PRESIDENT AND VICE-PRESIDENT OF ICSI (2015)

CS Atul Hasmukhrai Mehta
President, The ICSI

CS Mamta Binani
Vice President, The ICSI

OFFICE BEARERS OF NORTHERN INDIA REGIONAL COUNCIL OF ICSI (2015)

CS N P S Chawla
(CHAIRMAN, NIRC-ICSI)

CS Manish Gupta
VICE-CHAIRMAN, NIRC-ICSI

CS Dhananjay Shukla
SECRETARY, NIRC-ICSI

CS Pradeep Kumar Debnath
TREASURER, NIRC-ICSI
Chairman
CS NPS Chawla
09958535300

Secretary
CS Dhananjay Shukla
09873347280

Vice-Chairman
CS Manish Gupta
09212221110

Treasurer
CS Pradeep Debnath
09910562121

Regional Council Member
CS Amit Gupta
09415005108

Regional Council Member
CS Avtaar Singh
09999788981

Regional Council Member
CS Deepak Arora
09351788834

Regional Council Member
CS Manish Aggarwal
09988114441

Regional Council Member
CS Monika Kohli
09810480983

Regional Council Member
CS Nitesh K. Sinha
09871500827

Regional Council Member
CS Rajeev Bhambrı
09915710010

Regional Council Member
CS Saurabh Kalia
09810979440

Ex-officio Member
CS Rajiv Bajaj
09811453353

Ex-officio Member
CS Ranjeet Pandey
09810558049

Ex-officio Member
CS Satwinder Singh
09871686000

Ex-officio Member
CS Shyam Agrawal
09314923451

Ex-officio Member
CS Vineet K Chaudhary
09811577123

Regional Director at NIRO
S K Nagar
09313339897
Dear Professional Colleagues,

“Only begin and then the thinking gets accelerated…..
Only begin and then the task gets completed”

It is my great privilege to write my first communique in this well appreciated medium of communication, after being elected as the Chairman of the Northern India Regional Council (NIRC) of the Institute of Company Secretaries of India (ICSI) for the year 2015.

At the outset, I take this opportunity to convey my sincere gratitude to all of you for your continued support by giving me a substantial mandate in the recent elections. I also thank all my council colleagues for reposing confidence in me and unanimously electing me as the Chairman for the year 2015. I would also like to place on record my heartfelt thanks to the senior members of the profession who by their uniring efforts, continued commitment and wholehearted dedication have nurtured this profession to the present level. I pray the almighty to give me sufficient courage, confidence and strength to perform my duties as Chairman, NIRC up to the satisfaction of all the stakeholders.

I also congratulate CS Atul H. Mehta and CS Mamta Binani, on assuming their position as the newly elected President and Vice President of ICSI respectively for the year 2015 and to all the elected Central Council Members. I also congratulate all my colleagues for being elected to this prestigious and award winning Regional Council and expect their seamless support for bringing more glory to this council.

Friends, the newly elected council is prepared to cohesively work as a team seeking your continued help and support and as the first step to ensure that, immediately after coming on to the Chair, I have written a request to the newly elected President and Vice President of the ICSI to give a relook to the modified training structure for students wherein all the training programs for students (except the 15 days MSOP, earlier known as SMTP) are no more mandatorily required to be undertaken. The positive and prompt response of our President has encouraged us to aggressively plan the year ahead.

Friends, no one plans to fail as they fail to plan……..Keeping this in mind, for planning the year ahead, we have collated the agendas/manifestos of all the contesting candidates in the recent elections and basis that, are preparing a Strategic Action Plan (SAP) of NIRC. Broad agenda for this year would, inter-alia, include:

**Improved Facilities to Members’ and Students’**:
- Constitution of Members’ Assistance Committee and Students’ Assistance Committee.
- Working on the mechanism to launch E-Help Desks separately for Members’ and Students’.
- Training of NIRC staff to handle telephonic queries of the members and the students.

**Enhanced Capacity Building Programmes for Members’ and Students’**:
- Plan to increase, improve and multiply the number of Capacity Building Programmes for Members’ and Students’.
- Seminars on non-core competency theme. As per the revised guidelines of ICSI, the Members would be given 6 program credit hours (PCH) for attending these whole day programs on non-core competencies.

**Special impetus for programs to instil the art of appearance before quasi-judicial bodies, drafting and research skills in our members and students.**

**Monthly Master Class on critical subjects of the new Company Law.**

**Joint programmes with chambers of commerce; specialized institutes, bodies and associations like IRDA, IBA, ICA etc.**

**Introduction of a new pool of speakers and experts.**

**Introduction of specialised workshops, weekend series and half day conferences.**

**Residential courses for students and members will also be organized.**

**Upping the Employability of young Members’ and Students’**:
- Introduction of specially designed Courses with support from renowned Language Training Institutes, IT Institutes, Law Colleges and Management Institutes.
- Formation of a “Task Force for Placements”.

**Infrastructure Development, particularly at Chapters Level**:
- Active support to the management committees of the chapters to aggressively work on the proposals for infrastructural development.
- Infrastructural improvements at NIRC-ICSI, Prasad Nagar premises.

**Strengthening the Research Facilities and Library**:
- Strengthening the research facilities.
- Creation of a specialized “Research Wing”.
- Improvement of the Library.

**Focus on the practice area of Secretarial Audit**:
- Organising a series of “Orientation Program for Secretarial Auditors”.
- Conducting programs on different aspects of Secretarial Audit.

**ICSI National Convention**:
- I am feeling fortunate that this year, NIRC shall be hosting the ICSI National Convention, 2015 for which your ideas and support are being sought.

At the end of this first communique, let me share my observation that what we actually need for continued growth and development of our profession, are your constructive suggestions and feedback, basis which we shall improve and improvise continuously.

I assure you that I will do my level best for coming upto your expectations and carrying this growth baton of our beloved profession to the next level. I generally emphasise that time has come for our professionals to know our own worth and recognize that….”Sky is the Limit…..that Limit is Limitless….. and that Limitless Limit is our Limit…”

With kind regards,

Yours sincerely,

CS NPS Chawla
Chairman, NIRC-ICSI
npschawla@vaishlaw.com, chairman.nirc@icsi.edu
Cell: 9958535300
CS Atul Hasmukhrai Mehta, President, The ICSI

CS Atul Hasmukhrai Mehta has been elected as President of the Institute of Company Secretaries of India for the year 2015 w.e.f. 19th January, 2015.

CS Atul Hasmukhrai Mehta is B.Com, BGL and a Fellow Member of the Institute of Company Secretaries of India.

CS Mehta started his practice as founder of Mehta and Mehta in the 1996 and has been in the industry ever since. Initially, he has served the industry for 6 years as Company Secretary in various industries. Along with Secretarial Department, he also headed various departments like, Legal, Compliance, HR.

