2nd ICSI CONVOCATION - 2013 of Eastern Region on 17th May, 2013 at Kolkata

(L to R): CS Deepak Kumar Khaitan (Chairman, ICSI-EIRC), CS Anil Murarka (Past President, ICSI), CS S. N. Ananthasubramanian (President, ICSI), Chief Guest : Shri Siddhant Kaul (Managing Director, NICCO Engineering Services Ltd.), CS Ashok Pareek (Council Member, ICSI), CS M. S. Sahoo (Secretary, ICSI)
Hon’ble Justice Shri D. R. Deshmukh, Chairman - Company Law Board, Inaugurating the New Building of Company Law Board, Kolkata Bench and Dedicating the Company Law Board Library (set up by ICSI) to all the Stakeholders on 22nd April, 2013

(Partner Organisation of the Event : ICSI-EIRC)

“A storehouse of Knowledge to be shared by all.
Congrats to all.”

Hon’ble Justice Shri D. R. Deshmukh
Chairman - Company Law Board
22nd April, 2013
FORTHCOMING PROGRAMMES OF ICSI-EIRC

Professional Development Programme

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<td>08.06.2013</td>
<td>4th Study Circle Meeting of 2013, on the topic &quot;Section 314 &amp; related Provisions of Companies Act, 1956&quot; at ICSI-EIRC Building, Hall No. 4. 1 PCH</td>
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Student Training Programme

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Is it time to update your Details?

In case you wish to update your details with us please write an email to tamal.kar@icsi.edu with the following details for our doing the needful:-

- **Name:**
- **Membership No. / CP.No./ Student Registration No.:**
- **Communication Address:**
- **Designation & Company:**
- **Email:**
- **Mobile No.:**

EIRO HELPLINES

**TELEPHONE NUMBERS:**
+91-33-2283 2973 / 2290 1065 / 2290 2178 / +91-33-2290 2179 / 2281 6541 / 2281 6542

**TELEFAX:**
+91-33-2281 6542

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"In a conflict between the heart and the brain, follow your heart." – Swami Vivekananda
"Effective leadership is not about making speeches or being liked; leadership is defined by results not attributes."

- Peter Drucker

Dear Members & Students of ICSI-EIRC Parivar,

Hope you enjoyed reading the last edition of ICSI-EIRC Newsletter in its new avtaar. Some say that time gallops while the others opine that time is a constant phenomenon and we emerge and disappear in the different time zones. Last two months, time has been very generous and there is so much to share with you. It is a pleasure to present this small note of little steps taken by ICSI-EIRC in the last 2 months:

Infrastructure at your ICSI-EIRC Building will be further upgraded soon. Computers, Air Conditioners, Sound Systems, Washrooms, Programme Halls, Reading Lounge, Help Desks - all are on the way. Of course dil mange more!

Company Law Board Library at Company Law Board, Kolkata Bench, has been set up by ICSI. My sincere thanks to Hon’ble Justice Shri Dilip Raosaheb Deshmukh, Chairman - Company Law Board & Shri Amalesh Bandopadhyay, Member (Technical) - Company Law Board, Kolkata Bench and to all at the Council of ICSI and at Headquarters for considering the proposal of ICSI-EIRC to set up this Library, which has indeed created history. I am sure you will cherish the peace & joy of reading in this Library.

Study Circle Meetings have been a great hit. Please do take out some time to participate in this wonderful initiative of sharing knowledge.

Initiated the of mutation application of ICSI-EIRC Building, which was pending since long.

Effective reaching out to the members and students at Chapters / remote locations - MSOP conducted at Bhubaneswar Chapter. Very soon MSOPs will be conducted at other Chapters too. Thanks to Chapters for coming forward with their proposals.

Integrating Growth, Governance and Challenges Beyond - that is the theme for the 14th National Conference of Practising Company Secretaries being hosted by ICSI-EIRC on 19th and 20th July, 2013 at Vedic Village. I recommend that you register for this National Event.

Renovation of your Building has been taken up as another challenge. Very soon we will invite you to a new look ICSI-EIRC Building.

Capacity Building Programmes on specific skill sets to be hosted by ICSI-EIRC shortly. Get ready for a different learning experience.

Time has come that we must welcome the changes in our profession and at our Institute with open minds. It is our duty to ‘challenge the status quo’ at all levels. I am constantly guided by this revolutionary thought process, which our President-ICSI, CS S.N. Ananthasubramanian has led from the front. Let us all come forward to make things happen.

Wishing you all a cool summer and good monsoons thereafter and ofcourse a prosperous first quarter of the new financial year 2013-14. We hope you enjoy this issue and please do give us your feedbacks and suggestions.

For and on behalf of Team ICSI-EIRC

Kolkata
30th May, 2013

(CS Deepak Kumar Khaitan)
Outsourcing of Internal Audit

CS Dilip Kumar Sen
Former Vice-President & Secretary, Tata Tea Limited
dilipksen2008@gmail.com

The Ministry of Corporate Affairs had issued in December 2009 a set of Voluntary Guidelines on Corporate Governance for voluntary adoption by all listed companies and bigger size unlisted public companies and private companies. These guidelines were not meant only for listed companies but are meant for adoption by the public companies and private companies particularly the bigger ones. These guidelines were framed based on recommendations of a Task Force set up by the Confederation of Indian Industries under the Chairmanship of Mr Naresh Chandra and take into account feedbacks received from stakeholders on the recommendations of the Task Force. The Government expected that the companies would inform their shareholders about the reasons for not adopting these guidelines either fully or partly. The Government intended to review these guidelines after one year for further improvement. However, the Standing Committee on Finance of the Parliament while considering the Companies Bill 2009 had stressed in its report about incorporation of several issues included in these Guidelines into the new Companies Bill that hopefully will be enacted in 2013. The Voluntary Guidelines mentioned the following on Internal Audit:

Appointment of Internal Auditor - In order to ensure independence and credibility of internal audit the Board may appoint internal auditor and such auditor should not be an employee of the company.

Paragraph 16 of the report of the Finance Committee of the Parliament on Companies Bill 2009 lists out the issues on Corporate Governance that the Committee felt are substantive matters and should be included in the Act itself. After discussion with MCA it was agreed to include these issues in the new Act and clause (xvi) of the said paragraph of the Report deals with appointment of Internal Auditor.

The Companies Bill which deals with Internal Audit reads as follows:

“Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.”

The text of clause 138 remains as above in the version passed already by the Lok Sabha. The text suggests that internal auditor should not be an employee of the company.

It would therefore appear that the new Companies Act when passed by the Parliament will empower the Central Government to prescribe rules on appointment of Internal Auditor who should not be an employee of the Company as was suggested in the Voluntary Guidelines. However such rules would also prescribe the class or classes of companies to whom the rules would be applicable. It may or may not therefore be applicable to all companies.

In this article an attempt has been made to examine the pros and cons of outsourcing Internal Audit function in preference to in-house separate department.

Scope of Internal Audit

Internal Audit (IA) is an effective tool of management control. Scope of IA can be broad and can cover every function of the organization be it operations, logistics, finance, purchasing, marketing, legal or any other area. It depends on the management of the entity what it would like its IA team to cover. There are organizations where IA team is small and its activities are limited mainly to finance function. IA can be used effectively to examine issues such as efficacy of operations, areas of improvement/cost reduction in factory operations as well as other areas, checking compliance with company’s policies and procedures, checking adequacy/effectiveness or otherwise of internal control system in the company, checking reliability of financial reporting system, detecting and investigating fraud, safeguarding company assets, checking compliance with laws and regulations etc. In organizations where broad form of IA has been employed often IA team functions as internal management consultants and their job covers all functions of the entity. Audit Committee of the Board of a listed company now sets out the IA programme for a year such that the audit team systematically covers all areas of company operations. The IA reports are placed before Audit Committee meetings and observations of audit team alongwith comments of management on audit observations are considered and discussed at Audit Committee meetings and directions are given to management about corrective actions required to be taken. However, in some unlisted companies where IA is looked upon as a mere statutory requirement the audit team’s activities often remain restricted as
management does not wish to use them as a tool for exercising control. In organizations where IA team has a broad based job profile they can act as an internal checkpoint providing an 'outside' view on any subject instead of merely 'snooping'.

**Should Internal Audit be outsourced in India?**

Hitherto in India Internal Audit in most large-size companies are done by a separate department of the organization. Smaller companies often engage a practicing chartered accountant or a firm to carry out Internal Audit in the organization with the objective of meeting statutory requirements in this regard and also to economise on cost. Where Internal Audit is carried out in-house there are instances where the Chief Internal Auditor reports to the CFO even though there clearly arises a conflict of interest issue. What one needs to appreciate is that if the top management seriously wants to use internal audit as a management tool to unearth irregularities/malpractices and identify systems and processes in the organization which need to be improved, they can certainly do so by using IA. Unfortunately barring some exceptions in most cases internal audit is seen as one more statutory requirement that needs to be complied with. The proposal now is to get internal audit done by persons who are not employees of the company. Having an internal audit team who are not insiders has some advantages such as

i) independence - no pressure from bosses of the client;

ii) experience of auditing similar organizations and offering an unbiased view;

iii) greater objectivity;

iv) cost may be lower than in-house team.

