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**ICSIs Insight**

**NEWSLETTER**

**Theme of NIRC–2014: Change, Emerge & Lead**

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**“Focus on Deposits under the Companies Act”**

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**STATE TIMES NEWS**

**NEW DELHI**

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A person completing this course both examination and training, is enrolled as a member and become eligible to work as a company secretary either in employment or during practice.

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**Changes in Cos Act Takes Care of Co Secretaries’ Interest**

Now all firms with paid up capital above Rs. crore need to hire full-time co secretary

**RANJAN RASHIKA SINGH & AMRUTH S HIRANKER MONIRAT SHARMA**

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This change in scope feeds into the CS fraternity in a state of shock and confusion. The notification is issued, according to company law, with the Ministry of Corporate Affairs.

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**THE ECONOMIC TIMES**

**NEW DELHI**

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**S. NEW DELHI, WEDNESDAY, JUNE 12, 2014**

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The secret to mastery in any field is to forever be a student.

–Martin Palmer

Companies Act 2013 has offered a lot of opportunities but alongside it has also thrown upon us challenges in terms of competence, knowledge management and delivery of quality services. We have to reorient ourselves and multiply our efforts in line with changing needs and establish ourselves as indispensable to Corporate Governance process. We are going through a phase where knowledge and intellect are of utmost importance. We need to be epitome of excellence in the applicability of our diversified knowledge in order to get brand equity for our profession. In this competitive environment, we cannot compromise with professional excellence. It should be our endeavour to strive for excellence and come up to the expectations of our stakeholders.

In the ever changing and demanding business & corporate environment, we all have to keep pace with the changes happening around us. It is our persistent endeavour to equip our members with sound knowledge and attitude so as to enable them to face dynamic challenges offered by the world. Northern India Regional Council of the Institute of Company Secretaries of India is always in forefront of providing best of the services to the stakeholders. NIRC-ICSI is focused in its approach and is organising series of quality professional development programs focusing on Companies Act, 2013 and issues in implementing companies act.

In the month, the following initiatives have been taken by the NIRC by introducing for the First Time the Two Day Induction Program for Company Secretaries in Employment and 15 Day Class Room Series on Companies Act, 2013.
The NIRC has put its best efforts to invite eminent speakers from the industry and profession. Few of the eminent speakers are CS Ilam C Kamboj, AVP-Legal & Company Secretary, Hero Motocorp Ltd., CS B Murli, Senior Vice President-Legal & Company Secretary, Nestle India Ltd., CS N K Sinha, Company Secretary, ONGC Ltd., Dr. Bhavna Barmi, Sr. Clinical Psychologist, Fortis Group of Hospitals.

As continuing efforts, NIRC organized Campus Placement for students for 15 Months Training/Modified Training Structure in which 29 Company/PCS/Law Firm participated. Around 150 students have participated in the event and out of them 134 candidates got short-listed. Some of the leading companies were ONGC Tripura Power Company Ltd., Perfetti Van Melle India Pvt. Ltd., JK Paper Ltd., Ansal Housing & Construction Ltd., Godfrey Phillips India Limited., ITDC Ltd., HPCL Mittal Energy Ltd., DLF Ltd.etc. We plan to carry this focused activity further in a big way to support our young members & students

Friends, this year NIRC-ICSI will be celebrating 43rd Foundation Day from 25th to 31st July, 2014. The celebrations will start with the inauguration of the Foundation Week and plantation of saplings followed by the various other programs for members as well as students (Details of these programs are published elsewhere in the Newsletter for your reference). I appeal to all of you to attend these programs in large number to make them grand success.

With a view to promote the profession of Company Secretaries across the region and to spread its awareness to the areas where NIRC finds potential for both the development and growth of the profession, NIRC has opted to keep its Regional Conference at Dehradun (Detail is published elsewhere in the newsletter)

NIRC is organising "RESEARCH PAPER COMPETITION-2014" for the members with an objective to enlisting members to excel and update their knowledge and to bring together the views and experiences of different people on similar issue. (Detail is published elsewhere in the newsletter)

The Convocation of Northern Region is going to be held on Saturday the 26th July 2014 to award the certificate of membership of the Institute to newly qualified members admitted after 10th April 2013 to 31st March 2014. The convocation would enable the newly qualified members to feel about the dignity of being a member of the Institute and to generate belongingness amongst the members with the Institute.

We are pleased to inform you that due to persistent efforts of Lucknow Chapter of NIRC of ICSI under the able guidance of Team ICSI, Definition of Accountant in Rule 2(e) of UP VAT Rules, 2008 has been amended to include Company Secretary vide notification dated 27.06.2014. This is remarkable recognition for Company Secretaries.

Opportunities are never ending. It just needs an inquisitive eye to find the pin from the hay. We have to equip ourselves with the diversified knowledge and channelize it in a focused manner to bring out the best results. Newer areas of opportunities can be explored by us in the areas of public spheres. There are opportunities galore in the local bodies of the government which can be explored for mutual benefit of both society and profession. We are of the view that lot of opportunities for Company Secretaries are still left to be explored at the State/District Level Government Institutions/Departments. I take this opportunity to request all of you to kindly come forward and give your suggestions atchairman.nirc@icsi.edu specifying the areas where the services of the Company Secretaries can be utilised at the local level. I assure you that we will give due importance to your suggestions and take up the matter with the Local Government Authorities through ICSI.

At the end, I once again request you to kindly come forward and give your suggestions for the further growth of the profession through chairman.nirc@icsi.edu

Regards,

Yours sincerely,

(CS SHYAM AGRAWAL)
info@shyamagrawal.com
Mobile : 09314923451
DECODING OF DEPOSITS UNDER THE COMPANIES ACT, 2013 WITH THE RULES FRAMED THEREUNDER*

– CS Pankaj Kumar Singhal, singhalkap@gmail.com

Deposits and/or unsecured loans have been proved an essential and major source of financing in the corporate sector since the time of its recognitions. This is an essential tool of the growth of the private sector as well by reasons of least cost as well as controlling. The law maker had also taken the lenient view, while drafted the laws governing deposits/unsecured loans prior to the formation/implementation of the Companies Act, 2013.

However, this is also a truth that due to the least control and cost, some of the person/corporate group has taken undue advantage and made fraud with the general public.

Under the Companies Act, 2013, law maker has taken due care for the controlling/safety measures including the limits within which this source of funding may be availed/utilized. Allowance of deposits has been made from members as well as from the general public, subject to some restrictions/procedural aspects/limits/security etc.

The complete provisions relating to the deposits is covered under chapter V (Acceptance of deposits by Companies) covering section 73 to 76 read with Companies (Acceptance of Deposits) Rules, 2014.

Further, Deposits and/or unsecured loans also has a small applicability of section 117(3)(g) ((Resolutions and Agreements to be filed) read with section 179(3) (Powers of Board) for the filing of resolutions with the Registrar within 30 days of the meeting of board of directors. It also has some relevance of section 185 (Loan to directors, etc.) along with section 186 (Loan and investment by company). The brief of the same can be understood as under:-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Base Point of Difference</th>
<th>Point of Difference based on the types of category</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Status of Company</td>
<td>Private Company</td>
</tr>
<tr>
<td>2.</td>
<td>From Whom can take</td>
<td>From Directors and Members</td>
</tr>
<tr>
<td>3.</td>
<td>Conditions for Deposits to be taken from Directors</td>
<td>It is allowed to be taken without any Limit. However, Director has to furnish declaration at the time of money being given to the company that the amount is not being given out of the funds acquired by him by borrowing or accepting loans or deposits from others.</td>
</tr>
</tbody>
</table>

However, care here should be taken that the person giving loan is an interested director and should not participate and vote at the time while the resolutions for the same is discussed and passed within the meaning of section 117(3)(g) read with section 179(3) together with Section 174 of the Act.