Thereafter, he laid his pioneering step in the area of consultancy and practice and set up the firm Mehta & Mehta. Since, past 16 years, he is practicing as company secretary, partner Mehta & Mehta.

He was also Chairman of ICSI - CCGRT (2011-2014). He was the Chairman of Western India Regional Council (WIRC of ICSI) in 2009. He was Central Council Member for the 11th Council of the ICSI. Mr. Atul Mehta, is actively associated with Western India Regional Council (WIRC) of Institute of Company Secretaries of India (ICSI) and the activities of the Central Council of the Institute of Company Secretaries of India. He is regular faculty member for Seminars, study circle and several training programs of ICSI. He is also speaker at seminars organized by other institutions like IMC, SME Chambers etc.

CS Mamta Binani, Vice President, The ICSI

CS Mamta Binani has been elected as Vice-President of the Institute of Company Secretaries of India for the year 2015 w.e.f. 19th January, 2015.

She is a Commerce graduate and a Fellow Member of the Institute of Company Secretaries of India. Ms. Binani has been a meritorious student throughout her education career. She was an All India Topper in the Intermediate Examinations of The Institute of Company Secretaries of India, amongst all the Lady Candidates in India and had ranked 14th on an All India Basis. In the Final Examinations, she stood all India first in the subject "Company Law". She is practising as a Company Secretary for over 15 years now.

Ms. Binani is a facilitator for some very prestigious programmes conducted by the Professional Institutes of India. She is a regular and acclaimed speaker in the professional forums on subjects of academic interest including inter-personal & communication skills. She takes keen interest in delving into corporate and professional issues and is consulted on various contemporary matters by the Industry. She is also an empanelled trainer with ICICI Bank Limited, where she facilitates training in soft skills up to the chief managerial level on an All India Basis. She is a trainer with the Mutual Fund Industry, training people in products and processes. She is hugely associated with the financial sector, education sector and is an experienced mentor and counsellor to young professionals & students. She is an Independent Director and Advisor to a Company which is completely into XBRL development and services.

Ms. Binani has been the Chairperson of the Eastern India Regional Council of The Institute of Company Secretaries of India in 2010. She is the first lady to have held the position, amongst all the 3 Institutes, namely The Institute of Chartered Accountants of India, The Institute of Cost Accountants of India and The Institute of Company Secretaries of India, in the Eastern Region. She loves to interact with the student's fraternity and is an energetic contributor in activities pertaining to development of the society. She holds various executive positions in prestigious chambers of commerce, study circles, NGO's and associations.

She has been conferred with the "Bharat Nirman Awards" in the year 2010 for "Excellence in Professional Services" and is the first Company Secretary to have received this prestigious award. She also received the "Tejaswini Award" in the year 2010.

She writes for leading journals and magazines on a regular basis and contributes articles and papers in various house journals of professional institutes, on topics of varied interests. She is very regular with her informative & academic blogs.
CS. NPS Chawla (B.Com, FCS, LL.M, MBA) is presently working as a Principal Associate with Vaish Associates, Delhi and is primarily handling corporate restructuring and corporate litigation assignments. His experience includes advising clients on various matters including commercial aspects, Indian corporate laws, securities laws, Indian tax laws, and specifically mergers/demergers, hive-offs, and capital restructuring. Apart from professional front, his passion lies in enhancing the oratory skills of students and budding members of ICSI. The members of the Institute have again elected CS Chawla to the Northern India Regional Council for the term 2015-2018. He is presently the Chairman of NIRC-ICSI for the year 2015. In the last term (2011-2014), he has been the Vice Chairman (2014), Secretary (2013) and Treasurer (2012) of NIRC-ICSI. He has also been the Chairman, TEFC (2014), Study Circle Committee (2013&2011), Finance Committee and MSOP Committee (2012).

In all his endeavours, CS Chawla is supported by his better half Ms. Jagreeti Kaur Chawla who is also a company secretary and is working with a leading multinational company. The company secretary couple is blessed with a son, Harnoor Singh Chawla and a daughter, Rabnoor Kaur Chawla.

CS. Dhananjay Shukla, a Commerce and Law graduate, is the Fellow Member of The Institute of Company Secretaries of India. He is a Practicing Company Secretary based at Gurgaon. He has been practicing in the areas of Corporate Laws, Taxation Laws and Securities Laws. He has been regularly appearing before various regulators and Quasi Judicial Authorities.

Mr. Shukla has been serving the profession in different capacities for last many years. He had been elected to the Northern India Regional Council of The Institute of Company Secretaries of India for the term 2011-14 and further re-elected for the term 2015-18. He was Chairman of various committees of NIRC of the ICSI during 2011-14. He was Editor of NIRC-ICSI Newsletter, Insight in year 2013. He was Treasurer of NIRC of ICSI for the year 2014.

Earlier Mr. Shukla had been elected to the Managing Committee of Gurgaon Chapter of NIRC-ICSI for the period 2007-10. During this tenure at Gurgaon Chapter of NIRC of the ICSI, Mr. Shukla was Treasurer in 2007, Secretary in 2008 and Chairman for two consecutive terms in 2009 and 2010. During his tenure as Chairman of Gurgaon Chapter, Mr. Shukla took many initiatives for the Development of the chapter in terms of Infrastructure, Professional Development of members and Training programmes of the students.

On personal front Mr. Shukla is married to Ms. Archana Shukla, who is a teacher, and the couple is blessed with two adorable sons Anmol Shukla and Anurag Shukla.

Mr. Manish Gupta (FCS, M.Com, LL.B), associated with the profession of Company Secretaries for more than 14 years, is presently practicing as a Company Secretary and is the Managing Partner of M/s. RMG & Associates, Company Secretaries. Mr. Gupta’s specialization is in handling complex assignments of Corporate Laws, Securities Law & Taxation Laws. He is regularly appearing before various Quasi Judicial Authorities and other regulators. Mr. Gupta was elected to the Northern India Regional Council of Institute of Company Secretaries of India for the term 2011-2014 & 2015-2018. Presently he is Vice Chairman of NIRC of ICSI for the year 2015.

Earlier in his tenure at NIRC he was Secretary in the year 2014 & Treasurer in the year 2013. Apart from that he was the Chairman of various committees of NIRC, like PCS Committee, Cultural & Sports Committee, Finance Committee, Research & Publication Committee. He has been Editor of NIRC Newsletter - Insight for the year 2012.

Mr. Gupta is having rich experience in profession and also he is associated with many social and cultural organisations. He is the regular speaker in various training programmes of students and members at NIRC and other chapters of Northern Region. He is also regular speaker on the forums of various social and cultural organisations.