However an outside internal audit team may not have experience of the business and operations of the organization and hence may take longer time to finish the audit at least in the initial year. In certain industries specially those which are technology-intensive the internal audit team needs to clearly understand the operational intricacies to be able to do justice to their work which may not be easily available within the outsourced firms. In listed companies and most other large companies the Audit Committee generally selects the outsourced internal auditor and chalks out a programme of audit for a financial year. Audit Committee, and particularly its Chairman, has a very important role to play in making internal audit effective in the organization. Audit Committee should continuously question the internal auditor and the management on the points raised in internal audit reports and follow up on corrective actions.

I believe that no one can say with any amount of certainty that if internal audit is outsourced it would be more effective and useful than an in-house internal audit team. To argue in favour of in-house internal audit team it can be said that such a team can carry out the audit faster and often knows the weak spots where their checkings can be intensified. Every business has risks and chances of identifying risks of fraud by in-house internal audit team is probably greater than by statutory auditors. An in-house audit team is also difficult to fool as they are fully aware about internal systems/procedures and policies of the management. But an in-house team may suffer from complacency or may become ineffective if the issues raised by them are brushed aside by the management or if the team allow the top management to bully them or sacrifice independence.

In my view in today's complex business environment internal auditor can certainly be more effective than statutory auditor in safeguarding and protecting company's assets and for detecting frauds and errors in the organization. Today the Internal auditor not only needs to be thorough about internal control procedures but must necessarily have in-depth knowledge of changing accounting techniques and practices including requirements of accounting and auditing standards. Here again the intention and will of top management is very important. Do they allow the internal audit team a free hand to do their job or do they treat internal audit as a mere statutory compliance? Let me put the following issues here for consideration of the readers:

a) Once a person is appointed Chief Internal Auditor (CIA) is it the end of the road for his career?

b) Is there any precedence of internal auditor becoming CEO of the organization?

c) If the CFO or Deputy CFO is appointed Chief Internal Auditor is that considered punishment posting?

d) Is there any precedence of a CIA becoming CFO of the organization?

The above will vary from organization to organization and in my view would be indicator of the importance of internal audit in the organization.

It has been my experience that often top management team do not want to bring to light issues that an internal audit team may unearth particularly when some member of top management is involved with the irregularity, irrespective of whether the irregularity arose due to error of judgment or lack of proper diligence. Very often internal auditors are not asked to verify integrity and correctness of quarterly and annual financial statements on the plea that statutory auditors have already checked these statements. If one recalls the Satyam Computers episode it would be clear that even after a clean chit from reputed statutory audit firm the audited financial statements of that company did not show true and fair position of the company's state of affairs or its profit/loss for a financial year. There is no reason to assume that what had happened in Satyam has not happened or will not happen in any other organization, even if the magnitude is less. In this context Audit Committee members need to exercise their discretion and could periodically ask the internal auditor to verify the integrity of financial statements and report to the Committee.

While on the subject, it may be said that since an internal audit team is in a position to verify company's transactions in greater details and often before the statutory auditor commences its job, they are ideally poised to act as whistleblower. It is however unfortunate that a whistleblower often does not get the protection
that indeed he/she badly needs and generally blows the whistle
due to dictation of his/her conscience even at the cost of his/her
career. History will show that almost all major corporate frauds
came to light due to whistleblowing be it Enron or Satyam.

Concluding remarks

In the corporate environment that we live today it also depends
to a great extent on the individual internal audit team members
about how objectively and dispassionately they carry out their
work. There is no definite proof that an outsourced internal auditor
will deliver better than an in-house internal auditor. We must,
however, remember that till now we have not tried an outsourced
internal auditor on a mandatory basis and it may therefore not be
fair to say that no improvement can be expected just by outsourcing
internal audit. We should therefore give it a try but my personal
recommendations are with the following caveats:

a) The outsourced internal auditor should not be appointed for
more than one year at a time and should have a tenure of not
more than continuous period of three years. He can return
only after a gap of at least five years. Principle of mandatory
rotation must apply here just as for statutory auditors;

b) The outsourced internal auditor should report to the Audit
Committee only. He should have right to meet Audit Committee
members without presence of any member of management
team;

c) An outsourced internal audit firm should have right to engage
outside experts, with the approval of Audit Committee, to
check those areas of company operations where they may
not have expertise;

d) The outsourced internal auditor should be asked by the Audit
committee to specifically report on integrity and correctness of
at least one quarterly financial statement every year;

e) The draft internal audit report should first be seen exclusively
by Audit Committee members before it is sent to top
management for their comments. This will ensure that no
important issue is allowed to be brushed aside by the top
management.

I am aware that there has been considerable opposition from
certain quarters to certain provisions of the new Companies Bill
dealing with Auditors particularly on mandatory rotation of Auditors.
I leave the readers with following simple question:

Would the Auditors of Satyam Computers have ever certified the
annual accounts in the manner they did if they knew that due to
rotation principle they would not be the Auditors of Satyam next
year?

If the answer to this question is in the negative the principle of
mandatory rotation of Auditors whether statutory or internal is more
than justified.

Let us therefore try out outsourcing of internal audit and hopefully
internal audit by a new group of people will deliver more value to the
organizations.
PONZI SCHEMES

CS Ketan Madia
FCS, MBA
ketan.madia@itc.in

What is a Ponzi scheme?
A Ponzi scheme is an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on attracting new money to make promised payments to earlier-stage investors and to use for personal expenses, instead of engaging in any legitimate investment activity.

What are the Key Elements of a Ponzi Scheme?
The five key elements of a typical Ponzi Scheme are:

1. **The Benefit**: A promise that the investment will achieve an above normal rate of return. The rate of return is often specified. The promised rate of return has to be high enough to be worthwhile to the investor but not so high as to be unbelievable.

2. **The Setup**: A relatively plausible explanation of how the investment can achieve these above normal rates of return. One often-used explanation is that the investor is skilled and/or has some inside information. Another possible explanation is that the investor has access to an investment opportunity not otherwise available to the general public.

3. **Initial Credibility**: The person running the scheme needs to be believable enough to convince the initial investors to leave their money with him.

4. **Initial Investors Paid Off**: For at least a few periods the investors need to make at least the promised rate of return.

5. **Communicated Successes**: Other investors need to hear about the payoffs, such that their numbers grow exponentially. At the very least more money needs to be coming in than is being paid back to investors.

What are the steps in a Ponzi Scheme?
Ponzi Schemes are quite basic but can be extraordinarily powerful. The steps are as follows:

1. Convince a few investors to place money into the investment.
2. After the specified time return the investment money to the investors plus the specified interest rate or return.
3. Pointing to the historical success of the investment, convince more investors to place their money into the system. Typically the vast majority of the earlier investors will return. Why would they not? The system has been providing them with great benefits.
4. Repeat steps 1 through 3 a number of times. During step 2 at one of the cycles, break the pattern. Instead of returning the investment money and paying the promised return, escape with the money and start a new life.

Who is the ‘Ponzi’ in Ponzi schemes?
Ponzi schemes - also known as pyramid schemes - are named after Charles Ponzi, an obviously persuasive con artist who attracted millions of investment dollars from Boston-area investors back in the early 1920s. He promised people he could double their money in three months through a series of investments in postal reply coupons. Fawning press articles and favourable reviews from early investors attracted ever-increasing amounts of money. In reality, he had invested nothing in postal coupons or anything else. The money provided by later investors was used to pay off the early investors. His scheme eventually collapsed amid increasing scrutiny. He was jailed and eventually deported to his native Italy. He died a poor man in Brazil in 1949.

How do Ponzi schemes work?
To understand the entire chit-fund scam, one must understand their modus operandi. Say, with the start-up cash of Rs 100,000 from two depositors, a company floats a ‘Rupees One Lakh’ scheme, with an assurance of 20% return. Eventually, the fund manager or agent needs to cough up Rs 2.40 lakh at the end of the first year. To raise this sum, he brings in three more investors who contribute Rs. 80,000 each. At the end of the second year, the manager has to repay those who contributed the previous year at Rs 96,000 each. To make this payment, the agents raise another Rs 96,000 from three new investors at the end of the second year to make the previous payments. Now, these new investors need to be repaid Rs 115,200 each for a total of Rs 345,600 at the end of the third year. The manager now needs more investors and collects Rs 86,400 from four investors this time to make those payments.

