps to re-energise Mutual Fund Industry

Issued by the Securities and Exchange Board of India vide CIR/IMD/DF/21/2012 dated 13.09.2012.]

In order to increase penetration of mutual fund products and to energise the distribution network while protecting the interest of investors, SEBI held a series of meetings with various stakeholders in the mutual fund industry. Mutual Fund Advisory Committee (MFAC) also deliberated and offered its recommendations on issues confronted by the industry. Pursuant to SEBI Board's approval to various recommendations, it has been decided to implement the following:

### A. Total Expense Ratio (TER)

1. Additional TER can be charged up to 30 basis points on daily net assets of the scheme as per regulation 52 of SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred to as Regulations), if the new inflows from beyond top 15 cities are at least (a) 30% of gross new inflows in the scheme or (b) 15% of the average assets under management (year to date) of the scheme, whichever is higher.

In case inflows from beyond top 15 cities is less than the higher of (a) or (b) above, additional TER on daily net assets of the scheme shall be charged as follows:

$$\frac{\text{Daily net assets} \times 30 \text{ basis points} \times \text{New inflows from beyond top 15 cities}}{365 \times \text{Higher of (a) or (b) above}}$$

\* 366, wherever applicable.

The top 15 cities shall mean top 15 cities based on



# From the Government

Association of Mutual Funds in India (AMFI) data on 'AUM by Geography – Consolidated Data for Mutual Fund Industry' as at the end of the previous financial year.

2. The additional TER on account of inflows from beyond top 15 cities so charged shall be clawed back in case the same is redeemed within a period of 1 year from the date of investment.
3. Mutual funds/AMCs shall make complete disclosures in the half yearly report of Trustees to SEBI regarding the efforts undertaken by them to increase geographical penetration of mutual funds and the details of opening of new branches, especially at locations beyond top 15 cities.

## B. Service Tax

1. Mutual funds /AMCs may charge service tax on investment and advisory fees to the scheme in addition to the maximum limit of TER as prescribed in regulation 52 of the Regulations.
2. Service tax on other than investment and advisory fees, if any, shall be borne by the scheme within the maximum limit of TER as per regulation 52 of the Regulations.
3. Service tax on exit load, if any, shall be paid out of the exit load proceeds and exit load net of service tax, if any, shall be credited to the scheme.
4. Service tax on brokerage and transaction cost paid for asset purchases, if any, shall be within the limit prescribed under regulation 52 of the Regulations.

## C. Single plan structure for mutual fund schemes

1. Mutual funds/AMCs shall launch schemes under a single plan and ensure that all new investors are subject to single expense structure.
2. Existing schemes with multiple plans based on the amount of investment (i.e. retail, institutional, super-institutional, etc) shall accept fresh subscriptions only under one plan.
3. Other plans will continue till the existing investors remain invested in the plan.

## D. Separate option for direct investments

1. Mutual funds/AMCs shall provide a separate plan for direct investments, i.e., investments not routed through a distributor, in existing as well as new schemes.
2. Such separate plan shall have a lower expense ratio excluding distribution expenses, commission, etc., and no commission shall be paid from such plans. The plan shall also have a separate NAV.

## E. Distribution of mutual fund products

1. In terms of SEBI Circular no. CIR No.10 / 310 /01 dated September 25, 2001, MFD/CIR/20/23230/2002 dated November 28, 2002, SEBI/MFD/CIR No.01/6693/03 dated April 03, 2003, SEBI/IMD/CIR No.2/254/04 dated February 04, 2004 and Cir / IMD / DF/5 / 2010 dated June 24, 2010, agents/ distributors of mutual fund units are required to obtain certification from the National Institute of Securities Markets (NISM) and registration from AMFI.
2. A new cadre of distributors, such as postal agents, retired government and semi-government officials (class III and above or equivalent) with a service of at least 10 years, retired teachers with a service of at least 10 years, retired bank officers with a service of at least 10 years, and other similar persons (such as Bank correspondents) as may be notified by AMFI/AMC from time to time, shall be allowed to sell units of simple and performing mutual fund schemes.
3. Simple and performing mutual fund schemes shall comprise of diversified equity schemes, fixed maturity plans (FMPs) and index schemes and should have returns equal to or better than their scheme benchmark returns during each of the last three years.
4. These new cadre of distributors would require a simplified form of NISM certification and AMFI Registration.
5. AMFI shall create a unique identity number of the employee/ relationship manager/ sales person of the distributor interacting with the investor for the sale of mutual fund products, in addition to the AMFI Registration Number (ARN) of the distributor.
6. The application form for mutual fund schemes shall have provision for disclosing the unique identity number of such sales personnel along with the ARN of the distributor.

## F. Investor Education and Awareness

1. Mutual Funds/AMCs shall annually set apart at least 2 basis points on daily net assets within the maximum limit of TER as per regulation 52 of the Regulations for investor education and awareness initiatives. Mutual Funds shall make complete disclosures in the half yearly trustee report to SEBI regarding the investor education and awareness initiatives undertaken.

## G. Harmonizing applicability of NAV across schemes

1. In partial modification to SEBI circular no. SEBI/IMD/CIR No. 11/142521/08 dated October 24, 2008 and Cir/IMD/DF/19/2010 dated November 26, 2010, in respect of purchase of units of mutual fund schemes (other than liquid schemes), the closing





NAV of the day on which the funds are available for utilization shall be applicable for application amount equal to or more than 2 lakh, irrespective of the time of receipt of such application.

## H. Monthly Portfolio Disclosures

1. Mutual funds/AMCs shall disclose portfolio (along with ISIN) as on the last day of the month for all their schemes on their respective website on or before the tenth day of the succeeding month in a user-friendly and downloadable format (preferably in a spreadsheet).
2. The format for monthly portfolio disclosure shall be same as that of half yearly portfolio disclosures.
3. Mutual funds/AMCs may disclose additional information (such as ratios, etc.) subject to compliance with the Advertisement Code.
4. In this regard, SEBI circular no. SEBI/IMD/CIR No. 15/157701/2009 dated March 19, 2009 stands withdrawn.

## I. Cash investments in mutual funds

1. In partial modification to SEBI Circular no. MFD/CIR/15/19133/2002 dated September 30, 2002 and in order to help enhance the reach of mutual fund products amongst small investors, who may not be tax payers and may not have PAN/bank accounts, such as farmers, small traders/businessmen/workers, cash transactions in mutual funds to the extent of 20,000/- per investor, per mutual fund, per financial year shall be allowed subject to (i) compliance with Prevention of Money Laundering Act, 2002 and Rules framed there under; the SEBI Circular(s) on Anti Money Laundering (AML) and other applicable AML rules, regulations and guidelines and (ii) sufficient systems and procedures in place.
2. Repayment in the form of redemptions, dividend, etc. with respect to aforementioned investments shall be paid only through banking channel.

## J. Prudential limits and disclosures on portfolio concentration risk in debt-oriented mutual fund schemes

1. Mutual Funds/AMCs shall ensure that total exposure of debt schemes of mutual funds in a particular sector (excluding investments in Bank CDs, CBLO, G-Secs, T-Bills and AAA rated securities issued by Public Financial Institutions and Public Sector Banks) shall not exceed 30% of the net assets of the scheme.
2. Existing schemes shall comply with the aforementioned requirement within a period of one year from the date of issue of this circular. During this one year, total exposure of existing debt schemes of mutual funds in a particular sector should not

increase from the levels existing (if above 30%) as on the date of issuance of this circular.

3. Appropriate disclosures shall be made in Scheme Information Document (SID) and Key Information Memorandum (KIM) of debt schemes.

## K. Transaction Charges

1. In partial modification to SEBI circular no. Cir/ IMD/ DF/13/ 2011 dated August 22, 2011, distributors shall have also the option to either opt in or opt out of levying transaction charge based on type of the product.

## L. Disclosure with respect to Half Yearly Financial Results

1. Mutual funds/AMCs shall make half yearly disclosures of their unaudited financial results on their respective website in a user-friendly and downloadable format (preferably in a spreadsheet).

## M. Additional Disclosures

1. In partial modification to SEBI circular no. Cir/ IMD/ DF/13/ 2011 dated August 22, 2011, Mutual Funds/AMCs shall, in addition to the total commission and expenses paid to distributors, make additional disclosures regarding distributor-wise gross inflows (indicating whether the distributor is an associate or group company of the sponsor(s) of the mutual fund), net inflows, average assets under management and ratio of AUM to gross inflows on their respective website on an yearly basis.  
In case the data mentioned above suggests that a distributor has an excessive portfolio turnover ratio, i.e. more than two times the industry average, AMCs shall conduct additional due-diligence of such distributors.
2. Mutual Funds / AMCs shall also submit the data mentioned in paragraph 1 above to AMFI and the consolidated data in this regard shall be disclosed on AMFI website.

## N. Applicability of the Circular

1. All the paras except para D will become effective from October 1, 2012.
2. Para D of the circular will be effective from January 1, 2013.
3. Necessary amendments to the Regulations to give effect to the contents in the circular would be separately notified.

This circular is issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of



regulation 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of and to regulate the securities market.

**Parag Basu**  
General Manager

## 11 Addendum to Circular No. CIR/MRD/DP/21/2012 dated August 02, 2012 on activation of ISIN in case of additional issue of shares/ securities

Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/24/2012 dated 11.09.2012.]

- Please refer to SEBI circular CIR/MRD/DP/21/2012 dated August 02, 2012 on activation of ISIN in case of additional issue of shares/ securities.
- In partial modification, the earlier point 3 and 5 of the aforesaid circular shall be replaced as under -  
*"3. Further, in order to curtail the transfer of additional issue of shares / securities including by way of further public offerings, rights issue, preferential allotment, bonus issue etc of the listed company, prior to receipt of final listing / trading approval, the depositories shall devise a mechanism so that such new securities created shall be frozen till the time final listing/ trading permission is granted by the exchange."*  
*"5. The stock exchanges are advised to provide the details to the depositories whenever final listing / trading permission is given to securities. Further, in case of issuance of equity shares by a company, listed on multiple stock exchanges, the concerned stock exchanges shall synchronize their effective dates of listing / trading approvals and intimate the same to depositories in advance."*
- The Depositories are advised to:-
  - make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/ necessary;
  - bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website.
- This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

**Maninder Cheema**  
Deputy General Manager

## 12 Know Your Client Requirements

Issued by the Securities and Exchange Board of India vide CIR/MIRSD/11/2012 dated 05.09.2012.]

- This has reference to SEBI circulars No CIR/MIRSD/16/2011 dated August 22, 2011 and MIRSD/SE/Cir-21/2011 dated October 5, 2011 on know your client norms for the securities market.
- SEBI has received representations regarding operational issues in the implementation of aforesaid SEBI Circulars in case of foreign investors viz. Foreign Institutional Investors, Sub Accounts and Qualified Foreign Investors. In consultation with the Stock Exchanges, Depositories and Intermediaries, certain clarifications are issued, as given in Annexure A, with respect to these investors.
- Further, the intermediaries shall strictly follow the risk based due diligence approach as prescribed by SEBI Master Circular on AML No. CIR/ISD/AML/3/2010 dated December 31, 2010. Also, they shall conduct ongoing client due diligence based on the risk profile and financial position of the clients as prescribed in the Circular.
- The provisions of this circular are applicable for both new and existing clients.
- 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.

**A.S.Mithwani**  
Deputy General Manager

### Annexure A

Sr. No.	Relevant requirements on KYC Form as per SEBI Circulars dated August 22, 2011 and October 5, 2011	Clarifications for Foreign Investors viz. FIs, Sub Accounts and QFIs
1	Authorized signatories list with specimen signatures to be submitted.	If the client has authorized the Global Custodian - an entity regulated by an appropriate foreign regulatory authority or Local Custodian registered with SEBI as a signatory by way of a Power of Attorney ('PoA') to sign on its behalf, such PoA may be accepted.
2	Intermediary has to get the KYC form filled from the clients.	The Global Custodian or the Local Custodian may fill the KYC form, if authorized through the PoA.
3	PAN to be taken for individual promoters holding control - either directly or indirectly, Partners/Trustees, whole time directors/two directors in charge of day to day operations and persons authorized to deal in securities on behalf of company/firm/ others.	Not applicable.



4	For foreign nationals, (allowed to trade subject to RBI and FEMA guidelines), copy of passport/PIO Card/OCI Card is mandatory.	Proof of Identity document duly attested by the entities authorized for the same as per SEBI Circular dated October 5, 2011 or authorised signatories as mentioned at point 1 above may be adequate in lieu of the passport copy.
5	For foreign entities, CIN is optional; and in the absence of DIN no. for the directors their passport copy should be given.	CIN no. is provided as an example and requires the client's registration number in its respective country. If the foreign entity does not have CIN, the equivalent registration number of the entity may be mentioned. If it does not have any registration number, then SEBI Registration number may be mentioned.  In case the directors (as per point 3 above), of the client do not have an equivalent of DIN in the client's respective Jurisdiction, "Not Applicable" may be stated. Copy of the Passport may not be provided.
6	It shall be mandatory for all the intermediaries addressed in this circular to carry out In person verification of their clients.	In person verification is not applicable for a non-individual Client.  In case of QFI – Individual Client, IPV shall be carried out by SEBI registered intermediary as per SEBI Circular dated August 22, 2011.
7	Copies of all the documents submitted by the applicant should be self-attested and accompanied by originals for verification.  In case the original of any document is not produced for verification, then the copies should be properly attested by entities authorized for attesting the documents, as per the list mentioned in the circular dated Aug 22, 2011.	In the absence of originals for verification, documents may be attested as per SEBI Circulars dated August 22, 2011 and October 5, 2011 or authorised signatories as mentioned at point 1 above.
8	<b>A.</b> Copy of the balance sheets for the last 2 financial years (to be submitted every year), annual gross income and net worth details. <b>B.</b> Copy of latest share holding pattern including list of all those holding control, either directly or indirectly, in the company in terms of SEBI takeover Regulations, duly certified by the company secretary/Whole time director/MD (to be submitted every year). POI and POA of individual promoters holding control - either directly or indirectly.	<b>A.</b> Though it is not mandatory, the intermediaries shall carry out due diligence as per the PMLA and SEBI Master Circular on AML about the financial position of the client. <b>B.</b> List of beneficial owners with shareholding or beneficial interest in the client equal to or above 25% to be obtained. If Global Custodian /Local Custodian provides an undertaking to submit these details, then intermediary may take such undertaking only. Any change in the list to be obtained based on risk profile of the client.

9	Name, residential address, photograph POI and POA of Partners/Trustees, whole time directors/two directors in charge of day to day operations and individual promoters holding control - either directly or indirectly.	<b>A.</b> Not required if Global Custodian/Local Custodian gives an undertaking to provide the following documents as and when requested for by intermediary: 1) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and 2) An officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf. <b>B.</b> If Global Custodian/Local Custodian does not provide such undertaking as stated in A above, intermediary shall take required details from Foreign Investors.
10	Copy of SEBI registration certificate to be provided.	Custodian shall verify the SEBI registration certificate copy with the originals or with the details available on SEBI website and provide duly certified copy of such verified SEBI registration certificate to the intermediary.
11	Every client has to provide the trading account related details, as required by Annexure 3 to the SEBI circular dated August 22, 2011.	Annexure 3 to the circular dated August 22, 2012 pertaining to trading account related details is not applicable for FIIs and Sub Accounts. However, Intermediaries are required to update details of any action taken or proceedings initiated against the entity by the foreign regulators or SEBI/ Stock exchanges. For QFI, the intermediary shall collect the following details from Annexure 3: ● Bank Account details ● Depository account ● Regulatory Actions as mentioned above
12	Intermediary shall provide a set of all the executed documents to the client, free of charge.	Intermediary shall display these standard documents prescribed by SEBI on its web site, intimate the clients regarding the link and email a copy of the same to the client.
13	Place of incorporation	If place of incorporation is not available, Intermediary should take Registered office address/ principal place of business of entity.
14	Date of commencement of business	Not applicable





# From the Government

15	Copies of the Memorandum and Articles of Association and certificate of incorporation	If FII or Sub Account does not have certificate of Incorporation or Memorandum and Articles of Association, then any reasonable equivalent legal document evidencing formation of entity may be allowed.
16	Copy of the Board Resolution for investment in securities market	Not applicable.

## Exemptions -

In case of Sovereign Wealth Fund, Foreign Governmental Agency, Central bank, International or Multilateral organization and Central or State Government Pension Fund, the intermediary shall satisfy itself about their status and thereafter, only provisions at point 9 above shall be applicable. Further, these entities shall also be a part of KRA centralised system of KYCs.

## 13 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/23/2012 dated 03.09.2012.]

- It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
- The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
  - 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.
  - There are no other grounds/reasons for continuation of the trading in TFTS.
- The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

**Maninder Cheema**  
Deputy General Manager

## Annexure A

Sr. No.	Name of the Company	ISIN
1.	Premier Pipes Limited	INE448N01016
2.	IFM Impex Global Limited	INE169F01014
3.	H R B Floriculture Limited	INE284D01016
4.	Turbotech Engineering Limited	INE764M01018
5.	Caprolactam Chemicals Limited	INE470N01010
6.	Thakral Services (India) Limited	INE190F01010
7.	Raja Bahadur International Limited	INE491N01016
8.	The Amalgamated Electricity Company Limited	INE492N01014
9.	Kuwer Industries Limited	INE430F01010
10.	Dahyabhai Sons Limited	INE232N01014
11.	Pankaj Piyush Trade And Investment Limited	INE820M01018
12.	Mahamaya Investments Limited	INE570N01017
13.	Kamalakshi Finance Corporation Limited	INE286N01010
14.	Unno Industries Limited	INE142N01015
15.	Advance Petrochemicals Limited	INE334N01018
16.	Shree Ganesh Elastoplast Limited	INE400N01017
17.	Shri Kalyan Holdings Limited	INE079N01019
18.	Sam Leaseco Limited	INE368N01016
19.	Surabhi Chemicals And Investments Limited	INE401F01011
20.	Pyramid Trading And Finance Limited	INE231N01016
21.	Fortune International Limited	INE501D01013
22.	Union Quality Plastics Limited	INE338N01019
23.	Ganesh Holdings Limited	INE932M01011
24.	Chambal Breweries & Distilleries Limited	INE417N01011
25.	Fine Plast Polymers Limited	INE194N01016
26.	DEE Kartavya Finance Limited	INE219N01011
27.	Macro (International) Exports Limited	INE307N01014
28.	Gujchem Distillers India Limited	INE218N01013
29.	Parasrampur Credit And Investments Limited	INE403N01011
30.	Rabha Plastics Limited	INE532D01018
31.	Tirth Plastic Limited	INE008N01018
32.	S V Trading & Agencies Limited	INE404N01019
33.	Svaraj Trading And Agencies Limited	INE406N01014
34.	RCC Cement Limited	INE335N01015
35.	Crestchem Limited	INE293N01016
36.	Kanco Tea & Industries Ltd.	INE398L01017

## 14 Manner of achieving minimum public shareholding requirements in terms of SCRR, 1957

Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/11/2012 dated 29.08.2012.]

- Please refer to circular Nos. CIR/CFD/DIL/10/2010 and CIR/CFD/DIL/1/2012 dated December 16, 2010 and February 08, 2012 respectively, on the captioned subject.
- In continuation of the above and with a view to facilitate listed entities to comply with the minimum public shareholding requirements within the time specified in Securities Contracts (Regulation) Rules, 1957 ("SCRR, 1957"), the following additional methods shall be available:-



- a. Rights Issues to public shareholders, with promoters/promoter group shareholders forgoing their rights entitlement.
  - b. Bonus Issues to public shareholders, with promoters/promoter group shareholders forgoing their bonus entitlement.
3. Listed entities desirous of achieving the minimum public shareholding requirement through other means may approach SEBI with appropriate details. Further, listed entities desirous of seeking any relaxation from the available methods may approach SEBI with appropriate details. Such requests would be considered by SEBI based on merit. SEBI would endeavour to communicate its decision within 30 days from the date of receipt of such requests.
  4. Necessary amendments to Clause 40A of the Listing Agreement based on the above are placed in the Annexure to this Circular.
  5. The above listing conditions are specified in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992, and Rule 19A of the Securities Contracts (Regulation) Rules, 1957. The said listing conditions should form part of the existing Listing Agreement of the stock exchange.
  6. All stock exchanges are advised to ensure compliance with this circular and carry out the amendments in their Listing Agreement as per the Annexure to this circular.
  7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Issues and Listing".

**Sunil Kadam**  
General Manager

#### Annexure

#### Amendments to the Equity Listing Agreement

In sub-clause (ii) of Clause 40A of the Listing Agreement, after item (d), the following shall be inserted:-

- "(e) *Rights Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*
- (f) *Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*
- (g) *any other method as may be approved by SEBI, on a case to case basis."*

# Economic Laws

## 15 Amendment of the existing policy on Foreign Direct Investment in Single-Brand Product Retail Trading

[Issued by the DIPP, Ministry of Commerce & Industry vide Press Note No. 4 (2012 Series) dated 20.09.2012.]

### 1.0 Present Position:

1.1 Paragraph 6.2.16.4 of 'Circular 1 of 20 12-Consolidated FDI Policy', effective from April 10, 2012, relating to single-brand product retail trading, presently reads as below:

6.2.16.4	Single Brand product retail trading	100%	Government
	<p>(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.</p> <p>(2) FDI in Single Brand product retail trading would be subject to the following conditions:</p> <p>(a) Products to be sold should be of a 'Single Brand' only.</p> <p>(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.</p> <p>(c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.</p> <p>(d) The foreign investor should be the owner of the brand.</p> <p>(e) In respect of proposals involving FDI beyond 51%, mandatory sourcing of at least 30% of the value of products sold would have to be done from Indian 'small industries/ village and cottage industries, artisans and craftsmen'. 'Small industries' would be defined as industries which have a total investment in plant &amp; machinery not exceeding US \$ 1.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. Further, if at any point in time, this valuation is exceeded, the industry shall not qualify as a 'small industry' for this purpose. The compliance of this condition will be ensured through self-certification by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts, which the company will be required to maintain.</p> <p>(3) Application seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy &amp; Promotion. The application would specifically indicate the product! product categories which are proposed to be sold under a 'Single</p>		



# From the Government

Brand'. Any addition to the product! product categories to be sold under 'Single Brand' would require a fresh approval of the Government.

- (4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the products proposed to be sold satisfy the notified guidelines, before being considered by the FIPB for Government approval.

## 2.0 Revised Position:

- 2.1 The Government of India has reviewed the position in this regard and decided to amend paragraphs 6.2.16.4 (2) (d) & 6.2.16.4 (2) (e) of the existing policy.

## 3.0 Amendment to paragraph 6.2.16.4:

- 3.1 Accordingly, paragraph 6.2.16.4 of 'Circular 1 of 2012- Conso1idated FDI Policy', effective from April 10, 2012, is amended, as below:

6.2.16.4 Single Brand product retail trading	100%	Government
<p>(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.</p> <p>(2) FDI in Single Brand product retail trading would be subject to the following conditions:</p> <p>(a) Products to be sold should be of a 'Single Brand' only.</p> <p>(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.</p> <p>(c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.</p> <p>(d) Only one non-resident entity, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in the country, for the specific brand, through a legally tenable agreement, with the brand owner for undertaking single brand product retail trading in respect of the specific brand for which approval is being sought. The onus for ensuring compliance with this condition shall rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing! franchise/sub-licence agreement, specifically indicating compliance with the above condition.</p> <p>(e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1 " April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out single-brand product retail</p>		

trading.