Mr. Pradeep Debnath is Fellow member of the Institute of Company Secretaries of India” (ICSI), is Proprietor of Pradeep Debnath & Co and Partner of CLV & Associates. He is also senior associate of PERCEPTIUM EXPERT SOLUTIONS PRIVATE LIMITED. He started career in the year 2006 as company Secretaries in practice serving matters related to the Corporate and allied laws, handling various assignment related to corporate restructuring, Direct Listing, Revocation of suspensions, Preferential Issue,QIP, ESOP/ESOS, ADR/GDR issues, FCCBs, Bonus Shares,Right Issue, Delisting of Securities through Reverse Book Building Process, Intellectual Property Laws, Drafting of Various Agreements, MOU, Deeds etc, other matters related to Security Laws, RBI, FEMA, Labour Laws etc. He is regularly appearing before Company Law Board, SAT, Consumer Forum and various Quasi Judicial Authorities and other regulators.

He is elected to the Northern India Regional Council of Institute of Company Secretaries of India for the term 2015-2018. Presently he is Treasurer of NIRC of ICSI for the year 2015.

He has been actively associated with the institute and has always tried to give best whether as a speaker in career awareness program, member of placement committee, Convener of West Delhi Study Circle Meeting or a speaker in various chapters.
As the members are aware that NIRC performs its various activities through Functional Committees constituted every year. We are in the process of forming the Committees, named herein after, for the year 2015 and request the members to volunteer their names, indicating their preference, for the Committee through which they wish to serve the profession. You are requested to forward your names and other details i.e. ACS/FCS No.; Mailing Address; Phone Numbers; E-mail address, etc. to NIRC on email id niro@icsi.edu by 28th February, 2015.

Apart from the above, NIRC has constituted an Editorial Board for NIRC’s Newsletter – “Insight” for which members may send their nominations on or before 28th February, 2015 by emailing their details to niro@icsi.edu. Chief Editor of the said Newsletter is the Chairman, NIRC and the Editor is CS Manish Aggarwal.

A task force named “NIRC’s Activities Task Force” is also being formed in order to create a pool of volunteering members and students who are keen on becoming the active helping hand of NIRC for various activities. Members and students may send their nominations on or before 28th February, 2015 by emailing their details to niro@icsi.edu for becoming part of this innovative task force.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Committee Name</th>
<th>Committee Chairman/Chairperson</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Brand Building &amp; Public Relations Committee</td>
<td>CS Rajeev Bhambri</td>
</tr>
<tr>
<td>2</td>
<td>Career Awareness Committee</td>
<td>CS Avtaar Singh</td>
</tr>
<tr>
<td>3</td>
<td>Chapters Development Committee</td>
<td>CS Rajeev Bhambri</td>
</tr>
<tr>
<td>4</td>
<td>Female Company Secretaries Committee</td>
<td>CS Monika Kohli</td>
</tr>
<tr>
<td>5</td>
<td>Finance Committee (Standing Committee &amp; already constituted)</td>
<td>CS Pradeep Debnath</td>
</tr>
<tr>
<td>6</td>
<td>Fund Raising Committee</td>
<td>Chairman: CS Pradeep Debnath Co-Chairman: CS Saurabh Kalia</td>
</tr>
<tr>
<td>7</td>
<td>Innovation &amp; IT Committee</td>
<td>CS Amit Gupta</td>
</tr>
<tr>
<td>8</td>
<td>Investors Awareness Committee</td>
<td>CS Deepak Arora</td>
</tr>
<tr>
<td>9</td>
<td>Members’ Assistance Committee</td>
<td>Chairman: CS Manish Gupta Co-Chairman: CS Rajeev Bhambri</td>
</tr>
<tr>
<td>10</td>
<td>MSOP Committee</td>
<td>CS Dhananjay Shukla</td>
</tr>
<tr>
<td>11</td>
<td>Oral Tuition &amp; Library Committee</td>
<td>CS Pradeep Debnath</td>
</tr>
<tr>
<td>12</td>
<td>Placement Committee</td>
<td>All Regional Council Members</td>
</tr>
<tr>
<td>13</td>
<td>Practising Company Secretaries Committee</td>
<td>CS Dhananjay Shukla</td>
</tr>
<tr>
<td>14</td>
<td>Professional Development &amp; Programs Coordination Committee</td>
<td>CS Manish Aggarwal</td>
</tr>
<tr>
<td>15</td>
<td>Research &amp; Publication Committee</td>
<td>CS Saurabh Kalia</td>
</tr>
<tr>
<td>16</td>
<td>Students’ Assistance Committee</td>
<td>Chairman, NIRC (as per guidelines) Co-Chairman – CS Nitesh Sinha</td>
</tr>
<tr>
<td>17</td>
<td>Study Sessions Committee</td>
<td>CS Manish Gupta</td>
</tr>
<tr>
<td>18</td>
<td>Social welfare of members &amp; Benevolent Fund Committee</td>
<td>CS Deepak Arora</td>
</tr>
<tr>
<td>19</td>
<td>Training &amp; Educational Facilities Committee</td>
<td>CS Nitesh Sinha</td>
</tr>
</tbody>
</table>
DOCTRINE OF RESTITUTION

Restitution literally means restoration. It is based on the principle that a person should not be allowed to unjustly enrich himself at the expense of another. Therefore, when a contract becomes void, the benefiting party must restore it to the other party or compensate the other party by the benefit derived from the act. Restitution in void contracts are only granted when contract is discovered to be void and not when contract or agreement is void ab initio.

In law the term ‘restitution’ is used in three senses:
1. Return or restoration of some specific thing to its rightful owner or status
2. Compensation for benefit derived from a wrong done to another
3. Compensation for the loss caused to another.

In India, Section 65 of the Indian Contract Act, 1872 governs Doctrine of Restitution. As per Section 65 of the Indian Contract Act, 1872, doctrine of Restitution may arise:
1. If the agreement is subsequently discovered to be void; or
2. If the contract becomes void.

If the case falls within any of the above category, any person who has received any advantage under such agreement or contract becomes bound to restore it, or to compensate the disadvantage party. Exception to this general rule is a contract entered into with a minor or a person of unsound mind. Although such a contract is a nullity, but still it does not give rise to any right and obligations.

The scope section 65 of the Indian Contract Act came into consideration in the landmark case of Kujju Collieries Ltd. v. Jharkhand Mines Ltd., AIR 1974 SC 1892, wherein it was observed by the Hon’ble Apex court that an agreement discovered to be void means it is not enforceable, therefore, not a contract. In such a situation an advantaged person is bound to restore the disadvantaged party. This is a principle of equity and codified in form of Section 65 in the Contract Act.

Therefore, where the terms of an agreement are found to be uncertain by the court, the liability under Section 65 of the Indian Contract Act, 1872 would arise. Where performance of the contract is refused on the grounds that the terms were uncertain, the party who had received the advantage is ordered to refund the money paid for the performance of the contract. Restitution is available when one party performs the service believing that there is a binding contract. To receive the grant of restitution by the Court the plaintiff must demonstrate that the defendant received a benefit which was unjustly enriched. The doctrine becomes significant in the modern day transactions and helps a disadvantaged party to recover the losses suffered in a commercial transaction.