“Arise, awake, stop not until your goal is achieved.” — Swami Vivekananda
The first rule, therefore, is that the company has to constantly keep on adding fresh investors. So even if the old depositors do not ask for refunds, the chain instantly treads into troubled waters if the company fails to get new depositors. Membership in that "select" group gives investors a feeling of security that has no basis in reality. But it works, initially, because the investor who puts up Rs.100,000 is absolutely convinced he's made a brilliant investment when he gets his first Rs.20,000 "interest" payment. Often the fraudster urges the happy victim to invest even more and to encourage his friends and relatives to join the party. Investigators call this "affinity fraud" because investors are less likely to question the legitimacy of an investment tip from someone they know. And so it goes. In reality, of course, the money to pay off the original investors comes from the later investors. The thing that separates Ponzi schemes from simply being bad investments is that nothing is ever bought with the invested money.

In the end, the whole pyramid collapses because there aren't enough new investors to pay off the other investors. The architect of the scam usually tries to buy time by offering excuses like poor health or new accountants but investors end up losing patience and go to authorities to try to get back their money. By that point, it's too late. The money has usually all vanished, sometimes with the architect of the whole mess.

**Why do Ponzi schemes collapse?**

With little or no legitimate earnings, the schemes require a consistent flow of money from new investors to continue. Ponzi schemes tend to collapse when it becomes difficult to recruit new investors or when a large number of investors ask to cash out.

**Why are so many Ponzi schemes surfacing now?**

The market downturn that began in 2008 and continued into 2009 did two things. First, it slowed or stopped the flow of new money into many Ponzi schemes as investors became more cautious. Second, existing investors who faced increasing financial pressures during the market meltdown were no longer content to "roll over" their investments and started asking for their money back.

**What steps can people take to protect themselves?**

Any investment that purports to guarantee a well-above-average return on invested money should be viewed with suspicion. There just aren't easy ways to beat the market without taking huge risks. If there were, everyone would be doing it. Check out the person and/or the investment with a lawyer, accountant or other knowledgeable financial expert or phone your provincial securities commission. Some con artists, however, have been registered and managed to operate outside their firm's guidelines and the law. Alarm bells should be ringing if anyone asks for cheques to be made out to them personally, rather than a recognized firm. If they don't want to meet you at their normal place of work, that's they don't want to meet you at their normal place of work, that's another tipoff. Some fraudsters say their investments are insider-only "private" offerings that regulators don't need to know about. Another warning sign: Ask to see formal documentation. And that doesn't mean a glossy brochure. One thing investors should not do is simply assume that someone in authority has ferreted out all the phony ones and checked into everyone who has a questionable banking history. Investigations generally aren't launched until there are complaints. Probes take time, and con artists are often able to draw in a lot of new money even while inquiries are continuing. Even more discouraging, the regulators sometimes don't catch the bad guys even when they are given specific information the person is crooked.

To sum up, when you consider your next investment opportunity, start with these five questions:

- Is the seller licensed?
- Is the investment registered?
- How do the risks compare with the potential rewards?
- Where can I turn for help?

**What are some Ponzi scheme "red flags"?**

Many Ponzi schemes share common characteristics. Look for these warning signs:

- **High investment returns with little or no risk.** Every investment carries some degree of risk, and investments yielding higher returns typically involve more risk. Be highly suspicious of any "guaranteed" investment opportunity.

- **Overly consistent returns.** Investments tend to go up and down over time, especially those seeking high returns. Be suspect of an investment that continues to generate regular, positive returns regardless of overall market conditions.

- **Unregistered investments.** Ponzi schemes typically involve investments that have not been registered with SEBI. Registration is important because it provides investors with access to key information about the company's management, products, services, and finances.

- **Unlicensed sellers.** Federal and state securities laws require investment professionals and their firms to be licensed or registered. Most Ponzi schemes involve unlicensed individuals or unregistered firms.

- **Secretive and/or complex strategies.** Avoiding investments you don't understand or for which you can't get complete information is a good rule of thumb.
Issues with paperwork. Ignore excuses regarding why you can't review information about an investment in writing, and always read an investment's prospectus or disclosure statement carefully before you invest. Also, account statement errors may be a sign that funds are not being invested as promised.

Difficulty receiving payments. Be suspicious if you don't receive a payment or have difficulty cashing out your investment. Keep in mind that Ponzi scheme promoters sometimes encourage participants to "roll over" promised payments by offering even higher investment returns.

What are some of the similarities and differences between Ponzi and pyramid schemes?

Ponzi and pyramid schemes are closely related because they both involve paying longer-standing members with money from new participants, instead of actual profits from investing or selling products to the public. Here are some common differences:

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<th>Pyramid Scheme</th>
<th>Ponzi Scheme</th>
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<tr>
<td>Typical &quot;hook&quot;</td>
<td>Earn high profits by making one payment and finding a set number of others to become distributors of a product. The scheme typically does not involve a genuine product. The purported product may not exist or it may only be &quot;sold&quot; within the pyramid scheme.</td>
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<tr>
<td>Payments/profits</td>
<td>Earn high investment returns with little or no risk by simply handing over your money; the investment typically does not exist.</td>
</tr>
<tr>
<td>Interaction with original promoter</td>
<td>Must recruit new distributors to receive payments.</td>
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<tr>
<td>Source of payments</td>
<td>No recruiting necessary to receive payments.</td>
</tr>
<tr>
<td>Collapse</td>
<td>Sometimes none. New participants may enter scheme at a different level.</td>
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<td></td>
<td>From new participants - never disclosed.</td>
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<tr>
<td></td>
<td>Promoter generally acts directly with all participants.</td>
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<td></td>
<td>May be relatively slow if existing participants reinvest money.</td>
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"The world is the great gymnasium where we come to make ourselves strong." — Swami Vivekananda
PRACTICAL ASPECTS OF CONTRACTING

CS Siddharth Murarka
B.Com(H), ACS, LL.B.
Practising Company Secretary
siddharthamurarka@gmail.com

This write-up endeavours to go beyond the provisions of the Indian Contract Act, 1872 and discuss some practical aspects of contracting to enable professionals such as Company Secretaries to handle the Procurement and Contracting functions of an organisation effectively and render contracts related services to clients like drafting, vetting and negotiation of contractual terms.

Importance of Contracts:
Most relationships in the commercial or corporate world are contractual. Some prevalent examples are:

a) Employer - employee relationship;
b) Service Provider - Client relationship;
c) Annual Maintenance Contracts (AMCs);
d) Master Service Agreements (MSAs);
e) Non Disclosure Agreements (NDAs);
f) Shareholders’ Agreements;

The importance of contracts lies in the rights and obligations that it creates on the parties to it and the potential risks that may get associated with the same.

Risk Management and purpose of good contracting:
The objective of a contract should be to create a win-win situation for the parties concerned to enable them to meet their purpose in a meaningful manner. One should not try to create a unilateral or one-sided contract because it invites disputes and litigation at a later stage. Good contracting skills aim to mitigate the potential risks.

Life Cycle of Contracts:
Due Diligence (DD)
All contractual relationships begin with a due diligence process wherein the parties to the proposed relationship enquire about the capabilities of the other party in meeting supply conditions. It also tries to access potential risks that may be involved in dealing with the other party. Due diligence is a prelude to the proposed relationship and it scope may include following:

a) Business or Operations DD - is usually conducted to verify whether the commercial need for entering into the proposed arrangement shall be met or business synergy created. For example - if "A" intends to enter into a joint venture with "B" to utilise IPRs available with "A" and raw materials available with "B" to produce certain products, then it is imperative to see whether those IPRs have enough regulatory validity to survive the long gestation period and be legally usable during the commencement of commercial production;

b) Financial DD - indicates the financial strength or weakness of the other party to meet its financial obligations and what steps need to be taken by the other party to address any adverse situation. In the above example - it is important to take stock of financial strength of "B" to ensure continuous supply of raw materials to "A";

c) Legal DD - aims to provide reasonable assurance to the parties whether entering into the intended business with the other party is legal or not and what could be the level of potential risk of litigation. In the above example - it would be important to investigate the legality of proprietary claims over IPRs by "A" and over raw materials by "B"

d) Human Capital DD - has gained tremendous importance over last few years with the growth of cross-border transaction. It is extremely important to analyse whether the proposed merger or synergy would be a fit or not from a Human Capital perspective involving the culture, ethos and religious sentimental beliefs of the majority of employees.

Drafting or Inception and Vetting of Contracts:

a) Both Legal and Business Team should be involved so that both commercial aspects of business and legal risk management aspects are well taken care of;

b) Result of the Due Diligence should play an important role in drafting of various clauses;

c) Drafting should be unambiguous so that there are minimal chances of scope-creep and misinterpretation leading to disputes;

d) One should not draft a one-sided or unilateral contracts because it invites disputes and litigations at a later stage;

e) Ultimate objective should be to create a "Win-Win" situation for both the parties so that ultimate business objectives are met.
Negotiation:
In my personal view and experience, negotiation is like a big machine which has several levers. If one party pulls one, the other would pull another.