- (f) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of single-brand retail trading.
- (3) Applications seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product! product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product! product categories to be sold under 'Single Brand' would require a fresh approval of the Government.
- (4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

## 4.0 The above decision will take immediate effect.

Anjali Prasad  
Joint Secretary

# 16 Review of the policy on Foreign Direct Investment- allowing FDI in Multi-Brand Retail Trading

[Issued by the DIPP, Ministry of Commerce & Industry vide Press Note No. 5 (2012 Series) dated 20.09.2012.]

## 1.0 Present Position:

Foreign Direct Investment (FDI) is prohibited in retail trading, except in single-brand product retail trading, in which FDI, up to 100%, is permitted, under the Government route, subject to specified conditions.

## 2.0 Revised Position:

The Government of India has reviewed the extant policy on FDI and decided to permit FDI, up to 51%, under the Government route, in Multi-Brand Retail Trading, subject to specified conditions.

- 3.0 Accordingly, the following amendment is made in 'Circular 1of 2012- Consolidated FDI Policy', issued on 10.04.2012, by the Department ofIndustrial Policy & Promotion:

- 3.1 Paragraph 6.1 - 'Prohibited Sectors', is substituted with the following:

## "6.1 PROHIBITED SECTORS:

FDI is prohibited in:

- Lottery Business, including Government /private lottery, online lotteries, etc.
- Gambling and Betting, including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)





- (f) Real Estate Business or Construction of Farm Houses
- (g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (h) Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

**Foreign technology collaboration in any form, including licensing for franchise, trademark, brand name, management contract, is also prohibited for Lottery Business and Gambling and Betting activities."**

### 3.2 A new paragraph as paragraph 6.2.16.5 is inserted below paragraph 6.2.16.4 as below:

6.2.16.5	Multi Brand Retail Trading	51%	Government
	<p>(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.</li> <li>(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.</li> <li>(iii) At least 50% of total FDI brought in shall be invested in 'backend infrastructure' within three years of the first tranche of FDI, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back end infrastructure.</li> <li>(iv) At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian 'small industries' which have a total investment in plant &amp; machinery not exceeding US \$1.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. Further, if at any point in time, this valuation is exceeded, the industry shall not qualify as a 'small industry' for this purpose. This procurement requirement would have to be met, in the first instance, as an average of five years' total c value of the manufactured/ processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.</li> <li>(v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be crosschecked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.</li> <li>(vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking; In States/ Union</li> </ul>		

Territories not having cities with population of more than 10 lakh as per 2011 Census, retail sales outlets may be set up in the cities of their choice, preferably the largest city and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities. The locations of such outlets will be restricted to conforming areas, as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

(vii) Government will have the first right to procurement of agricultural products.

(viii) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is annexed. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the annexed list accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/regulations, such as the Shops and Establishments Act etc.

(ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multibrand retail trading.

(x) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

### 4.0 The above decision will take immediate effect.

**Anjali Prasad**

Joint Secretary

**ANNEXURE**

#### LIST OF STATES/ UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(i)(viii)

1. Andhra Pradesh
2. Assam
3. Delhi
4. Haryana
5. Jammu & Kashmir
6. Maharashtra
7. Manipur
8. Rajasthan
9. Uttarakhand
10. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

## 17 Review of the policy on Foreign Direct Investment in the Civil Aviation sector

[Issued by the DIPP, Ministry of Commerce & Industry vide Press Note No. 6 (2012 Series) dated 20.09.2012.]

### 1.0 Present Position:

1.1 Paragraph 6.2.9.3 of 'Circular 1 of 20 12-Consolidated



# From the Government

FDI Policy', effective from April 10, 2012, relating to air transport services, presently reads as below:

6.2.9.3	<b>Air Transport Services</b>		
	(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.		
	(b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled and Non-Scheduled Air Transport Services except Cargo airlines.		
	(c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.		
	(1) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49%FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(3) Helicopter services/ seaplane services requiring DGCA approval	100%	Automatic

## 2.0 Revised Position:

2.1 The Government of India has reviewed the position in this regard and decided to permit foreign airlines also to invest, in the capital of Indian companies, operating scheduled and nonscheduled air transport services, up to the limit of 49% of their paid-up capital.

2.2 Such investment would be subject to the following conditions:

- (i) It would be made under the Government approval route.
- (ii) The 49% limit will subsume FDI and FII investment.
- (iii) The investments so made would need to comply with the relevant regulations of SEBI, such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/ Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations.
- (iv) A Scheduled Operator's Permit can be granted only to a company:
  - a) *that is registered and has its principal place of business within India*
  - b) *the Chairman and at least two-thirds of the Directors of which are citizens of India and*
  - c) *the substantial ownership and effective control of which is vested in Indian nationals*
- (v) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be

cleared from security view point before deployment; and

- (vi) All technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.

2.3 The above revised policy is not applicable to Air India.

## 3.0 Amendment to paragraph 6.2.9.3:

3.1 Accordingly, paragraph 6.2.9.3 of 'Circular 1 of 2012- Consolidated FDI Policy', effective from April 10,2012, is amended, as below:

6.2.9.3	<b>Air Transport Services</b>		
	(1) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49%FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(3) Helicopter services/ seaplane services requiring DGCA approval	100%	Automatic
6.2.9.3.1	<b>Other conditions:</b>		
	(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.		
	(b) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above.		
	(c) Foreign airlines are also, henceforth, allowed to invest, in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions: <ol style="list-style-type: none"> <li>(i) It would be made under the Government approval route.</li> <li>(ii) The 49% limit will subsume FDI and FII investment.</li> <li>(iii) The investments so made would need to comply with the relevant regulations of SEBI, such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/ Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations.</li> </ol>		
	(iv) A Scheduled Operator's Permit can be granted only to a company: <ol style="list-style-type: none"> <li>a) <i>that is registered and has its principal place of business within India;</i></li> <li>b) <i>the Chairman and at least two-thirds of the Directors of which are citizens of India; and</i></li> <li>c) <i>the substantial ownership and effective control of which is vested in Indian nationals.</i></li> </ol>		
	(v) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment; and		
	(vi) All technical equipment that might be imported into India as a result of such investment shall require		



clearance from the relevant authority in the Ministry of Civil Aviation.

**Note:** The FDI limits/entry routes, mentioned at paragraph 6.2.9.3 (1) and 6.2.9.3 (2) above, are applicable in the situation where there is no investment by foreign airlines.  
(d) The policy mentioned at (c) above is not applicable to M/s Air India Limited.

#### 4.0 The above decision will take immediate effect.

Anjali Prasad  
Joint Secretary

## 18 Review of the policy on Foreign Investment (FI) in companies operating in the Broadcasting Sector

[Issued by the DIPP, Ministry of Commerce & Industry vide Press Note No. 7 (2012 Series) dated 20.09.2012.]

### 1.0 Present Position:

1.1 As per extant policy, the foreign investment (FI) limits, in companies operating in the Broadcasting Sector, are set out in paragraph 6.2.7 of 'Circular 1 of 2012 - Consolidated FDI Policy', issued by the Department of Industrial Policy and Promotion (DIPP), on 10.04.2012.

### 2.0 Revised Position:

2.1 The Government of India has reviewed the position in this regard and decided to amend the foreign investment limits, in companies engaged in providing broadcasting carriage services, in the manner indicated below, subject to such terms and conditions, as may be specified by the Ministry of Information and Broadcasting from time to time:

(1) **Teleports (setting up up-linking HUBs/teleports); Direct to Home (DTH); Cable Networks (MSOs operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability):**

Increase in the foreign investment (FI) limit from 49% to 74%, subject to:

- (a) Foreign investment up to 49% being permitted under the automatic route; and
- (b) Foreign investment beyond 49% and up to 74% being permitted under the Government route.

(2) **Mobile TV:**

Permitting foreign investment (FI) up to 74%, subject to:

- (a) Foreign investment up to 49% being permitted under the automatic route; and
- (b) Foreign investment beyond 49% and up to 74% being permitted under the Government route.

2.2 The foreign investment (FI) limit, in companies

engaged in the aforesaid activities of the I&B sector, shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities.

2.3 The terms and conditions relating to security and other conditions, will separately be incorporated in the sectoral guidelines of each broadcasting carriage service, as specified in paragraph 3.0 below.

3.0 Accordingly, paragraph 6.2.7 under 'Circular 1 of 2012- Consolidated FDI Policy' is substituted with the following:

Sl. No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
6.2.7	<b>Broadcasting</b>		
6.2.7.1	<b>Broadcasting Carriage Services</b>		
6.2.7.1.1	(1) <b>Teleports</b> (setting up of up-linking HUBs/Teleports); (2) <b>Direct to Home (DTH)</b> ; (3) <b>Cable Networks</b> (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) <b>Mobile TV</b> ; (5) <b>Headend-in-the Sky Broadcasting Service (HITS)</b>	74%	Automatic up to 49%  Government route beyond 49% and up to 74%
6.2.7.1.2	<b>Cable Networks</b> (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	49%	Automatic
6.2.7.2	<b>Broadcasting Content Services</b>		
6.2.7.2.1	<b>Terrestrial Broadcasting FM (FM Radio)</b> , subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	26%	Government
6.2.7.2.2	<b>Up-linking of 'News &amp; Current Affairs' TV Channels</b>	26%	Government
6.2.7.2.3	<b>Up-linking of Non-'News &amp; Current Affairs' TV Channels/ Down-linking of TV Channels</b>	100%	Government
6.2.7.3	FDI for Up-linking/Down-linking TV Channels will be subject to compliance with the relevant Up-linking/Down-linking Policy notified by the Ministry of Information & Broadcasting from time to time.		





# From the Government

6.2.7.4	Foreign investment (FI) in companies engaged in all the aforesaid services will be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.
6.2.7.5	The foreign investment (FI) limit in companies engaged in the aforesaid activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities.
6.2.7.6	<p>Foreign investment in the aforesaid broadcasting carriage services will be subject to the following security conditions/terms:</p> <p><b>Mandatory Requirement for Key Executives of the Company</b></p> <p>(i) The majority of Directors on the Board of the Company shall be Indian Citizens.</p> <p>(ii) The Chief Executive Officer (CEO), Chief Officer In-charge of technical network operations and Chief Security Officer should be resident Indian Citizens.</p> <p><b>Security Clearance of Personnel</b></p> <p>(iii) The Company, all Directors on the Board of Directors and such key executives like Managing Director / Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), shareholders who individually hold 10% or more paid-up capital in the company and any other category, as may be specified by the Ministry of Information and Broadcasting from time to time, shall require to be security cleared.</p> <p>In case of the appointment of Directors on the Board of the Company and such key executives like Managing Director / Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), etc., as may be specified by the Ministry of Information and Broadcasting from time to time, prior permission of the Ministry of Information and Broadcasting shall have to be obtained.</p> <p>It shall be obligatory on the part of the company to also take prior permission from the Ministry of Information and Broadcasting before effecting any change in the Board of Directors.</p> <p>(iv) The Company shall be required to obtain security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract, and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment. The security clearance shall be required to be obtained every two years.</p> <p><b>Permission <i>vis-a-vis</i> Security Clearance</b></p> <p>(v) The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn the permission granted is liable to be terminated forthwith.</p> <p>(vi) In the event of security clearance of any of the persons associated with the permission holder/licensee or foreign personnel is denied or withdrawn for any reasons whatsoever,</p>

the permission holder/licensee will ensure that the concerned person resigns or his services terminated forthwith after receiving such directives from the Government, failing which the permission/license granted shall be revoked and the company shall be disqualified to hold any such Permission/license in future for a period of five years.

## Infrastructure/Network/Software related requirement

- (vii) The officers/officials of the licensee companies dealing with the lawful interception of Services will be resident India citizens.
- (viii) Details of infrastructure/network diagram (technical details of the network) could be provided, on a need basis only, to equipment suppliers/manufactures and the affiliate of the licensee company. Clearance from the licensor would be required if such information is to be provided to anybody else.
- (ix) The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant Law.
- (x) The Company must provide traceable identity of their subscribers.

## Monitoring, Inspection and Submission of Information

- (xi) The Company should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location as and when required by Government.
- (xii) The company, at its own costs, shall, on demand by the government or its authorized representative, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring or the broadcasting service by or under supervision of the Government or its authorized representative.
- (xiii) The Government of India, Ministry of Information & Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the right of Government or its authorized representative to carry out the inspection. The company will, if required by the Government its authorized representative, provide necessary facilities for continuous monitoring for any particular aspect of the company's activities and operations. Continuous monitoring, however, will be confined only to security related aspects, including screening of objectionable content.
- (xiv) The inspection will ordinarily be carried out by the government of India, Ministry of Information & Broadcasting or its authorized representative after reasonable notice, except in circumstances where giving such a notice will defeat the very purpose of the inspection.
- (xv) The company shall submit such information with respect to its services as may be required by the Government or its authorized representative, in the format as may be required, from time to time.
- (xvi) The permission holder/licensee shall be liable to furnish the Government of India or its authorized representative or TRAI or its authorized representative, such reports, accounts, estimates, returns or such other relevant information and at such periodic intervals or such times as may be required.
- (xvii) The service providers should familiarize/train designated officials or the Government or officials of TRAI or its authorized representative(s) in respect of relevant operations/features of their systems.

## National Security Conditions

- (xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle. The Government of India, Ministry of Information and Broadcasting shall have the right to



temporally suspend the permission of the permission holder/Licensee in public interest or for national security for such period or periods as it may direct. The company shall immediately comply with any directives issued in this regard failing which the permission issued shall be revoked and the company disqualified to hold any such permission in further for a period or five years.

(xix) The company shall not import or utilize any equipment, which are identified as unlawful and/or render network security vulnerable.

#### Other conditions

(xx) Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of broadcasting services.

(xxi) Licensee will ensure that broadcasting service installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.

#### 4.0 The above decision will take immediate effect.

Anjali Prasad

Joint Secretary

## 19 Policy on foreign investment in Power Exchanges

[Issued by the DIPP, Ministry of Commerce & Industry vide Press Note No. 8 (2012 Series) dated 20.09.2012.]

#### 1.0 Present Position:

- 1.1 As per extant policy, FDI, up to 100%, under the automatic route, is permitted in the power sector (except atomic energy). This includes generation, transmission and distribution of electricity, as well as power trading, subject to the provisions of the Electricity Act, 2003.
- 1.2 Extant policy, however, does not provide any specific dispensation for foreign investment in power exchanges.

#### 2.0 Revised Position:

- 2.1 The Government of India has reviewed the position in this regard and decided to permit foreign investment, up to 49%, in Power Exchanges, registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010, as below:
  - (i) Such foreign investment would be subject to an FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital;
  - (ii) FII investments would be permitted under the automatic route and FDI would be permitted under the government approval route;
  - (iii) FII purchases shall be restricted to secondary market only;
  - (iv) No non-resident investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and

- (v) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/ regulations; security and other conditionalities.

#### 3.0 Insertion of new paragraph 6.2.26:

3.1 Accordingly, a new paragraph 6.2.26 is inserted under 'Circular 1 of 20 12-Consolidated FDI Policy', effective from April 10, 2012, as below:

6.2.26	<b>Power Exchanges</b>
6.2.26.1	Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010
	49% (FDI & FII) Government (for FDI)
6.2.26.2	<b>Other conditions:</b>
	(i) Such foreign investment would be subject to an FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital; (ii) FII investments would be permitted under the automatic route and FDI would be permitted under the government approval route; (iii) FII purchases shall be restricted to secondary market only; (iv) No non-resident investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and (v) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/ regulations; security and other conditionalities.

4.0 The above decision will take immediate effect.

Anjali Prasad

Joint Secretary

### 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.



## Institute News

### MEMBERS ADMITTED

Sl. No.	Name	Membership No.	Region
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#### FELLOWS\*

1	Sh. Ramakant Ruliram Chokhani	FCS - 6951	WIRC
2	Sh. Ramit Rastogi	FCS - 6952	NIRC
3	Sh. A. Velliangiri	FCS - 6953	SIRC
4	Sh. S Sivakumar	FCS - 6954	SIRC
5	Sh. Sarvesh Mathur	FCS - 6955	NIRC
6	Sh. Yogesh Goenka	FCS - 6956	EIRC
7	Sh. Depesh Kumar	FCS - 6957	NIRC
8	Sh. Sanjay Somani	FCS - 6958	NIRC
9	Sh. Mukesh Kumar Gupta	FCS - 6959	WIRC
10	Sh. Raghvendra Bhaskar Kulkarni	FCS - 6960	WIRC
11	Sh. Charudatta Rajan Mantri	FCS - 6961	WIRC
12	Sh. Basant Kumar Pattnaik	FCS - 6962	EIRC
13	Ms. Tulika Bansal	FCS - 6963	NIRC
14	Sh. Sameer Mukund Bakshi	FCS - 6964	WIRC
15	Sh. Brajesh Kumar	FCS - 6965	NIRC
16	Sh. Umesh Gupta	FCS - 6966	NIRC
17	Sh. V Mohan Rao	FCS - 6967	SIRC
18	Ms. Shaloo Nahata	FCS - 6968	EIRC
19	Mrs. Poonam Sharma	FCS - 6969	NIRC
20	Mr. Amit Kumar Aggarwal	FCS - 6970	NIRC
21	Sh. C Subramaniam	FCS - 6971	SIRC
22	Sh. C. A. Thulasidas	FCS - 6972	SIRC
23	Sh. Santosh Kumar Pradhan	FCS - 6973	NIRC
24	Sh. M V S S Kumar	FCS - 6974	SIRC
25	Sh. Kamlesh Kumar Goel	FCS - 6975	NIRC
26	Sh. Amit Kumar Goel	FCS - 6976	NIRC
27	Sh. Rajesh Kumar Jain Palrecha	FCS - 6977	SIRC
28	Ms. Kinnari Hanskumar Shah	FCS - 6978	WIRC
29	Sh. Abhijit Anand Barje	FCS - 6979	WIRC
30	Sh. Vikas Ramesh Agarwal	FCS - 6980	WIRC
31	Sh. Jinendra Kumar Jain	FCS - 6981	NIRC
32	Sh. Nitin Somani	FCS - 6982	NIRC
33	Sh. G Sivasankar	FCS - 6983	SIRC
34	Sh. Ashok Kumar Bansal	FCS - 6984	NIRC

\* Admitted on 21<sup>st</sup> August, 30<sup>th</sup> August, 2012 and 10<sup>th</sup> September, 2012



An exclusive Interview of  
**CS Nesar Ahmad,**  
President, ICSI on Delhi AajTak

A Programme / Panel discussion with CS Nesar Ahmad, President, ICSI was telecast on DELHI AAJ TAK during the Programme "Aap Ki Property" at 8:30 PM on 18.08.2012. The Programme was also repeated on 19th August 2012 at 12:30 PM on Delhi AajTak.

### Brand Building - Telecast/Broadcast of TV/Radio Spots on CS

With a view to creating Media Visibility for the CS Course & Profession, Spots on Company Secretaries Course were telecast / broadcast on Zee News, Zee Business, Zee 24 Ghanta (Bengali News), Zee 24 tas (Marathi News), Zee 36 Garh, Zee News- Uttar Pradesh, CNN-IBN, IBN7, CNBC TV18, CNBC Awaaz, Sun News (Tamil), Surya (Malayalam), ETV2 News (Telugu), Udaya News (Kannada), OTV (Oriya), DY365 (NE Channel) & Red FM for brand building. CS Spots were aired from 4th September 2012 and continued till 18th September 2012 for an activity period of 15 days.

30 seconds CS Spots were broadcast before Hindi News [7.55 AM - 8.00 AM] on All India Radio from 1st August 2012 and continued till 30th September 2012 for an activity period of 2 months.

The Spots were also hosted on the Homepage of ICSI website.

35	Sh. K Padmanabhan	FCS - 6985	SIRC
36	Sh. Gautam Sharma	FCS - 6986	WIRC

#### ASSOCIATES\*

1	Ms. Sneha Gupta	ACS - 30754	EIRC
2	Ms. Puja Bhalla	ACS - 30755	EIRC
3	Mrs. Priya Chugh	ACS - 30756	NIRC
4	Ms. Dolly Munjal	ACS - 30757	NIRC
5	Ms. Nidhi Bhatia	ACS - 30758	NIRC
6	Ms. Ranu Jain	ACS - 30759	NIRC
7	Ms. Ruchi Sharma	ACS - 30760	NIRC
8	Ms. Garima Garg	ACS - 30761	NIRC
9	Ms. Manpreet Kaur Kochhar	ACS - 30762	NIRC
10	Mr. Shashikant Pandey	ACS - 30763	NIRC
11	Ms. Harshita Maheshwari	ACS - 30764	NIRC
12	Ms. Vaishali Jain	ACS - 30765	NIRC
13	Mr. Raghendra Kumar Jha	ACS - 30766	NIRC
14	Mr. V Marikannan	ACS - 30767	SIRC
15	Ms. Bhavya Parvathi K	ACS - 30768	SIRC
16	Ms. Natasha Monica Saldanha	ACS - 30769	SIRC
17	Mr. Sunny Bharat Makwana	ACS - 30770	WIRC
18	Ms. Ranjani Vaidyanathan	ACS - 30771	WIRC
19	Mr. Kaushal Rajnikant Patvi	ACS - 30772	WIRC

\* Admitted on 21<sup>st</sup> August, 30<sup>th</sup> August, 2012 and 10<sup>th</sup> September, 2012