Contributed by: Mr. Adarsh Tripathi, Advocate

TALK ON UNION BUDGET 2015-16

Day & Date: Sunday, the 1st March, 2015
Time: 3:00 P.M. to 6.00 P.M.
Venue: Hotel Eros Continental(Royal Ball Room), Nehru Place, New Delhi-110019
No Fee
Registration:

In order to make necessary arrangements, Members are requested to enroll well in advance with Regional Director, NIRC-ICSI, 4, Prasad Nagar Institutional Area, New Delhi, Tel.:+91-11-49343000, Fax: 25722662 email id : niro@icsi.edu

CS NPS Chawla
Chairman, NIRC-ICSI
Mobile: 9958535300
E-mail: npschawla@vaishlaw.com,
chairman.nirc@icsi.edu

CS Manish Aggarwal
Chairman, PDPC Committee
Mobile: 9988114441
E-mail: manishkaggarwal06@gmail.com
Saathi Haath Badhana

Company Secretaries Benevolent Fund (CSBF)
Cultural Evening on 14th March, 2015 from 6.00 P.M.
at Air Force Auditorium, Subroto Park, New Delhi.

The Institute has set up the Company Secretaries Benevolent Fund (CSBF) with an objective of extending financial assistance to its members and their families and educational expenses for their children in times of distress. The members are also provided reimbursement of medical expenses in accordance with the guidelines in place.

In order to maintain the fund sustainable, to provide better financial assistance, it is considered necessary to strengthen the financial position of the fund.

With a view to achieve this righteous objective, spread the awareness and to undertake Membership Campaign, the CSBF is organizing a Cultural Evening on Saturday, the 14th March, 2015 from 6.00 P.M onwards at Air Force Auditorium, Subroto Park, New Delhi, which will be followed by Dinner.

There will be a mono act musical play ‘Vivekananda’ by Padma Shri award winner Shri Shekhar Sen, renowned singer, music composer, lyricist, actor and Chairman of the Sangeet Natak Akademi.

The Managing Committee of CSBF cordially invites all the members to attend and participate in the programme. Entry shall be free for all the Members of CSBF and those who intend to get themselves enrolled as Members of the Fund at the venue, besides the invitees including Sponsors/Advertisers and Donors.

The glimpses of the previous CSBF cultural evenings organized on 9th January, 2010 and 12th January, 2013, which were a grand success, may be viewed at web link – [http://www.icsi.edu/csbf/VideoClippings.aspx](http://www.icsi.edu/csbf/VideoClippings.aspx)

For this event, resources are being mobilised through Corporate Sponsorships/Advertisements, Donor Invitation cards and Advertisement in Souvenir as detailed below:

### Category of Sponsor

<table>
<thead>
<tr>
<th>Category of Sponsor</th>
<th>Amount of Donation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Sponsor</td>
<td>Rs. 11 lacs</td>
</tr>
<tr>
<td>Platinum Sponsor (upto four)</td>
<td>Rs. 5 lacs each</td>
</tr>
<tr>
<td>Diamond Sponsor (upto five)</td>
<td>Rs. 4 lacs each</td>
</tr>
<tr>
<td>Golden Sponsor (upto eight)</td>
<td>Rs. 3 lacs each</td>
</tr>
<tr>
<td>Silver Sponsor (upto ten)</td>
<td>Rs. 1 lac each</td>
</tr>
</tbody>
</table>

### Advertisement in Souvenir

<table>
<thead>
<tr>
<th>Advertisement in Souvenir</th>
<th>Advertisement Tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Back Cover (reserved for Principal Sponsor)</td>
<td>Rs. 30,000/-</td>
</tr>
<tr>
<td>Inside Cover (two) (reserved for Platinum Sponsors)</td>
<td>Rs. 25,000/- each</td>
</tr>
</tbody>
</table>

### Inside Page

<table>
<thead>
<tr>
<th>Inside Page</th>
<th>Advertisement Tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Full Page (Coloured)</td>
<td>Rs. 20,000/-</td>
</tr>
<tr>
<td>(ii) Full Page (B/W)</td>
<td>Rs. 10,000/-</td>
</tr>
<tr>
<td>(iii) Half Page (B/W)</td>
<td>Rs. 7,500/-</td>
</tr>
</tbody>
</table>

Donor’s Card denomination: Rs.1000/-, Rs.2000/- & Rs.5000/-

For further details please contact Mrs. Meenakshi Gupta, Director (Membership, Training & Placement) at 011-45341047 (O), email id: meenakshi.gupta@icsi.edu or Mr. Subhashis Bagchi, Dy. Director (Membership) at 011-45341096(O), Mob.-8527820116, email id: subhashis.bagchi@icsi.edu
CORPORATE MEMBERSHIP FOR PROFESSIONAL PROGRAMS

The concept of Corporate Membership for Professional Development Programs, as started by NIRC, is well appreciated and acknowledged by the members and corporates as it is convenient to make payment/take approval at onetime to attend different Professional Development Programs during the year.

The Corporate Membership scheme will continue for the financial year 2015-2016. Members are invited to opt for Corporate Membership for Professional Development Programs for the financial year 2015-2016 (April 2015 to March 2016) at the following fee structure.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Particulars</th>
<th>Amount Up to 15.04.2015*</th>
<th>Amount After 15.04.2015*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>For Members</td>
<td>Rs. 9,000/-</td>
<td>Rs. 9,500/-</td>
</tr>
<tr>
<td>2.</td>
<td>For PCS</td>
<td>Rs. 8,400/-</td>
<td>Rs. 8,900/-</td>
</tr>
<tr>
<td>3.</td>
<td>For Non-Members</td>
<td>Rs. 10,100/-</td>
<td>Rs. 10,500/-</td>
</tr>
<tr>
<td>4.</td>
<td>For Senior Citizens</td>
<td>Rs. 7,300/-</td>
<td>Rs. 7,800/-</td>
</tr>
</tbody>
</table>

The terms & conditions/benefits of the scheme shall be as under:

(a) To attend all the paid professional development programs (except Workshops and Residential programs) organized by NIRC free of charge throughout the year.

(b) The member may depute some other officer only from his/her organization with authorization on letter head of the company and certifying that the nominated person is from his/her organization.

(c) The individual member/PCS may depute his partner, employee or trainee authorizing in writing to attend the program.

(d) Credit hours will be given to only those members who joins the programs upto 11.00 a.m.

(e) PDP Hours for students on payment of participation fee.

All members of NIRC are kindly requested to obtain the Corporate membership for the year 2015-2016 and take part in all the activities of the NIRC.