CS Pankaj Kumar Singhal is a fellow member of Institute of Company Secretaries of India and Law and Commerce Graduate from Delhi University. He has more than 8 years experience in Corporate Sector and has wide corporate compliance exposure before CLB, Regional Director and various other authorities. He has also done various due diligence audits. Views expressed by the Author are solely his own view and the Firm, NIRC or ICSI does not accept any responsibility.

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<td>4.</td>
<td>From Shareholders</td>
<td>It is allowed to be taken subject to the limit of 25% of the Paid up share capital and free reserves subject to compliance of provisions of section 73(2) of the Act.</td>
</tr>
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<td></td>
<td></td>
<td>Provided that at any point of time, deposit shall not exceed 25% of Paid up capital and free reserves.</td>
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<tr>
<td>5.</td>
<td>From Public</td>
<td>Not Allowed to be taken</td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td>It is allowed to be taken subject to the limit of 25% of the Paid up share capital and free reserves. However, in case of Government company, who is eligible to accept deposits from public under section 76, it is allowed to be taken subject to the limit of 35% of the Paid up share capital and free reserves.</td>
</tr>
<tr>
<td>6.</td>
<td>Advertisement</td>
<td>Not Necessary</td>
</tr>
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<td></td>
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<td>Not Necessary</td>
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<tr>
<td></td>
<td></td>
<td>Necessary</td>
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<tr>
<td>7.</td>
<td>Credit Rating</td>
<td>Required to be taken before the submission of the circular to the registrar as an essential disclosure of the said Circular.</td>
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<tr>
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<td></td>
<td>Required to be taken (Including the rating of its net worth, liquidity and ability to pay its deposits on due date) before the submission of the circular to the registrar as an essential disclosure of the said Circular. Further, the said rating shall also be obtained for every year during the tenure of deposits.</td>
</tr>
<tr>
<td>8.</td>
<td>Display of Circular on Website</td>
<td>Optional</td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Mandatory, if any</td>
</tr>
<tr>
<td>9.</td>
<td>Secured/ Unsecured</td>
<td>Both can be issued</td>
</tr>
<tr>
<td>10.</td>
<td>Tenure</td>
<td>Period of deposits shall not be less than 6 months and not more than 36 Months. However, Deposits upto 10% of the paid up capital and free reserves may be taken for a duration which shall not be less than 3 months.</td>
</tr>
<tr>
<td>11.</td>
<td>Brokerage</td>
<td>It is allowed to be given to the broker appointed and authorized in writing and at the rate not exceeding the rate prescribed by the RBI for NBFC.</td>
</tr>
<tr>
<td>12.</td>
<td>Joint Ownership</td>
<td>Not exceeding 3 person can hold the deposits in Joint name with or without any of the clauses namely &quot;Jointly&quot;, &quot;Either or Survivor&quot;, &quot;First named or survivor&quot; or &quot;Anyone or Survivor&quot;</td>
</tr>
<tr>
<td>13.</td>
<td>Rate of Interest</td>
<td>It can be given at the rate not exceeding the rate prescribed by the RBI for NBFC</td>
</tr>
<tr>
<td>14.</td>
<td>Deposit Insurance</td>
<td>An deposit insurance contract is required to be executed before the issue of the circular, which shall ensure the repayment of the deposits</td>
</tr>
<tr>
<td>15.</td>
<td>Declaration of Non borrowed fund</td>
<td>Application form for deposit shall contain a declaration that deposit is not being made out of the funds borrowed by him from any other person.</td>
</tr>
<tr>
<td>16.</td>
<td>&quot;Unsecured Deposits&quot; to be quoted</td>
<td>Where the proposed deposits is unsecured or is secured partially, the deposits shall be termed as &quot;unsecured deposits&quot; and shall be quoted in every circular, form, advertisement or in any other document relating to invitation or acceptance of deposits.</td>
</tr>
</tbody>
</table>

Some other provisions, which are applicable on the same line of action has been combined herein under

9. Secured/ Unsecured
10. Tenure
11. Brokerage
12. Joint Ownership
13. Rate of Interest
14. Deposit Insurance
15. Declaration of Non borrowed fund
16. "Unsecured Deposits" to be quoted
17. Premature payment

In case of premature payment of deposits, 1% shall be reduced from the interest agreed to be paid.

18. Penal Interest

18% per annum for overdue period.

19. Deposit repayment reserve account

On or before 30th April of each year a sum not less than 15% of the amount of deposits maturing in the current financial year and the next financial years shall be deposited in a scheduled bank in a separate account called deposit repayment reserve account which shall be free from charge or lien and the funds therein shall not be used by the company for any purpose other than repayment of deposits.

Observations:-

While the government have consider the numerous complaint from a large number of public for non repayment of deposits from the deferent corporate as well as on been failure to assist in an effective manner to control the same and get the money revert to the depositor, government has taken hard informative, procedural and security measures, which ultimately will depressed the corporate world to utilize this effective source of funding and ultimately will affect its growth.

It is the observations of the author that while making rules and regulations, the government should have taken the lenient view for acceptance of deposits at least from the members and should had made rules and regulations to promote the deposits from members and close relatives which are the backbone funding source.

It appears to the author that while taking hard measures for deposits from the public, it has gone beyond the initial thinking of taking controlling measures and has hit the hammer on the backbone source of funding.

CONFUSION REGARDING DEPOSITS ACCEPTED EARLIER

It perhaps the most critical issue remained unclassified about the deposits taken prior to the implementation of the definitions of Private Company under The Company Act, 2013 as given under section 2(68) with exclusion of the permission of taking deposits from Members/ Director and their relatives.

The confusion continued due to the non specification about any kind of clarification as well as rules during the period covered from the implementation of the definitions and till the period of 31st March, 2013.

Moreover, after the implementation of Section 2(31) as well as Chapter V read with its rules, direct issue relating to what kinds of measures should be taken to deal with the deposits/ unsecured loans from members/ Director or their relatives/ Body corporate has not been dealt with specifically.

There author here has tried his best efforts to clear the picture in relation to the same.

1. Period prior to 12th September, 2013:-

Prior to the implementation of the definitions of Private Company in Section 2(68) of The Companies Act, 2013, Private Company was defined in Section 3(1)(iii) of The Companies Act, 1956 with sub clause (d) which is read as under:-

"prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives"

Being deposits, here is also useful to understand some of the Rules in relation to deposits namely Companies (Acceptance of Deposits) Rules, 1975 made by the central government under section 58A read with Section 642 of The Companies Act, 1956.

Rule 2(b): "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include-

2(b)(iv): "any amount received by a Company from any other Company"

2(b)(vii):"any amount received by way of subscriptions to any shares, stock, bonds or debentures such bonds or debentures as are covered by sub-clause (x) pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the Articles of Association of the Company so long as such amount is not repayable to the members under the Articles of Association of the Company"

2(b)(ix) "any amount received by a private company from a person who, at the time of the receipt of the amount, was a director, relative of director or member: Provided that the director or member, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting from others"

2(b)(xi) any amount brought in by the promoters by way of unsecured loans in pursuance of stipulations of financial institutions subject to the fulfillment of the following conditions, namely:-

(a) the loans are brought in pursuance of the stipulation imposed by the financial institutions in fulfillment of the obligation of the promoters to contribute such finance;

(b) the loans are provided by the promoters themselves and/or by their relatives, and not from their friends and business associates; and

(c) the exemption under this sub-clause shall be available only till the loans of financial institutions are repaid and not thereafter.

Rule 2(c): "Depositor" includes any person who has given a loan to a company.
On going through the above, it can clearly understand that the deposits from Members/ Director and their relatives/ Other Company was exempt. There was no dilemma under The Companies Act, 1956.

It is also clear that unsecured loans as covered under Rules 20© is deposits within the meaning of Section 3(1)(ii) of The Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules, 1975.

It should also be kept in mind that the provisions of section 205C do not get violated.