20	Mr. Abhijit Sinha	ACS - 30773	EIRC	77	Ms. Purvi Anuj Poddar	ACS - 30830	WIRC
21	Ms. Rutva Dhvani Oza	ACS - 30774	WIRC	78	Mr. Vishnu Karbharee Salunke	ACS - 30831	WIRC
22	Ms. Sakina Rassawala	ACS - 30775	NIRC	79	Mr. Raj Jayesh Gandhi	ACS - 30832	WIRC
23	Mr. Rajiv Mundhra	ACS - 30776	NIRC	80	Mr. Kushal Vasantbhai Gala	ACS - 30833	WIRC
24	Ms. Richa Gupta	ACS - 30777	EIRC	81	Ms. Payal Rajesh Rana	ACS - 30834	WIRC
25	Mr. Binod Kumar More	ACS - 30778	EIRC	82	Ms. Bharti Shantilal Gandhi	ACS - 30835	WIRC
26	Ms. Bharti Ranga	ACS - 30779	EIRC	83	Ms. Avanti Chandrashekhar Chitale	ACS - 30836	WIRC
27	Mr. Prakash Aggarwal	ACS - 30780	NIRC	84	Ms. Rupali Dhananjay Patwardhan	ACS - 30837	WIRC
28	Ms. Ruhi	ACS - 30781	NIRC	85	Mr. Nitin Thanvi	ACS - 30838	WIRC
29	Ms. Megha Sharma	ACS - 30782	NIRC	86	Mr. Gunjan Girishkumar Shah	ACS - 30839	WIRC
30	Ms. Manju	ACS - 30783	NIRC	87	Mr. Muffaddal Asgarali Jawadwala	ACS - 30840	WIRC
31	Ms. R Nithya	ACS - 30784	NIRC	88	Ms. Saraiya Prachi Bimalkumar	ACS - 30841	WIRC
32	Ms. Ruchika Prithvi	ACS - 30785	WIRC	89	Ms. Priti Malani	ACS - 30842	WIRC
33	Mr. Virendra Lalbahadur Varma	ACS - 30786	WIRC	90	Mr. Sunil Kumar Verma	ACS - 30843	NIRC
34	Mrs. Rashmi Ganesh	ACS - 30787	SIRC	91	Mr. Atluri Ramesh	ACS - 30844	SIRC
35	Mr. Nikunj Dineshbhai Kiri	ACS - 30788	WIRC	92	Mr. Parameswaran Viswanathan	ACS - 30845	SIRC
36	Ms. Bijal Pravin Bhai Salot	ACS - 30789	WIRC	93	Ms. Reshma Gul Israni	ACS - 30846	WIRC
37	Mrs. Arti A Panchal	ACS - 30790	WIRC	94	Ms. Aditi Rajendra Javanjal	ACS - 30847	WIRC
38	Ms. Nimisha Ajay Ramaiya	ACS - 30791	WIRC	95	Mr. Chandan Dubey	ACS - 30848	EIRC
39	Ms. Ruchika Parash Agarwal	ACS - 30792	SIRC	96	Mr. Birendra Kumar	ACS - 30849	EIRC
40	Ms. Amita Balkesh Vishwakarma	ACS - 30793	WIRC	97	Mr. Chirag Jain	ACS - 30850	NIRC
41	Ms. Mamta Mishra	ACS - 30794	WIRC	98	Ms. Sweta Bhadani	ACS - 30851	EIRC
42	Mr. Bhupal Jambu Khidrapure	ACS - 30795	SIRC	99	Mr. Sumit Dhawan	ACS - 30852	NIRC
43	Mr. Mithun Balagopala Shenoy	ACS - 30796	SIRC	100	Ms. Mahima Sharma	ACS - 30853	NIRC
44	Ms. Shubhra Aggarwal	ACS - 30797	NIRC	101	Ms. Rini Srivastava	ACS - 30854	NIRC
45	Ms. Megha Gandhi	ACS - 30798	NIRC	102	Mr. Bijulal M	ACS - 30855	SIRC
46	Ms. Ishu Saini	ACS - 30799	NIRC	103	Mr. Kumar J	ACS - 30856	SIRC
47	Mr. Kawal Kishore Khurana	ACS - 30800	WIRC	104	Ms. Neha Priyadarshini	ACS - 30857	WIRC
48	Ms. Sneha Chandrakant Thukarul	ACS - 30801	WIRC	105	Mr. Ankush Vasudev Bhoir	ACS - 30858	WIRC
49	Mr. Vinay Kumar Jindal	ACS - 30802	NIRC	106	Ms. Nimisha Hemant Agnihotri	ACS - 30859	WIRC
50	Mr. Avijit Saha	ACS - 30803	EIRC	107	Mr. Shinto Stanly	ACS - 30860	SIRC
51	Mr. Anirudh Chandak	ACS - 30804	EIRC	108	Mr. Santosh Kumar Sharma	ACS - 30861	WIRC
52	Mr. P Nallasenapathi	ACS - 30805	SIRC	109	Mr. Nilesh Amrutbhai Patel	ACS - 30862	WIRC
53	Mr. Ajay Jagdish Wagle	ACS - 30806	WIRC	110	Ms. Pooja Sharda	ACS - 30863	NIRC
54	Mr. Jatin Chanrakant Thakkar	ACS - 30807	WIRC	111	Ms. Anjali Malpani	ACS - 30864	WIRC
55	Mr. Sunil Kumar Maheshwari	ACS - 30808	EIRC	112	Mr. Sushil Kumar Jethlia	ACS - 30865	NIRC
56	Ms. Shraddha Sinha	ACS - 30809	EIRC	113	Mr. Ganesh Suresh Padte	ACS - 30866	WIRC
57	Mr. Sumit Kanungo	ACS - 30810	EIRC	114	Ms. Sarita Jennifer S Rego	ACS - 30867	WIRC
58	Ms. Sonu Agarwal	ACS - 30811	EIRC	115	Ms. Savita Harish	ACS - 30868	WIRC
59	Ms. Richa	ACS - 30812	EIRC	116	Mr. Gliry Parappen Paul	ACS - 30869	WIRC
60	Mr. Sumit Paul	ACS - 30813	EIRC	117	Mr. Navin Kumar Agarwal	ACS - 30870	EIRC
61	Mr. Rishu Garg	ACS - 30814	NIRC	118	Mr. Vikas Garg	ACS - 30871	NIRC
62	Mr. Nitesh Kumar Nosadar	ACS - 30815	NIRC	119	Mr. Sandeep Dogra	ACS - 30872	NIRC
63	Ms. Himanshi Madan	ACS - 30816	NIRC	120	Mr. Pranav Pankaj Shah	ACS - 30873	WIRC
64	Ms. Shikha Gupta	ACS - 30817	NIRC	121	Ms. Vanitha Kunder	ACS - 30874	WIRC
65	Ms. Vineeta Sharma	ACS - 30818	NIRC	122	Mrs. Swati Saffar	ACS - 30875	EIRC
66	Ms. Meenu Tela	ACS - 30819	NIRC	123	Mr. Pritpal Singh Bedi	ACS - 30876	NIRC
67	Ms. Archana	ACS - 30820	NIRC	124	Ms. Harsha Druvananda Shettigar	ACS - 30877	WIRC
68	Ms. Sarla Jain	ACS - 30821	NIRC	125	Ms. Minakshi Bothra	ACS - 30878	WIRC
69	Ms. Neha Jain	ACS - 30822	NIRC	126	Mrs. Deepika Sharma	ACS - 30879	NIRC
70	Mr. Nirupam Srivastava	ACS - 30823	NIRC	127	Ms. Hina Tuteja	ACS - 30880	NIRC
71	Mr. Gagan Goel	ACS - 30824	WIRC	128	Mr. Kamaljit Singh	ACS - 30881	NIRC
72	Mr. Neeraj Kumar Modi	ACS - 30825	NIRC	129	Mr. Ishan Anand	ACS - 30882	NIRC
73	Ms. Amulya Dasari	ACS - 30826	SIRC	130	Ms. Amrita Ghosh	ACS - 30883	EIRC
74	Ms. Prajka Malajirao Pawshe	ACS - 30827	WIRC				
75	Mr. Tejas Niranjambhai Doshi	ACS - 30828	WIRC				
76	Mr. Nimit Rajkumar Lohia	ACS - 30829	WIRC				



# News from the Institute

131	Ms. Rubi Jha	ACS - 30884	EIRC
132	Ms. Sakshi	ACS - 30885	NIRC
133	Ms. Geeta Jaria	ACS - 30886	EIRC
134	Mrs. Neha Sharma	ACS - 30887	WIRC
135	Mr. Mohammed Abdullah Slatewala	ACS - 30888	WIRC
136	Ms. Radhika Anil Shidore	ACS - 30889	WIRC
137	Ms. Sonali Badole	ACS - 30890	WIRC
138	Mr. Yogesh Jayram Kohinkar	ACS - 30891	WIRC
139	Ms. Shreya Arora	ACS - 30892	EIRC
140	Ms. Nivedita Shankar	ACS - 30893	EIRC
141	Ms. Sarita Sharma	ACS - 30894	NIRC
142	Mr. Sandeep Agarwal	ACS - 30895	NIRC
143	Mr. Gunasekaran K	ACS - 30896	SIRC
144	Ms. Manisha Chhillar	ACS - 30897	NIRC
145	Ms. Priyanka Jain	ACS - 30898	NIRC
146	Ms. Amisha Nimish Gandhi	ACS - 30899	WIRC
147	Mr. Bipinchandra Madhav Joglekar	ACS - 30900	WIRC
148	Mr. Ian Francis Sardinha	ACS - 30901	WIRC
149	Ms. Jivika Shravan Uthada	ACS - 30902	WIRC
150	Ms. Annie Agarwalla	ACS - 30903	SIRC
151	Mr. Nitin Shah	ACS - 30904	NIRC
152	Ms. Sonam Saraogi	ACS - 30905	EIRC
153	Mr. Md Ozair	ACS - 30906	NIRC
154	Ms. Reena Dilip Chopra	ACS - 30907	WIRC
155	Mr. Jithin R	ACS - 30908	SIRC
156	Ms. Himani Goel	ACS - 30909	NIRC

## Restored\*

1.	Sh. Rajesh Kumar Jain Palrecha	ACS - 19648	SIRC
2.	Sh. Dhananjay S Barve	ACS - 11932	SIRC
3.	Ms. Neelam Damji Shah	ACS - 10518	WIRC
4.	Ms. Nidhi Agrawal	ACS - 22372	WIRC
5.	Sh. Niraj Kumar Agrawal	FCS - 6146	WIRC
6.	Sh. Sanjay Bahl	ACS - 5934	NIRC
7.	Sh. Ankur Jolly	ACS - 14200	NIRC
8.	Ms. Meghna Rashmi	ACS - 20314	NIRC
9.	Sh. Manoj Kumar Chandak	ACS - 11767	EIRC
10.	Mrs. Sangeeta Agarwal	ACS - 20589	EIRC
11.	Sh. Sanjeev Kumar Sachdeva	ACS - 13768	NIRC
12.	Ms. Puja Ahuja	ACS - 14892	EIRC
13.	Sh. Inder Mohan Singh	FCS - 3073	NIRC
14.	Ms. Priyanka Sisodiya	ACS - 27841	WIRC
15.	Sh. Akhilesh Soni	ACS - 15684	WIRC
16.	Sh. Rakesh Moudgil	ACS - 10611	WIRC
17.	Ms. Aruna Ramachandran	ACS - 20865	SIRC
18.	Sh. Padma Lochan Mishra	FCS - 6253	WIRC
19.	Sh. Vishal Hareshkumar Joshi	ACS - 18769	WIRC
20.	Ms. Sankalita Subhash Kedia	ACS - 24134	WIRC
21.	Sh. Surendra Khemka	FCS - 1649	WIRC
22.	Sh. J L Golgota	ACS - 2346	WIRC
23.	Sh. L P Sanghvi	ACS - 3343	WIRC
24.	Sh. Sandeep Khurana	FCS - 2790	NIRC

\* Restored from 21<sup>st</sup> August 2012 to 20<sup>th</sup> September, 2012

25.	Ms. D. Mahalakshmi	ACS - 16346	SIRC
26.	Sh. Mukesh Mittal	FCS - 3652	NIRC
27.	Sh. Umakanta Pattanayak	FCS - 5610	EIRC
28.	Sh. Sushanta Kumar Panda	ACS - 24529	SIRC
29.	Sh. Sanjeev Dahiya	ACS - 17028	NIRC
30.	Ms. Nisha Aggarwal	ACS - 27944	NIRC
31.	Sh. Nitin Kochhar	FCS - 6235	NIRC
32.	Sh. Yogesh Chandulal Parmar	ACS - 29262	WIRC
33.	Sh. Subramoniam T R Venkita	ACS - 20758	NIRC
34.	Sh. Alok Malhotra	ACS - 11127	NIRC
35.	Sh. S Sridhara Rao	ACS - 3485	SIRC
36.	Sh. N Pradeep	FCS - 4664	SIRC
37.	Ms. Neha Arora	ACS - 25672	NIRC
38.	Sh. R. Sampath Kumar	ACS - 13475	NIRC
39.	Sh. Nirmal Narayan Sharma	ACS - 14625	SIRC
40.	Sh. Deepak Sharma	ACS - 15537	EIRC
41.	Ms. Rachna Sinha Roy	ACS - 14843	WIRC
42.	Sh. Swapan Kumar Pal	ACS - 10004	NIRC
43.	Sh. N Krishnan	FCS - 42	SIRC
44.	Sh. K. Rajagopal	ACS - 12818	SIRC
45.	Ms. Vandana Yadav	ACS - 15101	NIRC
46.	Sh. Ashok Kumar Dugar	FCS - 3908	NIRC

## CERTIFICATE OF PRACTICE

Sl. No.	Name	ACS/FCS No.	C P No.	Region
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## ISSUED\*

1.	Mr. Kamal Kishore Lahoty	ACS - 30434	11152	WIRC
2.	Mr. Rahul Gupta	ACS - 30597	11153	NIRC
3.	Ms. Yachika Bhatia	ACS - 30448	11154	NIRC
4.	Mr. Ashish Omprakash Lalpuria	ACS - 30649	11155	WIRC
5.	Ms. Gayathri E	ACS - 30686	11156	SIRC
6.	Mr. Sanjay Kumar Tiwari	ACS - 30494	11157	NIRC
7.	Mr. Shyam Lal Sharma	ACS - 29993	11158	NIRC
8.	Mr. Sudesh Kumar Balecha	ACS - 30653	11159	NIRC
9.	Mrs. Priti Rupen Thakkar	ACS - 22118	11160	WIRC
10.	Mr. Umashankar Krishna Hegde	ACS - 22133	11161	WIRC
11.	Ms. Sucheta Panicker	FCS - 4367	11162	WIRC
12.	Sh. Rajiv Gupta	ACS - 25404	11163	EIRC
13.	Ms. Deepti	ACS - 25442	11164	NIRC
14.	Mr. Chetan Goel	ACS - 28069	11165	NIRC
15.	Sh. M Subba Rao	FCS - 3817	11166	SIRC
16.	Mr. Ankit Dipakbhai Parekh	ACS - 29063	11167	WIRC
17.	Mrs. Jharna C Kapadia	ACS - 21140	11168	WIRC
18.	Mr. Saumayo Jyoti Seal	ACS - 30311	11169	EIRC
19.	Ms. Ruchika Agarwal	ACS - 26595	11170	NIRC
20.	Ms. Sweeny Gulati	ACS - 29367	11171	NIRC
21.	Ms. Dhvani Fatehpuria	ACS - 23072	11172	EIRC
22.	Ms. Ankita Jain	ACS - 27318	11173	NIRC
23.	Ms. Richa Sharma	ACS - 21904	11174	WIRC

\* During the month of August, 2012

October  
2012



CHARTERED SECRETARY

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24. Sh. Maneck Jal Kotwal	FCS - 814	11175	WIRC	76. Ms. Astha Daluja	ACS - 30037	11227	EIRC
25. Mr. Abhishek Omprakash Jhanwar	ACS - 30609	11176	WIRC	77. Ms. Swati Kedia	ACS - 30664	11228	EIRC
26. Ms. Amrita Kumari	ACS - 25428	11177	NIRC	78. Sh. B Prabakar	ACS - 13914	11229	SIRC
27. Mr. Gopal Singh	ACS - 30530	11178	NIRC	79. Mr. V Marikannan	ACS - 30767	11230	SIRC
28. Ms. Shreya Bhandari	ACS - 30045	11179	NIRC	80. Ms. Mini Bansal	ACS - 26776	11231	NIRC
29. Mr. Arun Kumar	ACS - 30596	11180	NIRC	81. Ms. Riddhi Badiyani	ACS - 28686	11232	WIRC
30. Mr. Sourabh Parnami	ACS - 30679	11181	NIRC	82. Mr. Shanmugaraja R	ACS - 29001	11233	SIRC
31. Ms. Neha Dewan	ACS - 24010	11182	NIRC	83. Mr. Kushal Sharma	ACS - 30640	11234	WIRC
32. Ms. Nikitasha Mangal	ACS - 30641	11183	WIRC	84. Mr. Ravindra Agarwal	ACS - 28349	11235	EIRC
33. Sh. Jitendra Kumar Singh	ACS - 21381	11184	NIRC	85. Sh. Anandteerth Hipparagi	ACS - 25280	11236	SIRC
34. Ms. Pinky Lalwani	ACS - 30470	11185	WIRC	86. Ms. Pooja Dodia	ACS - 28158	11237	NIRC
35. Mr. Arvind Bajpai	ACS - 30634	11186	EIRC	87. Ms. Nisha Jajodia	ACS - 30668	11238	EIRC
36. Ms. Dhara Sureshchandra Shah	ACS - 30237	11187	WIRC	88. Ms. Pooja Bakshi	ACS - 30723	11239	NIRC
37. Mr. K R Madhava Murthy	ACS - 29308	11188	SIRC	89. Mr. Abhijit Sinha	ACS - 30773	11240	EIRC
38. Mr. Chintan Kumar Mahendrabhai Patel	ACS - 29326	11189	WIRC	90. Ms. Rutva Dhvani Oza	ACS - 30774	11241	WIRC
39. Ms. Shivali Gupta	ACS - 30617	11190	NIRC	91. Mr. Kaushik Laxman Kantak	ACS - 30750	11242	WIRC
40. Sh. Raj Mani Mishra	ACS - 14688	11191	NIRC	92. Sh. S K Shah	FCS - 3123	11243	WIRC
41. Ms. Neelam Kanhaiyalal Master	ACS - 25006	11192	WIRC	93. Mrs. Tanushree Agarwal	ACS - 28056	11244	NIRC
42. Mr. Siddharth Surendra Sipani	ACS - 28650	11193	WIRC	94. Sh. Atul Jain	ACS - 25697	11245	NIRC
43. Ms. Meghna Patel	ACS - 30327	11194	WIRC	95. Sh. Vinay Vishnu Kadam	ACS - 26093	11246	WIRC
44. Mr. Kulbhushan Dilip Rane	ACS - 30644	11195	WIRC	96. Mr. Saurabh Jain	ACS - 23427	11247	NIRC
45. Sh. R. K. Ananth	ACS - 24390	11196	SIRC	97. Ms. Richa Sharma	ACS - 28362	11248	NIRC
46. Ms. Sana Mehnaaz Siddiqui	ACS - 27612	11197	WIRC	98. Ms. Nikita Madan	ACS - 25370	11249	NIRC
47. Ms. Sarita Lalwani	ACS - 28875	11198	NIRC	99. Sh. Ashwani Kumar Sharma	ACS - 18443	11250	NIRC
48. Sh. Subhendu Bhusana Mohapatra	ACS - 26614	11199	NIRC	100. Mr. Narendra Kumar	ACS - 28017	11251	NIRC
49. Ms. Savita Gopichand Matta	ACS - 28565	11200	WIRC	101. Ms. Manjula Poddar	ACS - 30520	11252	EIRC
50. Ms. Divya Garg	ACS - 20235	11201	WIRC	102. Mr. Amey Vitthal Morajkar	ACS - 28643	11253	WIRC
51. Ms. Sukhmeet Kaur	ACS - 30107	11202	NIRC	103. Sh. Dillip Chandra Maharathi	ACS - 24955	11254	NIRC
52. Mr. Giriraj Joshi	ACS - 30646	11203	NIRC	104. Sh. Madhav Kumar Shastri	ACS - 2192	11255	EIRC
53. Mr. Vikram Jhavar	ACS - 30623	11204	NIRC	105. Ms. Shruti Sushilkumar Dayma	ACS - 28119	11256	WIRC
54. Ms. Vidhi Gupta	ACS - 18940	11205	NIRC	106. Sh. Gaurav Bagga	ACS - 22863	11257	NIRC
55. Mrs. Nandita Nanda	ACS - 27506	11206	NIRC	107. Sh. Pradeep Kumar	ACS - 30264	11258	NIRC
56. Mr. Amit Dave	ACS - 28787	11207	NIRC	108. Ms. Jyoti Kochar	ACS - 30565	11259	NIRC
57. Ms. Shweta Gupta	ACS - 30064	11208	NIRC	109. Mr. U Alagarsamy	ACS - 30569	11260	SIRC
58. Ms. Priyanka Shastri	ACS - 29506	11209	NIRC	110. Ms. Madhu Girish Duggal	ACS - 29180	11261	WIRC
59. Ms. Seema Sharma	ACS - 24160	11210	EIRC	111. Ms. Nishtha Chaturvedi	ACS - 30548	11262	NIRC
60. Ms. Mansi Bhati	ACS - 30699	11211	NIRC	112. Ms. Tejal Prasanna Patil	ACS - 28914	11263	WIRC
61. Ms. Parul Gupta	ACS - 29939	11212	NIRC	113. Ms. Neha Gupta	ACS - 30152	11264	NIRC
62. Mr. Ronak Bipin Ajmera	ACS - 30628	11213	WIRC	114. Mr. Amit Kumar	ACS - 29371	11265	NIRC
63. Ms. Shilpa Gupta	ACS - 30446	11214	NIRC	115. Mrs. Priyamvada Maurya	ACS - 29315	11266	NIRC
64. Ms. Swapnila Gupta	ACS - 29434	11215	NIRC	116. Ms. Shruti Agarwal	ACS - 27435	11267	NIRC
65. Mrs. Anuradha Bhalchandra Koppalkar	ACS - 30267	11216	SIRC	117. Sh. Devraj Gupta	ACS - 18327	11268	NIRC
66. Ms. Rameshwari Rajaram Kalse	ACS - 28392	11217	WIRC	118. Ms. R Vasumathi	ACS - 16602	11269	SIRC
67. Ms. Pratibha Sabharwal	ACS - 29484	11218	NIRC	119. Sh. Giriraj Ratan Kothari	ACS - 8483	11270	EIRC
68. Ms. Sheetal Singh	ACS - 27361	11219	NIRC	120. Sh. Gamini Sri Lakshmi Narayana Gupta	ACS - 25283	11271	SIRC
69. Ms. Rupali Mohanlal Bhutada	ACS - 21758	11220	WIRC	121. Sh. Navin T. Shah	FCS - 203	11272	WIRC
70. Ms. Sanju Jaju	ACS - 30626	11221	EIRC	122. Ms. Rajni Miglani	ACS - 30016	11273	NIRC
71. Ms. Reena Sharma	ACS - 29171	11222	NIRC	123. Sh. Tej Kumar Jain	ACS - 12076	11274	NIRC
72. Mrs. Heta Shalin Shah	ACS - 22446	11223	WIRC	124. Mr. Vishal Soni	ACS - 30440	11275	NIRC
73. Ms. Monika Verma	ACS - 28538	11224	NIRC				
74. Sh. Sarvesh Mathur	FCS - 6955	11225	NIRC				
75. Ms. Ashwini Rao	ACS - 25708	11226	WIRC				

## CANCELLED\*

1. Ms. Pavitra Agarwal	ACS - 29922	10801	NIRC
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\* During the month of August, 2012





# News from the Institute

2. Sh. Vivek Singh	ACS - 23721	8552	NIRC
3. Ms. Beena R Shah	FCS - 5618	7485	NIRC
4. Mrs. Natasha Chaudhary	ACS - 29818	10944	NIRC
5. Sh. Prem Kumar Iyer	ACS - 9450	10441	WIRC
6. Ms. Tejal Jayant Waje	ACS - 26782	10690	WIRC
7. Mrs. Harshita C Kochhar	ACS - 21662	10824	NIRC
8. Sh. Saurabh Jain	ACS - 23427	8922	NIRC
9. Ms. Radhika Rath	ACS - 28835	10848	NIRC
10. Ms. Renuka Shukla	ACS - 19283	9264	NIRC
11. Sh. Raj Kamal Saraogi	FCS - 3152	10917	NIRC
12. Sh. Ashutosh Bhatt	ACS - 30231	11019	WIRC
13. Sh. Aishwarya T M C	ACS - 28065	10663	SIRC
14. Ms. Pooja Ravindra Joshi	ACS - 29418	10700	SIRC
15. Sh. Gaurav Jain	ACS - 29995	10811	NIRC
16. Sh. Mohit Khanna	ACS - 30262	11000	NIRC
17. Sh. Prashant Mohan	ACS - 20113	9330	SIRC
18. Sh. Manish Chetani	ACS - 29459	10794	EIRC
19. Sh. Ajay Aggarwal	ACS - 16183	10503	NIRC
20. Sh. Amit Sharma	ACS - 29979	10953	NIRC
21. Ms. Ekta Kathuria	ACS - 23391	9678	NIRC
22. Ms. Priyanka Bhutani	ACS - 29938	10877	NIRC
23. Ms. Shefali Grover	ACS - 26218	10317	SIRC
24. Ms. Jyotsna Sharma	FCS - 6320	3575	NIRC
25. Ms. Sweeny Gulati	ACS - 29367	11171	NIRC

## LICENTIATE ICSI

Sl. No.	Name	Licentiate No.	Region
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### ADMITTED\*

1. Sh. G Santhil Kumar	6406	SOUTH
2. Sh. Ayush Saraf	6407	EAST
3. Sh. Vishnu G Sarda	6408	WEST
4. Sh. Deepak Agarwal	6409	NORTH
5. Ms. Prachi Anil Poddar	6410	SOUTH
6. Sh. Naman Jatinkumar Shah	6411	WEST
7. Ms. Vandana Periwal	6412	WEST
8. Sh. Dhiraj Gupta	6413	WEST
9. Sh. Rahul Shivkumar Dharne	6414	WEST
10. Ms. Isha Modi	6415	NORTH
11. Sh. Bharat Arora	6416	NORTH
12. Sh. Nikhil Singhal	6417	NORTH
13. Ms. Priyanka Gupta	6418	NORTH
14. Sh. Akashdeep Singh	6419	NORTH

\* During the period 1.07.2012 to 31.07.2012

October  
2012



CHARTERED SECRETARY

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## ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2012-13

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

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

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

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

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

## MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

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

### For queries, if any,

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

# APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION\* OF CERTIFICATE OF PRACTICE

See Reg. 10, 13 & 14

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

Sir,

I furnish below my particulars .....