*Inclusive of Service Tax (Rounded off to neares rupee)

FORM OF CORPORATE MEMBERSHIP FOR PROFESSIONAL DEVELOPMENT PROGRAMS FOR FINANCIAL YEAR 2015-16

(1) Name of Nominated Person : .................................................................
(2) Membership No (ACS/FCS) : .................................................................
(3) Corporate Membership No. of NIRC (For existing members only) : ...........
(4) Sponsoring Organisation : .................................................................
    Telephone .................. Fax ..................
    Mobile.......................... E-mail ................................................
(5) Details of Payment of Fee
    Cash/Cheque/DD No/ .................. dated..............................
    Bank ............................. Amount ..............................................

Date : ....................... Signature

Note : Cheque/DD to be issued in favour of “NIRC of the ICSI” and sent to Regional Director, NIRC of ICSI, 4 Prasad Nagar Institution Area, New Delhi.

Members on the move

“Pleased to inform you that Mr. Rajesh Arora, Company Secretary (FCS 4081) has joined Britannia Industries Limited, Bangalore as General Manager - Legal & Company Secretary. Before that he was working with NIIT Limited, New Delhi.”
If a secured creditor claims that he has got a charge over an asset of the borrower company, he cannot afford to leave it loose and take it for granted that on default of repayment by the borrower company, the right over the entire asset will automatically vest on him whatever be the money lent or he can deal with the asset in whatever manner he wants for initiating the recovery process since he has a charge registered in his favour.

Section 77 of the Companies Act, 2013, (new Act) and earlier section 125 of the Companies Act,1956 (old Act) has/had, cast an obligation on the borrowing company (after creation of a charge by the borrowing company on the property(ies) belonging to it), to "file the particulars of the charge so created" with the Registrar of Companies. It is, however, pertinent to point out here that though the intention of the new Act was also the same, through a drafting error, s.77 states that the company must "register" the particulars of the charge, instead of using the word 'file' or 'seek registration' in place of "register". It is only the Registrar who shall register and not the company. Be that as it may, neither the new Act or the old Act has/had defined the word 'particulars' in the context of registration of charges.

However, these sections do state that the 'particulars' must be stated in such form and such manner as may be prescribed. Rule 3 of the Companies (Registration of Charges) Rules, 2014, which is currently applicable. It, inter alia, prescribes that the 'particulars' must be filed in Form No. CHG-1(for other than debentures) and Form.No.CHG-9 (for debentures) under Item 12(d) of Form No.CHG-1 and item 12 of Form No. CHG-9 respectively. The requirements are that the principal terms and conditions in brief such as rate of interest, repayment terms, margin, date of redemption of debentures and creation of debenture reserve must be stated as also "the extent and operation of the charge". Therefore, the credit manager must understand the import of this phrase while these forms are filled up with proper back-up documents. This phrase assumes enormous importance at the time of recovery if the loan fails. As long as the company is a going concern, by default, this phrase is generally ignored by the credit manager as the repayments are forthcoming.

**Extent:**

The word extent has been defined in English Law as:

"The range, magnitude, or distance over which a thing extends or the degree to which a thing extends".

The origin of the word comes from the phrase "writ of extent". A writ was formerly used to recover debts of record to the British crown and under which the lands, goods, and person of the debtor might all be seized to secure payment. The recovery man would assess how much should be recovered and how much should be paid to the creditor.

In the context of Form CHG-11 and CHG-9 it means to what extent in terms of monetary value the charge could extend. It is obvious that the amount cannot be indefinite. Assuming, for the sake of example that the loan extended by the secured creditor was Rs.1 Crore. and the value of the property on which a charge has been created in his favour is Rs 2 Crores; he has state in the aforesaid form that the extent of charge as Rs. 1 crore plus whatever amount has been rightfully debited to the company's account from time to time which may include interest, overdue interest, penal interest, cost of expenses, if any,, the amount of guarantee invoked, if any etc. The borrowing company may not allow him to have a charge on the property to the extent of anything more than this amount much less Rs. 2 Crores just because the value of the property at the time of borrowing was Rs. 2 Crores. The value of the property would have gone up due to efflux of time but the extent of charge can only be Rs.1 crore or thereabouts. The extent of charge must be quantified and explicit. If it is not quantified the charge would become infructuous and unenforceable. It would be as good as having no charge. Therefore, due care must be taken care by the credit manager when the form is filled and filed to confirm that the extent of charge covers the credit limits sanctioned by his bank.

**Operation:**

As important as the extent, is the operation of the charge. In fact, the operation of charge operates on a larger and varied canvas. If the extent of operation dwells on the quantum of charge, the operation is largely related to the quality of the charge. How
forceful it is. How much is its exertion of power or influence. It is the state of being in effect, in action, or operative.

We have heard of first exclusive charge, second charge, pari passu charge, first pari passu charge, cross charges and so on. All these indicate that there is a scramble for priority of charges amongst various creditors. Therefore, it is important that the credit manager explicitly spells out in the form the nature of his charge vis-à-vis other creditors and establishes his place in the ranking of the charges.

First Exclusive Charge

There is nothing like first exclusive charge. Sum and substance of it is that the charge holder has the first charge on the assets in priority over all other charges. The word exclusive is cosmetic and superfluous unless it is a specific charge. That means the secured creditor who holds the first charge on the assets of the company is entitled to defray all his debts in priority to those of the others whether one calls it exclusive or not. If anything of the proceeds of the asset is left after they are sold and after the liabilities of the first chargeholder is discharged, then the person having subsequent charge is entitled to get his debts redeemed out of the proceeds.

Second Charge

Second charge is subordinate to the first charge and will spring into operation only after the dues of the first charge holder are discharged fully. Second charge is a diluted charge and such a charge holder runs the risk of not getting anything at all on a winding up and will be as bad as an unsecured creditor unless the value of the security is so high as to cover the dues of the second charge holder after the dues of the first charge holder are cleared. Typically, a second charge is created and registered on the immovable properties of the borrower company by the after a NoC is obtained from the first chargeholder since the value of the immovable property is bound to rise due to efflux of time unlike the current assets. Infact, a second charge on movable assets of the company is always risky. The NoC is insisted upon by the Registrar only in relation to immovable properties since he may not be aware of the status of registration on mortgages with the concerned sub-registrar thereby putting the first charge holder on alert. There is no such NoC required for registering second charge on movables. It is important to note here that under the Companies Act, 2013, the date of registration of charge and not the date of its creation is relevant unlike in the old Act. And therefore, what is intended to be a second charge will turn out to be the first charge if due to default the first chargeholder gets his charge registered on a date subsequent to the date of registration of charge of the second charge holder. But it remains to be seen how courts will decide in a case of litigation involving immovable properties where the mortgage would have been registered first in the first chargeholder’s favour and the documents to title may be held by the first chargeholder assuming it is a case of Mortgage by Deposit of Title Deeds. Please note that second charge holder is also a secured creditor and accordingly rights of secured creditor accrues to second charge holder too. Further the first charge or prior charge holders may challenge the validity of such a charge if proper prior clearance of prior charge holders had not been obtained prior to creating the subsequent charges.