**Few simple but fundamental tips on negotiation strategy:**

a) Negotiate on substantial issues not trivial;
b) Adopt “Carrot & Stick” policy where you accommodate some demands of the other party and reiterate your requirements as well;
c) Involvement of professionals from different fields is important so that the best judge negotiates in his core area of operations. For example - business team should be supplemented with legal and finance team members;
d) Be accommodative - the objective is not to break-down the proposed arrangement;
e) Few sticky negotiation clauses to ponder-upon
   - Affiliates;
   - Anti-Bribery Provisions;
   - Audit Rights;
   - BCP or Business Continuity Planning;
   - Change Control Process;
   - Confidential Information;
   - Damages;
   - Dispute Resolution / Jurisdiction;
   - Drag-along rights;
   - DRP or Disaster Recovery Planning;
   - Governing Law;
   - Indemnity;
   - IPR or Intellectual Property Rights;
   - Limitation of Liability;
   - Privy of Contract;
   - Service Level Credits;
   - SoW;
   - Subcontracting;
   - Tag-along rights;
   - Take or Pay provisions;
   - Transition & transition services.

Signing & Execution:

a) A duly authorised person should sign on behalf of the Company;
b) If required, a ratification should be recorded;
c) Document should be stamped if necessary;
d) Registration should be done if necessary.

Commencement & Compliance:

a) As soon as a Contract is in force, the legal & business teams should get involved in contract abstraction and prepare a checklist of their rights & obligations under the Contract;
b) Different teams within the organisation should be briefed about their duties under the Contract;
c) Implementation of the contract should be strictly monitored & notices issued promptly whenever a breach of provisions occur.
SEBI makes amendment to Takeover Code to iron out difficulties in the Regulations
SEBI (SAST) (Amendment) Regulations, 2013

CS Aditi Jhunjhunwala
Vinod Kothari & Company
aditi@vinodkothari.com

SEBI has vide notification no. No. LAD-NRO/GN/2012-13/36/7368 dated March 26, 2013 brought in amendments to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [the Regulations]. The amendments seek to bring clarity to certain existing provisions apart from introducing new provisions. Clarification has been provided in relation to time period of making public announcement in case of passive acquisitions in case of buy-back, disclosure requirements. Provision has been amended in relation to time period for making public announcement in case of preferential allotments. It is apparent that the amendments have been done only to bring in clarifications so as to remove ambiguity to the existing provisions, though we cannot say that all the requisite clarifications have been made. On one hand where the regulator has sought to clarify, on the other hand few amendments have also brought in certain queries and confusions. We discuss and analyse the amendments below.

Amendments

In case of acquisition pursuant to buy-back [Regulation 10 (3), Reg 10 (4) (c), Reg 13 (2) (h)]

Earlier, if the voting rights of a shareholder went beyond the prescribed threshold on account of buyback by the target company, the open offer requirement would not be triggered if voting rights are brought below the threshold limit within ninety days from the date on which the voting rights so increase. The regulation has now been amended to mean that the period of ninety days will reckoned from the date of closure of the buy-back. The amendment now reads as:

"An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company[inserted] shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer (deleted-on which the voting rights so increase)."[10(3)]

Further, the second proviso of the sub-regulation (4) has been amended to give effect to the above change in sub-regulation 3. Exemption is to be provided on the condition that the shareholding is reduced within the threshold within the period of 90 days from the date of closure of the buy-back offer below the level at which obligation to make an open offer would have been attracted instead of within 90 days from the date on which the voting rights increase. [Second proviso to Reg 10 (4) (c)]

In case the shareholding is not brought below the trigger limit then the public announcement should be made shall be made not later than the ninetieth day from the date of closure of the buy-back offer by the target company. [Reg 13 (2) (h)]

Through the above substitutions SEBI has sought to bring in clarity to the language of the provision of existing provisions.

In case of acquisition pursuant to preferential issue/preferential allotment [Regulations 13 (2) (g), 22 (2A), 23]

Regulation 13(2) (g) of the Regulations provides that if the open offer obligation is triggered pursuant to the allotment of shares on preferential basis, then public announcement shall be made on the date on which special resolution is passed for allotment of shares under sub-section (1A) of section 81 of the Companies Act, 1956.

However, there is sufficient time gap between the date of passing of the board resolution authorizing such preferential issue. Hence, the same may have impact on the market price of the shares and the transaction in substance. In addition, pricing of offer shall also be affected as minimum offer price is calculated considering the public announcement date.

A graphical comparison of situation pre and post amendment:

<table>
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<td>Board Resolution</td>
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<td>Special Resolution</td>
<td>Board Resolution</td>
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<tr>
<td>Trigger for public announcement</td>
<td>Special Resolution</td>
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“The will is not free—it is a phenomenon bound by cause and effect but there is something behind the will which is free.” – Swami Vivekananda
It is important to analyse the ambiguity in this provision. The preferential issue will be approved only through the special resolution, however, with the amendment it is now proposed that the public announcement will be made at the time of approval by the Board itself. Though unlikely but what if the general meeting turns down such a proposal? Will the public offer be taken back? What happens to the transaction in between the board resolution and the general meeting date? This ambiguity is much perpetuated by the next amendment discussed below.

Withdrawal of the public offer [Regulation 23]
Regulation 23 provides for situation for withdrawal of the public offer in certain cases. It is now proposed vide proviso to sub-regulation (1) (c) that that an acquirer shall not withdraw an open offer pursuant to a public announcement made under clause (g) of sub-regulation (2) of regulation 13, even if the proposed acquisition through the preferential issue is not successful.

So in other words after passing of the resolution by BOD and making the public offer [pursuant to Regulation 13 (2) (g)], in case the issue is not successful due to any reason, the offer will not be withdrawn. This is surely vague as to what happens to the entire transaction. Does the same become valid or goes void? This provision is sure to create chaos and SEBI should surely come up with some clarification on the same. Critically speaking, the purpose of such provision remains inexplicable and unwarranted.

 Acquisition through preferential allotment and stock exchange mechanism [Reg 22 (2A)]
Sub-regulation 2A has been inserted in Regulation 22 that provides an acquirer may acquire shares of the target company through preferential issue or through the stock exchange settlement process, other than through bulk deals or block deals, subject to such shares being kept in an escrow account and the acquirer not exercising any voting rights over such shares kept in the escrow account. Further, these shares can be transferred from the escrow account to the name of the acquirer after the expiry of 21 working days from the date of the detailed public statement, provided the acquirer deposits 100 percent of the consideration payable in cash in the escrow account.

Unlike the earlier requirement, it is now an additional requirement that the shares should also be kept in escrow account.

Public announcement in case of acquisition by multiple modes
Earlier there was no clarity as regards making of the public announcement in case of acquisition by combined modes. In order to bring in transparency a new sub-regulation 2A under Regulation 13 has been inserted that provides that where the open offer obligation is triggered pursuant to an agreement or otherwise in combination of any modes of acquisition, the ‘relevant date’ for making the public announcement shall be the earliest date on which obligation is triggered; such as in case where there are both for example market purchase as well as conversion of securities at close dates attracting trigger. In such cases, the earliest date shall be the relevant date for making of public announcement.

Disclosure requirements for change in holding under the Regulations
Sub-regulation 2 of Regulation 29 has been amended to the effect that the change of 2% would be calculated from the last disclosure made by the acquirer. It has been further clarified that the disclosure in respect of change in shareholding is required to be given even if the shareholding of acquirer falls below 5%. The language of existing provision was not clear and some could have said that the disclosure is not required in case of disposal of shareholding aggregating to 2% or more but where the shareholding fell below 5% after such disposal. With this clarification it is clear that in spite of shareholding falling below 5%, disclosure requirements get attracted.

Conclusion
The amendments of SEBI as discussed are more in the nature of clarifications. After introduction of all together a new code for takeover and acquisitions in the year 2011, this is the first amendment circular issued by SEBI and seems that amendments are based on experiences so far on the new code and to make the ambiguous language of certain regulations clearer now. For example, Regulation 29(2) has been replaced with more clear language on the basis of SAT’s judgment in Bhavesh Pabari v. SEBI (2012) 24 Taxman 64 (SAT).

---

**SOLVE THE JUMBLE**  
[Arrange these LETTERS TO FORM WORDS]

Arrange these LETTERS TO FORM WORDS.

1. HABQETUE
2. TOICAITN
3. CALYNRE
4. SARHYAE
5. NETCFDU
6. TANRGOR

Now arrange the circled letters to form a word with meaning "to indicate an item cited has been pulled or drawn from a larger list."

---

**LEGAL TERM**

"Pari causa"
Similar circumstances, with equal right

---

**Vision**

"To be a global leader in promoting Good Corporate Governance"

---

**Mission**

"To develop the high calibre professionals facilitating good Corporate Governance"
1. **Meaning of the expression 'Moral turpitude'**

   [P. Mohansundaram Vs. President ICAI]

   The expression "moral turpitude" is not defined anywhere. However, it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. If the individual is charged with a certain conduct he owes a duty, either to another individual or to the society in general, to act in a specific manner. If he acts contrary to it and does so knowingly, his conduct might be held to be due to vileness and depravity.