2. Period on or After 12th September, 2013 and upto 31st March, 2014

After the implementation of the definitions of Private Company in Section 2(68) of The Companies Act, 2013, although the definitions had been made effective, however, the following provisions under The Companies Act, 2013 could not be made effective due to non preparation of Rules:-

Section 2(31): Deposits: Definition of Deposits
Section 73 to 76: Acceptance of Deposits by Companies (Chapter V)
Rules: Companies (Acceptance of Deposits) Rules, 2014

The lawmaker intentionally defers the implementation of all the above provisions. Therefore the period covered here comprises the following provisions:-

Section 2(68): Private Company
Section 58A Read with its Rules: Companies (Acceptance of Deposits) Rules, 1975

Therefore the position here becomes clear that the rules namely Companies (Acceptance of Deposits) Rules, 1975 was effective during the period i. e. 12th September, 2013 and upto 31st March, 2014 and therefore deposits from other body corporate was also exempt under Rule 2(b)(iv). Further deposits from members/ director and their relatives was also exempt under Rule 2(b)(ix) provided that the director or member, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting from others.

It should also be kept in mind that the provisions of section 205C do not get violated.

3. Period After 31st March, 2014

Now, on or after 1st of April, 2014, all the provisions of The Companies Act, 2013 i. e. Section 2(31) defining deposits as well as Chapter V read with Companies (Acceptance of Deposits) Rules, 2014 has been made effective (Other than Section 74(2) and (3)) in relation to deposits and all the liberties to take unsecured loans/ deposits is taken back with effect from 1st April, 2014.

In the opinion of the author, as there is no specific exemptions been provided under The Companies Act, 2013, all the Deposits from Exempted Categories earlier, becomes due for refund automatically together with the interest due thereon.

Section 74 (1), which has also been made effective is being reproduced here for clear understanding:-

Section 74 (1): Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall-

(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

On plain reading of the above said Section, it is clear that the sum accepted prior to 1st April, 2014 is required to be repaid within the maximum period of one year (i. e. 31st April, 2015) from the date of commencement (i. e. 1st April, 2014)

It should also be kept in mind that there is a need to submit Form DPT-4 within the meaning of Section 74(1) upto the date of 30th June, 2014. The Ministry, vide General Circular 27/2014 dated 30th June, 2014, has granted extension for 2 months i.e. upto 31-08-2014 for filing of Form DPT4 without any additional fee.

The procedure to accept the deposits can be summarized as under:-

1. Convene a meeting of the Board of Directors to consider and approve the business to propose and accept deposit from Director/Member/ Public. In the case of Eligible Companies, approval by means of Special/ Ordinary Resolutions from the members is also required.

2. Once the proposal is approved, Authority to directors to approach to the credit rating agency for the grant of rating, execution of deposit insurance contract, Appointment of depositor trustee and Execution of trust deed, if the deposits are secured, Appointment of registered valuer, discussion and preparation of Circular for the issue of deposits may be given. Since the provisions of registered valuer have not been notified and as per clarification valuation should be done by Chartered Accountant having experience of 10 years or more or from Merchant Banker.

3. Submit form MGT 14 with the Registrar of Companies within 30 days of passing the resolution.

4. Submit the circular in the form DPT 1 with the ROC.

5. Submit form CHG 1 with ROC (Applicable in case of secured deposits) for assets other than intangible assets and for an amount which shall not be less than the
1. All Companies having outstanding deposit or interest on 31st March, 2014 repayments accepted on or before next following financial year.

2. After the expiry of 30 days of filing DPT 1, the Circular in form DPT 1 along with application form is sent to all members by registered post with acknowledgement due/speed post/electronic mail. Take note that, in case of eligible companies proposed to accept deposit from public is also required to issue advertisement (One in English newspaper and one newspaper in vernacular language having wide circulation in the state in which the registered office of the company is situated.

Said Circular/advertisement shall be valid till before the expiry of 6 months from the end of respective financial year in which it was issued or up to the date of Annual General Meeting (or last due date of AGM, if not held) wherein the financial statement is laid before members, whichever is earlier.

8. Upload the circular/advertisement on the Company Website, if any.

9. Collect duly signed application form along with money.

10. Issue receipts of deposits within 21 days of the receipt of money/realization of cheque.

11. Maintain register of deposits which shall contain the details as prescribed under rule 14 Companies (Acceptance of Deposits) Rules, 2014.

12. Pay interest at per the rate proposed on agreed terms.

13. Submit return of Deposits in form DPT 3 on or before 30th June each year for information as on 31st March of respective year.

14. Open "Deposit Repayment Reserve Account" with schedule bank and transfer at least 15% of the deposit maturing during the financial year and financial year next following.

Care should be taken that the so deposited shall not be utilized for any purpose other than for the repayment of deposits and the amount remaining deposited shall not at any time fall below fifteen percent of the amount of deposits maturing, until the end of the current financial year and the next financial year.

REPAYMENT OF DEPOSITS ACCEPTED ON OR BEFORE 31ST MARCH, 2014

1. a) All Companies having outstanding deposit or interest thereon shall be filed with ROC in form DPT 4 within 3 months from the Commencement of the Act (i.e. 30th June, 2014) or from the date on which such payment are due. The Ministry, vide General Circular 27/2014 dated 30th June, 2014, has granted extension for 2 months i.e. upto 31-08-2014 for filing of Form DPT4 without any additional fee.

2. Repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

NON APPLICABILITY OF THE RULES:-

These rules shall apply to a company other than -

(i) a banking company;

(ii) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) registered with the Reserve Bank of India;

(iii) a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987 (33 of 1987); and

(iv) a company specified by the Central Government under the proviso to sub-section (1) of section 73 of the Act.

1. DEFINITIONS:-

"Deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include -

(i) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(ii) any amount received from foreign Governments, foreign international banks, multilateral financial institutions (excluding, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made thereunder;

(iii) any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or in clause (b) of section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or from a co-operative bank as defined in clause (b(ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (2 of 1934);

(v) any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

(vi) any amount received by a company from any other company;
(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

**Explanation.-** For the purposes of this sub-clause, it is hereby clarified that -

(a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules.

(b) any adjustment of the amount for any other purpose shall not be treated as refund.

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company:

Provided that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;

(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within five years:

Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;

(xi) any non-interest bearing amount received or held in trust;

(xii) any amount received in the course of, or for the purposes of, the business of the company,-

(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance:

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply:

(b) as advance, accounted for in any manner whatsoever, received in connection with consideration for property under an agreement or arrangement, provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement;

(c) as security deposit for the performance of the contract for supply of goods or provision of services;

(d) as advance received under long term projects for supply of capital goods except those covered under item (b) above:

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:

**Explanation.-** For the purposes of this sub-clause the amount referred to in the first proviso shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

(xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:-

(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

(xiv) any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

**Explanation.-** For the purposes of this clause, any amount,-

(a) received by the company, whether in the form of installments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or

(b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer,

shall be treated as a deposit.

"Paid-up share Capital" or "Share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also include any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.
"Free reserves" means such reserves which, as per the latest balance sheet of a company, are available for distribution as dividend:

**Provided that-**

1. Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
2. Any change in carrying amount of an assets or of a liability recognized in equity, including surplus in profits and loss account on measurement of the assets or the liability at fair value, shall not be treated as free reserves.

**Penalty:**

Punishment for contravention under Companies (Acceptance of Deposits) Rules, 2014-

If any company referred to in sub-section (2) of section 73 or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues.

Penalty under Section 74(3) (Repayment of deposits, etc., accepted before commencement of this Act):

If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

**Conclusion:**

The overall provisions relating to deposits are much harder than the provisions of the previous Companies Act. The law maker have stringent the provisions keeping in view of the safety measures of the depositor and have made suffice provisions to get ensure the repayment of deposits taken either from members or from general public. The Corporate will have to thinks a lot to accept deposit from member/ public.