For the purpose of SARFAESI Act, second charge is as good a secured asset as any other secured asset and subject to provisions of the SARFAESI Act, second charge holder too can initiate recovery action.

Pari Passu Charge

The term "pari passu" can be interpreted in the context of finance as well in the context of rights of secured creditors on distribution of proceeds of the sale of assets in a winding up. It's a Latin phrase meaning "equal footing". In finance, this term refers to loans, bonds or classes of shares that have equal rights of payments or equal seniority. In addition, secondary issues of securities that have equal rights with existing securities ranks pari passu. It also describes a situation where two or more assets, securities, creditors or obligations are equally managed without any display of preference. An example of pari passu occurs during corporate insolvency proceedings when a verdict is reached. All the secured creditors are regarded in the same plane, and will be repaid at the same time in the proportion of their respective lendings.

Therefore, if there is an agreement or the so called arrangement or a specific clause is inscribed in the inter-se agreement amongst creditors for sharing the proceeds in a pari passu manner, such intention must be reflected in the column under 'operation' in the aforesaid forms.

Therefore, it will only be prudent for the credit manager to pay extra attention to the item requiring the description of the extent and operation of the charge in the aforesaid forms as and when they are filed.
Section 180 of the Companies Act, 2013 corresponds to section 293 of the companies Act, 1956 and the said section has been brought into effect from 12th September 2013.

Section 293 of the Companies Act, 1956 Was Applicable Only To Public Companies i.e. Private Limited Companies Were Exempted from this requirement and therefore they could borrow any sums of money upto any limit without the need of seeking any approval from the members of the company.

*Now Section 180 is Applicable To All Companies i.e. public as well as private. So now onwards even private companies have to seek the approval of their members if they are intending to borrow monies in excess of their paid up share capital and free reserves.

THE RELEVANT SECTION 180(1) (C) STATES AS FOLLOWS:

180. (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:-

(c) To Borrow Money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company’s bankers in the ordinary course of business:

Explanation: For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

So after reading of the above section implies that it has become Mandatory for private Companies to obtain approval of their members by way of Special Resolution passed at the general meeting that the company is allowed to borrow monies in excess of the paid up share capital and free reserves of the company, specifying thereby the maximum amount upto which monies could be borrowed by the company.

Since the operative part of section 180(1)(c) does not mention "after the commencement of this Act" it means all working and active private companies will be required to pass the necessary special resolution in this regard.

Since the section has been made effective from 12th September 2013, it would be imperative for private companies to get such special resolution passed at the earliest, since sub-section (5) above clearly stipulates that the onus of complying the provisions of this section is upon the private company since the lender can claim that he has acted in good faith.

ARE U MOVING TOWARDS CONDONATION?
The Main Reason behind writing this article is "Are We Moving Toward Condonation?"

As per Section-117 of Companies Act, 2013:

Sub- Section 1 Section- 117: A Copy Of Every Resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, Shall Be Filed With The Registrar Within Thirty Days Of The Passing or making thereof in such manner and with such Fees As May Be Prescribed Within The Time Specified Under Section 403:

Sub- Section 3 Section-117: Every SPECIAL RESOLUTION

VIEW: As per Section 117(3) Every Special Resolution is required to file with ROC in e-from MGT-14. If the Company failed to file Special Resolution in e-form

*Views expressed by the Author are solely his own view and the Firm, NIRC of ICSI does not accept any responsibility.
MGT-14 within 30 days of Passing of Resolution. Then additional fee will be applicable as table given below:

**Table of Additional fees which shall be applicable for delays in filing of the forms other than for increase in Nominal Share Capital**

<table>
<thead>
<tr>
<th>Period of Delays</th>
<th>Forms including charge documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 15 days (sections 93, 139 and 157)</td>
<td>One time</td>
</tr>
<tr>
<td>More than 15 days and up to 30 days (Sections 93, 139 and 157) and up to 30 days in remaining forms.</td>
<td>2 times of normal filing fees</td>
</tr>
<tr>
<td>More than 30 days and up to 60 days</td>
<td>4 times of normal filing fees</td>
</tr>
<tr>
<td>More than 60 days and up to 90 days</td>
<td>6 times of normal filing fees</td>
</tr>
<tr>
<td>More than 90 days and up to 180 days</td>
<td>10 times of normal filing fees</td>
</tr>
<tr>
<td>More than 180 days and up to 270 days</td>
<td>12 times of normal filing fees</td>
</tr>
</tbody>
</table>

- The belated filing of documents/forms (including increasing in nominal capital and delay caused thereon) which were due to be filed whether in Companies Act, 1956 or 2013 Act i.e due for filing prior to notification of these fee rules, the fee applicable at the time of actual filing shall be applicable.
- Delay beyond 270 days, the second proviso of section 403(1) of the Act may be referred.

**IF COMPANY FAILS TO FILE E-FORM WITHIN 30 DAYS + ADDITIONAL 270 DAYS (TOTAL 300 DAYS) THEN PROVISIONS OF SECTION- 403 WILL APPLICABLE.**

(1) Any document, required is submitting, filing, registering or recording, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso (within 300 days from the date of passing of Resolution) to that sub-section with additional fee, the company and the officers Of The Company Who Are In Default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

VIEW POINT: As per Language of Section given above, if a company fails to file E-form within 300 days from the date of passing of resolution company have to pay to Fees 12times of Original fees Plus Compounding of Offence as per 403(2).

Penalty which Department can be imposed is as per Section 450:- If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and

For Which No Penalty Or Punishment Is Provided Elsewhere In This Act, The Company And Every Officer Of The Company Who Is In Default Or Such Other Person Shall Be Punishable With Fine Which May Extend To Ten Thousand Rupees, And Where The Contravention Is Continuing One, With A Further Fine Which May Extend To One Thousand Rupees For Every Day After The First During Which The Contravention Continues.

Now Start Discussion on "Are We Moving Toward Condonation of Delay?"

Hope above mentions Sections & Provisions are clear to all of you. So as per the above mention rules and provision, My views are given below:

Question: 1:- If A private Limited Company Having Paid up capital of Rs. 1,00,000 (Mostly Private Companies in India Having Paid up Share Capital Rs. 1,00,000/-) and Free Reserve suppose Rs. 1,00,00. Company Borrow Money on or after 12th September, 2013 (Assume on 14th September, 2013) of Rs. 2,50,000 (More than Paid up share capital + Free Reserve), Company was not aware about provisions of Section- 180 and fails to file e-form MGT-14 along with Special Resolution.

Then what will be the treatment?

Solution: : As per Section -180 if company borrows money on 14th September, 2013 more than Paid-up Share Capital and Free Reserve there is need to pass Special Resolution before 14th September 2013. So company didn't hold an EGM or didn't Passed a Special Resolution and no form is filled by company. Today 14th January, 2015 Company come to know that there was need to pass a Special Resolution and required to file same with ROC.