   In the instant case the appellant (a Chartered Accountant) married another woman, while first marriage was subsisting, and thus acted contrary to the law and against expectation of his "estranged wife" - therefore the offence of bigamy had been committed within the meaning of "moral turpitude".

2. **The absence of due care does not necessarily mean being guilty of either furnishing inaccurate particulars or an attempt to conceal income. Thus silly mistakes by an expert shall not be a valid ground for levying penalty.**

   [Price Waterhouse Coopers Pvt. Ltd. v. CIT, Kolkata-I, In the Supreme Court of India]

   Price Waterhouse Coopers Private Limited (PWC) filed its Return of Income (ROI) alongwith the Tax Audit Report (Report). In the Report, the provision for gratuity liability was not deducted for computation of income under "Profits and gains of business or profession" in accordance with the provisions of the Income Tax Act, 1961. However, in the ROI filed, the said amount was left out to be disallowed and thus, inadvertently got claimed as deductible revenue expense. According to PWC, a genuine mistake or omission had been committed.

   The Assessing Officer initiated concealment penalty proceedings and levied maximum penalty of 300% of tax allegedly sought to be evaded on the ground that PWC had furnished inaccurate particulars.

   It was inter-alia held that the contents of the Report suggested that there was no question of PWC concealing its income or furnishing any inaccurate particulars. This could only be described as a human error, which all are prone to make. The caliber and expertise of PWC had little or nothing to do with the inadvertent error. The absence of due care does not necessarily mean being guilty of either furnishing inaccurate particulars or attempting to conceal its income.

3. **Even one member is competent to call extraordinary general meeting when company compri$$s$$ only two shareholders, if situation demands so.**

   [Ranjeeet Kumar Mishra vs. Chinnmastika Estates (P.) Ltd. And Anr.]

   There being only two members in the company, one being not available for holding EGM, because the other shareholder’s whereabouts not being known led to impracticability for holding EGM.

   The Judicial Bench, in the larger interest of the Company, took a view that the Petitioner is entitled to a direction for calling EGM even in the absence of quorum, because in a situation like this, even one member is competent to call EGM considering the company has only two shareholders.

4. **Members of companies under Section 25 (Clubs etc) are not ‘members’ within the meaning of the Companies Act.**

   [Madras Cricket Club v M. Subbiah CRL]

   Mr. M Subbiah (Respondent) was a member of Madras Cricket Club (Petitioner Company / Club), a company within the meaning of Section 25 of the Companies Act, 1956 (Act), with no share capital. Mr. Subbiah had sought a copy of the Memorandum of Association of the Club and copies of the proceedings of general meetings of the Club, which were not provided to him. The Respondent filed a complaint before the Additional Chief Metropolitan Magistrate, Chennai, pursuant to the provisions of Section 196 of the Act, for non-furnishing of the copies of minutes etc. by the Club. The Club filed a petition before the High Court of Madras for quashing of the complaint.

   The High Court quashed the complaint on the grounds that the Petitioner Company did not have a share capital, the Respondent could not be considered a ‘member’ or ‘shareholder’ thereof. Moreover, In terms of Section 621 of the Act, no Court can take cognizance of any offence unless it is made at the instance of the Registrar of Companies, or
shareholder or a person authorised by the Central Government; the respondent did not fall in any of the above categories.

5. No enterprise can be considered dominant on the basis of a big name. Dominance has to be determined on the basis of market share, economic strength and other relevant factors. Tie-in arrangements not having appreciable adverse effect on competition in India do not lead to violation of Competition Act, 2002. [Ajay Devgan Films v. Yash Raj Films Pvt. Ltd. & Others]

Ajay Devgan Films (the Informant) informed the Competition Commission of India (CCI) that Yash Raj Films Private Limited and others (YRF) had contravened the provisions of the Competition Act, 2002 (the Act) on the following grounds:

YRF, prior to release of its mega starrer film Ek Tha Tiger (ETT) on 15th August, 2012 had put a condition on single screen theatres (theatres) that if they wanted to exhibit ETT, they would have to simultaneously agree to exhibit its other film Jab Tak Hai Jaante be released around Diwali. Any theatre not agreeing to book both films would not get the right to exhibit a single film, thereby leading to a tie-in arrangement in terms of the Competition Act, 2002.

YRF, a big banner production house, had a big name in the film industry and several blockbuster films to its credit. Since ETT was a big-ticket film and bound to be a blockbuster, majority theatres entered into the agreement because of the dominance of YRF. This amounted to abuse of dominant position.

The grievance of the Informant arose because he feared that he would not get enough theatres for his own film Son of Sardar to be released around Diwali due to this arrangement.

CCI held that there was no contravention of the provisions of the Act, as while the agreement was in nature of a tie-in arrangement, it had no adverse effect as such on competition in Indian markets. The theaters while entering into agreement in July, were aware that many other films were likely to be released during Diwali and had taken a business decision to screen the two YRF films rather than screening any other film. This was a commercial decision taken by the theatres in their own interest. Some theatres refused to enter into such agreement and were free to screen any film they wished to, including that of the Informant. Further, single screen theatres contribute only 35% of revenue while multiplexes contribute about 65% of the revenue; multiplexes were not constrained from exhibiting the informant's film. Thus, the agreement had neither created entry barriers for new entrants nor driven existing competitors out of market.

YRF did not abuse the dominant position in the market. Out of 107 and 95 films released in Bollywood in 2011 and 2012 respectively, YRF had produced only 2-4 films each year. This could not tantamount to dominance even in the Bollywood industry, let alone the Indian film industry.

6. When there is a blatant abuse of dominance with the object of undue economic gains and business profits, the penalty has to be commensurate with the severity of the violation. [Belaire Owners' Association v DLF Limited & others]

The Competition Commission in above case held that DLF Ltd. is a dominant enterprise in the geographic area of Gurgaon in the relevant market. The Commission found that DLF Ltd. had abused its dominant position and violated the provisions of Section 4 of the Competition Act, 2002 (the Act) as DLF had made the flat owners i.e. members of the Informant association to sign a highly abusive apartment buyers agreement. DLF Ltd. had made it clear to the allottees that no alterations/modifications were to be made in the said agreement by the allottees. The Commission observed commencement of project without sanction/approval, increase in number of floors midway, increase of Floor Area Ratio and density per acre, inordinate delay in completion and possession, forfeiture of amounts, etc. The Commission found that the clauses of the agreement were biased in favour of DLF Ltd. Certain clauses in the agreement gave DLF the sole discretion in respect of making changes in zoning plans, usage pattern, super area, carpet area and for alteration of structure and even a case of change of location of apartment and if a refund became due, no interest was payable by the builder. No rights had been given to buyers for raising objections. Even if the buyers had paid full amount, the builder could create mortgage on the property of the buyers for raising finance for its own purpose. DLF Ltd. inserted such clauses which made exit next to impossible for buyers. In case of delay by the builder, DLF Ltd. was to pay compensation of Rs. 5 per sq. feet per month equivalent to about 1% per annum interest, while in case of delay in payment by the buyer, the interest charged was 15% per annum for the first 90 days and 18% thereafter. The Commission came to conclusion that the conduct of DLF Ltd. was unfair in terms of Section 4 and was being carried out by it because of its being a dominant enterprise and amounted to abuse of dominance and the abuse of dominant position in instant case is in respect of the basic necessity of housing.

The CCI held DLF guilty of abusing its dominant position and adopted a deterrent approach by imposing a penalty of 7% of the average turnover of the past three years amounting to Rs.630 crores, so that recurrence of such conduct is stopped. Further, CCI directed DLF and its group companies offering services of building/ developing to cease and desist from formulating and imposing unfair conditions in its agreements with buyers in Gurgaon and to suitably modify the present agreement within 3 months of the Order.