The author is of the view that the government, while making provisions, has overstepped to the enabling provisions to accept deposits and therefore has not left the space even to take breath. Under the present provisions, the backbone source of funding to the private sector even from members have been crushed by hit hammer by means of making provisions of Credit Rating, Deposit Insurance etc.. Under the present scenario, the Private Corporate world will prefer either to stop the business or to do the business merely by means of the status of "Partnership Firm" or "Proprietorship Concern".

The author, therefore is of the view and request the government that it should reconsider the provisions and at least the acceptance of deposits from the members of the company be libraries.

**Disclaimer:**

The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested to cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the author does not take responsibility of the same and this cannot be quoted before any authority.

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**LIGHTER SIDE OF THE PROFESSION**

"Why the company Secretary is not reporting for the duties for the last six days?"

"Sir, he is out of order."

"What do you mean by out of order?"

"Sir, he has been infected with virus."

****

Sir, inspite of the fact that Paramjeet Singh has vast knowledge of Corporate Laws, you didn't find him suitable for the post of Group Secretary."

"Because he does not fulfil the standards of the job fixed by our Chairman."

"In what respect he does not fulfil the Standards?"

"It seemed that he cannot be manipulated."

— CS PRAMJEET SINGH, pslawadvisers@yahoo.com

Members may send their contribution for this column at e-mail niro@icsi.edu for publication in the NIRC Newsletter-Insight. Decision of the Editorial Board of Newsletter in this regard will be final.
In this article

- Background
- Registered Valuer - New provisions in the Companies Act
  - Appointment of Registered Valuer
  - Qualifications of Registered Valuer
- Situations when valuation is required
- Duties of Registered Valuer & Penal Provisions
- New areas to be learned by Professionals
- Typical time to deliver a valuation project
- Areas left untouched

Background...

Though the year 2013 has not augured well for the Indian economy, 29th August 2013 became a historic date for the corporates when the honourable President of India accorded assent to the much awaited Companies Bill. The corporate segment had been demanding the reforms in multiple areas covered under the erstwhile Companies Act 1956. While a few of the demands were honoured by passing on amendments in the Act, there were multiple areas which were left unattended or lacked clarity. To iron out all such glitches, the new Companies Act 2013 has waxed the old provisions and covered a lot of new provisions demanded by the corporates and economy as whole. Among other inclusions, a prominent one which paves new areas of opportunities for the professional is the introduction of the concept of "Registered Valuer".

Registered Valuer - New provisions in the Companies Act...

A new chapter has been included in the Companies Act to cover valuation by a registered valuer. The Act includes provisions in various sections and clauses where a valuation by a registered valuer is required. Section 247 of the Act reads as under:

"247(1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company."

As evident from the above section, the areas covered under the law are wide enough to capture any type of asset or liability of a company for valuation.

Appointment of Registered Valuer: The registered valuer shall be appointed by the audit committee in the first instance. If the company does not have an audit committee, then the Board of Directors shall assume the responsibility of appointing the valuer.

Qualifications of Registered Valuer: The Act stipulates that the person proposed to be selected as a valuer shall have the qualifications and experience as prescribed by the Central Government. The Act, per se, does not cover the eligibility requirements for a registered valuer.

Situations when valuation is required...

The new Act covers the term valuation in various sections and clauses. In all such areas, the registered valuer is supposed to play a major role. A couple of such areas are encapsulated below:

Table: Provisions in the Companies Act where Valuation is required

<table>
<thead>
<tr>
<th>Section</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>62 (1) (c)</td>
<td>Valuation in case of further issue of share capital</td>
</tr>
<tr>
<td>192 (2)</td>
<td>Valuation of assets in case of non-cash transactions involving directors</td>
</tr>
<tr>
<td>230 (2) (c)</td>
<td>Valuation of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company in a scheme of corporate debt restructuring</td>
</tr>
</tbody>
</table>

CS Amardeep Singh has over 8 years of industry experience, he is an experienced professional in financial consulting and business valuation. He is also an avid trainer and has led workshops on Financial Modelling, DCF Valuation, M&A Modelling, Project Finance, Credit Evaluation, Advanced MS Excel and VBA for Excel. He is a visiting faculty at the Institute of Company Secretaries of India (ICSI), the Institute of Cost Accountants of India (ICAI), and various B-Schools.

CS Pawan Dubey has over 8.5 years of experience in corporate compliances and legal advisory. He is Partner at Lex Bolster Global LLP which specializes in fields of Corporate Legal Advisory, Due Diligences & Audit, Foreign Exchange Management, Financial & Taxation Advisory, India Investment strategies, Intellectual Property Rights, Business Valuation and Food Safety Compliances, among others.

*Views expressed by the Authors are solely their own view and the Firm, NIRC or ICSI does not accept any responsibility.
Duties of Registered Valuer & Penal Provisions...

Duties: The Companies Act embellishes that a registered valuer is duty bound by law to:
- Make an impartial, true and fair valuation of any assets which may be required to be valued
- Exercise due diligence while performing the functions as valuer
- Make the valuation in accordance with the prescribed rules
- Not to undertake valuation of any assets in which he has a direct or indirect interest

Penal Actions: Any duty comes along with accountability; as such the law provides for penal actions in case the registered valuer is found contravening the assigned duties. Such penalty could involve a monetary fine of an amount anywhere between Rs.25,000 and Rs.1,00,000. If the registered valuer does not abide by the provisions with an intention to defraud the company or its members, then there are imprisonment provisions and extended fine of as much as five lakh rupees.

Further, where a registered valuer is convicted on account of contravening the aforementioned duties, then he shall be liable to:
- Refund the remuneration received by him to the company; and
- Pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

As evident from the above provisions, the lawmakers have ensured that the person, who is taking this big responsibility of performing valuation, has to make sure that such duty is performed with utmost good faith, else he/she should stand ready to face repercussions for misleading the people relying on the valuation report.

New areas to be learned by Professionals...

As apparent from the new Companies Act, there is a wide spectrum of services that could be rendered by the professionals in relation to valuation. Furthermore, there are many clauses in the Act wherein a certificate of valuation is required to be filed to statutory authorities. Having said this, it is time for the professionals to get ready for the new demand. Whether we consider any legal clause, the broad requirement remains the same, i.e. to value an asset or a liability or ownership stake. Though the Companies Act does not provide which valuation methodology needs to be employed for different situations, the underlying principle of performing valuation exercise is constant. We have a wide array of valuation techniques ranging from income based approach to asset based approach. One could also conduct the valuation by making a comparison with similar precedent transactions.

All the valuation approaches are influenced by the underlying business being valued and to some extent by the availability of information.

<table>
<thead>
<tr>
<th>Article</th>
<th>Duties of Registered Valuer &amp; Penal Provisions...</th>
</tr>
</thead>
<tbody>
<tr>
<td>232 (3) (h)</td>
<td>In a scheme of compromise or arrangement, if the transferor is a listed company and the transferee is an unlisted company, and shareholders of the transferor company decide to opt out of the transferee company, then the shares held by them require valuation</td>
</tr>
<tr>
<td>236 (2)</td>
<td>In a scheme of compromise or arrangement, valuation is required for purchase of minority shareholding</td>
</tr>
<tr>
<td>260 (2) (c)</td>
<td>In case of revival and rehabilitation of sick companies, the company administrator may cause to be prepared a valuation report in respect of the shares and assets to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio</td>
</tr>
<tr>
<td>281 (1) (a)</td>
<td>In case of winding up by the Tribunal, liquidator is required to submit a report to the Tribunal including, among others, valuation of assets obtained from registered valuers</td>
</tr>
<tr>
<td>305(2)(d)</td>
<td>Declaration of solvency filed in case of voluntary winding up is required to be accompanied by a report of valuation of assets of the company by a registered valuer</td>
</tr>
<tr>
<td>319(3)(b)</td>
<td>In case of voluntary winding up, valuation by a registered valuer is required to determine a price for purchasing the interest of dissentient members of the transferor company</td>
</tr>
</tbody>
</table>

Valuation Approaches

- Income based approach
- Asset based approach
- Market based approach

DCF, DDM, NAV, Trading Multiple, Precedents, Transactions
In order to learn the various valuation methodologies, one needs a detail understanding of the following factors:

- Historical parameters to identify how these are likely to behave in future
- Growth prospects of the business coupled with industry specific government policy (in case of business valuation)
- Estimation of future free cash flows expected from the underlying business
- Valuation for the infinite period through terminal value and long term sustainable growth rate
- Desired return to discount the future expected cash flows and determine the current estimated value
- Risk profile of the underlying asset being valued
- Accounting and taxation impact
- Dissecting the overall cash flows into abnormal and normalized cash flows

The above, in essence, calls for a detailed preliminary analysis of the business / asset being valued since this has a special bearing on the way the valuation is done. It may be noted that this is merely an indicative list of factors that need to be analyzed.