TREATMENT OF THE SAME: Now we can show a Board Meeting on 13th September, 2013 and call a EGM on Shorter Notice at evening of 13th September, 2013. Then Passed Special Resolution on 13th September, 2013.

Now the problem is we have to file this resolution with ROC in e-form MGT-14. We will file form with ROC With 12 Time Additional Fees as per table given above. But as per Section-403(2) Company fails to file same within 300 days from the date of passing of resolution. So penalty will be imposing on company as per Section- 450. The person ‘who is officer in default’ will be liable to penalty.

For payment of this penalty company require to file Petition for Condonation of Delay with with Regional Director (RD).

CONCLUSION: So As per Above Discussion it is clear that if company are ignoring or not aware from borrowing by Company then WE ARE MOVING TOWARD CONDONATION.

(Author - CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) 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 that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the written
## Compliance Checklist

**COMPLIANCE CHECKLIST FROM 1ST FEBRUARY TO 10TH MARCH, 2015**

### Central Excise Related Compliance

<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>1.</td>
<td>Last Date for payment of Excise Duty Non SSI units (January) <em>(in case of Payment through Internet banking)</em></td>
<td>Rule 8</td>
<td>Central Excise Rules, 2002</td>
<td>05th February *06th February</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>2.</td>
<td>Monthly Return of information relating to Principal Inputs (January, 2014) (Form No. ER-6)</td>
<td>Rule 9A</td>
<td>CENVAT Credit Rules, 2004</td>
<td>10th February</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>4.</td>
<td>Monthly Excise return by EOU for the month of January, 2014 (Form No. ER-2)</td>
<td>Rule 17(3)</td>
<td>Central Excise Rules, 2002</td>
<td>10th February</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>5.</td>
<td>Last Date for payment of Excise Duty Non SSI units (February) <em>(in case of Payment through Internet banking)</em></td>
<td>Rule 8</td>
<td>Central Excise Rules, 2002</td>
<td>05th March *06th March</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>6.</td>
<td>Monthly Return of information relating to Principal Inputs (February, 2014) (Form No. ER-6)</td>
<td>Rule 9A</td>
<td>CENVAT Credit Rules, 2004</td>
<td>10th March</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>7.</td>
<td>Filing of Return of Central Excise and Cenvat Credit for the month of February, 2014 (Form No. ER-1) (Non SSI Units)</td>
<td>Rule 12 / Rule 9(7)</td>
<td>Central Excise Rules, 2002/ CENVAT Credit Rules, 2004</td>
<td>10th March</td>
<td>Central Excise Authorities</td>
</tr>
<tr>
<td>8.</td>
<td>Monthly Excise return by EOU for the month of February, 2014 (Form No. ER-2)</td>
<td>Rule 17(3)</td>
<td>Central Excise Rules, 2002</td>
<td>10th March</td>
<td>Central Excise Authorities</td>
</tr>
</tbody>
</table>

### Service Tax 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>9.</td>
<td>Pay Service Tax in Challan GAR – 7, collected for the month of January 2014 by persons other than individuals proprietors and partnership firms. <em>(in case of Payment through Internet banking)</em></td>
<td>Section 68 Read with Rule 6</td>
<td>Finance Act, 1994 Service Tax Rules, 1994</td>
<td>05th February *06th February</td>
<td>Service Tax Authorities</td>
</tr>
<tr>
<td>10.</td>
<td>Pay Service Tax in Challan GAR – 7, collected for the month of February 2015 by persons other than individuals proprietors and partnership firms. <em>(in case of Payment through Internet banking)</em></td>
<td>Section 68 Read with Rule 6</td>
<td>Finance Act, 1994 Service Tax Rules, 1994</td>
<td>05th March *06th March</td>
<td>Service Tax Authorities</td>
</tr>
<tr>
<td>S. No.</td>
<td>Activities</td>
<td>Sections/Rules/Clauses etc.</td>
<td>Acts/Regulations etc.</td>
<td>Compliance Due Date</td>
<td>To whom to be submitted</td>
</tr>
<tr>
<td>-------</td>
<td>------------</td>
<td>-----------------------------</td>
<td>------------------------</td>
<td>---------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>11.</td>
<td>Contractor’s Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (January)</td>
<td>Section 194C</td>
<td>Income-tax Act, 1961</td>
<td>07th February</td>
<td>Income Tax Authorities</td>
</tr>
<tr>
<td>13.</td>
<td>TDS from Salaries for the previous month (January 2014)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th February</td>
<td>Income Tax Authorities</td>
</tr>
<tr>
<td>14.</td>
<td>Deposit TDS from salaries for the previous month in Challan No.281 (January)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th February</td>
<td>Income Tax Authorities</td>
</tr>
<tr>
<td>15.</td>
<td>Contractor’s Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (February)</td>
<td>Section 194C</td>
<td>Income-tax Act, 1961</td>
<td>07th March</td>
<td>Income Tax Authorities</td>
</tr>
<tr>
<td>17.</td>
<td>TDS from Salaries for the previous month (February)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th March</td>
<td>Income Tax Authorities</td>
</tr>
<tr>
<td>18.</td>
<td>Deposit TDS from salaries for the previous month in Challan No.281 (February)</td>
<td>Section 192</td>
<td>Income-tax Act, 1961</td>
<td>07th March</td>
<td>Income Tax Authorities</td>
</tr>
</tbody>
</table>