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

1. Submitted for (tick whichever is applicable):

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

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

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

Yours faithfully,

(Signature)

Place:

Encl.

Date:

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

# Panel of Examiners for CS Examinations

## INVITATION OF APPLICATIONS FOR PANEL OF EXAMINERS FOR THE COMPANY SECRETARIES EXAMINATIONS

The Institute is inviting applications for preparing a panel of Examiners for evaluation of answer books from qualified, competent and experienced persons in the following subjects of company secretaries examinations:

<b>I</b>	<b>LEGAL DISCIPLINE SUBJECTS:</b>	
	(a) Law:	
	(i) General and Commercial Laws	Executive Programme
	(ii) Tax Laws	Executive Programme
	(iii) Company Law	Executive Programme
	(iv) Economic and Labour Laws	Executive Programme
	(v) Securities Laws and Compliances	Executive Programme
	(b) Law and Practice:	
	(i) Company Secretarial Practice	Professional Programme
	(ii) Drafting, Appearances and Pleadings	Professional Programme
	(iii) Corporate Restructuring and Insolvency	Professional Programme
	(iv) Advanced Tax Laws and Practice	Professional Programme
	(c) Law and Management:	
	(i) Due Diligence and Corporate Compliance Management	Professional Programme
<b>II</b>	<b>MANAGEMENT, ETHICS AND SUSTAINABILITY DISCIPLINE SUBJECTS:</b>	
	(i) Strategic Management, Alliances and International Trade	Professional Programme
	(ii) Governance, Business Ethics and Sustainability	Professional Programme
<b>III</b>	<b>ACCOUNTING AND FINANCE DISCIPLINE SUBJECTS:</b>	
	(i) Company Accounts, Cost and Management Accounting	Executive Programme
	(ii) Financial, Treasury and Forex Management	Professional Programme

<b>SCALE OF HONORARIUM FOR EVALUATION OF ANSWER BOOKS</b>		
Sr. No.	Stage of Examination	Rate
(i)	Executive Programme	₹ 80/- per answer book
(ii)	Professional Programme	₹ 100/- per answer book

### QUALIFICATIONS:

A person applying for empanelment of his/her name as an Examiner should be holding professional qualification as member of the Institute of Company Secretaries of India/Institute of Cost Accountants of India/Institute of Chartered Accountants of India at least for five years and/or a Doctorate Degree/Postgraduate Qualification with at least second class in the disciplines of Law, Management, Finance, Accounting, International Trade, etc., with five years experience either in an academic position or in practice or in employment in the concerned field/discipline having relevance to the subjects of examinations.

### DESIRABLE EXPERIENCE:

Persons having adequate experience of teaching and as Head Examiner/Examiner in subjects of Law, Management, Finance, Accounting, International Trade, etc., at graduate/post-graduate level or professional examinations or in writing book(s) or study material in the relevant subject(s) or any other specialised subjects at graduate/post-graduate level with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

### HOW TO APPLY:

Candidates fulfilling the above conditions and not registered as a student of the Institute may send their bio-data in the prescribed application form. The prescribed application form may be downloaded from the Institute's website <http://www.icsi.edu/webmodules/member/forms/examnew.pdf>. The blank application form can also be obtained by post from the Joint Director (Examinations), The Institute of Company Secretaries of India, C - 37, Institutional Area, Sector - 62, NOIDA - 201 309 or by sending an e-mail to: [exam@icsi.edu](mailto:exam@icsi.edu)





## List of Companies Registered for Imparting Training During the Month of August 2012

Region	Training Period	Stipend (Rs.)
<b>Eastern</b>		
<b>Bengal Aerotropolis Projects Ltd.</b> 5, Gorky Terrace 2nd Floor, Kolkata 700017 <i>corporate@bengalaero.com</i>	15 Months Training	3500/-
<b>Electricals &amp; Electronics (India) Ltd.</b> C/o Business Communication Centre 21 Parsee Church Street Opp.18 Ezra Street Kolkata 700001	15 Months Training	3500/-
<b>P.K. Credits Pvt. Ltd.</b> White Towers 115, College Street 3rd Floor, Kolkata 700012	3 Months Practical Training	3500/-
<b>Sunaina Finance Ltd.</b> 41D/118 Biplabi Barin Ghosh Sarani Murari Pukur Road, Kolkata 700067	15 months & 3 Months Practical Training	3500/-
<b>Suraj Products Ltd.</b> Vill.Barpali, P.O. Kesaramal (Rajgangpur) Dist.Sundargarh, Odisha - Pin 770017 <i>suproduct@gmail.com</i>	15 Months Training	3500/-
<b>Oriental Carbon &amp; Chemicals Ltd.</b> Duncan House 31, Netaji Subhas Road Kolkata 700001 <i>occl@cal2.vsnl.net.in</i>	15 Months Training	3500/-
<b>Hindusthan National Glass &amp; Industries Ltd.</b> 2, Red Cross Place Post Box 2722, Kolkata 700001 <i>hngkol@hngil.com</i>	3 Months Practical Training	5000/-
<b>Jatinder Finance Private Ltd.</b> 406 Srilok Complex, H.B. Road, Ranchi 834001 <i>Abhi85.sj@gmail.com</i>	15 Months Training	2500/-

**Minolta Finance Ltd.**  
37 A & b, Stephen House 4,  
B B D Bag (East)  
Kolkatta - 700001  
*minoltafinance@gmail.com*

15 Months Training 3500/-

**Bhagwanshree Enterprises Ltd.**  
405,Shreelok Complex  
4,H.B. Road,  
Ranchi - 834001  
(Jharkhand)  
*cssservices26@gmail.com*

15 Months Training 3500/-

**Sree Durga Fibre Products Pvt. Ltd.**  
13/C, Kashi Nath Mullick Lane,  
Kolkatta - 700073  
*sss.sdfp@yahoo.com*

15 Months Training 3500/-

**Ambika Supply & Services Pvt. Ltd.**  
"Ambika Apartment" Bijuli Mill Road,  
Manipuri Basti,  
Paltan Bajar,  
G.S. Road, Guwahati - 781007

15 Months & 3 Months Practical Training 3500/-

**Protech Buildcon Pvt Ltd.**  
306, dainik Purvodaty Bhawan,  
(Opp. International Hospital)  
G.S Road, Guwahati - 781005

15 Months & 3 Months Practical Training 3500/-

**Bengal Nri Complex Ltd.**  
783 Anandpur, P.O. East Kolkatta,  
Township Project,  
Kolkata - 700107  
*Info@Urbana.Co.In*

15 Months Training 3500/-

### Northern

**NTPC BHEL Power Projects Private Ltd.**  
(A Joint Venture of NTPC & BHEL)  
NTPC Bhawan,  
SCOPE Complex,  
7, Institutional Area,  
Lodi Road, New Delhi 110003  
*ritu.mehrotra@nbppl.in*

15 Months Training 3500/-

**Raymed Labs Ltd.**  
Greenland Complex  
Dehradun Road  
Saharanur 247001

15 Months Training 3500/-

**American Express (India) Private Ltd.**  
Commercial Block 3 (Zone 6)  
Group Housing Scheme,  
DLF City V  
Gurgaon 122002

15 Months Training 3500/-

**Jai Shree Rasayan Udyog Ltd.**  
501, Gopal Heights  
Netaji Subhash Place  
Delhi 110034  
*carasayan@jaishreerasayan.org*

15 Months Training 3500/-



# News from the Institute

<b>Romesh Power Products Private Ltd.</b> 203 Tikkarmal Street, Kishanpole Bazar Jaipur	15 Months Training	3500/-	<b>Maxopp Investments Ltd.</b> Max House, 1 Dr.Jha Marg, Okhla III, New Delhi 110020	15 Months Training	3500/-
<b>Sarv Tech Private Ltd.</b> 435 First Floor, Jagrati Enclabve Karkardooma Delhi 110092 <i>ashatiwari08@gmail.com</i>	15 Months Training	3500/-	<b>H.P.Power Transmission Corporation Ltd.</b> (A Statement Government Undertaking) Barowalia House, Khalini, Shimla 171002	15 Months Training	2500/-
<b>Magppie International Ltd.</b> Reg. Off. PD-4A, Pitampura, Delhi -110088	15 Months & 3 Months Practical Training	3500/-	<b>Riviera Home Furnishings Pvt. Ltd.</b> 501 (Fifth Floor) Aggarwal Corporate Heights Netaji Subhash Place District Center Wazirpur Delhi 110034 <i>riviera@rivieratex.com</i>	15 Months Training	3500/-
<b>India Emerging Infrastructure Pvt. Ltd.</b> F 217 A W5d4 Sainik Farms New Delhi -110062	15 Months Training	3500/-	<b>BCL Industries &amp; Infrastructures Ltd.</b> Hazi Rattan Link Road, Bathinda 151005 <i>bcl@mitalgroup.co.in</i>	15 Months & 3 Months Practical Training	3500/-
<b>SV Creditline Pvt. Ltd.</b> 10th Floor, Tower D Global Business Park M.G.Road Gurgaon 122002 <i>info@svcl.in</i>	15 Months Training	3500/-	<b>Alliance Strategies Ltd.</b> A-57, DDA Sheds, Okhla Industrial Area Phase II, New Delhi 110020,	15 Months Training	5000/-
<b>Housing &amp; Urban Development Corporation Ltd.</b> (A Govt. of India Undertaking) Jaipur Regional Office HUDCO Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur 302005 <i>hudco@hudco.org</i>	15 Months Training	3500/-	<b>Great Indian Nautanki Co. Pvt. Ltd.</b> K 804/2,mahipalpur, Vasant Kunj Road, New Delhi- 110037	15 Months & 3 Months Practical Training	3500/-
<b>Morarka Organic Foods Ltd.</b> Postal Address Post Box No.226 Jaipur <i>info@morarkamail.com</i>	15 Months Training	3500/-	<b>JKM Infra Projects Ltd.</b> A - 14,First Floor, Sector-7, Noida (U.P.) - 201301	15 Months Training	3500/-
<b>KMF Builders &amp; Developers Ltd.</b> 1007 Vikram Tower Rajendra Place, New Delhi 110008 <i>kmfbuilders95@gmail.com</i>	15 Months Training	3500/-	<b>Filatex India Ltd.</b> 43,Community Centre, New Friends Colony, New Delhi - 110025	15 Months Training	3500/-
<b>Jubilant Oil &amp; Gas Pvt.Ltd.</b> A-80 Sector 2 Noida-201301	15 Months Training	7000/-	<b>Shahi Exports Pvt. Ltd.</b> F - 88, Okhla Industrial Area, Phase - 1, New Delhi - 110020	15 Months Training	3500/-
<b>Dorling Kindersley India Pvt.Ltd.</b> Knowledge Boulevard 7th Floor, A-8 (A) Sector 62 Noida 201309 <i>ahmad.abbas@pearson.com</i>	15 Months Training	3500/-	<b>Himachal Fibres Ltd.</b> Plot No. 43-44, Industrial Area Barotiwala, Distt. Solan HP - 174103	15 Months & 3 Months Practical Training	3500/-
<b>Spire Developers Pvt.Ltd.</b> 4 H, Plaza M-6, Jasola District Centre, New Delhi 110025	15 Months Training	3500/-	<b>S.Chand Harcourt (India) Pvt. Ltd.</b> A 27 Mohan Cooperative, Industrial Estate New Delhi - 110044 <i>info@sch.co.in</i>	15 Months Training	3500/-
			<b>Infocom (India) Pvt. Ltd.</b> 1st Floor 15 Vallabh Nagar Kota, Rajasthan - 324007 <i>info@infocomin.com</i>	15 Months Training	3500/-



<b>Rishabh Constructions Pvt. Ltd.</b> S - 53/54, Shopping Centre, Janta Colony Jaipur - 302004 <i>riscon@datainfosys.net</i>	15 Months Training	3500/-	<b>Surana Power Ltd.</b> 29 Whites Road, IInd Floor, Royapettah, Chennai - 600014 <i>power@suranapower.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>Kribhco Infrastructure Ltd.</b> A 10 Sector 1 District Gautambudh Nagar Noida - 201301 <i>contact@kribhcoinfra.com</i>	15 Months Training	3500/-	<b>Western</b>		
<b>Dyna Securities Ltd.</b> E 73 & 74 Amar Colony, Lajpat Nagar IV, New Delhi - 110024 <i>dynasecurity@sify.com</i>	15 Months & 3 Months Practical Training	3000/-	<b>UTI Infrastructure Technology and Services Ltd.</b> UTI-ITSL Tower Plot No. 3, Sector 11 CBD Belapur Navi Mumbai 400614	15 Months Training	3500/-
<b>Southern</b>			<b>Nouveau Global Venture Ltd.</b> 401/A Pearl Arcade, Opp P K Jewellers Dawood Baug Lane, Off J. P. Road, Andheri (West), Mumbai - 400 058 <i>nouveauglobal@gmail.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>Bharat Dynamics Ltd.</b> Ministry of Defence Kanchanbagh, Hyderabad 500058 <i>bdltd@ap.nic.in</i>	3 Months Practical Training	3500/-	<b>Kotak Investment Advisors Ltd.</b> 36-38A, Nariman Bhavan 227, Nariman Point Mumbai-400021	3 Months Practical Training	3500/-
<b>Hatsoff Helicopter Training Pvt. Ltd.</b> Sy.Nos. 3 & 4, Opp. ARDC Main Gate, HAL, Vibhuthipura, Marainandilli Post Bangalore - 560021 <i>contactus@hatsoff-training.com</i>	15 Months Training	5000/-	<b>Avon Corporation Ltd.</b> DLH Park Office No.1106 11th Floor Near MTNL S.V.Road, Goregaon (W) Mumbai 400062 <i>marketing@avon.co.in</i>	15 Months Training	3500/-
<b>Kutty Flush Doors &amp; Furniture Co. Pvt. Ltd.</b> 1167,Poonamallee High Road, Koyambedu, Chennai- 600107 <i>kutty schn@yahoo.in</i>	15 Months & 3 Months Practical Training	3500/-	<b>Central Cables Ltd.</b> 5, Temple Road, Civil Lines, Nagpur 440001 <i>companylawreply@gmail.com</i>	15 Months & 3 Months Practical Training	3500/-
<b>Sagun Copper Conductors Pvt. Ltd.</b> N - 5A,Industrial Estate, Gokul Road, Hubli - 580030 <i>sagun@saguncopper.in</i>	5 Months Training	3500/-	<b>Indo City Infotech Ltd.</b> A6, Mittal Estate, Bldg.No.2, Andheri Kurla Road, Andheri (E), Mumbai 400059 <i>contact@indo_city.com</i>	15 Months Training	3500/-
<b>Shalivahana Green Energy Ltd.</b> Post Box No:1582, 7th Floor, Minerva Complex, S.D. Road, Secunderabad - 500003 <i>shalivahanacs@gmail.com</i>	15 Months Training	3500/-	<b>Apple Hospitals &amp; Research Institute Ltd.</b> 525/E, Vyapar Peth, Shahupuri, Kolhapur 416001 <i>appledocs@rediffmail.com</i>	15 Months Training	3500/-
<b>Shiva Global Agro Industries Ltd.</b> "Shiva House" New Mandha, Nanded - 431602 <i>shivaagro1@gmail.com</i>	15 Months Training	3500/-	<b>Essar Projects (India) Ltd.</b> Essar House, 11, K.K.Marg, Mahalaxmi, Mumbai 400034 <i>birjesh.shah@essar.com</i>	15months Training	3500/-
<b>Coastal Projects Ltd.</b> Plot No.304 - 0,Road No. 78 Film Nagar, Jubilee Hills, Hyderabad - 500033 <i>cpl.ho@coastalprojects.co.in</i>	15 Months Training	3500/-	<b>Ceejay Finance Ltd.</b> 9th Floor, Abhijit II Mithakhali Six Road, Ellisbridge, Ahmedabad 380006 <i>kpuj@yahoo.co.in</i>	15months Training	3500/-





# News from the Institute

**Wadhawan Holdings Pvt. Ltd.**  
HDIL Towers,  
4th Floor, Anant Kanekar Marg  
Bandra (E)  
Mumbai 400051

15 Months &  
3 Months  
Practical Training

3500/-

**Purva Sharegistry (India) Pvt. Ltd.**  
9 Shiv Shakti Ind.Estt.  
J.R. Boricha Marg,  
Off N.M.Joshi Marg,  
Near Lodha Excelus,  
Lower Parel (E), Mumbai 400011  
*busicomp@vsnl.com*

15 Months  
Training

4000/-

**Universal Starch-Chem Allied Ltd.**  
Mhatra Pen Building, B Wing  
2nd Floor, Senapati Bapat Marg  
Dadar (West), Mumbai 400028  
*mumbai@universalstarch.com*

15 Months  
Training

3500/-

**JSW Severfield Structures Ltd.**  
302 Naman Centre  
Plot No.C 31, G Block  
Bandra Kurla Complex  
Bharat Nagar, Bandra (East)  
Mumbai 4000515

15 Months &  
3 Months  
Practical Training

3500/-

**Tunip Agro Ltd.**  
107/108, Commerce House  
140, Nagindas Master Road  
Fort, Mumbai - 400023  
*onjus@tunip.com*

15 Months  
Training

3500/-

**Matalia Stock Broking Pvt. Ltd.**  
"Matalia House", 21-New Jagnath  
Near Jain Bhuvan, Rajkot - 360001  
*mataliabroker@yahoo.com*

15 Months  
Training

3500/-

**MAS Financial Services Ltd.**  
6, Ground Floor, Narayan Chambers  
B/H Patang Ashram Road  
Ahmedabad - 380009  
*mfs@mas.co.in*

15 Months &  
3 Months  
Practical Training

3500/-

**Brooks Instrument India Pvt Ltd.**  
301, 3rd Floor, A to Z  
Industrial Estate,  
Ganpatrao Ladam Marg,  
Lower Parel, Mumbai - 400013

15 Months  
Training

10000/-

**Deloitte Touche Tohmatsu India Private Limited**  
12 Dr. Annie Besant Road,  
Opp. Shivsagar, Worli  
Mumbai - 400018  
*trustomjee@deloitte.com*

15 Months  
Training

3500/-

**Credila Financial Services Pvt Ltd.**  
F-2 & 3, Sahyadri House, 1st Floor  
MICO Circle, Tidke Colony  
Trimbak Road,  
Nashik - 422002  
*laxmikant@credila.com*

15 Months &  
3 Months  
Practical Training

3500/-

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



**CS PARMAL SINGH** PCSA -3070  
Company Secretary in Practice  
415, Krishna Apra Plaza  
Sector -18  
Noida - 201 301

**CS NAMAN G. JOSHI** PCSA -3071  
Company Secretary in Practice  
No. 249, 1st Floor, 27th Cross  
17th Main, II Block, Rajajinagar  
Bangalore -560 010

**CS DASARI VENKATESWARLU** PCSA -3072  
Company Secretary in Practice  
No. 170, 2nd Floor  
State Bank of Mysore Building  
2nd Cross, 1st Block  
Koramangala  
Bangalore -560 034

**CS ANKITA VARUN SHAH** PCSA -3073  
Company Secretary in Practice  
A/401, Twinkle Towers  
Dhokali Kolshet Road  
Near Highland Residency  
Thane (W) 400 607

**CS MANOJ KUMAR SAXENA** PCSA -3074  
Company Secretary in Practice  
4/9, Ansal Chambers -II  
New Delhi -110 066

**CS ANIL KUMAR AGRAWAL** PCSA -3075  
Company Secretary in Practice  
Royal -209  
Exotica Building  
Opposite T.V. Tower  
Shankar Nagar  
Raipur -492 001

**CS APAR SINGH** PCSA -3076  
Company Secretary in Practice  
DA- 18, 2nd Floor, Vikas Marg  
Shakarpur, Delhi -110 092

**CS ABHAY RAGHUNATH GULAVANI** PCSA -3077  
Company Secretary in Practice  
Block -3, Shivadatta Palace  
Haripriya Nagar, Near MSEB Office  
Govt. Colony Road  
Vishrambag  
Sangli -416 415



**CS VEDVATI BHANGAONKAR**  
Company Secretary In Practice  
C-2,/26, Popular Colony, Warje  
Pune - 411 058

**CS VIKAS AGGARWAL**  
Company Secretary In Practice  
2874/214,  
Vishram Nagar Trinagar  
Delhi -110 035

**CS VIVEK GUPTA**  
Company Secretary In Practice  
B-29/B -Street No -3  
Kanti Nagar Extn.  
Delhi -110 051

**CS DEEPTI CHAWLA**  
Company Secretary In Practice  
Flat -102, 2nd Floor  
Extra Apartments  
Sector- 3, Dwarka  
Delhi -110 045

**CS HIRAL ADATIYA**  
Company Secretary In Practice  
101, Manav Appartmant  
B/H Gail Tower  
Anand Mahal Road  
Surat -395 009

**CS MANGESH R. DANDAWATE**  
Company Secretary In Practice  
8-A, Shree Chaitanya Apts  
Shiv Darshan Chowk,  
Parvati, Pune - 411 009

**CS MONA L. VORA**  
Company Secretary In Practice  
31/D/16, Majithia Nagar  
S.V. Road  
Kanoiwali (West)  
Mumbai -400 067

**CS DEEPMALA MALL**  
Company Secretary In Practice  
F-7, Hira Arcade  
1st Floor, New Bus Stand  
Pandri, Raipur - 492 001

**CS ADITI AGARWAL**  
Company Secretary In Practice  
2nd Floor  
Manish Chambers, LSC  
Mayur Vihar, Phase -II  
New Delhi -110 091

**CS JASLEEN KAUR**  
Company Secretary In Practice  
B- 48A, Jaina Tower -I  
District Centre  
Janakpuri  
New Delhi -110 058

**CS VINAY B.L**  
Company Secretary In Practice  
# 15, First Floor  
Church Road  
Basava Nagudi  
Bangalore - 560 004

PCSA -3078

PCSA -3079

PCSA -3080

PCSA -3081

PCSA -3082

PCSA -3083

PCSA -3084

PCSA -3085

PCSA -3086

PCSA -3087

PCSA -3088

**CS SRIKANT MOHAN**  
Company Secretary In Practice  
11 Floor, Kamala Arcade  
71 (8&A), 37th B Cross, 26th Main  
9th Block, Jayanagar  
Bangalore -560 069

**CS PRAMIL DEV**  
Company Secretary In Practice  
Akshaya , Aruveode  
Maruthour  
Thiruvanantha -695 028

**CS. SUNEET SINGH GROVER**  
Company Secretary In Practice  
B-9, 309, ITI Twin Tower  
Netaji Subhash Place  
Pitampura  
New Delhi - 110088

**CS GESU NATHANI**  
Company Secretary In Practice  
4/139, Gali No.- 4  
Lalita Park, Laxmi Nagar  
Delhi - 110 092

**CS MANISH SANCHETI**  
Company Secretary In Practice  
C-54A/3, Lalkothi Marg, Bapu Nagar  
Jaipur -302 015

**CS SAURABH AWASTHI**  
Company Secretary In Practice  
Z-320, Shop No -32  
Aamrapali Commercial Complex  
Sector -12, Noida -201 301

**CS SURYAKANT GUPTA**  
Company Secretary In Practice  
F-172, Second Floor  
Dilshad Colony  
New Delhi -110 095

**CS ADITI VAIBHAV DOSHI**  
Company Secretary In Practice  
Office No -46/47, P.S. Plaza  
Near Maha Nagar Bank  
Yerwada, Pune -411 006

**CS HEMANT AMBADAS WAGHMARE**  
Company Secretary In Practice  
Flat No.-303, 'Revati'  
S.No.-28/2, Suvidha Ambar, Narhe  
Pune -411 042

**CS POOJA MAMGAIN**  
Company Secretary In Practice  
T-276, Baljeet Nagar, West Patel Nagar  
New Delhi -110 008

**CS VARUN BHOMIA**  
Company Secretary In Practice  
302, Sapphire Square  
Indore -452 001

PCSA -3089

PCSA -3090

PCSA -3091

PCSA -3092

PCSA -3093

PCSA -3094

PCSA -3095

PCSA -3096

PCSA -3097

PCSA -3098

PCSA -3099



# Company Secretaries Benevolent Fund

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



Sl. No.	LM No.	Name	Mem	City	Sl. No.	LM No.	Name	Mem	City
<b>EIRC</b>					8. 9823		Ms. Amulya Dasari	ACS - 30826	Rajahmundry
1. 9822		Ms. Richa	ACS - 30812	Ranchi	9. 9825		Mr. Kancherla Dharma Rao	ACS - 30631	Hyderabad
<b>NIRC</b>					10. 9829		Sh. Gouri Shanker Mishra	FCS - 6906	Chennai
2. 9818		Mr. Puneet Manawat	ACS - 30719	Udaipur	<b>WIRC</b>				
3. 9824		Ms. Jyoti	ACS - 20392	Gurgaon	11. 9815		Mrs. Zankhana Vishal Trivedi	ACS - 22438	Vadodara
4. 9827		Mr. Santosh Kumar Agarwal	ACS - 30342	Bareilly	12. 9817		Ms. Kirty Shrikant Gogate	ACS - 30642	Nashik
5. 9828		Sh. Dhanraj	ACS - 10788	Delhi	13. 9820		Sh. Vijay Babulal Shirole	FCS - 6876	Pune
<b>SIRC</b>					14. 9821		Mr. Ashish Omprakash Lalpuria	ACS - 30649	Mumbai
6. 9816		Mr. Sanjay Bangani V	ACS - 30743	Chennai					
7. 9819		Mr. N Selvaraj	ACS - 30620	Aruppukottai					

\* During the Period 21<sup>st</sup> August, 2012 to 20<sup>th</sup> September, 2012.