Typical time to deliver a valuation project...

A valuation project may vary hugely in terms of scope to be covered. In case of valuation of a single asset involving straight series of cash flows, the project could be delivered in 2-3 days to account for data gathering and actual valuation process. However, when the project involves complex valuation of a business (whether for M&A deal or for allotment of new shares or any situation involving multiple streams of cash flows), the time required to deliver the project could take somewhere between 15 days to a month’s time.

In nutshell, the time required to execute a valuation project is directly proportional to extent of details to be covered and complexity involved in cash flow estimation.

Areas left untouched...

Though the new Companies Act lists down the situations requiring valuation, it doesn’t give a complete answer in terms of:

- Valuation methodology to be employed;
- Eligible professionals who can carry out the valuation exercise;
- Educational qualifications or competencies required for becoming a registered valuer;
- Level of details to be covered in valuation report;
- Knowledge dissemination mechanism to train the existing professionals; et al.

Though the Act states that the appropriate rules would be brought in to cover the above aspects, it needs to be seen whether the rules would provide a perfect response to these unanswered areas or not.
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Activities</th>
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<th>Acts/Regulations etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Last Date for payment of Excise Duty Non SSI units (June) *(in case of Payment through Internet banking)</td>
<td>Rule 8 Central Excise Rules, 2002</td>
<td>Excise Rules, 2002</td>
<td>05th July *06th July</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>2.</td>
<td>Monthly Return of information relating to Principal Inputs (June, 2014 (Form No. ER-6)</td>
<td>Rule 9A CENVAT Credit Rules, 2004</td>
<td>CENVAT Credit Rules, 2004</td>
<td>10th July</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>3.</td>
<td>Filing of Return of Central Excise and Cenvat Credit for the month of June, 2014 (Form No. ER-1) (Non SSI Units)</td>
<td>Rule 12 / Rule 9(7) Central Excise Rules, 2002</td>
<td>Excise Rules, CENVAT Credit Rules, 2004</td>
<td>10th July</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>4.</td>
<td>Monthly Excise return by EOU for the month of June, 2014 (Form No. ER-2)</td>
<td>Rule 17(3) Central Excise Rules, 2002</td>
<td>Excise Rules, 2002</td>
<td>10th July</td>
<td>Central Excise Authorities</td>
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<tr>
<td>5.</td>
<td>Quarterly Return of Central Excise and Cenvat Credit in Form ER-3 (SSI units)</td>
<td>Rule 12 Central Excise Rules, 2002</td>
<td>Excise Rules, 2002</td>
<td>10th July</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>6.</td>
<td>Quarterly payment of Excise Duty SSI units (June) *(in case of Payment through Internet banking)</td>
<td>Rule 8 Central Excise Rules, 2002</td>
<td>Excise Rules, 2002</td>
<td>05th July *06th July</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>7.</td>
<td>Last Date for payment of Excise Duty Non SSI units (July) *(in case of Payment through Internet banking)</td>
<td>Rule 8 Central Excise Rules, 2002</td>
<td>Excise Rules, 2002</td>
<td>05th August *06th August</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>8.</td>
<td>Monthly Return of information relating to Principal Inputs (July, 2014 (Form No. ER-6)</td>
<td>Rule 9A CENVAT Credit Rules, 2004</td>
<td>CENVAT Credit Rules, 2004</td>
<td>10th August</td>
<td>Central Excise Authorities</td>
</tr>
</tbody>
</table>

**Service Tax Related Compliances**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Activities</th>
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<th>Acts/Regulations etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
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<tbody>
<tr>
<td>11.</td>
<td>Pay Service Tax in Challan GAR 7 collected during the previous Quarter (April to June) by individuals, proprietors and partnership ? rms *(in case of Payment through Internet banking)</td>
<td>Rule 6 Service Tax Rules, 1994</td>
<td>Service Tax Rules, 1994</td>
<td>05th July *06th July</td>
<td>Service Tax Authorities</td>
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**Income-tax Related Compliances**

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<td>16.</td>
<td>TDS from Salaries for the previous month (June 2014)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th July</td>
<td>Income Tax Authorities</td>
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<tr>
<td>17.</td>
<td>Deposit TDS from salaries for the previous month in Challan No.281 (June)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th July</td>
<td>Income Tax Authorities</td>
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<tr>
<td>20.</td>
<td>Certificate of tax deducted at source on salaries (Form No 16).</td>
<td>Section 203 of read with Rule 31</td>
<td>Income-tax Act, 1961 &amp; Income-tax Rules, 1962</td>
<td>30th July</td>
<td>Concerned Employee(s)</td>
</tr>
<tr>
<td>24.</td>
<td>Due date of filing Wealth tax Return in case of assesse having incomes from Salary, Rent, Capital gain, Interest, or Business with turnover less than 60 Lakhs Form: BA</td>
<td>Section 14 - Return of wealth - of - Wealth Tax Act, 1957</td>
<td>31st July</td>
<td>Income Tax Authorities</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>TDS from Salaries for the previous month (July 2014)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th August</td>
<td>Income Tax Authorities</td>
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<td>29.</td>
<td>Deposit TDS from salaries for the previous month in Challan No.281 (July)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th August</td>
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</tbody>
</table>

**RBI Related Compliances**

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<tr>
<td>30.</td>
<td>Monthly return (NBS-6) on exposure to capital market</td>
<td>Para 13B</td>
<td>NBFC Prudential Norms (Reserve Bank) Directions, 1998</td>
<td>07th July</td>
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</tr>
<tr>
<td>31.</td>
<td>Monthly Return on Important Financial Parameters</td>
<td>DNBs (RID) C.C. No.57/02.08.15/2 005-06 dated Sep 6, 2005</td>
<td>Circular</td>
<td>07th July</td>
<td>RBI</td>
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<tr>
<td>32.</td>
<td>Reporting of actual transactions of ECB in form ECB-2 within 7 working days (June)</td>
<td>ECB Rules</td>
<td>FEMA, 1999</td>
<td>08th July</td>
<td>RBI through Authorized Dealer</td>
</tr>
<tr>
<td>33.</td>
<td>Quarterly submission of Monetary and Supervisory Return</td>
<td>Master Circular DNBs.PD.CC.No. 227/03.10.042/ 2011-12 dated July 01, 2011</td>
<td>Master Circular</td>
<td>10th July</td>
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</tr>
<tr>
<td>S. No.</td>
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<tr>
<td>34.</td>
<td>Monthly statement of short term dynamic liquidity in Form ALM-I</td>
<td>DNBS (PD).CC.No.15 /02.01/2000-2001 dated June 27, 2001</td>
<td>Circular</td>
<td>10th July</td>
<td>RBI</td>
</tr>
<tr>
<td>35.</td>
<td>Quarterly return on Statutory Liquid Assets in Form NBS-3</td>
<td>Master Circular DNBS.PD.CC.No.227/03.10.042/2011-12 dated July 01, 2011</td>
<td>Master Circular</td>
<td>15th July</td>
<td>RBI</td>
</tr>
<tr>
<td>36.</td>
<td>File a quarterly result on frauds outstanding</td>
<td>Department of Non Banking Supervision</td>
<td></td>
<td>15th July</td>
<td>RBI</td>
</tr>
<tr>
<td>37.</td>
<td>Annual Return on foreign assets and liabilities by Indian companies.</td>
<td>A.P (DIR Series) Circular No. 45</td>
<td></td>
<td>15th July</td>
<td>RBI</td>
</tr>
<tr>
<td>38.</td>
<td>Monthly return (NBS-6) on exposure to capital market</td>
<td>Para 13B</td>
<td></td>
<td>07th August</td>
<td>RBI</td>
</tr>
<tr>
<td>39.</td>
<td>Monthly Return on Important Financial Parameters</td>
<td>DNBS (RID) C.C. No.57/02.05.15/2005-06 dated Sept 6, 2005</td>
<td>Circular</td>
<td>07th August</td>
<td>RBI</td>
</tr>
<tr>
<td>40.</td>
<td>Reporting of actual transactions of ECB in form ECB-2 within 7 working days</td>
<td>ECB Rules</td>
<td></td>
<td>08th August</td>
<td>RBI through Authorized Dealer</td>
</tr>
</tbody>
</table>