The views if any expressed hereinabove are not necessarily the views of the organization. The contributor would like to sincerely thank Ms. Anjali Prasad for her contribution and critical inputs provided by her towards the above.
### FULL-DAY SEMINAR ON "LAWS RELATING TO DEBENTURES & COMPETITION"

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<td></td>
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<td>Proprietor, Anjan Kumar Roy &amp; Co. on &quot;Discussion on Sections 3 &amp; 4 of The Competition Act, 2002 in view of recent Case Laws&quot;</td>
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### FELLOWSHIP & CULTURAL PROGRAMME ON BASANT UTSAV"

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### 2ND STUDY CIRCLE MEETING OF 2013

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<td>Discussion Leader</td>
<td>CS Rajesh Poddar, Deputy Company Secretary, ITC Limited on &quot;Dealing with Interest of Directors u/s 299, 297 and 274 of the Companies Act, 1956&quot;</td>
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<td>Delegates</td>
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INAUGURAL CEREMONY OF NEW BUILDING OF COMPANY LAW BOARD, KOLKATA BENCH &
DEDICATING THE LIBRARY (SET UP BY ICSI) TO ALL THE STAKEHOLDERS
(Partner Organisation of the Event : ICSI-EIRC)

Date : 22.04.2013 Venue : New Building of Company Law Board, Kolkata Bench, 5 Esplande Row (West), Kolkata - 700 001

(L to R) CS Deepak Kumar Khaitan, Shri Amalesh Bandopdhay, Hon’ble Justice D. R. Deshmukh, CS Harish Vaid, CS (Dr.) Navrang Saini and Shri S. B. Mukherjee

Hon’ble Justice D. R. Deshmukh inaugurating the Library at the New Building of Company Law Board, Kolkata Bench. Also seen (L to R) : Shri Amalesh Bandopdhay and CS Harish Vaid

Hon’ble Justice D. R. Deshmukh addressing at the Company Law Board Library at the New Building of Company Law Board, Kolkata Bench

Hon’ble Justice D. R. Deshmukh penning down his thoughts on the occasion of Inauguration of the Library at the New Building of Company Law Board, Kolkata Bench

Glimpses of the Company Law Board Library at the New Building of Company Law Board, Kolkata Bench

“We must be Bright and Cheerful, long face do not make Religion.” – Swami Vivekananda
FULL-DAY WORKSHOP ON
“SOUL POWER LEADERSHIP”

Date 14.04.2013
Venue ICSI-EIRC Building (Hall No.4)
Speaker Shri Vishal Avtaar on “Soul Power Leadership”
Delegates 19

3RD STUDY CIRCLE MEETING OF 2013

Date 18.05.2013
Venue ICSI-EIRC Building (Hall No.4)
Speakers CS Payel Jain
Company Secretary, Emami Infrastructure Limited on “Preferential Allotment - Law & Procedure”
Delegates 49

ICSI-EIRC MEETING

05.04.2013 264th Meeting ICSI-EIRC Building

OTHER MEETINGS

13.04.2013 Building Committee ICSI-EIRC Building
24.04.2013 Convocation Sub Committee ICSI-EIRC Building
01.05.2013 Newsletter Committee ICSI-EIRC Building
01.05.2013 Editorial Board ICSI-EIRC Building
17.05.2013 14th National PCS Conference Committee Bengal Club

Visit of CS Harish K Vaid, Vice-President - ICSI & CS Sutanu Sinha, Chief Executive - ICSI at ICSI-EIRC Building on 22.04.2013

“When an idea exclusively occupies the mind, it is transformed into an actual physical or mental states.” – Swami Vivekananda
**FULL-DAY SEMINAR ON “MERGERS & ACQUISITIONS - THE 7 DIMENSIONS”**

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<td>Venue</td>
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| Chief Guest| **CS Debasish Bandopadhay**  
Registrar of Companies (W.B.)  
Ministry of Corporate Affairs |
| Speakers   | **CS Aniruddha Sen**  
Senior Vice President & Company Secretary - Berger Paints India Ltd.  
on “Practical & Legal Aspects”  
**Shri Ajay Choudhury**  
Proprietor, Choudhury Law Offices  
on “Judicial Aspects”  
**CS K. K. Chhaparia**  
Senior Partner, Chhaparia & Associates on “Taxation Aspects”  
**Ms. Ankita Agrawal**  
Partner, G.P Agrawal & Co.  
on “Accounting Aspects”  
**CS Anjan Kumar Roy**  
Proprietor, Anjan Kumar Roy & Co.  
on “Competition Aspects”  
**CS Amit Ghosh**  
Company Secretary, Balmer Lawrie & Co. Ltd. on “SEBI Aspects, Listing Agreement & Takeover Code” |
| Delegates  | 133 |

**Chief Guest**

CS Debasish Bandopadhay,  
Registrar of Companies (West Bengal)  
Ministry of Corporate Affairs, Govt. of India

---

**Speakers**

CS Aniruddha Sen  
Shri Ajay Choudhury  
CS K. K. Chhaparia  
Ms. Ankita Agrawal  
CS Anjan Kumar Roy  
CS Amit Ghosh

---

CS Debasish Bandopadhay, Registrar of Companies (W.B.), MCA and CS B. P. Dhanuka, (Past President), ICSI, light the lamp at Inaugural Session of Full-Day Seminar on “Mergers & Acquisitions - The 7 Dimensions”

---

“This life is a hard fact; work your way through it boldly, though it may be adamantine; no matter, the soil is stronger.” — Swami Vivekananda
2nd ICSI CONVOCATION - 2013 OF EASTERN REGION
Date: 17.05.2013 | Venue: Rotary Sadan | Awardees: 88

Chief Guest

CS Deepak K Khaitan
Chairman
ICSI-ERIC

CS Anil Murarka
Past President
ICSI

CS S N Ananthasubramanian
President
ICSI

Shri Siddhant Kaul
Managing Director
Nicco Engineering Services Ltd.

CS Ashok Pareek
Council Member
ICSI

CS M S Sahoo
Secretary
ICSI

Group Photographs of Awardees at 2nd ICSI Convocation - 2013 of Eastern Region.
FULL-DAY SEMINAR ON "CORPORATE GOVERNANCE - ISSUES & CHALLENGES"

**Date**: 25.05.2013  
**Venue**: The Park

**Chief Guest**: Shri R. Bandopadhayay, IAS (Retd.), (Former Secretary, Ministry of Corporate Affairs), Member, Central Administrative Tribunal, Calcutta Bench

**Speakers**

- CS B. B. Chatterjee, Executive Vice-President & Company Secretary, ITC Limited on "Board - Diversity, Committee & Succession"
- CA Sagar Sarkar, Senior Manager, Deloitte Haskins & Sells on "Related Party Transactions"
- Dr. Basudeb Sen, (Former CMD, IIBI), Director, ITC Limited on "Independent Directors & Professional Directors"
- CS Dilip Kumar Sen, (Former Vice-President & Secretary, Tata Tea Limited), Faculty, IIM on "Independent Directors & Professional Directors"
- CS Pawan Marda, Asst. Vice President and Company Secretary, Linde India Limited on "Independent Directors & Professional Directors"

Delegates: 96

---

**PANEL DISCUSSION ON "Corporate Governance Norms India - Present & Future"**

**Date**: 25.05.2013  
**Venue**: The Park

**Panelists**

- CS Anup Sharma  
  Vice President, VC  
  Corporate Advisors Pvt. Ltd.
- CS Dilip Kumar Sen  
  (Former Vice-President & Secretary, Tata Tea Limited)
- CS Barun Das  
  (Former Director & Company Secretary, Exide Industries Limited), Chief Operating Officer, The KPC Group
- CS S. Gangopadhyay  
  Practising Company Secretary
- CS Sanjay Kumar Gupta  
  Practising Company Secretary
- CS Pawan Marda  
  Asst. Vice President and Company Secretary, Linde India Limited

---

"The more we grow in Love, Virtue and Holiness, the more we see Love, Virtue and Holiness outside." — Swami Vivekananda
51st STUDENT INDUCTION PROGRAMME (51st SIP)

Date: 03.04.2013 to 10.04.2013
Venue: ICSI-EIRC Building
Participants: 67

52nd STUDENT INDUCTION PROGRAMME (52nd SIP)

Date: 03.04.2013 to 10.04.2013
Venue: ICSI-EIRC Building
Participants: 47

53rd STUDENT INDUCTION PROGRAMME (53rd SIP)

Date: 11.04.2013 to 18.04.2013
Venue: ICSI-EIRC Building
Participants: 39

54th STUDENT INDUCTION PROGRAMME (54th SIP)

Date: 18.04.2013 to 27.04.2013
Venue: ICSI-EIRC Building
Participants: 37

55th STUDENT INDUCTION PROGRAMME (55th SIP)

Date: 04.05.2013 to 14.05.2013
Venue: ICSI-EIRC Building
Participants: 81

29th EXECUTIVE DEVELOPMENT PROGRAMME (29th EDP)

Date: 05.04.2013 to 13.04.2013
Venue: ICSI-EIRC Building
Participants: 41

30th EXECUTIVE DEVELOPMENT PROGRAMME (30th EDP)

Date: 16.04.2013 to 27.04.2013
Venue: ICSI-EIRC Building
Participants: 33

“Why should a Man be Moral? Because this strengthens his will.” — Swami Vivekananda
31st EXECUTIVE DEVELOPMENT PROGRAMME (31st EDP)

<table>
<thead>
<tr>
<th>Date</th>
<th>13.05.2013 to 21.05.2013</th>
</tr>
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<tbody>
<tr>
<td>Venue</td>
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</tr>
<tr>
<td>Participants</td>
<td>30</td>
</tr>
</tbody>
</table>

Chief Guest

31st EDP Inaugural Session

CS Trilochan Sharma
C.M. & Company Secretary
Balcoore Alloys Limited

31st EDP Valedictory Session

CS Girish Bhatia
Company Secretary
Magma Fincorp Limited

75th MANAGEMENT SKILLS ORIENTATION PROGRAMME (75th MSOP)

<table>
<thead>
<tr>
<th>Date</th>
<th>12.03.2013 to 02.04.2013</th>
</tr>
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<tbody>
<tr>
<td>Venue</td>
<td>ICSI-EIRC Building</td>
</tr>
<tr>
<td>Participants</td>
<td>49</td>
</tr>
</tbody>
</table>

CS B. P. Dhanuka, Past President - ICSI, Guest of Honour (Valedictory Session) presenting the Awards to
Chandra Kr. Jain - 3rd Best Participant, Sanjay Gupta - 2nd Best Participant and Shilpa Aggarwal - Best Participant at 75th MSOP

CS Amit Kumar Sen (Past Vice-President, ICSI)
Managing Director, East India Pharmaceutical Works Ltd.