# News From the Regions

## Eastern India Regional Council

### Campus Placement for Fresh Members and Students

On 21.8.2012 the ICSI-EIRC organised a Campus Placement for the fresh members and students at ICSI-EIRC Building. Companies/PCS requiring Members for employment and Students for 15 Months training participated in the Campus Placement. There was an overwhelming response from among the students to attend the event and to get placement under a company or under a Company Secretary in practice. The Company and Practising Company Secretaries, namely, Microsec Financial Services Limited, Paragon Finance Limited, IKF Technologies, ITC Ltd, M/S A K Srivastava & Company, M.R & Associates, K.K Chhaparia & Associates, R Kanodia & Associates, Vinod Kothari & Company, etc. attended the programme and shortlisted the candidates for placements. An orientation programme for the candidates was organised just before the start of the interview session in which the candidates were briefed about the process of interview skills by CS Ranjeet Kanodia, Chairman, ICSI-EIRC.

### Study Circle Meeting on Global Change in Corporate Law and Opportunities for Company Secretaries in Global Market

On 25.8.2012 the ICSI-EIRC organised a Study Circle Meeting on the Global Change in Corporate Law and Opportunities for Company Secretaries in Global Market at ICSI-EIRC Building. The Guest Speaker was CS Abhijit Mukhopadhyay, Past Chairman, ICSI EIRC and President (Legal) & Company Secretary, Hinduja Group, London. CS Ranjeet Kr. Kanodia, Chairman, ICSI-EIRC, in his welcome address mentioned about the professional activities and various training programmes being conducted by EIRC from time to time for the cause of students and members alike. He in his deliberation also mentioned about the scope of Company Secretaries profession in the global arena and pointed out that company secretaries play a vital role not only in India but also in the global corporate laws sector.

CS Abhijit Mukhopadhyay, who dealt with various changes in corporate law in regard to the volatile changes in the global market

explained about UK Bribery Act which is also applicable for some class of Indian companies and stated the opportunities company secretaries have in the global market. The session was followed by an interactive Question and Answer session.

### Full-Day Seminar on XBRL under revised Schedule-VI, E-Voting and E-Conferencing

On 18.8.2012 the ICSI-EIRC organised a full day Seminar on XBRL under Revised Schedule - VI, E-Voting and E-Conferencing at Kolkata.

CS Ranjeet Kr. Kanodia, Chairman, ICSI-EIRC in his welcome address explained the concept of XBRL and at the same time stated that last year around 27,000 companies filed their financial statement in XBRL form. He also described the e-voting platform of SEBI which is applicable for top 500 listed companies on NSE and BSE based on their market capitalisation.

The Chief Guest at the inaugural session was CS Debashish Bandopadhyay, RoC (West Bengal) and the Guest of Honour was Dr. Pankaj Srivastava, Director, Ministry of Corporate Affairs and J.P. Agarwal, Architect, M/s. Agarwal & Agarwal. Bandopadhyay in his address said that the Revised Schedule VI is a step towards convergence with IFRS on presentations of financial statements which has led to a sea change in the disclosure requirements in financial statements, thus it has become very imperative for a need to understand the requirements of the Revised Schedule VI.

The speakers in the Technical Sessions of the seminar were CA Vinay Pagaria, Practising Chartered Accountant, CS Rajender Kapoor, Director, Webtel Electrosoft Pvt. Ltd, Moloy Biswas, Regional Manager, Central Depository Services (India) Limited.

In the First Technical Session, Dr. Pankaj Srivastava, Director, Ministry of Corporate Affairs dealt with current taxonomy of XBRL under Revised Schedule-VI and also explained the typical issues while filling the XBRL statements. CA Vinay Pagaria, dealt with the technical aspect of XBRL and stated that XBRL is the language for electronic communication of business and financial data which is revolutionising business reporting around the world. CS Rajender Kapoor dealt with XBRL concept, terminology and practical demonstration to creation of Instance Document and also briefly explained the difference between the old schedule-VI and Revised Schedule-VI. The session was followed by an Interactive Q&A session by the delegates.

The eminent speaker of the Second Technical Session was Moloy Biswas, Regional Manager, Central Depository Services (India) Limited. The theme of the session was E-Voting & E-Conferencing. Moloy Biswas gave a nice presentation on E-



# News from the Institute & Regions

voting and described the procedure of e-voting and e-conferencing. The session was followed by an Interactive Q&A session by the delegates.

After completion of the technical sessions a quiz programme was conducted on XBRL by Purshotam Vyas, participated by all and proved to be very interesting and interactive.

## Full-Day Seminar on Good Governance for Sustainability

From 27.8.2012 to 31.8.2012 the ICSI-EIRC observed 2nd ICSI Corporate Governance Week by organising a full day seminar on the theme Good Governance for Sustainability at Hotel Park, Kolkata. The idea behind it was to create awareness, propagate the best practices of Corporate Governance and mainstream corporate responsibility in the social fabric. Amlesh Bandopadhyay, Member (Technical), Company Law Board, Kolkata graced the occasion as the Chief Guest at the Inaugural session of the seminar. He in his address said that Indian GDP has grown very fast during the last decade and this growth is due to good Corporate Governance and as such the economy is booming. He also pointed out that for a business the foremost aim should not be profit maximisation but sustainability.

CS Ranjeet Kanodia, Chairman, ICSI-EIRC in his inaugural address spoke on the various initiatives taken by ICSI to improve standards of Corporate Governance like setting up of ICSI-CCGRT (Centre For Corporate Governance, Research and Training) in Navi Mumbai to foster and nurture research activities, setting up of ICSI National Award for Excellence in Corporate Governance to recognise and promote good Corporate Governance among good companies, conducting Investor Awareness Programmes, Post Membership Qualification in Corporate Governance etc. He also said that sustainability is an important part of business. He then said that Company Secretaries, over a period of time, have developed themselves as professionals having core competence in Corporate Governance. CS Arun Khandelia, Vice-Chairman, ICSI-EIRC in the introduction to the theme of the programme pointed out that It's ICSI's vision to be a global leader in promoting good Corporate Governance. He said that Governance is about taking decisions and implementing them and good Corporate Governance is a must for better business. CS Anjan Kr. Roy, Past Chairman, ICSI-EIRC in his address said that Corporate Governance is not new to Indian Civilization even Chanakya, has spoken on Corporate Governance by referring to *Raksha*, *Vrridhi*, *Palana* and *Yogakshema*.

The topics discussed during the four Technical Sessions were Board Interlocks and their impact on Corporate Governance, Director Development and Performance Evaluation, Gender Diversity, Regulators' Role Board's Role, Institutional Investors' Role, Law, Procedure & Issues, National Corporate Governance

Policy, Case for Non-financial Reporting - GRI Guidelines.

The First Technical Session was on the topic Board Interlocks and their impact on Corporate Governance where Prof. (Dr.) Suman K. Mukherjee, Principal & Dean, Bharatiya Vidya Bhavan Institute of Management Science spoke on the topic Board interlock and impact of Corporate Governance. Dr. Mukherjee in his very interesting and informative presentation covered the topic effectively from basic definition to the implementation as well as the deadlocks and way out. He said that corporate governance should be implemented in all the three levels - management, control and ownership.

In the Second Technical Session Sujata Roy, Assistant Professor, The West Bengal National University of Juridical Sciences spoke on the essentials of regulatory framework regarding corporate governance and sustainability, the requirement of Regulatory frame work, Decision making, Accountability, Functional aspects of the regulatory authority, Protection of target groups/class section of society, Dispute resolution and enforcement of powers. The other speaker in the technical session was CS Sanjay Kumar Gupta, Practising Company Secretary and Past Chairman, ICSI-EIRC. He in his deliberation to the audience spoke on corporate sustainability, then about the 3ps i.e. People, Planet and Profit. Saud Siddique, Joint Managing Director, SREI Infrastructure Finance Limited in his deliberation compared the Indian economy with other Asian Economies like Singapore, Japan, Korea, etc. He then pointed that Singapore, even though being a small country geographically and which was in the same situation as India fifty years ago, today has become an attractive destination for investment or and also for setting up or establishing a business and this is all due to the business environment, policy planning, etc.

The Third Technical Session was on the topic E Voting - New Fulcrum to Corporate Governance Vijay Bhushan, Chairman, Association of National Exchanges Members of India, NIRC (ANMI-NR) in his presentation spoke on e-voting, the genesis of e-voting, the developments and benefits of e-voting, the objective behind compulsion of e-voting. He also talked about the hurdles for implementing the e-voting process in India like low penetration of broadband internet or DSL compared to US or China. Vinod Goel, Vice-Chairman, Association of National Exchanges Members of India, EIRC (ANMI-ER) in his presentation stated that how concepts like e-voting, which is doing away with ballot paper is saving earth. It will increase the green initiative level proposed by ICSI. He explained the process of e-voting, gave an insight about the e-voting mechanism. He also stated that the agencies like NSDL, CDSL are adopting this concept and will lead others to follow. Nitin Ambure, Vice-President, National Securities Depository Limited in his deliberation explained the full process of e-voting in a very lucid manner with the help of a very informative presentation. He gave data with regard to those companies which have started this process. He mentioned that



from first October 2012 itself, e-voting will be compulsory for top 500 listed companies whether they listed on NSE or BSE.

The Fourth Technical Session was on the topic National Corporate Governance Policy. CS B. B. Chatterjee, Executive Vice-President & Company Secretary, ITC Limited, spoke about the need of National Corporate Governance Policy. According to him Good Corporate Governance aims at long-term value creation for all stakeholders. It encourages efficient use of resources and also demands accountability from leadership. Rubina Sen, Focal Point India Coordinator, Global Reporting Initiative spoke on GRI. She quoted Peter Drucker "What you can't measure, you can't manage, What you can't manage, you can't change." She spoke on the basic reporting framework of GRI. She also spoke on the role of company secretaries in sustainable reporting.

There was also a Press Conference with CS Ranjeet Kr. Kanodia, Chairman, ICSI-EIRC and CS Deepak Kr. Khaitan, Secretary, ICSI-EIRC. While addressing the media people CS Ranjeet Kr. Kanodia stated about Corporate Governance and said that we can achieve sustainability in our organization by maintaining Good Governance. He also highlighted the CS Course, fee structure etc. CS Deepak Kr. Khaitan, Secretary, ICSI-EIRC also explained the role of Company Secretary in maintaining Good Governance for achieving sustainability.

The Valedictory Session was attended by CS Debasish Bandopadhyay, Registrar of Companies (West Bengal), Ministry of Corporate Affairs as Chief Guest, CS K. Ananda Rao, Official Liquidator, High Court, Calcutta as Guest of Honour. The Guests appreciated the efforts of ICSI and highlighted the role of Company Secretaries for implementation of better corporate governance principles in corporates as healthy businesses lead to healthier economies.

## HOOGHLY CHAPTER

### Study Circle Meeting on Role of CS in Corporate Governance

On 26.8.2012 as a prelude to the 2nd Corporate Governance Week (27-31Aug 2012), Hooghly Chapter organized a Study Circle Meeting on Role of CS in Corporate Governance at the Chapter Conference Hall, Rishra. CS Ashok Purohit, Immediate Past Chairman of Hooghly Chapter in his welcome address emphasized the role of a company secretary in the day to day compliance activities of a company. He further said that a CS has the responsibility to enforce the Corporate Governance standards in a company. Managing Committee Members, past Chairman of the Chapter, other members along with twenty other delegates attended the programme.

### Full day Workshop on Leadership Skills and Recent Amendments to

## Listing Agreements

On 2.9.2012 the Hooghly Chapter of EIRC of the ICSI organized a Full Day Workshop on Leadership Skills and Recent Amendments to Listing Agreements at the Chapter Conference Hall, Rishra. In the forenoon session, CS Gautam Dugar, Chairman-Hooghly Chapter said that Leadership can be perceived particularly as an emotion-laden process, with emotions entwined with the social influence process. He discussed the different styles of leadership which can help to achieve professional success.

In the afternoon session, CS Ashok Purohit, Immediate Past Chairman of Hooghly Chapter elaborated the recent amendments to the Listing Agreements. Nearly 40 delegates attended the programme.

## Annual Students' Conference

On 16.9.2012 the Chapter organized a Students' Conference 2012 - Beyond the Barriers which was attended by more than 1250 delegates. This was a Mega Event both in terms of turn out of students and the presence of dignitaries from various fields.

The inaugural session witnessed the presence of Arup Roy, Hon'ble Minister of Agricultural Marketing; Pradip Chopra, Chairman - PS Group; Debashis Bandopadhyay, Registrar of Companies, West Bengal; Om Prakash Mall, Ex-Managing Director - Howrah Mills Company Limited; CS Ashok Pareek, Central Council Member - the ICSI; CS Ranjeet Kanodia, Chairman - EIRC-ICSI; CS Arun Khandelia, Vice-Chairman - EIRC-ICSI; CS Gautam Dugar, Chairman - Hooghly Chapter; CS Rakesh Ghorawat, Vice Chairman - Hooghly Chapter and CS Manisha Saraf, Secretary - Hooghly Chapter.

In the Technical Session, N. Krishna Mohan, CEO - Sales, Supply Chain & Human Capital, Emami Limited discussed the different aspects of Leadership Development Skills.

In the Learning Session, B. L. Mittal, Chairman and Managing Director - Microsec Group illustrated the role of CS in present corporate world. He further said that one should try to keep its mind as innovative as a child to get the solution for any problem one has never thought of earlier.

Speaking on this occasion, CS Manoj Banthia, Practicing Company Secretary and Past Chairman EIRC-ICSI said that it is good to be motivated and excited to achieve the desired goal but one should fix only such targets which are practical and real. This will help to achieve success step by step and also have a reality check.

In the post lunch Motivation Session, CA Amar Agarwala, renowned motivational speaker and senior partner - D. Roy & Co.



# News from the Institute & Regions

Chartered Accountants stressed upon communication skills. He said that the voice modulation is one of the most important tools in communication to convey the message effectively.

After this, Quiz Session was hosted by Prof Dilip Shah, renowned educationist and management consultant. CS Ravi Varma, CS Aditya Purohit, CS Davinder Kaur, CS Disha Dugar and CS Aditya Karwa selected the six finalists from the students. These students played the final round of quiz with Prof. Shah. The winners, Pritam Shaw won the Mr. Conference title and Swati as Miss Conference.

The students of ICSI got full day PDP exemption for attending the programme.

## Northern India Regional Council

### **Vaishali Study Circle Meeting on Practical Aspects of Delhi VAT and its Implications**

On 11.8.2012 at the Vaishali Study Circle Meeting on Practical Aspects of Delhi VAT and its Implications H C Bhatia, Senior Advocate and President Delhi Sales Tax Bar Association was the speaker.

### **Meeting of Company Secretaries in Practice on Powers of Regional Director (with respect to Latest Circulars & Notifications)**

On 13.8.2012 at the Meeting on above topic CS Adesh Tandon and CS Vishal Lochan Agarwal were the speakers.

### **Orientation Programme- How to Conduct Career Awareness Programmes**

On 14.8.2012 at the Orientation Programme on How to Conduct Career Awareness Programmes CS J.K. Bareja, CS Manoj Sharma were the speakers.

### **Study Circle Meeting on Corporate Sickness & Revival**

On 17.8.2012 at the Study Circle Meeting on Corporate Sickness & Revival C.S. Gupta, Advocate was the speaker.

### **West Zone Study Circle Meeting on Evolving Concepts in Tax Law**

On 18.8.2012 at the West Zone Study Circle Meeting on Evolving

Concepts in Tax Law DC Agrawal, Former CIT & Accountant Member ITA was the speaker.

### **Special Talk on Emerging Opportunities for CS in Global Arena**

On 20.8.2012 at the Special Talk on Emerging Opportunities for CS in Global Arena CS Abhijit Mukhopadhyay, President, Hinduja Group of Companies, UK was the speaker.

### **South Zone Study Group Meeting on XBRL- Revised Schedule VI**

On 24.08.2012 at the South Zone Study Group Meeting on XBRL- Revised Schedule VI, CS Rajendra Kapoor was the speaker.

### **Press Conference**

On 25.8.2012 at the Press Conference CS Rajiv Bajaj, Chairman, NIRC addressed the media people.

### **East Zone Study Group Meeting on Intellectual Property Rights**

On 25.8.2012 at the East Zone Study Group Meeting on Intellectual Property Rights CS Avinash Kumar was the speaker.

### **North Zone Study Group Meeting on Governance, Risk and Compliances**

On 26.08.2012 at the North Zone Study Group Meeting on Governance, Risk and Compliances, CS Gagan Palta, Country Compliance Office, Alstom India was the speaker.

### **Corporate Governance Conclave on Good Governance for Sustainability**

On 31.8.2012 the Regional Council organised a Corporate Governance Conclave on Good Governance for Sustainability. Chief Guest on the occasion was Dr. M. Veerappa Moily, Hon'ble Union Minister of Corporate Affairs and Power, Government of India.

The Key-note address was given by Sunil Kant Munjal, Jt.Managing Director, Hero Moto Corp. Ltd. Special Address was given by U.Venkataraman, CEO, Currency Derivatives Segment & Whole Time Director, MCX Stock Exchange.

Chairmen/Guest Speakers of various Technical Sessions were CS Vijaya Sampath, CS (Dr.) Sanjeev Kumar (Director-Corporate & Legal Affairs), Bajaj Hindusthan Ltd., B.K. Sabharwal, Executive Director, Jaypee Capital Services Ltd., CS Sutanu Sinha, Chief Executive (Designate), the ICSI, P.K. Bindlish (Chief General Manager, SEBI), Seema Arora (Principal Counsellor & Head, CII-ITC Centre of Excellence for Sustainable Development), Amit Tandon (Founder & MD, Institutional Investor Advisory Services India Ltd.), Dr.Naresh Maheshwari (President-DPAI), Samar Banwat (Senior Vice-President, NSDL), Dr. Aditi Halder (Director-GRI Focal Point India), Smt. Renuka Kumar (Joint Secretary, MCA) & Sonal Kohli (Lead





Sustainability, Essar Group).

## Investor Awareness Programme on Recent Developments in Capital Market

On 27.8.2012 the Regional Council organised an Investor Awareness Programme on Recent Developments in Capital Market. CS J.K. Bareja & CS Anupam Jha were the speakers.

## Career Awareness Programmes

NIRC had organised 27 Career Awareness Programs during the month of August, 2012 in various schools & colleges located in Delhi and surrounding areas. CS Deepak Kukreja, CS J K Bareja, CS Shiv Tyagi, CS Anupam Jha, Shyam Soni and Himanshu Sharma addressed in these Career Awareness Programmes. The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretary ship Course both in employment and in practice.

## GURGAON CHAPTER

### Career Awareness Week

On 21.8.2012 the Gurgaon Chapter of NIRC of the ICSI celebrated Career Awareness Week during which programmes on CS course were organized in rural areas around Gurgaon. On 21.8.2012 three programmes were organized in Rewari district of Haryana. In the programme the students were apprised about the mode of registration in the course, syllabus, structure of the course and opportunities available as CS professional both in employment and in practice. ICSI Teacher's Kit, Brochures, Pamphlets, posters received from the Institute for the above programme was distributed. The programme was addressed by Animesh Srivastava, Executive Officer of the Chapter. Around 300 students taken together attended the programme from all streams of the school. Detailed information was provided among others about the examinations, requirements of training, the role and importance of the profession of Company Secretary in changing economic scenario. The queries raised by the students were also replied satisfactorily by the speaker.

### Corporate Governance Week

From 27.8.2012 to 31.8.2012 the Gurgaon Chapter of NIRC of the ICSI celebrated 2nd ICSI Corporate Governance week. During the week a number of programmes were organised both for members and students, some of which included tree plantation, corporate governance quiz, essay writing competition etc. On 28.8.2012 a blood donation camp in association with Indian Red Cross Society was also organised.

### Half Day Seminar

On 29.8.2012 the Gurgaon Chapter of NIRC of the ICSI organized a Half Day Seminar on Corporate Governance &

Corporate Social Responsibility on the occasion of CG Week organized by the Chapter.

In the First Technical Session CS Deepak Jain, General Manager and Company Secretary, Unitech Ltd. spoke on Corporate Governance and Corporate Social Responsibility covering its importance for the Corporate Sector and in general life. He said Corporate Governance is not just compliance but it is far more than that as good governance leads to good business. He emphasized the concept of Corporate Governance as not only taking care of shareholders but also to take care of all the stakeholders of the business like shareholders, employees, creditors, suppliers, Banks & Financial Institutions, Government, society at large and even competitors.

The Second Technical Session was addressed by CS Punit Kumar Chellaramani, Senior Manager (Secretarial), Unitech Ltd who spoke on Corporate Governance. He discussed various stipulations of Clause 49 of the Listing Agreement of Securities and Exchange Board of India. With respect to this, he emphasized the role of Board and its various Committees, Code of Conduct, Training for Directors and Whistle blower Policy. He also spoke on the provisions of Companies Bill, 2011 on Corporate Social Responsibility. It enabled the members to gain insight and thorough knowledge relating to various statutory provisions of Corporate Governance/Corporate Social Responsibility.