### Economic, Industrial & Labour Law Related Compliances

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Activities</th>
<th>Sections/Rules/Clauses, etc.</th>
<th>Acts/Regulations etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>42.</td>
<td>Monthly payment of Provident Fund (PF) (Non Corporate)</td>
<td>(a) Paragraph 38 of Employees Provident Funds Scheme, 1952 &amp; (b) Section 418 of the Companies Act, 1956</td>
<td></td>
<td>15th July</td>
<td>Provident Fund Authorities of Provident Fund</td>
</tr>
<tr>
<td>43.</td>
<td>File monthly return for employees leaving / joining during the month of June (Form No.5)</td>
<td>Paragraph 20(2) read with Paragraph 36(1) &amp; (2)</td>
<td>The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)</td>
<td>15th July</td>
<td>Provident Fund Commissioner</td>
</tr>
<tr>
<td>44.</td>
<td>i) File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))</td>
<td>Paragraph 10</td>
<td>The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)</td>
<td>15th July</td>
<td>Provident Fund Commissioner</td>
</tr>
<tr>
<td></td>
<td>ii) File monthly Return for members of Insurance Fund leaving service during the month of June (Form no. 3(IF))</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>iii) File monthly return of members joining service during the month of June (Form no.F4(PS))</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>45.</td>
<td>Payment of ESI contribution for the previous month</td>
<td>Regulation 31</td>
<td>Employees State Insurance Act, 1948 and Employees State Insurance (Gen.) Regulations, 1950</td>
<td>21st July</td>
<td>ESIC Authorities</td>
</tr>
</tbody>
</table>

July, 2014  16  NIRC-ICSI Newsletter
### Compliance Checklist

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Activities</th>
<th>Sections/Rules/ Clauses, etc.</th>
<th>Acts/Regulations etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>46.</td>
<td>Monthly return of Provident Fund for the previous month (June) Provident funds</td>
<td>Paragraph 38 of Employees’ Provident Act, 1952</td>
<td>Employees Provident Funds and Misc. Scheme, 1952</td>
<td>25th July</td>
<td>Provident Fund Authorities</td>
</tr>
<tr>
<td>47.</td>
<td>Monthly return of Provident Fund for the previous month with respect to International Workers.</td>
<td>Paragraph 36</td>
<td>The Employees’ Provident Funds Scheme, 1952</td>
<td>25th July</td>
<td>Provident Fund Authorities</td>
</tr>
</tbody>
</table>

#### Stock Exchange / Listing Compliance

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Activities</th>
<th>Acts/Regulations etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>48.</td>
<td>Quarterly Compliance Report &amp; Certificate on Corporate Governance signed by the Compliance Officer of the Company</td>
<td>Clause 49 (VI) (ii) &amp; SEBI Circular SMDRP/Policy/DIR-03/01 dated 22.1.2001</td>
<td>Listing Agreement</td>
<td>15th July</td>
</tr>
<tr>
<td>49.</td>
<td>Quarterly Shareholding pattern</td>
<td>Clause 35</td>
<td>Listing Agreement</td>
<td>21st July</td>
</tr>
<tr>
<td>50.</td>
<td>Capital Reconciliation Audit Report</td>
<td>Reg. 55A &amp; SEBI Circular No. D&amp;G / FTTC/CIR-16 / 2002 dated December 31, 2002</td>
<td>SEBI (Depositories &amp; Participants) Regulations, 1996</td>
<td>30th July</td>
</tr>
<tr>
<td>51.</td>
<td>Intimation of date of Board Meeting to consider quarterly results</td>
<td>Clause 41</td>
<td>Listing Agreement</td>
<td>7 days in advance</td>
</tr>
<tr>
<td>52.</td>
<td>Intimation of quarterly results</td>
<td>Clause 41</td>
<td>Listing Agreement</td>
<td>Within 15 minutes of Board Meeting</td>
</tr>
<tr>
<td>53.</td>
<td>Submit three copies of quarterly results signed by the MD</td>
<td>Clause 41</td>
<td>Listing Agreement</td>
<td>Immediately on conclusion of Board Meeting</td>
</tr>
<tr>
<td>54.</td>
<td>Issue press release about Board Meeting to consider quarterly results</td>
<td>Clause 41</td>
<td>Listing Agreement</td>
<td>Simultaneously after Board meeting</td>
</tr>
</tbody>
</table>

#### Depositories

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Activities</th>
<th>Acts/Regulations etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>55.</td>
<td>Submit monthly statement on substitution of names of depositories in the previous quarter.</td>
<td>Regulation 54(5)</td>
<td>SEBI (Depositories &amp; Participants) Regulations, 1996</td>
<td>07th July</td>
</tr>
<tr>
<td>56.</td>
<td>Submit monthly statement on substitution of names of depositories in the previous quarter.</td>
<td>Regulation 54(5)</td>
<td>SEBI (Depositories &amp; Participants) Regulations, 1996</td>
<td>07th August</td>
</tr>
</tbody>
</table>

Note: While every care has been taken in the preparation of this Compliance Check List for the Month of July, 2014, to ensure its accuracy at the time of publication, NIRC – ICSI assumes no responsibility for any errors which despite all precautions, may be found therein. Members are requested to check the latest position with the original sources before acting upon the information published in this newsletter. Neither this Newsletter nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/substitute professional advice that may be required before acting on any matter.
LEGAL UPDATES

In the matterof M/s. Bharat HVdropowe.
Corporation Limited

&

In thematterof : ShriVijayKumarlalan&Anr. ....

Applicants

Vs.

M/s. Bharat Hydropower Corporation Limited ..... 

Respondent

Whether Section 117C of the Act empowers CLB to entertain applications from any debenture holder to redeem debentures?

Application under (Section 117C - Debenture redemption reserve - Companies liability to create such reserve - Option to convert debentures) Company Law Board Held that - the provisions of Section 117C(4) are applicable to all debentures whether issued prior or after the introduction of the Amendment Act, 2000, i.e., 13.12.2000 and pending redemption - provisions of Section 117C(4) being analogous to Section 58A(9) and 45QA(2) are beneficial provisions intended to protect the interest of debenture holders. (Ref: COMPANY LAW BOARD KOLKATA BENCH C. P. No. 423(117C)/KB/2011 Shri Vijay Kumar Jalan &Anr. (Applicants) V/s M/s. Bharat Hydropower Corporation Limited (Respondent).