Participants of the 1st SMP Batch of ICSI-EIRC at the 75th MSOP Valedictory Session, (L to R) - CS Ravita Dhanania, CS Sudha Singh, CS Sanjay Kumar Gupta, CS Mahadev Agarwal, CS Prem Chand Kankaria

"Education is the manifestation of perfection already existing in man." – Swami Vivekananda
**76th MANAGEMENT SKILLS ORIENTATION PROGRAMME (76th MSOP)**

**Date**
20.03.2013 to 07.04.2013

**Venue**
Bhubaneswar Chapter

**Participants**
15

---

Participants at 76th MSOP with Chief Guest (Valedictory Session) Shri D. K. Samantaray, Managing Director - Angul Sudha Railway Ltd, and Shri Basuli Dasgupta - Best Participant at 76th MSOP

---

**77th MANAGEMENT SKILLS ORIENTATION PROGRAMME (77th MSOP)**

**Date**
07.05.2013 to 23.05.2013

**Venue**
ICSI-EIRC Building

**Participants**
27

---

CS Subhasish Mitra, Vice-President & Company Secretary - CESC Limited, with Chief Guest (Valedictory Session) presenting Award to Varsha Sanghvi - 3rd Best Participant, Shikha Bansal - 2nd Best Participant at 77th MSOP

CS Deepak Kumar Khaitan and CS Anjan Kumar Roy presenting Award to Aditya Madhoharia - Best Participant at 77th MSOP

---

Participants at 77th MSOP with Chief Guest (Inaugural Session) CS S. Radhakrishna, Managing Director - DESCON Limited and CS Subhasish Mitra, Vice-President & Company Secretary - CESC Limited

---

"First, believe in the world—that there is meaning behind everything." — Swami Vivekananda
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<tr>
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<tbody>
<tr>
<td>1.</td>
<td>TDS/TCS FILE PREPARATION(UPTO TEN ENTRY)[Without upload fees]</td>
<td>200/-</td>
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<tr>
<td>2.</td>
<td>TDS/TCS FILE PREPARATION(AFTER TEN ENTRY PER ENTRY)</td>
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<tr>
<td>3.</td>
<td>TDS &amp; TCS FILE UPLOAD (UPTO 100 DEDUCTEE)</td>
<td>31/-</td>
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<td>4.</td>
<td>TDS &amp; TCS FILE UPLOAD (101-1000 DEDUCTEE)</td>
<td>185/-</td>
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<td>5.</td>
<td>TDS &amp; TCS FILE UPLOAD (MORE THAN 1000 DEDCUTEE)</td>
<td>618/-</td>
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</tbody>
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Contact : 033-6451 1510 (O), 98317 53533 (M), 98002 30970 (M)
E-mail : info@bengalefiling.com
Website : www.bengalefiling.com
New challenges for company secretaries

The Institute of Company Secretaries of India (ICSI) organised the ICSI Convocation 2013 – Eastern Region in the city to announce the Award of Associate and Honorary Membership of the Institute and to recognise students’ achievements. Siddhant Kaul, director, NICCO Corporation Ltd, explained how the regulatory scenarios have undergone a change over the years and that the new Companies Bill provides for CS to appear before NCLT, expanding the work sphere of a CS.

THE TIMES OF INDIA
UPDATES
MONDAY, MAY 20, 2013

NEWS BRIEFS

AWARDS & ACCOLADES

The Institute of Company Secretaries of India (ICSI) organised the ICSI Convocation 2013 – Eastern Region at Kolkata to formalise the award of associate and honorary membership of the institute and to recognise the achievements of the students. Siddhant Kaul, director, NICCO Corporation Ltd, awarded the associate and honorary membership of the institute to recognise the achievements of the students at the 2nd ICSI Convocation – Eastern Region 2013. Kaul in his convocation address said that regulatory scenarios have undergone a change and the new Companies Bill also brings in a lot of change. He said the directors of a company rely on a company secretary for compliance and other follow-ups regarding regulatory requirements. CS SN Ananthasubramanian, president, Council of the ICSI, congratulated the new members and said, “We are entering a world that rewards individual aspiration and persistence and can measure precisely who is contributing and who is not. In this context, the 2nd ICSI Annual Convocation 2013 is being held.” CS Anil Murarka, council member, ICSI, said that the profession of company secretary is achieving new heights. He also said the profession will be what the members make of it. CS Ashok Pareek, council member, ICSI, advised the students to take care of their performance in whatever they do.
भारतमित्र

श्री रिद्वार्थ कौल निर्देशक निकाय कार्यालय लि. ने इंस्ट्रूडूक्शन ऑफ कंपनी सेक्टरॉरी ऑफ इंडिया ने एनएससीटी लिए आनन्दी समस्या प्रदान कर छात्रों की उच्चाकाशी को मान्यता देने के लए दीर्घ आईसी}

प्रभात कवर

कंपनियों का नियमानुक परिषद् बदला : कौल

रोजनार नि निर्देशक के बहुत हज़रत बना चुका है रखा लेने का अधिकार, ख्यात निवेशकों के नियमानुक पदार्थों में लगातार बदलाव आ रहा है, जब कंपनी खिल के लागू को रखा देता है, और मुद्रण की जानकारी को मिली है।

‘कोलाज्ड’ के मामले में बढ़े जांच कंपनी नज़रिया का महत्व'
Eight PCH for Members  Sixteen PDP for Students

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

14th National Conference of Practising Company Secretaries
July 19-20, 2013 (Friday & Saturday)
Inaugural: 11.00 AM

Theme
Integrating Growth, Governance and Challenges Beyond

Sub Themes
Enhancing Quality of Service
Emerging Areas of Practice in Governance
Professionals’ Responsibility, Accountability and Regulation

Key Takeaways
- Explore new opportunities in the areas of practice.
- Update and sharpen technical and professional skills.
- Share knowledge among the peer group.
- Build professional networking.
- Interact with experienced and expert faculty.
- Enjoy the scenic beauty of The Vedic Village Spa Resorts, Kolkata.
- Rejuvenate in the City of Joy to achieve further heights

Speakers
Eminent speakers with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

Participants
Company Secretaries and other Professionals in Secretarial, Legal and Management disciplines would be benefited by participating in the Conference.

Venue
The Vedic Village Spa Resort, Shikharpur, P.O. Bagu Rajarhat Kolkata 700135

"Work and worship are necessary to take away the veil, to lift of the bondage and illusion." – Swami Vivekananda
INTEGRATING GROWTH, GOVERNANCE AND CHALLENGES BEYOND

Governance holds the key to growth. Growth is the key to sustenance of posterity. This explains renewed worldwide focus on ‘growth enhancing governance’. The ever evolving dynamics of growth and governance spawns challenging challenges. It is bounden duty of the company secretaries, who are fast emerging as responsible governance professionals, to support and meet such challenges of growth enhancing governance in all three segments - government, corporate and non-governmental organisations. This is bedsides the fact that this is opening up new vistas of practice for governance professionals. The Conference will deliberate the theme in three technical sessions as under:

Session 1
Enhancing Quality of Service

A professional is expected to compete with himself, his fellow professionals and professionals from other disciplines. He, however, survives and excels only if he goes beyond the expected. A quality conscious approach supplemented by continuing professional education and peer review holds him in good stead. He, however, needs break down his activities into different categories, each with specific performance metrics, best practice guidelines and measurable results. The session would help him develop these capabilities and may persuade the Institute to come up with service standards.

Session 2
Emerging Areas of Practice in Governance

Three sets of economic agents, namely, government, corporate and non-governmental organizations have almost the entire resources of the country at their custody. They neither own these resources nor benefit therefrom. They hold and manage such resources as agents for the benefit of 1.2 billion Indians. The governance of these three sets of agencies must avoid conflict of interest of various stakeholders and pursue their interests harmoniously. The deliberations of the session would enable the participants appreciate as to where we are, where we want to go and how do we get there as governance professionals.