At the end a question answer session took place wherein the queries raised were ably replied by the speakers. The seminar was attended by a gathering of ICSI members and students.

### Study Circle Meeting

On 15.9.2012 the Chapter at a study circle discussed the topic Understanding some important Commercial Terminologies. The Guest speaker was CS Rakesh Kumar Singhal. The participants were explained in detail by live examples the meaning of various commercial terms which are used on regular basis in the business of import and export and local purchases and their importance and financial implications. Main focus of the training was to make members aware of the important terms like FOB Price, CIF Price, Delivered duty paid, Delivered duty unpaid, Customs Bill of Entry, Switching of Bill of lading, Buyers' Credit, Letter of credit with and without recourse to buyer, Nostro/Vostro Accounts, Coverage of Customs duty Insurance, F.O.R. price, Ex-factory price, currency derivatives, packing credit, TT Selling and buying rates.

Participants were put to on an on-the-spot test as to how to calculate customs duty as per Indian Customs rules and were explained as to how to save money in the process of imports and also the precautions that must be observed while handling import/export documents so as to avoid any Complications from DGFT and RBI.



# News from the Institute & Regions

Members were explained about the importance of covering credit risk against exports by insurance through ECGC and by seeking L/C from buyers without recourse to buyer. Further the importance of Certificate of origin was explained along with mechanism/process of import.

The topic was well accepted by the members from Industry as they were made aware of the importance of authentication of audited accounts by Company Secretary and how they should build an in house macro check list to ensure that accounts are in compliance with requirements of the Companies Act, 1956.

## JALANDHAR CHAPTER

### Career Awareness Programmes

Career Awareness Programmes were conducted in the Commerce Department of DAV College, Jalandhar, S.D College and Doaba College to enlighten the students about the most coveted profession of Company Secretaries. The programme was attended by around 400 students from the Commerce Department. The animus of the programme was to brief the students regarding the immensely increasing popularity of the Company Secretary course, the scheme of the course and the prospects of the profession. Guest of Honour Neeraj Arora, Chartered Accountant who is also a visiting faculty of the ICSI presented a very interactive and engrossing session in which he motivated the students to join the CS course and at the same time addressed to the various fears and myths relating to Company Secretary Course.

## KANPUR CHAPTER

### Career Awareness Programmes

On 22.8.2012 Dr. Vinod Kumar Tewari, Counsellor-ICSI in Farrukhabd and Kannauj Districts under Kanpur Chapter of NIRC organized a series of Career Awareness Programmes, which included first CAP at Vidya Mandir Degree College, Kaimganj(Farrukhabad) and on 15.9.2012 at Vidya Prakash Mahavidyalay, Udharanpur (Kannauj) and third at H.L.V.N. Inter College, Chhibramau (Kannauj) . A total of 350 students (B.Com. and Intermediate classes) and teachers participated in these programmes.

Dr V.K. Tewari, in his address during all these career awareness programmes explained in detail the CS course offered by the ICSI, the role of company secretary, job opportunities, eligibility, registration procedure, fee structure, examination pattern and training required for the CS course. Dr V.K. Gupta Principal, VMD College, Kuldeep Arya, Neeraj Shakya also addressed the students. Brochures explaining company secretary course were distributed to the students.

## MEERUT CHAPTER

### Visit of Past President, the ICSI to Chapter Office

On 16.9.2012 O.P. Dani, Past President, the ICSI visited the Chapter Office. In his brief message O.P. Dani emphasised the importance of good governance in one's professional and personal life and gave tips and mantras for living a peaceful and better professional life. Dani interacted with the members present and appreciated the efforts of Team Meerut Chapter. He disclosed the fact that he also passed the CS examinations from Meerut. Manoj Aggarwal, ACS and Commerce Faculty, Meerut College, asked each student and member to follow the path of truth and good principles to demonstrate the highest level of dignity. He also interacted with the students present and gave tips to get through in examination and asked each student to work hard. Gaurav Jain put some useful questions to match the personal and professional life together which was well replied by O.P. Dani.

## MODINAGAR CHAPTER

### Study Circle Meeting on Role of Company Secretaries in Transfer Pricing

On 9.9.2012 the Chapter organized a Study Circle meeting on Role of Company Secretaries in Transfer Pricing. CS M.K Singhal, Chapter Chairman briefed on the scope and areas that are likely to open for a Company Secretary. He explained that a Company Secretary is responsible for all regulatory compliances of Company; he supervises the finalization of Annual Accounts of a Company and is also a party to sign the Balance Sheet. He has to ensure that all disclosures with respect to financial statements, Company law compliance, taxation, audit, related party disclosure, etc.; have been disclosed and that the financial statement gives a true and fair view of the financial performance of the Company. Merely because a Company has a hired specialist key personnel taking care of taxation related matters (including transfer pricing matters) including Finance Director or a Chief Financial Officer or a Chartered Accountant who takes care of tax related compliance matters does not absolve a Company Secretary from his duties to ensure that the tax related matters are regularly complied with by the Company in a timely manner. Even then, a Company Secretary has to overlook the work done by the key personnel or a Chartered Accountant and ensure appropriate compliance by the Company.

CS SK Sharma, Vice Chairman of the Chapter briefed that prima-facie role of a Company Secretary is to identify all the AEs with whom the Company has transacted during the year. There are likely chances that some of the entities which are falling under the deeming fiction might go unnoticed to the auditors. The consequence of non-reporting of a transaction is as high as 2 % of the total value of transaction that went unreported.



Further, penalty proceedings can also be initiated for concealment of true facts and disclosure under the section of the Income Tax Act.

CS Anup Gupta, Chapter Secretary briefed that whenever a Company proposes to enter into any of the international transactions, a Company Secretary should liaise with the Finance Director or the Chief Financial Officer of the Company and ensure that an appropriate advice from a transfer pricing specialist has been taken as to what should be an appropriate arm's length price for entering into such international transactions. He also gave examples of few companies having cross border transactions under specified domestic transactions. The following Transactions covered under the ambit of domestic transfer pricing: ● Any expenditure in respect of which payment is made or is to be made to a person referred to in Section 40A(2)(b) of the IT Act; ● Any transaction that is referred to in Section 80A; ● Any transfer of goods or services referred to in Section 80-IA (8) i.e. applicable to companies operating as industrial undertaking or enterprises engaged in infrastructure development; ● Any business transacted between the assessee and other person as referred to in section 80-IA (10); ● Any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; ● Any other transaction, as may be prescribed by the board. Provided that the aggregate value of the transaction entered into by the assessee with its domestic AE exceeds Rs. 5 crore.

CS Deepak Garg, CS Sushil Antal and CS P.C Gautam also covered certain areas those are being covered by a Company Secretary in Companies which did not have international transactions till date, however had domestic transactions with related parties, were not governed by the Indian TPR. Now since the domestic transfer pricing regulations are in place, Company Secretary of the companies who have domestic transaction with its related parties equal to or more than Rs. 5 crore or companies whose present domestic transaction is less than Rs. 5 crore but is likely to increase beyond Rs. 5 crore in the financial year 2012-13 are advised to validate their present business model and pricing methodology from a transfer pricing perspective which will enable them to take corrective actions, if necessary. They outlined the following check List for a Company Secretary to ensure appropriate compliance of Transfer Pricing Regulation: 1. During the financial year, liaise with the Finance Director or the Chief Financial Officer to identify the list of AEs and determine the value of International Transactions or specified domestic transactions. 2. Revisit the existing business model and transfer pricing methodology at least once in a year to ensure that the transactions of the Company with its AEs are at arm's length to justify contemporaneous nature of transfer pricing business model. 3. Ensure that the Transfer Pricing Accountant Report is filed with the Assessing Officer before the due date of filing of the return of income i.e. 30 November.

## Southern India Regional Council

### Participation in Live Phone-in Programme at Doordarshan

On 7.8.2012 the ICSI - SIRC participated in a live phone-in programme organized by the Doordarshan, Chennai. CS Ramasubramaniam C, Member, ICSI - SIRC represented the ICSI - SIRC in the programme and replied the queries of the callers.

### Independence Day Celebrations

On 15.8.2012 the ICSI - SIRC celebrated the Independence Day of the Nation. CS Chandrasekaran K, Past Chairman, ICSI - SIRC hoisted the National Flag at the ICSI - SIRC House, Chennai. CS Marthi S S, Chairman, ICSI - SIRC, CS Dr. Ravi B, Member, ICSI - SIRC and CS Ramasubramaniam C, Member, ICSI - SIRC spoke on the occasion. The members and students attended the Independence Day Celebrations. In his address Chandrasekaran recalled how the independence was achieved with the great efforts and sacrifices of several people. He also emphasized that it is the duty of all the citizens and particularly professionals to contribute to the growth of the Nation.

### One Day Seminar on Revised Schedule VI & XBRL Concepts, Terminology & Practical Demonstration on Preparation of Instance Document

On 18.8.2012 a one day seminar was held on the above topic. Rajeev Khandelwal, FCA, Director, Webtel Electrosoft Private Limited, New Delhi was the speaker for the seminar and CS Sanjay Bhandari, Partner, Bhandari & Co, Chartered Accountants, Chennai inaugurated the Seminar. In his address, Bhandari narrated the growing importance of being updated with XBRL. He also complimented the green initiatives taken by the ICSI - SIRC. Rajeev Khandelwal, in his lively speech explained the important changes of the Revised Schedule VI in comparison with the previous. In the second session, the speaker dealt elaborately with the various technicalities of XBRL. The session was so lively that members actively interacted with him.

### One Day Seminar on Corporate Governance

On 30.8.2012 to commensurate the 2nd Corporate Governance Week, the ICSI - SIRC organized a one day seminar on Corporate Governance at Chennai. CS S G Prabhakaran, Promoter & Chairman, XS Real Group, Chennai inaugurated the





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Seminar. In his address, Prabhakaran complimented the ICSI and ICSI - SIRC for organizing the 2nd Corporate Governance Week. He highlighted the role of CS in practising good governance in the organization he has promoted. Suresh B Menon, Chief General Manager and Regional Manager of SEBI, Southern Region, Chennai also graced the occasion.

The speaker for the first session was Henry Richard, Registrar of Companies, Tamilnadu, Chennai. He spoke on the Role of Regulators in Corporate Governance. The RoC on the growth of Corporate Governance in India explained that the Confederation of Indian Industry (CII) took a special initiative on Corporate Governance, the first institution initiative in Indian Industry. The objective was to develop and promote a code for Corporate Governance to be adopted and followed by Indian Companies and the code was called Desirable Corporate Governance Code. He also dealt with the initiatives and recommendations of various committees in improving the governing standards.

CS Dr. V Gopalan, Director, Janhar Management Consultancy Private Limited, Chennai was the speaker for the second session on Role of Auditors in Corporate Governance. Dr. V Gopalan observed that the auditors play a vital role in guiding the governance practices of the companies.

The third session was handled by V Nagappan, Director, Madras Stock Exchange Limited, Chennai. He addressed on Shareholders' activism in Corporate Governance. Nagappan quoted the point that the primary emphasis of activist shareholders has been to focus on the poorly performing firms in their portfolio and to pressure the management of such firms for improved performance, thus enhancing shareholder value.

S A Muraliprasad, Director, Sam Consultancy Services Private Limited, Chennai spoke on Independent Directors in the fourth session. He observed that Independent Director means non-executive Director who, apart from receiving directors' remuneration, does not have any material/pecuniary relationship or transaction with the company, its promoters, directors, senior management or holding company, its subsidiaries and associates, which in judgment of the Board may affect independence of judgment of the Director. He further explained that the Companies Act, 1956 does not specifically give the definition of the Independent Director. However Clause 49 of the Listing Agreement gives the definition. He also opined that it is necessary for the independent directors to prepare themselves thoroughly for any meeting and should be objective in forming sound decisions relating to the company and its business.

## Joint Programme on Role of Company Secretaries in Corporates and Practice

On 31.8.2012 the ICSI - SIRC and the VIT University, Vellore

jointly organized a programme on Role of Company Secretaries in Corporates and Practice at VIT Campus for the students. Around 400 students and 35 faculties from VIT University and 6 colleges in Vellore participated in the programme. CS Marthi S S, Chairman, ICSI - SIRC, Sarah Arokiaswamy, Joint Director, ICSI - SIRO and Dr. V Balaji, AEO, ICSI - SIRO spoke at the programme.

Dr. N Sundaram, Professor and Division Leader - Commerce, School of Social Sciences and Languages, VIT University welcomed the dignitaries and students for the programme. Dr. K Sathiyarayanan, Director, School of Social Sciences and Languages, VIT thanked the ICSI - SIRC for organizing the joint programme in their campus. Dr. G Viswanathan, Chancellor, VIT University, in his presidential address, highlighted the students about the importance of being professionally qualified to survive in this competitive world.

CS Marthi S S, Chairman, ICSI - SIRC spoke on the role of Company Secretaries in Corporate and Practice. He highlighted the increasing job opportunities available in the Corporate India for Company Secretaries and narrated the equal opportunities available in taking up practice.

Sarah Arokiaswamy, Joint Director, ICSI - SIRO, in her speech advised the students to do the CS course and explained about the course. Sarah also suggested the students to have a goal in their life and emphasized that if the students fail to plan, they plan to fail. She also advised the students to be punctual, disciplined and focused so as to achieve their goal in stipulated time. She also stunned the audience by quoting the success stories of various educationists, political and sports personalities, which were highly appreciated by the audience.

Dr. V. Balaji, AEO, ICSI - SIRO made a presentation on the CS course. The faculties and students interacted and raised many queries, which were aptly replied by Sarah Arokiaswamy.

The VIT University, Vellore also expressed its keen interest in being a public private partner of the ICSI and signing a MOU with ICSI.

## Joint Workshop on Corporate Governance

On 1.9.2012 the ICSI - SIRC & DB Jain College, Chennai organized a joint workshop on Corporate Governance for the faculty members of Commerce/Management at ICSI - SIRC House, Chennai. The workshop was inaugurated by E Selvaraj, Regional Director, Southern Region, MCA, Chennai. Sarah Arokiaswamy, Joint Director, ICSI - SIRO in her welcome address lauded the services of faculty members in educating the students and shaping the future India. She also requested them to be ambassadors and suggest CS course to their students. CS DR. M Sakthivel Murugan, Principal, DB Jain College, in his address, thanked the ICSI - SIRC in joining hand with them to





conduct a workshop for the faculty members.

CS Marthi S S, Chairman, ICSI - SIRC, in his address apprised them about the concept of Corporate Governance in brief. In his address, Selvaraj, Regional Director complimented the ICSI and ICSI - SIRC for organizing programmes on corporate governance and in particular the workshop for faculty members. He also threw light on the role of regulators in corporate governance.

The first session was addressed by CS Dr. B Ravi, Member, ICSI - SIRC on Role of Directors in Corporate Governance. In his simple and elegant speech he made possible of understanding the term corporate governance and the role of directors in it. The faculty members actively interacted with him.

CS C Ravisankar, Executive Vice President, Finance, Sundaram Motors, Chennai was the speaker for the second session on Corporate Social Responsibility. Ravisankar explained the concept of CSR in detail and also made a presentation on the CSR activities undertaken by leading corporates. CS S Eshwar, Company Secretary in Practice, Chennai spoke on Role of professionals in Corporate Governance in the third session. He spoke on the important roles played by professionals in practising good governance.

Around 135 faculties from various colleges in and around Chennai participated in the programme. The participation certificates were distributed to the faculty members by Harish Metha, Secretary & Correspondent of DB Jain College. A presentation about the CS course was made to the faculty members by Sreejith P, DO [CA], ICSI - SIRO.

## **BANGALORE CHAPTER** **Annual Day Celebration 2012**

On 12.8.2012 the Bangalore Chapter commemorated its Annual Day by organising a get-together of members, students and their family at Hotel Woodlands, Bangalore.

CS M Manjunatha Reddy, Vice-Chairman of the Chapter gave a brief summary of the major programmes organised throughout the year and the activities organised by the Chapter on account of its Annual Day Celebrations.

CS S Kannan, Chapter Chairman acknowledged the Contribution made by the Immediate Past Chairman CS G.M. Ganapathi in steering the Chapter this past year. The Chief Guest then presented a memento to CS G.M. Ganapathi, Immediate Past Chairman, Bangalore Chapter of the ICSI, as a token of gratitude and appreciation for his contribution to the Profession and the Chapter during his tenure as Chairman of the Managing Committee of the Bangalore Chapter of the ICSI. CS Gopalakrishna Hegde, Central Council Members, The ICSI honoured and distributed Cash Award and the Certificates to the

meritorious students for the June and December 2011 CS examinations.

CS Dwarakanath C, Vice-Chairman, SIRC of the ICSI & Ex-officio, Bangalore Chapter of the ICSI distributed prizes to the members and students who won various competitions previously conducted by the Chapter.

CS Nagendra D Rao, Treasurer, SIRC of the ICSI and Ex-officio, Bangalore Chapter of the ICSI honoured Participants/Winners/Runners-up of the various Competitions - at Regional and National Level.

CS Gopalakrishna Hegde then made a brief presentation on the Building Project for the Bangalore Chapter wherein he highlighted the work in progress of the construction activities. He shared with the audience the complete Architectural plan of project and also highlighted the sponsorship options and the area wise cost statements of the Building Project and requested all the members of CS fraternity located in Bangalore for their generous contribution and support in completion of the project. On the same evening, the Chapter also organised a cultural programme. Around 275 members/students along with their families were present.

## **Inauguration of Second ICSI Corporate Governance Week followed by One Day Programme on Good Governance for Sustainability**

Inaugural Session: On 27.8.2012 the Chapter organised the Inauguration of the 2nd ICSI Corporate Governance Week followed by One Day Programme on the Theme Good Governance for Sustainability. Padma Vibhushan, Hon'ble Justice M. N. Venkatachaliah, Former Chief Justice of India was the Chief Guest and inaugurated the event. CS S. N. Ananthasubramanian, Vice-President, The ICSI; CS Gopalakrishna Hegde, Central Council Member, The ICSI; CS S. Marthi, Chairman, SIRC of the ICSI and CS C Dwarakanath, Vice-Chairman, SIRC of the ICSI were also present. CS Gopalakrishna Hegde while introducing the theme stated that ICSI has been dedicated to promoting good corporate governance in India. It has been playing a crucial role in endorsing ethical governance practices as well as in creating awareness about the various barriers that stand in the way of putting together a strong corporate governance framework in India.

S.N. Ananthasubramanian in his address stated that the 3E's of good governance were Efficiency, Equity and Ethics and further added that Company Secretaries must not only be the purveyors but also practitioners of good governance.



# News from the Institute & Regions

Justice M.N. Venkatachaliah in his inaugural address said that "Our nation is going through a period of transformation and the corruption is the scum and emergence out of it. However it is the institution of democracy that will help us sustain during these turbulent times. Our country holds potential and promise that needs to be utilized for a sustainable growth".

The Chief Guest then released the Theme Paper and ICSI Publication - "Role of Company Secretary in Corporate Governance" which was facilitated by CS G.M. Ganapathi, Immediate Past Chairman, Bangalore Chapter of the ICSI.

## *First Technical Session - Topic: Ensuring Effective Boards*

Dr. Rejie George Associate Professor, Indian Institute of Management, Bangalore and Alka Kapoor, Joint Director, the ICSI were the speakers for the session. Dr. Rejie George in his presentation on "Board Interlocks and their impact on Corporate Governance" emphasised on Implications of Interlocks, existence and extent of such interlocks. He also touched on the implications for the companies and society at large and dealt with the Network Methodology of Directors and gave the descriptive statistics of overall network of Directors on NSE100 from year 2001 -2010. Regression analysis - Model Specifications and its variables and Correlation Matrix was also dealt in brief.

Alka Kapoor presenting on "Gender Diversity" focused on the rationale for diversity and gender diversity on boards. She highlighted the two studies made by McKinsey and Company and Ahern & Dittmar 2011 envisaging the financial benefits of having gender diversity on boards. She also emphasised that different perspective of the Genders leads to good governance. She also gave an overview of the steps taken by various countries like USA, Canada, South Africa, Finland, Sweden and Norway in incorporating gender diversity in their boards and its impact.

## *Second Technical Session - Topic: E-empowerment and Regulator's Role in Good Governance*

Samar Banwat, Senior Vice-President, NSDL, Mumbai; Manjit Singh, Executive Director, BgSE, Bangalore and Suresh B Menon, Chief General Manager and Regional Manager, SEBI (SR), Chennai were the speakers of the Second Technical Session.

Samar Banwat in his presentation on "E-Voting - New Fulcrum to Corporate Governance" gave a brief overview of NSDL, its promoters and the current legal framework of NSDL. He then highlighted the road map of e-voting system of NSDL as authorised by MCA. The salient features and advantages of e-voting system and the procedure for accessing e-voting system by entities like RTA, Company, Shareholders and Scrutinizers was also explained in detail.

Thereafter Manjit Singh speaking on the same topic emphasised

that E-Voting is a tool to empower investors, strengthen corporate governance and to protect interest of Minority Share Holders. He also dealt on the significance of E Voting and the agencies facilitating E-Voting. Further he highlighted the benefits of it to issuers and Shareholders.

Later Suresh B Menon in his presentation on "Corporate Governance - Regulator's Perspective" highlighted the definitions of Corporate Governance and its principles. He also enumerated the various initiatives of SEBI with regard to Corporate Governance.

## *Third Technical Session - Topic: From Self-Regulation to Public Policy*

Dr. Aditi Haldar, Director - GRI Focal Point India, New Delhi in her presentation on "Sustainability Reporting: Self-Regulation to Public Policy" dealt with the transparency Continuum of the Sustainability reporting. The GRI's (Global Research Initiatives) sustainability reporting framework and its standard disclosures were also explained in detail. She also highlighted the trends in reporting in India and South Asia.

Vasanthi Srinivasan, Associate Professor and Chairperson, Centre for Corporate Governance and Citizenship, Indian Institute of Management, Bangalore spoke on "National Policy on Corporate Governance" and brought up the real issues concerning corporate Governance and its framework. She emphasised that execution of formed principles and legislatures of corporate governance is far more important than modification and amendments and more laws. She emphasised on the importance of governance being an inborn trait or one implemented by people in true letter and spirit rather than mere laws and more laws to ensure transparency, and smooth functioning of corporate and the society at large. The programme was well attended by 224 Members and Students.

## **COIMBATORE CHAPTER**

### **Career Awareness Programmes**

On 7.8.2012 the Chapter as part of its Career Awareness drive aimed at educating the student community on the benefits of Company Secretaries Course organized a Career Awareness Programme at SNR Sons College, Coimbatore. CS P. Eswaramoorthy, Vice Chairman of the Chapter addressed more than 200 students. He was assisted by Ashok, Chapter in charge, Coimbatore Chapter in organizing the programme. On 10.8.2012 the Chapter organized a Career Awareness Programme at Karappagam Engineering College, Coimbatore. CS.Hariram.R, Management Committee Member of the Chapter addressed more than 150 students. He was assisted by Shyama Vijayaraghavan, Assistant Education officer of Coimbatore Chapter Office in organizing the programme. On 14.8.2012 the programme was held at PSG College of Arts and Science, Coimbatore. CS.Hariram.R, addressed more than 60 students.