FACTS OF THE CASE

- The application under Sect on 117C of the Companies Act, 1956 (the Act), filed by Shri Vijay Kumar Jalan and Smt. Kavita Devi Jalan (joint holders)(Applicants) holding 1,000 Convertible Debentures in M/s. Bharat Hydro Power Corporation Limited (Respondents)
- On 03.04.1995, the company issued 1,000 Convertible Debentures of Rs 200/- each to the applicants, carrying interest @ 14% per annum from the date of allotment till the date of repayment.
- The debentures shall at the option of the debenture holder be convertible into equity shares of the company for which the Board shall intimate the date fixed by it for such conversion of debenture and shall notify such date at least 15 days in advance by way of written notes addressed to the debenture holder within 2 years from the date of allotment.
- The debenture holder shall have the right to seek redemption thereafter at any time and in that case, interest as stipulated in the condition No.4 of the covenants and conditions, shall be payable.
- the respondent company neither notified the date of conversion of debentures to equity shares to the debenture holder nor redeemed the debentures of the applicants
- The applicants made necessary application for redemption of such debentures along with interest @ 14% per annum by sending the original Debenture Certificate No.0112 alone with the application which was duly acknowledged to have been received on 11.03 1996
- the applicants had issued another letter dated 21.04.1997 to the company requesting for redemption of the debentures along with interest thereon and incidentally, such request was made after 2 years from the date of allotment, i.e., beyond the lock in-period for such redemption without any response from the company.
- The applicants further issued reminder letters dated 09.09 1998, 06.04.1999 and 18.05.2010 to the company, but the company did not respond to such letters nor did make any payments to the applicants on account of redemption of such debentures.
- The applicants had received three TDS certificates in Form No.164 from the company for the financial year ending 31.03.1997, 31.03.1998 and 31.03.1999 declaring amount paid/credited on account to interest on debentures of Rs 28,000/- each for the above years and 10% TDS amounting to a 2,800/ was deducted on such interest paid of a 28,000/- for each year and deposited to Central government.
- The respondent company has acknowledged the due on account of debenture holder till 31.03.1999 against which interest has been shown to have been paid to such debenture holders, but in reality, the applicants have not received any interest on such debentures till date as per the averments made in the application by both of them.
• The applicants, through their Advocate, issued a letter dated 19.07.2010 to the company requesting redemption of 1000 Convertible Debentures of Rs 200/ each along with interest @ 14% per annum.

• In spite of receipt of such letter the company had neither given any reply to the said letter nor made any payment to the applicants on account of redemption of debentures held by them.

• The applicants have moved this application under Section 117C (4) of the Companies Act, 1956, praying for direction to the respondent company to make repayment of the aforesaid deposits with interest.

• Finally, the respondent company has challenged the application on the ground that it has been affirmed only by applicant No 1 and not by applicant No.2 even though the applicants are joint debenture holders.

• The respondent company has also challenged the claim of applicant being barred by Limitation Act, 1963 since there is no correspondence on their behalf after 04/06/1999, being the date of last IDS certificate for the period ending 31/03/1999 wherein the debt of the appellants has been last acknowledged.

• The respondent company has also contended that section 117C of the Act applies to debentures which are not governed by Companies (Acceptance of Deposits) Rules, 1975 and the present application is beyond the scope of jurisdiction of this Bench.

JUDGMENT

CLB after considering pleadings and submissions, both oral and written made on behalf of the company gave the following judgment on 20/03/2014.

• That it appears that the respondent company is hell bent on refusing the right of the applicants to get relief under section 117C of the Act on frivolous grounds either by resorting to Limitation Act or faulty application affirmed by one of the applicants or non eligibly of the application for redemption of impugned debentures.

• That as per section 117(4) of the Act, CLB may, on the application made in Form 4 of the Company Law Board Regulations, 1991’ of any or all the holders of debentures shall after hearing the parties concerned direct by order, the company to redeem the debentures forthwith by principal and interest due thereon. Thus, any of the holders of such debentures is entitled to make the application and therefore the contention of the respondent in this regard is not tenable and rejected.

• That the claim of the applicants for redemption of debentures has been duly lodged after expiry of 2 years lock-in-period from the date of allotment being 03.04.1995 in the applicants vide letter dated 21.04.1997 requested the respondent company to redeem the debentures along with interest according to terms and conditions of issue of such debentures subsequently, reminder letters dated 09/09/1999, 06/04/1999 and 18/05/2010 were issued to the company but the respondent company has not acted on the said claim. Thus, the contention of the respondent company that the case of the applicants is barred by limitation is not tenable and hence rejected.

• That finally as regard the issue as to whether Section 117C of the Act empowers CLB to entertain applications from any debenture holder to redeem debentures, it has been that the provisions of section 117C(4) are applicable to all debentures whether issued prior or after the introduction of the Amendment Act, 2000, i.e., 13.12.2000 and pending redemption in this regard clause (d) of Circular No.9/2002-No.6/3/2001 CL.V dated 18.04.2002 of Department of Company Affairs.

• Further, it has been held in the said direction of CLB that the provisions of section 117C(4) being analogous to section 58A(9) and 45QA(2) are beneficial provisions intended to protect the interest of debenture holders. Such a provision, CLB view, should be exercised in favor of aggrieved investors. The above view taken by CLB cannot be lost sight of and the interest of the aggrieved debenture holders deserves to be protected by invoking the provisions of Section 117C(4).

The above application filed by the applicants under 117 of the Act was considered and the respondent company was directed to redeem the debentures covered by the application by payment of the principle amount along with the interest within 3 months of the issue of this order.

Compiled by
CS Abhishek Gupta, abhishek@rmgcs.com
CS Manish Gupta, manish@rmgcs.com
# 43rd FOUNDATION DAY CELEBRATIONS OF NIRC-ICSI

<table>
<thead>
<tr>
<th>Date and Time</th>
<th>Program</th>
<th>Venue</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.7.2014 10.00 AM</td>
<td>Inauguration of Foundation Day Celebrations &amp; Plantation of Sapling &amp; Blood Donation &amp; Health Check-up Camp</td>
<td>ICSI-NIRC Building, Prasad Nagar Institutional Area, New Delhi</td>
<td>Free</td>
</tr>
<tr>
<td>26.7.2014</td>
<td>Convocation -2014 (For members admitted from 10th April 2013 to 31st March 2014)</td>
<td>New Delhi</td>
<td>Details will be informed through email</td>
</tr>
<tr>
<td>27.7.2014 9.00 AM to 6.00 PM</td>
<td>One Day Students Regional Conference</td>
<td>New Delhi</td>
<td>Details will be informed through email</td>
</tr>
<tr>
<td>28.7.2014 6.00 PM</td>
<td>Meeting of Company Secretaries in Practice - Interactive Session with Regulators</td>
<td>ICSI-NIRC Building, Prasad Nagar Institutional Area, New Delhi</td>
<td>Free (Credit Hour:01)</td>
</tr>
<tr>
<td>29.7.2014 10.00 AM</td>
<td>Elocution/Debate Competition/ Spelling Bee Competition/ Moot Court Competition for students</td>
<td>ICSI-NIRC Building, Prasad Nagar Institutional Area, New Delhi</td>
<td>Free</td>
</tr>
<tr>
<td>30.7.2014 10.00 AM to 3.00 PM</td>
<td>One Day Seminar</td>
<td>Hotel Holiday Inn, 13-A, District Centre, Mayur Vihar (Near New Ashok Nagar Metro Station), New Delhi.</td>
<td>Rs.1500/- per delegate inclusive of service tax FREE FOR CORPORATE MEMBERS OF NIRC OF ICSI (Credit Hour:04)</td>
</tr>
<tr>
<td>30.7.2014 4.00 PM</td>
<td>Annual General Meeting of NIRC</td>
<td>Hotel Holiday Inn, 13-A, District Centre, Mayur Vihar (Near New Ashok Nagar Metro Station), New Delhi.</td>
<td>Free</td>
</tr>
<tr>
<td>31.7.2014 6.00 PM</td>
<td>Members’ Quiz on Corporate Laws and Conclusion of Foundation Day Celebrations</td>
<td>ICSI-NIRC Building, Prasad Nagar Institutional Area, New Delhi</td>
<td>Free</td>
</tr>
</tbody>
</table>
RESEARCH AND PUBLICATION COMMITTEE OF NIRC- ICSI
ANNOUNCES
“RESEARCH PAPER COMPETITION-2014”
For the members of ICSI-NIRC

OBJECTIVE:
The competition is aimed at sharing the skills of the Members of ICSI-NIRC:
• Enticing Members to excel and update their knowledge; and
• To bring together the views and experiences of different people on similar issue.