Session 3
Professionals’ Responsibility, Accountability and Regulation

A practicing company secretary is an extended arm of State and pursues public goods in public interest. He is fiercely independent commensurate with his responsibility. Such independence calls for commensurate accountability. The accountability is fastened to not only what he does, but also what he does not. It is doing the right thing, in the right manner, for the right reasons, and with the right attitude. There would be a panel discussion in this session on the parameters of a professionals’ responsibility, accountability and regulation. It would also dwell on the extent of self-discipline and external discipline.
Delegate Registration Fee (Rs.)

<table>
<thead>
<tr>
<th>Delegates</th>
<th>Registering on or before 15th June, 2012</th>
<th>Registering after 15th June, 2013</th>
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<tr>
<td></td>
<td>Non Residential</td>
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<td>Twin Sharing</td>
<td>Single Occupancy</td>
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<td>Members</td>
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<td>Non-Members</td>
<td>3371</td>
<td>6121</td>
</tr>
<tr>
<td>Students/Licentiates of ICSI</td>
<td>2247</td>
<td>4997</td>
</tr>
<tr>
<td>Accompanying Spouse / Children (above the age of 12 years)</td>
<td>2247</td>
<td>4997</td>
</tr>
</tbody>
</table>

☐ Check in: 19th July, 2013 / Check out: 20th July, 2013
☐ Registration fee covers the cost of background material, lunch, tea (both days) and dinner (Friday, 19th July, 2013) and includes service tax
☐ As limited number of rooms is available at the Vedic Village Spa Resort on 'First Come First Served' basis, we shall appreciate if a line in confirmation is sent at the email id sudhirsakani@icsi.edu so that the desired accommodation is blocked at the venue of the Conference.
☐ Delegates with chauffeur driven cars will have to pay extra charges for food arrangements for Driver during the conference. These charges have to be paid immediately on arrival.
☐ Any extra stay will be charged separately, subject to availability of rooms and receipt of reservation charges in advance.
☐ Any extra facilities availed by the delegate during the stay have to be paid directly to Vedic Village Spa Resort.
☐ Members attending the conference on both the days shall be eligible for Eight Programme Credit Hours.

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Council Member, ICSI  
033-66023845  
akpareek2000@yahoo.co.in

PROGRAMME COORDINATOR
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Chairman, EIRC  
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deepak_khaitan@hotmail.com

PROGRAMME FACILITATOR
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Vice Chairman, EIRC  
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khandeliaarun@hotmail.com

For any clarification please contact:
1. Ms. Jagvinder Kaur Bedi, Administrative Officer - Tel: 011-45341040; e-mail: jayvinder.bedi@icsi.edu
2. Mr. Saurabh Jain, Assistant Director - Tel: 011-45341035; e-mail: saurabh.jain@icsi.edu
3. Mr. Utpal Mukherjee, Assistant Director - Tel: 033-22816542; e-mail: utpal.mukherjee@icsi.edu

“Each work has to pass through these stages—ridicule, opposition, and then acceptance. Those who think ahead of their time are sure to be misunderstood.” – Swami Vivekananda
**BHUBANESWAR CHAPTER**

<table>
<thead>
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<th>Date</th>
<th>Details</th>
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<tbody>
<tr>
<td>07.04.2013</td>
<td>Successfully Hosted the Valedictory of 76th MSOP of ICSI-EIRC</td>
</tr>
<tr>
<td>28.04.2013</td>
<td><strong>Yoga Session on Better Life</strong> at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
</tr>
<tr>
<td>03.05.2013</td>
<td><strong>Managing Committee meeting with the Faculty Members of Oral Coaching Classes</strong> at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
</tr>
<tr>
<td>05.05.2013</td>
<td><strong>Yoga Session on Better Life</strong> at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
</tr>
<tr>
<td>12.05.2013</td>
<td><strong>Yoga Session on Better Life</strong> at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
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<td>19.05.2013</td>
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<td>26.05.2013</td>
<td><strong>Yoga Session on Better Life</strong> at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
</tr>
<tr>
<td>29.05.2013</td>
<td>Evening talk on &quot;Professional Excellence in a Spiritual Way&quot; at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
</tr>
<tr>
<td>19.06.2013</td>
<td>Meeting with Shri J.K. Mohapatra, IAS, Development Commissioner &amp; Additional Chief Secretary (Finance) and Shri P. Venugopal, IAS, Principal Secretary, Department of Public Enterprise, Govt. of Odisha at State Secretariat, Bhubaneswar</td>
</tr>
<tr>
<td>21.06.2013</td>
<td>Talk on &quot;Risk Management through Financial Derivatives&quot; at Conference Hall, the ICSI, Bhubaneswar Chapter</td>
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**HOOGHLY CHAPTER**

<table>
<thead>
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<tr>
<td>31.03.2013</td>
<td>Half Day Workshop on the Topic &quot;Takeover Regulations 2011&quot;. Total participants: 46</td>
</tr>
<tr>
<td>07.04.2013</td>
<td>Seminar for Students on the Topic &quot;How to Perform Excellent in Examination and the Way to Present Answers&quot;. Total participants: 25</td>
</tr>
<tr>
<td>19.05.2013</td>
<td>Half Day Workshop on the Topic &quot;Ponzi Scheme- The Legal Aspect and Role of Company Secretary&quot;. Total participants: 88</td>
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**PATNA CHAPTER**

<table>
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<th>Date</th>
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<tbody>
<tr>
<td>12.05.2013</td>
<td>Professional Development Programme on &quot;Overview on Companies Bill 2012, as passed by Lok Sabha&quot;. Total participants: 82</td>
</tr>
</tbody>
</table>

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This is to inform to all that views and information expressed and provided in the Articles of this edition are the views and information of the respective authors. They have no connection with the organisation with which the authors are associated. ICSI-EIRC is not responsible for the authenticity or propriety of the contents of the Articles and ICSI-EIRC cannot be held responsible or liable for any claim or damage arising out any action or belief on the basis of the contents of the aforesaid Articles. ICSI-EIRC is not in any way responsible for the result of any action taken on the basis of the advertisement published in ICSI-EIRC Newsletter.

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**DR TAPAS KUMAR ROY**
ASSISTANT EDUCATION OFFICER

Dr. Tapas Kumar Roy joined ICSI in 2007. Before joining ICSI, Shri Roy pursued his Ph.D. in Commerce with specialization of Mutual Funds in India as well as served as Faculty in Department of Commerce, Netaji Nagar College, Kolkata and thereafter in Haldia Law College for around eight years. Shri Roy did M. Phil. in LIS with specialization of applicability of Right to Information Act, 2005. He has presented various papers in different UGC sponsored Seminars. Recently he was invited to speak on good Governance in a Two Days National Seminar under the title "Establishing Good Governance in Academic Institutions" organized by West Bengal University of Technology. Being a law graduate he is a Member of Bar Council of West Bengal and Life Member of the Bengal Library Association.

**SHRI S. SREEJESH**
DESK OFFICER (CAREER AWARENESS)

Shri S. Sreejesh joined ICSI in 2009. Presently as Desk Officer (Career Awareness), he has been looking after Career Awareness Programmes, Media Relations, Student Services etc. Before joining ICSI, Shri Sreejesh served as an Officer in ICICI Bank Ltd and as Asst Manager in HSBC. He is a professional member of All India Management Association (AIMA) and Calcutta Management Association (CMA).

**OBITUARY**

We deeply regret the sad demise of

CS DEVAKI PROSAD CHAKRAVARTI

ACS-2419

(30.10.1953 to 22.05.2013)

an Associate Member of

ICSI from Kolkata.

May the Departed Soul
rest in peace.

**Articles in ICSI-EIRC Newsletter : Guidelines for Authors**

1. Articles on subjects of interest to the profession of Company Secretaries are published in ICSI-EIRC Newsletter.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for ICSI-EIRC Newsletter.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed by the Chief Editor on the parameters such as (a) relevance and usefulness of the article (from the point of view of company Secretaries), (b) organization of the article (structuring, sequencing, construction, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in ICSI-EIRC Newsletter, shall vest with ICSI-EIRC.
9. ICSI-EIRC /the Chief Editor of ICSI-EIRC Newsletter has the sole discretion to accept/ reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to tamal.kar@icsi.edu
11. The article shall be accompanied by a ‘Declaration-cum-Undertaking’ from the author(s) as under:

**Declaration-cum-Undertaking**

1. I, Shri/Ms./Dr./Prof. …………………………. declare that I have read and understood the Guidelines for Authors as prescribed for ICSI-EIRC Newsletter.
2. I affirm that :-
   (a) the article titled "……………………………………" is my original contribution and no portion of it has been adopted from any other source;
   (b) the aforesaid article is an exclusive contribution for ICSI-EIRC Newsletter and has not been / nor would be sent elsewhere for publication; and
   (c) the copyright in respect of the aforesaid article, if published in ICSI-EIRC Newsletter, shall vest with the ICSI-EIRC.
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