He was assisted by Shyama Vijayaraghavan. On 18.8.2012 the programme was held at PSG College of Arts and Science, Coimbatore. Shyama Vijayaraghavan addressed more than 90 students. On 21.8.2012 the Chapter organized the Programme at Chinmaya International School, Coimbatore. Shyama Vijayaraghavan addressed more than 50 students. On the same day the Chapter organized another Programme at Stanes High School, Coimbatore. Shyama Vijayaraghavan addressed more than 185 students. On 22.8.2012 the Programme was held at Mani Higher Secondary School, Coimbatore. CS.G.Vasudevan, Management Committee Member, Coimbatore Chapter of SIRC of ICSI addressed more than 130 students. On the same day the Chapter organized a Career Awareness Programme at AVT School, Tirupur. Shyama Vijayaraghavan, Assistant Education officer of Coimbatore Chapter of SIRC of ICSI addressed more than 100 students. On 23.8.2012 the Chapter organized a Career Awareness Programme at Shri Nehru Vidyalaya Higher Secondary School, Coimbatore. CS Hariram R, Management Committee Member of the Chapter addressed more than 140 students. On the same day another Programme was held at SBOA School, Coimbatore. CS Venkatesh, Chapter Treasurer addressed more than 125 students. On the same day another Programme at NGP Arts and Science College was held. CS. C.Subramaniam, Chapter Chairman addressed more than 200 students. On 31.8.2012 the Chapter organized a Career Awareness Programme at Kongunadu Arts and Science, College. CS. Hariram.R, Management Committee Member of the Chapter addressed more than 300 students.

## Study Circle Meeting on Guidelines for issue of Commercial Paper

On 8.8.2012 the Chapter as part of knowledge updation initiative conducted a study circle meeting on Guidelines for issue of Commercial Paper by eminent Speaker and company Secretary, CS. K. Babu, Bangalore. More than 41 members/students attended the programme.

## Independence Day Celebration

On 15.8.2012 the Chapter on the occasion of Independence Day celebration had a get together. All the committee members and more than 10 other members of the Coimbatore region participated along with their families to grace the event. CS.C.Subramaniam, Chapter Chairman hoisted the National Flag.

## Second Corporate Governance Week of ICSI

On 30.8.2012 the Chapter celebrated the 2nd Corporate Governance Week of ICSI and organized a seminar on Limited Liability Partnership jointly with ICAI (Cost Accountants), Coimbatore, CS. C.V. Madhusudhanan, Partner, KSR & Co., Company Secretaries, Coimbatore addressed the gathering on LLP. The occasion was graced by the august presence

of 30 members.

## HYDERABAD CHAPTER

### Study Circle Meeting on Corporates and Criminal Liability

On 9.8.2012 the Chapter organized a Study Circle Meeting on Corporates & Criminal Liability at the Chapter premises. CS SV Rama Krishna, Advocate & Corporate Legal Advisor spoke on Court trial of offences under the Companies Act, 1956, Categories of punishments under the Companies Act, 1956, Object of Code of Criminal Procedure, 1973, Classification of offences and cases under Cr.PC, Trial of offences under the Indian Penal Code and other laws, Prosecution of companies for offences committed, Divergent views, Vicarious liability of companies, Prosecution of companies for offences, Identification Tests to Determine Criminal Liability of Corporations - English law and supported his speech with important case laws.

### Half Day workshop on Practical Issues on Revised Schedule - VI and XBRL Filing

On 10.8.2012 the Chapter organized a half-day workshop on Practical Issues on Revised Schedule -VI & XBRL filing, as a part of the Foundation Day Celebrations of the Chapter. CS Shujath Bin Ali, Chapter Chairman in his welcome address highlighted the importance of XBRL and Schedule-VI.

Darshan Varma, Associate Director in KPMG, CA Premnath, CA M. Praneeth Reddy, CS Rajender Kapoor, Director of Webtel were the speakers of the seminar. They stated that the adoption of XBRL filing by replacing traditional format has brought uniformity in the procedure. It converts the financial reports into computer readable form which in turn helps all the authorities in using the financial information optimally. Also there were different taxonomies put in procedure by the industry and regulatory authorities as per the requirements/rules and with the use XBRL filing the language barrier has been broken up to the great extent.

They further stated that the potential challenges of XBRL were inadequate training, improper identification of required software, incorrect tagging etc. At last they envisaged the role of Company Secretaries wherein a CS has to understand the basics of working of XBRL and ensure that the information is accurate.

### Lectures on the topic CS - Key Governance, Risk and Compliance Professional

CS Shujath Bin Ali, Chapter Chairman in his welcome address narrated various mile-stones and progress of the Hyderabad Chapter since its inception. On the eve of 38th Foundation day



# News from the Institute & Regions

Celebrations, The ICSI- Hyderabad Chapter organised Foundation Day lecture on CS- Key Governance, Risk & Compliance Professional on 10.8.2012. Vinod K Agarwal, IAS, Principal Secretary, Public Enterprises Department, Govt. of AP was delighted to be the Chief Guest at the ICSI Hyderabad Chapter's Foundation Day Celebrations. He spoke on the trends in the Corporate Sector, Corporate Governance, ROC, Companies Bill and on the role of Company Secretary in Corporate Social Responsibility. He cautioned the professionals to be vigilant and to discharge their duties similar to the responsibility towards all stakeholders of wealth and society at large. He advised the participants to adhere to the values and to teach the younger generation the importance of the value based system. He emphasized the role of the professionals as wealth protectors and reminded the participants as how the society depends on them in protecting and maximizing the wealth. CS S.S. Marthi, Chairman, SIRC and CS C. Sudhir Babu, Council Member, The ICSI graced the occasion and addressed the gathering. The services and significant contributions for the development of Hyderabad Chapter rendered by former President, The ICSI [Hyderabad] and former Chairmen/ Chairperson and former Secretaries of Hyderabad Chapter were recollected and were honoured on the occasion. Chapter distributed the Certificates to Award Winners.

## Independence Day Celebrations

On 15.8.2012 the Chapter celebrated the Independence Day. CS Shujath Bin Ali, Chapter Chairman hoisted the National Flag followed by National Anthem rendered by all the participants. Managing Committee members also graced the occasion. A big crowd of students was gathered on the said patriotic celebration.

## Seminar on Good Governance for Sustainability

On 28.8.2012 the Chapter organized a Seminar on Good Governance for sustainability at Taj Deccan. CS Sudhir Babu, Council Member in his welcome address emphasised on good governance for sustainability. In continuation of it he said governance simply means the process of decision making and the process by which decisions are implemented. Governance can be used in several contexts such as corporate governance, international governance, national governance, and local governance also made the audience aware that ICSI is a global leader in promoting good corporate governance and the company secretary as a top corporate professional to play an important role in the corporate governance. Being the governance professional company secretary is entrusted for effective guidance etc.

CS Shujath Bin Ali, Chapter Chairman spoke on role of a professional in good corporate governance and the reason why today the appointment of a company secretary is being mandatory in various jurisdictions. He further stated that

Company secretary as a corporate governance professional acts as a link between the company and its stakeholders, who updates development on legislative, regulatory and governance issues. CS acts as a compliance officer and Corporate governance is the core area of function of a company secretary, company secretary is a key functionary in the corporate world, with the changing global business environment placing thrust on compliance & governance, responsibilities of a company secretary have increased manifold towards safeguarding the interests of the stakeholders and also said the Institute and its professionals are the two important ingredients which bridges the gap of ensuring good corporate governance and making corporate governance as a brand ambassador.

CS S. S. Marthi, Chairman, SIRC in his address spoke on importance of the Corporate Governance and sustainability. He also narrated on execution of Board's governance practices as an officer of the company at the centre of the decision making process, and stated the company secretary has a major duty in ensuring that good governance is practised.

CS S.N. Ananthasubramanian, Vice President, The ICSI said that Sustainability is the capacity to endure. For humans, sustainability is the long-term maintenance of responsibility, which has environmental, economic and social dimensions. It encompasses the concept of stewardship and the responsible management of resource use. He also discussed practicing good corporate governance in the management and in regard to sustainability said that two key personnel play important role namely, the Institute and the company secretary.

Neerabh Kumar Prasad, IAS, Commissioner Hyderabad Metro Development Authority in his address said that Corporate Governance is simply the issue of principal & agent relationship. In view of ensuring good corporate governance various amendments have been made in the company law like - audit committee, independent director, etc., National foundation for corporate governance setup by the three institutes namely ICSI, ICAI, and ICWAI with the help of Ministry of Corporate Affairs. He further discussed the major issue of the corporate world that is the corporate accounts do not reflect true and 100% picture. So here the ICSI has to play an important role in the assurance of audit committees' corporate accounts being audited properly. He gave suggestions ICSI has to take the first initiative in the assurance of corporate accounts as a part of ensuring good corporate governance, the 2nd suggestion to ICSI is that the financial institutions and all the fund flows from abroad to have a proper regulatory framework and the 3rd suggestion is that it should have a proper corporate law in the functioning of the good corporate governance.

Thota Narasimham, Hon'ble Minister for Stamps & Registration, Govt. of Andhra Pradesh, Hyderabad congratulated the Institute to conduct the said celebration. He spoke on the importance of





the Company Secretary and the performance of the Board of Directors etc.

## Programme on Living Values

On 31.8.2012 the Chapter organized a programme on Living Value at Brahmakumari Shanti Sarovar. Sister Sheela, Senior Resource Person, Brahmakumari Shanti Sarovar, spoke on 'Values'. She said that value has two place of origination i.e. values which are already set in oneself and secondly the values which are set by one self. A person with positive values may not find instant success and could get little later but lives with moral satisfaction. On the other hand a person with negative values can find instant success but does not stay with it for long. She told anger always causes destruction and advised to avoid hatred and adopt the notion of forgive and forget. Finally she informed that values can be good or bad based on the perception of an individual, but a value which comes from inner soul is true and should be followed.

She also touched upon the importance of emotional balance in life, how to enhance emotional IQ, advised to learn to love/appreciate the person and how ethics help in growing in life.

## MADURAI CHAPTER

### Second Corporate Governance Week Celebrations

From 27.7.2012 to 31.8.2012 the Madurai Chapter of ICSI celebrated Corporate Governance Week with the theme Good Governance for Sustainability. The Mega Programme was arranged in association with Tamilnadu Chamber of Commerce and Industry, Madurai. Karumuttu T. Kannan, Managing Director, M/s.Thiagarajar Mills P Ltd., Madurai was the Chief Guest. Eleven Companies in and around Madurai which have introduced corporate culture were being recognized by the Institute. These companies were Thiagarajar Mills (P) Ltd, TVS & Sons Ltd, Thangamayil Jewellery Ltd, Vaigai Group of Companies, V.V.V & Sons Edible Oils Ltd, Pandyan Hotels Ltd, Fenner India Ltd, Madras Cements Ltd, Hi-tech Aria (P) Ltd, The Metal Powder Company Ltd and M/s Penguin Apparels (P) Ltd, presented with the Appreciation Awards by the Chief Guest. Dr. V.Chinniah Professor, Dept. of Management Studies, Madurai Kamaraj University delivered the lecture on the Subject. On this occasion the winner of the essay competition was presented with the shield and also the students who had completed the Professional examination of CS course June 2012 session numbering eight were honoured with the shield by N. Jegatheesan, President, Tamil Nadu Chamber of Commerce.

## MANGALORE CHAPTER

### Career Awareness Programmes

On 22, 23 and 31.8.2012 the Managalore Chapter of SIRC of the ICSI conducted the following four Career Awareness

Programmes in Aikala, Haleangadi and Bantwal areas: On 22.8.2012 the Career Awareness Programme was held at Pompei College, Aikala for IIIrd yr. B.Com students. 84 students attended the programme. On 23.8.2012 at Pompei College for IInd yr. B.Com students and Government First Grade College for IIIrd yr. B.Com/BBM students. Around 154 students taken together attended the programmes. CS Ullas Kumar Melinamogaru, Chairman, Mangalore Chapter addressed the Career Awareness Programme. During the Career Awareness Programmes the students were apprised about the Company Secretary Course, mode of Registration, syllabus, structure of the course and opportunities and avenues both in employment /practice on successful completion of the course. Brochure explaining the company secretary course were distributed among the students. The response in all the above programmes was very much encouraging and many queries asked by the students were satisfactorily replied by the Chairman.

## Celebration of Second ICSI Corporate Governance Week

On 30.8.2012 the Chapter organized an essay competition for the students of ICSI on "Good Governance for Sustainability" as a part of celebrating 2nd ICSI Corporate Governance Week, 27-31 August, 2012. The said competition was held at the office premises of the Chapter. CS Ullas Kumar Melinamogaru, Chapter Chairman inaugurated the programme. He explained the gathering that the 2nd Corporate Governance Week celebrated all over India from 27th to 31st August 2012 the theme was chosen as "Good Governance for Sustainability". The idea behind the ICSI Corporate Governance Week was to create awareness, propagate the best practices of corporate governance and mainstream corporate responsibility in the social fabric. About the theme Good Governance for Sustainability he stated that good governance is very vital for sustainability of nations, corporates and even families. Achieving sustainability is the ultimate goal of every corporate entity and each stakeholder plays a significant role towards this achievement. He further stated that during this week five mega programmes were held at five major cities of India and apart from that a number of the programmes were organized on corporate governance, sustainability & sustainability reporting, integrated reporting, responsible investment, gender diversity, waste management, whistle blowing, risk management & governance, and Good Corporate Citizenship as well as furthering "Go Green" initiatives all over the country and the Chapter was celebrating through holding essay competition for students on the Good Governance for Sustainability. Fifteen ICSI students attended the competition and the Chairman appreciated them for their participation. The essay written by Clarrel Jane Rodrigues was selected as the best essay among all the essays and would be awarded a special prize on behalf of the Chapter.



# News from the Institute & Regions

## Western India Regional Council

### Seminar on Secretarial Audit and Secretarial Standards

On 11.8.2012 the ICSI-WIRC organized a Seminar on Secretarial Audit and Secretarial Standards at Mumbai. C. V. Sajeevan, Ministry of Corporate Affairs was the Guest of Honour. Other faculty of the Seminar were Dr. S. D. Israni, Advocate & Solicitor, Keyoor Bakshi, Practising Company Secretary & Past President, the ICSI, Prakash Pandya, Practising Company Secretary. About 82 participants attended the Seminar.

### Seminar on Revised Schedule VI & XBRL Concepts, Terminology & Practical Demonstration on Preparation of Instance Document

On 18.8.2012 the ICSI-WIRC organized a seminar on Revised Schedule VI & XBRL Concepts, Terminology & Practical Demonstration on Preparation of Instance Document at WIRC of ICSI, AC Auditorium. Vijay Sahni, FCS, Director, Webtel Electrosoft Pvt. Ltd. and Ankit Varshney, Chartered Accountant addressed around 76 participants who attended the seminar.

### Seminar on SEBI Regulations, Listing Agreement and E-Voting

On 25.8.2012 the ICSI-WIRC organized a Seminar on SEBI Regulations, Listing Agreement and E-Voting at WIRC of ICSI. The Guest of Honour was J. N. Gupta, Founder & Managing Director, Stakeholders Empowerment Services. Other Speakers of the Seminar were Yogesh Chande, Advocate, J. J. Bhat, Advocate, Shailashree Bhaskar, Ex. DGM, SEBI and Nitin Ambore, Vice President, NSDL. About 76 participants attended the seminar.

## PUNE CHAPTER

### Management Skills Orientation Programme

From 23.7.2012 to 8.8.2012 the Pune Chapter organised its 10th MSOP at Pune Chapter premises for the students who have cleared their professional level of examination. 35 Students attended the same.

### Career Awareness Programme

On 31.7.2012 two Career Awareness Programme sessions were

organised in H V Desai College. CS Kunal Mandwale was the faculty of these sessions. More than 150 students attended the programme. Again on 3.8.2012 the Chapter organized a Career Awareness Session in S.N. D.T College of Arts & Commerce, Pune. CS Aarti Hugar was the faculty for the session. More than 85 students attended the CAP. Brochures explaining Information about CS Course were distributed amongst all the students present in these career awareness programmes. CS Brochures were also distributed amongst the students present.

### Investor Awareness Programme

On 1.8.2012 Pune Chapter of ICSI, jointly with the CDSL organized an Investor Awareness Programme at Maratha Chamber of Commerce, Near Swargate, Pune. The programme was organized free of cost with a view to spread over the awareness about the Stock Market amongst the Investors. There were in all two sessions which were as under: By CS Vivek Sadhale, Company Secretary & Head - Legal & Investor Relations, Persistent Systems Limited who shared his views along with the presentation on "Initial Public Offer". By Chandrashekar Thakur, Head Investor Education who shared the presentation and Information about the Demat and depositories (Mutual Funds Demat) and its advantages. There was a big response to both the sessions and around 100 participants attended the same.

### Two Days Conference on Mergers & Amalgamation-Creating Growth Opportunities

On 27 and 28.7.2012 the Chapter organized a two Days Conference on Mergers & Amalgamation-Creating Growth Opportunities at Hotel Le Meridian. The conference was inaugurated by Pradeep Bhargava, Chairman, CII (Confederation of Indian Industry) Western Region. CS Vivek Sadhale, Vishwas Mahajan, Entrepreneur- Compulink, Lekha Nair, VP Corporate Finance Enam Securities Pvt Ltd, S. Sundareswaran from Morgan Stanley, Anil Patwardhan-CFO KPIT Cummins, CA Parag Ved, Saumil Shah, Partner, M & A KPMG, Adv Alhad Oak were the eminent faculties for the programme. Valedictory session was chaired by Vijaykumar Khubchandani, ROC, Maharashtra, Pune. All the sessions were very informative and well appreciated by the gathering. The Programme received an over whelming response from the Members and other participants. Around 240 Participants attended the same and (8) Eight Credit Hours were allotted to the members attending the programme.

### Study Circle Meeting on Important Aspects of the Finalisation of the Financial Statements

On 11.8.2012 CA Kiran Kunte, Practising Chartered Accountant conducted a Study Circle Meeting on Important Aspects of the



Finalisation of the Financial Statements. Initially he briefed the audience about the revised Schedule VI and new concepts introduced under it. He also threw light on difference between IFRS & IGAP. He explained reasons for revising schedule VI and thereby points to be considered while finalization of financial statements.

He also explained the three stages of financial statements i.e. Preparation, Presentation and Disclosure. He briefed the audience about concepts called Extraordinary Items, Exceptional Item and Discontinuing of Operation by giving practical examples.

Lastly he explained concept of XBRL, few terminologies under it and difference between Business Reporting and Financial Reporting. He then focused on points to be considered while reporting for different purposes and ended the session with replying the queries raised by the audience.

CS Anant Palande, PCS Committee Chairman coordinated the same. There were around 44 participants and 1 (One) Credit hour was allotted to the members attending the SCM.

## Study Circle Meeting on Role of Company Secretary as Compliance Officer

On 25.8.2012 CS G. P. Kulkarni, Company Secretary conducted a Study Circle Meeting on Role of Company Secretary as Compliance Officer. Initially he briefed the audience about the importance of compliance, concept of compliance with respect to corporate governance and expectation of board of directors from a company secretary as a compliance officer and explained the role of reporting system as an integral part of compliance system. He also explained methodology of ensuring compliances with the help of various practical experiences of his and stressed on the point that compliance be ensured by developing understanding, awareness and co-operation in the organization rather than by compulsion. The session concluded after replying the queries raised by the audience. The Study Circle Meeting was attended by approximately 40 participants.

## Corporate Governance Week

From 27.8.2012 to 31.8.2012 the ICSI organized the Second Corporate Governance Week. Pune Chapter of ICSI participated in the same by way of organising many activities on the occasion. On 27.8.2012 the start of the Corporate Governance Week was made with the Blood Donation Camp, which was organized in association with the Sahyadri Hospitals. The Camp was organized at the Chapter premises and there was good response especially from students for this noble cause.

*Good Governance for Sustainability:* 28.8.2012 - One of the initiatives of the Corporate Governance Week was to take efforts towards promoting environment protection and sustainability

development. The goal is to reduce use of office paper and forms part of our push to integrate sustainability into our day-to-day operations.

*Parvati Hill Climbing:* On the second day of the Corporate Governance Week, a hill climbing was organized by the Pune Chapter, at Parvati in the Morning.

*Tree Plantation:* This was followed by the Tree Plantation organized in association with Green Hills Group, Pune. Through this project, Pune chapter of ICSI planted in all 15 Karawand saplings and as a part of its social responsibility, a certain amount was donated to this Group towards adopting these saplings for a period of two years. This initiative was well received by all the members and students.

*Competitions Day:* The third day was organized as a Competitions Day wherein following competitions were organized for students and members, ICSI: Slogan writing, Poster - Painting and Essay Writing, The themes for the competitions were "Green initiatives". Winner's name for Best slogan to be suitably published on child portal of Pune Chapter. Green Day: On 30.8.2012 the Fourth day was celebrated as a "Green Day". Pune Chapter of ICSI celebrated this day as a Green Day or a "No Print Day". An appeal was made to all the members of ICSI to celebrate this day as a Green day along with the Pune chapter of ICSI and also to use less paper, less electricity and to take green initiatives such as use of technology and digitalization, instead of printing of papers, etc.

*CSR Meet:* On 31.8.2012 the fifth and last day of the Corporate Governance Week was celebrated by the Chapter by organizing a "CSR Meet" in association with the Maharashtra Chamber of Commerce Industry and Agriculture, Pune Branch at Navalmal Firodiya Hall, MCCIA, Pune.

There were 2 sessions conducted during the CSR Meet which were as under:

Uday Bhaskarwar, Founder and CEO of Thinking Hut conducted a session on "CSR and emerging areas on CSR". Seemantinee Khot, Global Head, Suzlon Foundation conducted a session on CSR - Good governance for Sustainability. Around 40 participants attended the programme.

## RAIPUR CHAPTER

### Study Circle Meeting on Schedule VI of the Companies Act, 1956

On 9.9.2012 the Chapter organized a Study Circle Meeting on Schedule VI of the Companies Act, 1956. CA Sakshi Gopal Agrawal was the speaker. Nearly thirty people attended the meeting.



## ICSI - CCGRT

### Programme on Writing Skills

On 9.9.2012 the ICSI-CCGRT organized a programme on Writing Skills at its premises. Clearly written documents are expected to improve compliance and decrease litigation. Four key criteria of Clarity, Correctness, Conciseness and Consciousness in writing documents help in conveying the meaning clearly, simply and effectively. In learning writing skills, one is actually learning skills, aptitudes and a way of thinking that helps to prepare for all aspects of a Company Secretary's work. The programme was particularly designed for young members and students.

The speaker for the programme was Bakul Pandya, Advocate, High Court. He held elaborate discussions from the Basics of Writing to the Preparation of Professional Documents. The programme also had various exercises on Grammar and Vocabulary Development; in which the participants actively participated. Advocate Bakul Pandya explained the Four Basic Rules of writing. By enriching the participants with his vast experience, he divulged them to professional writing. The programme ended with eulogize and ovation from participants.

### Programme on Ethics for Enduring Happiness

Business decisions that result in superior profits in the short term may not necessarily be sustainable business proposition in the long run. There are several moral traps that an executive experiences in today's dynamic business environment like blowing the whistle on workplace misconduct; employee rewards for succeeding at any cost, tinkering with corporate disclosures, conflict of interest situations, etc. In this backdrop, ICSI-CCGRT conducted a half-day training program on Ethics for Enduring Happiness at its premises in Navi Mumbai to help the participants to recognize and analyze ethical issues in business; promote ethical behaviour in companies and institutions, develop skills in presenting and evaluating ethical arguments and measure their moral compass. A Lahiri, Former Managing Director, CARE gave the inaugural address. The speakers for the programme were Huzeifa Unwala, Partner, NMAH & Associates, Chartered Accountants, Mumbai and Anil Kamath, Founder Chairman, Esemcee Advisors, Ex Managing Director, Wockhardt Hospitals Ltd, Mumbai. The sessions were delivered by the speakers through a combination of theory, practical insights and business case studies to introduce the participants to the basic concepts of ethics and moral behaviour, align their thoughts and actions to morally correct behaviour, inculcate a strong foundation and belief system that they succeed in life only through morally right actions and practice legitimate means that gives them enduring happiness. The speakers provided the participants with a set of framework which will enable them to quickly re-visit the basics of ethical behaviour and also tested their moral compass by taking the ethics objective test.