SUBMISSION OF PAPERS:
• The last date for the submission of Research Paper is Saturday, the 19th July, 2014.
• The Research papers shall be submitted (via e-mail: niro@icsi.edu and also through signed hard copy addressed to The Chairman, Research and Publication Committee, NIRC of ICSI, ICSI-NIRC Building, Plot No.4, Prasad Nagar Institutional Area, Near Rajendra Place, New Delhi - 110005).
• The hard copy shall be supported by two passport size photograph, membership number, e-mail ID and declaration regarding originality.
• Prescribed word limit shall be adhered to; only eligible entries shall be scrutinized.
• Research papers will be judged by a panel of jury members
• The decision of the Jury shall be final & binding on all the participants.

ELIGIBILITY CRITERIA:
• Members of NIRC- ICSI & Students who have completed their MSOP as on cut-off date.
• Elected Council Members, Regional Council, Members & their Partners, Associates & Staff and employees of ICSI are not eligible to participate.
• Members may send more than one entry on different topics.

SUGGESTED TOPICS (1200 – 1500 words)
1) Secretarial Audit – A Governance tool
2) Challenges & Opportunities for PCS in small cities.
3) Independent Directors - A conscious keeper for Corporate Governance
4) CSR – Responsibility or Liability
5) Evaluation of Board – Process & Techniques
6) Vigil Mechanism & its Effectiveness
7) Allotment of Securities – Impact on Pvt. Ltd. Companies
8) Women Director – Governance & Empowerment

RECOGNITION & AWARDS:
• Three best entries shall be awarded with a Citation, Trophy and Cash Prize in any of the full day Seminar as organised by the NIRC
• Participation Certification will be given to each & every participant.

Ist Prize Rs. 7,500/-
IInd Prize Rs. 5,000/-
IIIrd Prize Rs. 3,000/-

END USE :
Research and Publication Committee reserves the right to publish the Articles / Excerpts either in print or in electronic media.
NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the 33rd Annual General Meeting of the members of The Institute of Company Secretaries of India (ICSI) in the Northern India region, forming part of Northern India Regional Council (NIRC), will be held on Wednesday, the 30th day of July, 2014 at 4.00 PM at Hotel Holiday Inn, 13-A, District Centre, Mayur Vihar, Delhi-110091 to transact the following business(es):

1. To receive, consider and adopt Audited Balance Sheet as at 31st March, 2014, the Income and Expenditure account for the year ended on that date, Report of the Regional Council and Auditors' thereon.

2. To appoint Statutory Auditors to hold office from the conclusion of this Annual General Meeting until conclusion of the next Annual General Meeting and to fix their remuneration.

By order of the Northern India Regional Council of ICSI

(CS MANISH GUPTA)
Secretary

Note(s):

1. The members are requested to send their queries on financial accounts and/or functioning of NIRC through email at niro@icsi.edu or by any other mode, atleast three days in advance, so that answers may be made available at the meeting.

2. Members are requested to update the changes in their address (es), e-mail IDs, contact details and other particulars for enabling NIRC to disseminate information about activities and programs.

3. In order to promote the Green Initiative, the ICSI vide its letter dated 21.10.2011 has allowed all its Regional Councils to send the Annual Report to the members through electronic mode. Accordingly, NIRC is sending Annual Report for the year 2013-14 through e-mail. Members may also view/download Annual Report from the child portal of NIRC ICSI (www.icsi.edu/niro). Copies of the Annual Report will also be available at the venue of the AGM i.e on 30th July, 2014.

4. Members interested to receive the printed version of Annual Report should send their request atleast 4 days prior to the date of the AGM. The printed version of the Annual Report shall be dispatched on receipt of such request.

THE ANNUAL REPORT IS AVAILABLE ON CHILD PORTAL OF NIRO-ICSI www.icsi.edu/niro
One Day Seminar on the theme “Company Secretary – A Strategic Professional” (28.6.2014): CS Ajit Yadav addressing and sitting CS Manish Gupta, CS Shyam Agrawal, CS G P Madaan, CS Ilam Kamboj, CS Vineet Chaudhary and members.

Two Day Induction Program for Company Secretaries in Employment (14 – 15.6.2014): Group Photograph of participants along-with CS Vineet Chaudhary, CS Deepak Kukreja, CS Atul Mittal, CS Shyam Agrawal & CS Rajiv Bajaj

Fifteen Day Class Room Series on Companies Act, 2013 (17.6.2014 – 7.7.2014): Group Photograph of participants along-with CS Deepak Kukreja, CS Shyam Agrawal, CS Ranjeet Pandey, CS Manish Gupta & Mr. S K Nagar

Two Day Induction Program for Company Secretaries in Practice (21 – 22.6.2014): Group Photograph of participants along-with CS Manish Gupta, CS Dhananjay Shukla, CS S Kumar & Mr. S K Nagar

Study Circle Meeting on the Theme “General Meetings including Postal Ballot & E-voting” (20.6.2014): CS Ilam Kamboj addressing and sitting CS Ranjeet Pandey and members.

Inauguration of 194 MSOP (27.6.2014): Group Photograph of participants along-with CS Deepak Kukreja, CS Manish Gupta, CS Shyam Agrawal, CS P K Aggrawal, CS Ranjeet Pandey, Mr S K Nagar & CS Alka Arora.
Dear Professional Colleagues,

As you may be aware that in recent past, some of our members have died leaving behind the spouse and minor children. In some cases providing adequate financial assistance to the bereaved family becomes an impediment. Although the Managing Committee of the CSBF wanted to help the bereaved family members, but it was constrained to do so in view of financial position of the Fund.

The fund can provide the much needed financial assistance in such cases if the corpus of the Fund increases substantially which is possible if more number of members are enrolled to the fund. The members in all earnestness are therefore sincerely requested to become the members of the CSBF by paying one time Life membership fee of ₹7,500/-.

The payments made to the Fund are exempted under Section 80G of the Income Tax Act, 1961.

Following benefits are presently provided by the CSBF:

<table>
<thead>
<tr>
<th>Financial Assistance in the event of Death of a member of CSBF:</th>
<th>Other benefits subject to the Guidelines approved by the Managing Committee from time to time:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Upto the age of 60 years</strong></td>
<td><strong>Reimbursement of Medical Expenses</strong></td>
</tr>
<tr>
<td>• Group Life Insurance Policy for a sum of ₹5,00,000</td>
<td>• Upto ₹60,000/-</td>
</tr>
<tr>
<td><strong>Above the age of 60 years</strong></td>
<td><strong>Financial Assistance for Children’s Education (one time)</strong></td>
</tr>
<tr>
<td>• Upto ₹2,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time</td>
<td></td>
</tr>
</tbody>
</table>

I appeal to the members who have yet not become members of CSBF are requested to fill up Form-A (available on website of the Institute i.e. www.icsi.edu) and send the same along with a cheque for ₹7,500/- favouring ‘Company Secretaries Benevolent Fund’ payable at New Delhi to the Regional Director, NIRC of ICSI, 4, Prasad Nagar Institutional Area, New Delhi. Members may also apply online at www.icsi.edu

Looking forward to receive positive response for this noble cause.

Yours sincerely,

CS SHYAM AGRAWAL
Chairman, NIRC-ICSI
Mobile: 09314923451
Email: info@shyamagrawal.com; chairman.nirc@icsi.edu

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Mobile: 09314923451
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