The interactive format of the programme enhanced the knowledge

of the participants on the subject of Business Ethics, helped them in applying it in business situations and encouraged them to work on self-acknowledged moral standards. Towards the end, Certificates of Participation were distributed to the participants.

### Second Corporate Governance Week of ICSI

On 29.8.2012 the third consecutive day of the Corporate Governance Week was organised in the city of Mumbai, at the National Stock Exchange Auditorium-Bandra Kurla Complex. The day dedicated to deliberations on Good Governance for Sustainability saw the coming together of professionals, researchers, corporate heads and students. Distinguished professionals treated the audience to a feast of thoughts on good governance and sustainability by sharing their rich experience from the board rooms and corporate interactions.

The Chief Guest on the occasion was Rajeev Agarwal, Whole Time Member, Securities and Exchange Board of India (SEBI) and the Guest of Honour was Chitra Ramkrishna, Joint Managing Director, National Stock Exchange(NSE).

The eminent speakers enriching the gathering were Dr. A K Sengupta, Founder and President, Higher Education Forum (HEF), M K Chauhan, Chairman, Mahendra & Young Knowledge Foundation, Dr. A K Khandelwal, Former CMD, Bank of Baroda, Dr. Naresh Maheshwari, President- DPAI, Nitin Ambure, Vice President, NSDL, B K Sabharwal, Chairman, FISE, Zia Mody, AZB & Partners and Rubina Sen GRI. The moderators included S V Subramanian, Chairman, SSB, ICSI, Pramod Shah, Former Chairman, WIRC and R Balakrishnan, Company Secretary, Pune. Mahavir Lunawat, Chairman, WIRC of the ICSI welcomed the audience and dignitaries and set the tone to the proceedings. The theme of the Corporate Governance Week was elucidated by Atul Mehta, Council Member, the ICSI and Programme Director while the Vice Presidential address was given by S N Ananthasubramanian. B Narasimhan at the end of the inaugural session informed the participants of some of the recent initiatives of the ICSI.

Chitra Ramkrishna with her lucid style raised vital issues on the governance practices prevalent in India; the primary being the ownership issues in Indian listed companies. The focal point of governance in India was concentrated on three major issues viz. Ownership pattern of corporates, Compliance being a box ticking exercise and Gender diversity in the Corporate Board. Citing the statistical research findings of CLSA report and World Bank report, she candidly complemented on the improvement of governance standards. However, there is much to do, and a long way to go she reiterated. She ended her note by provoking the thought that the ultimate responsibility of corporate governance lies within us and it should be propagated through professionals with clear conscience. This was followed by launch of the ICSI's publication on Responsibly Managing e-waste by the Chief Guest, Guest of Honour and other dignitaries.

Rajeev Agarwal commenced his inaugural address by giving a brief note on the Indian Economy; Issues and challenges. Talking about the significance of Good Governance for Sustainability, he said that





the Governance Structure of an organisation should pave way for the sustainable development of the organisation and the country as well. Growth, Equity and Environment are therefore the three fundamental components of Good Governance, which in turn leads to economic development. Distortion of any Governance Structure makes the nations/societies collapse e.g. Roman Civilisation. Same is the case with corporations. Weak governance structure leads to the collapse of the organisation altogether which is evident in case of Enron, Satyam etc. In conclusion, he made it clear that for long-term success of any organisation, it is necessary to evaluate the cost and benefit to all stakeholders and not only shareholders.

Dr. A K Sengupta in his vocalizations discussed the vision 2050 by World Business Council for Sustainable Development. He questioned the sustainability practices of the corporates by raising questions like how to develop economic stewardship in corporates, what should be the role of Corporate Governance and Board, what should be the principles of Corporate Governance etc. He also detailed the three principles of golden triangle. Dr. Sengupta inquired into the openness, transparency and financial reporting of the corporates, which could lead to a better tomorrow for the citizens of this world.

M K Chauhan spoke with eloquence on Board Interlocks. He focused on the human side of the corporates. Profit is not bad but profiteering is. The model of ESG (Environment, Society and Governance) can create difference. He also gave importance to the three qualities of Independent directors viz. Vision, Integrity and Courage. Board interlocks are of two types - Direct interlocks and Indirect interlocks. Interlocks are necessary for basic three reasons viz. Social networking, Leveraging common thinking and Opening communication channels. These were the highlights of his session. Interaction with the audience opened few more doors at the end of his session. The questions were raised on impact of board interlocks on Corporate Governance, Board of Champions v. Champions Board and Qualities of Independent Directors. These were judiciously answered by the speakers M K Chauhan and Dr. Sengupta.

Dr. A K Khandelwal conducted an awe-inspiring session on Director Development and Performance Evaluation and Deficit Governance. Bringing to the forum his vast expertise and rich interactions with the various boards, Dr Khandelwal kept the audience spell bound with intriguing thoughts, and provocative answers. He classified Boards into three types namely 1. Board as NPA (Non Performing Assets) 2. Talented Board and 3. Mediocre Board. He also discussed on whether and how board requires development. Directors can add or erode value and hence needs to be developed as leader, in technicalities of organization and Corporate Governance. The chemistry of creating collaboration by seeing each other's view point is necessary to develop. Board development can be made through arranging Internal and external talks, orientation programmes at the time of joining of directors, developing mutual respect, subscribing published material etc. Board development should be continuous and in various ways which enhances their intangible assets. Not only development but Board Evaluation also plays an important role. Following indicators

should be considered before evaluation - who should evaluate, with whom the evaluation should be shared, what should be evaluated, what should be the limit of directors to sit on board, how it can create value towards society, organization, environment and nation etc. Dr. Khandelwal's clarity in questions, and ideas for action provoked many to consider the pursuit of research and get deeper insights into the board functioning.

Dr. Naresh Maheshwari, Nitin Ambure and BK Sabharwal a trio of experts on E-Voting- New fulcrum to Corporate Governance, Law, Procedure and Issues mesmerised the participants by specially focusing on the budding professionals. Speakers cleared various doubts on e-voting and postal ballot practices. Dr. Naresh Maheshwari shared his thoughts on specific features of e-voting. Nitin Ambure a key role player in developing e-voting platform of NSDL gave a brief note on the framework of e-voting and role of RTA agent. SEBI recently mandated top 500 listed companies at BSE and NSE to implement the e-voting process for the businesses to be transacted through postal ballot. These thoughts were propagated by him in his speech. B K Sabharwal focused on Corporate Governance from capital point of view in his proceedings. Promoters pledging their shares for capital benefit should be restricted. Policy such as Dividend Declaration and issuing warrant should be used in positive spirit.

SV Subramanianspoke on the need to have a National Policy on Corporate Governance that synthesizes the disparate elements in diverse guidelines, draws on innovative best practices adopted by specific companies, incorporates the current international trends, and anticipates emerging demand on Corporate Governance. He also threw light on several studies made till date that shows that gender diversity on the board plays off and that there is a positive correlation between the share of women in senior position and with company performance. He also marked the role ICSI plays and always demonstrated its commitment to Corporate Governance in bringing out awareness on various issues.

Rubina Sen gave a brief introduction on role and importance of GRI. She emphasized on the crises in trust which may be overcome through sustainability report. A sustainability report is an organizational report that gives information about economic, environmental, social and governance performance. Reporting on sustainability performance is an important way for organizations to manage their impact on sustainable development. The challenges of sustainable development are many, and it is widely accepted that organizations not only have a responsibility but also a great ability to exert positive change on the state of the world's economy and environmental and social conditions. She also explained process of GRI reporting.

Zia Mody kept the audience pondering for more with her command on language and conviction in the subject of governance. She elucidated the journey of corporate governance policy when it started with the setting up of Cadbury Committee till recent amendments and setting up of Adi Godrej Committee with ICSI providing secretarial support. She focused on principle based Corporate Governance which applies to the listed and unlisted



companies. The constant tussle between Outsider and Insider leads to development of SMART CG (Simple, Moral, Accountable, Responsible and Transparent Corporate Governance). Tone from Top, Stewardship and Gender Diversity were the main issues raised by her.

## Programme on Understanding Tax Laws

On 26.8.2012 ICSI-CCGRT conducted a full day programme on Understanding Tax Laws at its premises in CBD Belapur, Navi Mumbai. The programme was well attended by members and students. The speakers for the programme were Kalidas Ramaswami, Company Secretary, Reliance Power Limited and Smitesh Amul Desai, Practising Company Secretary, Valsad.

Kalidas Ramaswami initiated the discussion by giving a brief overview of the provisions of Direct Tax Code and Goods and Service Tax. He then explained the concept of Capital Gains. He also quoted some of the important case laws under the Income Tax Act. Going further, he explained the role of a Tax Manager. He said that a tax manager can contribute to the bottom line through his innovative thinking. He also explained the concepts of Tax planning, Tax avoidance and Tax Evasion and the wafer thin differences between these concepts. He highlighted various areas of tax planning viz. dividend policy, issue of bonus shares, corporate restructuring, depreciation policy and accounting policies. He then explained the concepts of charging section and inclusive definition. Interpretation of statutes is an important aspect of any law. Ramaswami discussed the various means of interpreting tax laws. Smitesh Amul Desai covered the Indirect Taxation aspect elaborately. He discussed Custom duty, Excise and Service Tax including the recent amendments in Service Tax laws by quoting various examples. He made a brief presentation on the various concepts in Indirect Tax Laws. Desai conducted the session in the form of an experiential learning. This was well appreciated by the participants. The queries raised by the participants were well addressed by both the speakers.

## Programme on Conduct of Annual General Meetings and Board Meetings

On 25.8.2012, ICSI-CCGRT conducted a programme on Conduct of Annual General Meetings and Board Meetings at its premises in CBD Belapur, Navi Mumbai mainly for newly admitted members and students of the institute to make them understand the practical aspects of conduct of meetings. As a part of this programme, the students were taken to the Annual General Meeting (AGM) of a Listed Public Limited Company at Mumbai the previous day, for practical exposure to the proceedings and atmosphere of the AGM. On the program day, sessions were conducted on the practical aspects of conduct of AGM and Board Meetings. Speakers for the programme were N L Bhatia, FCS and Practising Company Secretary, V C Vadodaria, Group Company Secretary, Piramal

Enterprises Ltd. and Suresh Thakur Desai, Former Chairman WIRC. The speakers shared their vast experience on the subject with the participants. Suresh Thakur Desai shared his experience on the conduct of board meetings and AGM. He discussed the preparations to be made for the conduct of general meetings. He also explained the various steps which need to be taken before and after the proceedings of general meetings. N L Bhatia quoted some instances relating to the conduct of Board and General Meetings which were remarkable. He cited an instance, where the Company Secretary while reading the annual report during the AGM fell down and died. Even in this case the meeting was conducted by the Chairman smoothly because he had no other choice but to follow the regulatory requirement. He said that a professional learns by making mistakes. Hence one must not fear making mistakes; but must try and learn from their mistakes. Students and young members should therefore try and lay hands on various new things. He further said that application of knowledge is most important and just reading the theory is not enough. V C Vadodaria too shared his experience of conducting general meetings. He made it crystal clear that one must be thorough with the provisions of the Companies Act to be able to conduct the AGM as per law. He further explained that suppressing the mistake is the biggest mistake a professional ever commits. One should disclose it to their seniors. He also discussed about the seating arrangements of the Directors at the Board Meetings and said that special care must be taken regarding the same.

As a part of the programme, the participants were also given a glimpse of Minutes Book, Statutory Register and the common seal. Bhaskar Upadhyay of N L Bhatia & Associates gave an overview of the practical aspects of writing minutes, binding the minutes, affixing the common seal and updating the statutory registers. He said that the real challenge arises when company secretaries are asked to fill up the statutory registers, which seems to be very easy but requires a lot of concentration. He further said that theory is easy to read but a company secretary learns only when he actually lays hands on various things.

## Programme on Project Finance

On 12.8.2012 the ICSI-CCGRT conducted a full day programme on Project Finance at its premises in CBD Belapur, Navi Mumbai. The speakers for the programme were Vishal Thakkar, Director - Brianna Knowledge Resources Pvt. Ltd, Inderpreet Singh Chhadha, Associate Vice President - Intellivate Capita and M V Phadke, Chief General Manager - Legal, IDBI Bank Ltd.

Inderpreet Singh Chhadha initiated the discussion by giving an overview of the concept of project finance and then covered the process of project finance. He explained the concepts and the process in a lucid manner. Vishal Thakkar covered the topics of project cost estimation, cash flow, capital budget and project funding in detail. His session was truly a learning exercise for the participants. M V Phadke conducted an elaborate session on project finance documentation. He shared his practical experiences on the subject. This made the session quite interesting. All the queries of the participants were well addressed by the speakers.



## Announces

Program on

PCH-4

### Labour Laws and Compliances

PDP-8

Day, Date & Time	Saturday October 13, 2012	09.30 a.m. to 05.30 p.m. (followed by lunch)
Focus of Coverage	<ul style="list-style-type: none"> <li>◆ Liability of employers under Labour Laws</li> <li>◆ Statutory Compliances under Labour Laws</li> <li>◆ Returns to be filed under Labour Laws</li> <li>◆ Compliance under select Labour Laws</li> <li>◆ Dispute resolution mechanism</li> </ul>	
Faculty	Speakers with practical exposure to the subject will address the participants.	
Fees :	₹ 1500/- per participant for Members of ICSI ₹ 2000/- per participant for Others ₹ 1000/- per participant for Students to cover the cost of backgrounder, kit, lunch and other organisational expenses.	

Program on

PCH-4

### Transfer Pricing

PDP-8

Day, Date & Time	Sunday October 14, 2012	09.30 p.m. to 05.30 p.m. (followed by lunch)
Proposed Coverage	<ul style="list-style-type: none"> <li>◆ Overview and Regulatory framework of Transfer Pricing</li> <li>◆ Transfer Pricing Methods</li> <li>◆ Domestic Transfer Pricing Rules</li> </ul>	
Faculty	Speakers with practical exposure to the subject will address the participants.	
Fees :	Members ₹ 1,500/- per Member Students ₹ 1,000/- per Student Others ₹ 2,000/- per participant to cover the cost of program kit, lunch and other organizational expenses.	

Program on

PCH-4

### Revised Schedule VI

PDP-8

Day, Date & Time	Saturday October 20, 2012	09.30a.m. – 05.30 p.m. (followed by lunch)
Proposed Coverage	<ul style="list-style-type: none"> <li>◆ Overview of Revised Schedule VI</li> <li>◆ Old Schedule VI Vs Revised Schedule VI</li> <li>◆ Practical Issues in implementation of Revised Schedule VI</li> <li>◆ Preparation of Balance sheet under Revised Schedule VI</li> </ul>	
Faculty	Speakers with practical exposure to the subject will address the participants.	
Fees :	Members ₹ 1,500/- per Member Students ₹ 1,000/- per Student Others ₹ 2,000/- per participant to cover the cost of program kit, lunch and other organizational expenses.	

Early bird discount of ₹ 250/- per participant for payments received up to October 11, 2012

**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 send to The Dean, ICSI-CCGRT , Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614.

**Venue for the above program :** ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614

Phone : 022 - 2757 7814, 022 - 4102 1515, Fax-022-2757 4384 or email: ccgrt@icsi.edu



## REPORT ON 2nd ICSI CORPORATE GOVERNANCE WEEK

Corporate Governance is the evolution of a culture by which the values, principles, management policies of a corporation are inculcated and manifested. The Institute has always demonstrated its commitment to corporate governance and has played a pivotal role in bringing about awareness on various issues impinging corporate governance.

In line with its vision, and furthering the cause of good governance amongst corporate India, the Institute celebrated "2nd ICSI Corporate Governance Week" on the theme Good Governance for Sustainability, from 27th to 31st August, 2012 by organizing five mega programmes at Bangalore, Hyderabad, Mumbai, Kolkata and New Delhi. Global Reporting Initiative Focal Point India and the Indian Institute of Corporate Affairs were the knowledge partners.

In addition to the mega events at five major cities, the Week long nation wide event was held by all the Regional Councils and Chapters of the ICSI by organizing various programmes, events, interactive sessions etc. for the members, students, industry luminaries, professionals and other stakeholders on the various facets of the corporate governance and sustainability.

The launching event of the 2nd 'ICSI Corporate Governance Week' was held in Bangalore at Vivanta by Taj on August 27, 2012. Hon'ble Justice Shri M.N. Venkatachaliah, Former Chief Justice of India was the Chief Guest on the occasion. Inaugurating the mega event, Hon'ble Justice Shri Venkatachaliah said that in the present economic scenario, professionals like Company Secretaries can play a very important role in the governance management of corporate sector by virtue of their in-depth knowledge of Securities and Corporate governance Laws. He emphasized that the Company Secretaries hold the highest positions in corporate sector and their role should be as independent professionals for corporate governance.

Sri Thota Narasimham, Hon'ble Minister for Stamps & Registration, Govt. of Andhra Pradesh, inaugurated the mega event at Hotel Taj Deccan in Hyderabad on August 28, 2012. Shri Neerabh Kumar Prasad, IAS Commissioner Hyderabad Metro Development Authority, was the Guest of Honour on the occasion.

In Mumbai, the mega event was held at the NSE Auditorium on August 29, 2012. Shri Rajeev Agarwal, Whole Time Member, SEBI and the Chief Guest on the Occasion, in his address, highlighting the significance of Good Governance for Sustainability, saying that the Governance Structure of an organisation should pave way for the sustainable development of the organisation and the country as well. Growth, Equity and Environment are therefore the three fundamental components of Good Governance, which in turn lead to economic development. Ms. Chitra Ramakrishna, Joint Managing Director, NSE and the Guest of Honour raised vital

issues on the governance practices prevalent in India; the primary being the ownership issues in Indian listed companies. The focal point of governance in India was concentrated on three major issues viz. Ownership pattern of corporates, Compliance being a box ticking exercise and Gender diversity in the Corporate Board.

The mega event in Kolkata was held at Hotel Park on August 30, 2012. Shri Amlesh Bandopadhyay, Member (Technical), Company Law Board, Kolkata was the Chief Guest at the Inaugural Session. Shri Bandopadhyay in his address said that Indian GDP has grown in a fast paced manner during the last decade and this growth is due to good corporate governance. It is due to good corporate governance corporates are growing and economy is booming.

He advised the younger members of the profession that professional integrity is a must for being a successful professional. For a business the foremost aim should not be profit maximization but sustainability, he added. Appreciating the efforts of the Institute for organizing such type of programs, he stressed that Company Secretaries being governance professionals, should report the anomalies in business to the regulators.

The 2nd Corporate Governance Week culminated into Corporate Governance Conclave at the Hotel Ashok on August 31, 2012 at New Delhi. Dr. M Veerappa Moily, Hon'ble Union Minister for Corporate Affairs and Power was the Chief Guest and inaugurated the Corporate Governance Conclave. Shri Sunil Kant Munjal, Jt. Managing Director, Hero MotoCorp Ltd. was the Key Note Speaker and Shri U Venkataraman, CEO-Currency Derivatives Segment and Whole Time Director, MCX Stock Exchange was the Special Guest. Smt. Sheila Dikshit, Hon'ble Chief Minister of Delhi, the Guest of Honour, could not be there due to official exigency. Nevertheless, she conveyed her best wishes for the success of the Conclave.

In his inaugural address Dr. Veerappa Moily said that governance is the character and corporate civilisation will face disaster if there is lack of good governance as Good Governance is effective leadership, transparency & accountability. Good Governance contributes 70% to their success and reputation he added. Dr. Moily briefed about the National Policy on Corporate Governance which is being drafted by committee headed by Mr. Adi Godrej, Chairman, Godrej Group of Industries.

Dr. Moily informed that the New Companies Bill 2011 would be passed soon and that certain issue on sustainability which were hitherto not addressed would be addressed. He once again stressed on the need for economic stability & progress intertwined with Corporate Social Responsibility

Mr. Sunil Kant Munjal while delivering the Keynote address complimented ICSI for initiative to observe the ICSI Corporate Governance Week 2012 and observed that that governance of countries, families and societies is a reflection of accepted norms. There is no single individual who can work without honouring the





environment, he said and added that Company Secretaries are the conscience keepers not just to the corporates but also to themselves. He expressed that there is a need to build trust and accountability as well as to make simple rules that are easy to understand and simple to follow. He concluded that sustainability is the collective responsibility of all of us.

Mr. U Venkataraman delivered the Special Address and stated that the Role of Stock Exchanges and institutional investors is vital in ensuring good governance. Institutional investors can act as whistle-blower, he added. He emphasised that the industry's best practices should be showcased and at the same time deterrents and penalties should be placed for mis-governance.

During the 'CG Week', the theme and sub themes were deliberated in four Technical Sessions at all the five mega events.

The First Technical Session on Ensuring Effective Boards, deliberated on Board Interlocks and their impact on Corporate Governance, Director Development, performance Evaluation and Gender Diversity.

During the Second Technical Session on Achieving Sustainability, Boards' Role, Institutional Investors' Role & Regulators' Role were deliberated.

The Third Technical Session on E-voting - New Fulcrum to Corporate Governance deliberated on law, procedure & issues relating to e-voting.

The Fourth Technical Session on From Self Regulation to Public Policy, discussed National Corporate Governance Policy, GRI Guidelines and National Voluntary Guidelines.

The Technical Sessions were lively and interactive. The healthy discussion and interaction centered around the topics was not only informative, but also provided food for thought for all present.

The following publications of the Institute were released at the five mega events:

1. Role of Company Secretary in Corporate Governance
2. Theme Paper on Good Governance for Sustainability
3. Gender Diversity in Boardrooms
4. Responsibly Managing E-waste
5. Sustainability Reporting for Sustainable Future

The message that is sought to be spread through Corporate Governance Week is to create awareness, propagate the best practices of corporate governance and mainstream corporate responsibility in the social fabric.

## 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. Attitudinal shift in the functioning of Corporates and Company Secretaries - November 2012 issue and
2. 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).



Prize query

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### Conditions

- 1 ] Answers should not exceed one typed page in double space.
- 2 ] Last date for receipt of answer is 8<sup>th</sup> November, 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 October, 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..

## ANNOUNCEMENT

In line with the Green Initiatives and the Ministry of Corporate Affairs Circular No. 18/2011 (No. 17/95/2911-CL.V dated April 29, 2011) requiring companies to send Balance Sheet and Auditors Report etc. to their members through electronic mode and pursuant to the decision of the Council of the Institute, the Annual Report of the Institute for the Financial Year 2011-12 has been sent to all the members of the Institute through Electronic Mode on 25th Sept. 2012. Annual Report has also been hosted on the website of the Institute on link

<http://www.icsi.edu/portals/0/AnnualReport.pdf>

## 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.

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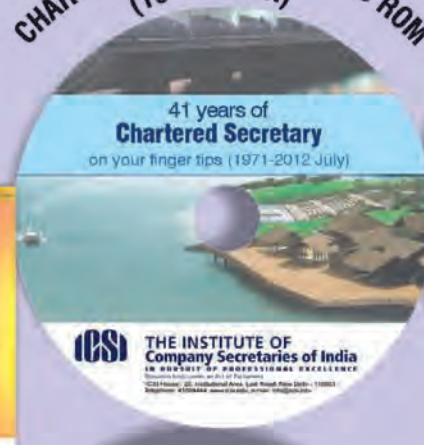
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