<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>19.</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 February</td>
<td>RBI</td>
</tr>
<tr>
<td>20.</td>
<td>Monthly Return on Important Financial Parameters</td>
<td>DNBS (RID) C.C. No.57/02.05.15/ 2005-06 dated Sep 6, 2005</td>
<td>Circular</td>
<td>07th February</td>
<td>RBI</td>
</tr>
<tr>
<td>21.</td>
<td>Reporting of actual transactions of ECB in form ECB-2 within 7 working days (January)</td>
<td>ECB Rules</td>
<td>FEMA, 1999</td>
<td>09th February</td>
<td>RBI through Authorized Dealer</td>
</tr>
<tr>
<td>23.</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 March</td>
<td>RBI</td>
</tr>
<tr>
<td>No.</td>
<td>Activities</td>
<td>Sections/Rules/Clauses, etc.</td>
<td>Acts/Regulations/etc.</td>
<td>Compliance Due Date</td>
<td>To whom to be submitted</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>24</td>
<td>Monthly Return on Important Financial Parameters</td>
<td>DNBS (RID) C.C. No.57/02.05.15/2005-06 dated Sep 6, 2005</td>
<td>Circular</td>
<td>07th March</td>
<td>RBI</td>
</tr>
<tr>
<td>25</td>
<td>Reporting of actual transactions of ECB in form ECB-2 within 7 working days (February)</td>
<td>ECB Rules</td>
<td>FEMA, 1999</td>
<td>09th March</td>
<td>RBI through Authorized Dealer</td>
</tr>
<tr>
<td>26</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 March</td>
<td>RBI</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>27</td>
<td>Monthly payment of Provident Fund (PF) (Non Corporate)</td>
<td>(a) Paragraph 38 of Employees Provident Funds Scheme, 1952</td>
<td>(a) Employees’ Provident Funds and Misc. Provisions Act, 1952</td>
<td>15th February</td>
<td>Provident Fund Authorities of Provident Fund</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) Section 418 of the Companies Act, 1956</td>
<td>(b) Exempted Scheme</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>File monthly return for employees leaving / joining during the month of January (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 February</td>
<td>Provident Fund Commissioner</td>
</tr>
<tr>
<td>29</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 January</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 January (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 January (Form no.F4(PS))</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</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 February</td>
<td>ESIC Authorities</td>
</tr>
<tr>
<td>S. No.</td>
<td>Activities</td>
<td>Sections/Rules/Clauses, etc.</td>
<td>Acts/Regulations etc.</td>
<td>Compliance Due Date</td>
<td>To whom to be submitted</td>
</tr>
<tr>
<td>--------</td>
<td>------------------------------------------------</td>
<td>-----------------------------</td>
<td>-----------------------</td>
<td>---------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>31</td>
<td>Monthly return of Provident Fund for the previous month (January) Provident funds</td>
<td>Paragraph 38 of Employees’ Provident Act, 1952</td>
<td>Employees Provident Funds and Misc. Scheme, 1952</td>
<td>25th February</td>
<td>Provident Fund Authorities</td>
</tr>
<tr>
<td>32</td>
<td>Monthly return of Provident Fund for the previous month with respect to International Workers.</td>
<td>Paragraph 36 of The Employees’ Provident Funds Scheme, 1952</td>
<td></td>
<td>25th February</td>
<td>Provident Fund Authorities</td>
</tr>
</tbody>
</table>

**Stock Exchange / Listing Compliance**

<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>33</td>
<td>Submit Limited Review Report for the quarter ended 31st December, 2014</td>
<td>Clause 41</td>
<td>Listing Agreement</td>
<td>14th February(45 days from the end of the quarter)</td>
<td>Stock Exchanges</td>
</tr>
<tr>
<td>34</td>
<td>Furnish Unaudited quarterly financial results in the prescribed format</td>
<td>Clause 41</td>
<td>Listing Agreement</td>
<td>Within 45 days from the end of the quarter</td>
<td>Stock Exchanges</td>
</tr>
</tbody>
</table>

**Depositories**

<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>35</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 February</td>
<td>Depositories</td>
</tr>
<tr>
<td>36</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 March</td>
<td>Depositories</td>
</tr>
</tbody>
</table>

**Note:** While every care has been taken in the preparation of this Compliance Check List for the Month of February, 2015, 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.

**CHAPTERS OF NIRC-ICSI**

LEGAL UPDATES

DISCLOSURE OBLIGATIONS BY PROMOTERS: Are promoters under obligation to disclose encumbered shares or company can be made liable for non-disclosure of encumbered shares???

Securities Appellate Tribunal (SAT) in a recent case (Golden Tobacco Ltd. Versus SEBI Appeal No. 183 of 2013), had to deal with two separate situations pertaining to the disclosure of pledge or other encumbrance over shares. The SAT found that the acquisition of shares by a public financial institution (PFI) through the invocation of a pledge was required to be disclosed in accordance with SEBI’s Takeover Regulations. Separately, in another order involving Golden Tobacco Limited, SAT directed listed Companies to disclose to the Stock Exchanges details of shares that are otherwise encumbered by the promoter/promoter group, without making it obligatory on part of promoter/promoter group to disclose such details to the listed Companies.

SEBI has created an anomalous situation, because, promoter/promoter group who have details of shares that are ‘otherwise encumbered’ are not obliged to disclose the same to the listed Company, whereas, listed Companies to whom such details are not furnished by the promoter/promoter group are made to disclose such details to the Stock Exchanges. The order of Adjudicating officer was overturned as SAT observed that neither clause 35 of the Listing Agreement nor any other clause in the Listing Agreement requires the promoter/promoter group to disclose to the Company the shares that are ‘otherwise encumbered’.

Brief Facts

In the Golden Tobacco case, SEBI alleged that the company failed under clause 35 of the listing agreement to disclose to the stock exchange that by an arbitration order dated July 23, 2009, nine promoter entities of the company were restrained from selling transferring or creating third party interest in any manner in the shares of the company held by such promoters.

Clause 35 requires the company to disclose to the stock exchange the details of “shares pledged or otherwise encumbered”. On account of such failure, SEBI’s adjudicating officer imposed penalties under section 23E of the Securities Contracts (Regulation) Act, 1956 and section 15HA of the Securities and Exchange Board of India Act, 1992. It is against this order that the company preferred an appeal to SAT.

A peculiar situation arose in this case. Normally, disclosures regarding shareholding (as well as pledge or encumbrance) have to be made by the relevant shareholders to the company, which in turn has to notify that information to the stock exchanges.

The peculiarity arose here because clause 35 imposes a unilateral obligation on the company to initiate disclosures without being aided by information from the shareholders. Using this logic, SAT came to the conclusion that it would not be possible to impose such an obligation on the company given that it creates an incongruous position under the listing agreement. On this aspect, SAT observed as follows:

SAT OBSERVATIONS

SAT observed that it is surprising that the format attached to clause 35 of the Listing Agreement casts an obligation on the listed Companies to disclose to the Stock Exchanges details of the shares that are otherwise encumbered by the promoter/promoter group, without making corresponding obligation on the promoter/promoter group to make such disclosures to the listed Company. This way SEBI has created an anomalous situation, because, promoter/promoter group who have details of shares that are ‘otherwise encumbered’ are not obliged to disclose the same to the listed Company, whereas, listed Companies to whom such details are not furnished by the promoter/promoter group are made to disclose such details to the Stock Exchange.

This conclusion is entirely reasonable that the primary disclosure ought to come from the shareholders who are best placed to make these disclosures. Moreover, the expression “or otherwise encumbered” must be read in the context of a pledge. In other words, the encumbrance must be in the nature of a security interest or something similar over the shares.

Amendments to Listing Agreement

This case raised some issues regarding the legal veracity of the listing agreement as a regulatory
instrument, and more particularly the manner in which it can be amended.

As per the press release issued by SEBI on January 21, 2009, and as per regulation 8A of Takeover Regulations, 1997, what is to be disclosed by the listed Companies to the Stock Exchanges is the information received by the listed Company from the promoter/promoter group. As per regulation 8A(1)/8A(2) what is to be disclosed by the promoter/promoter group to the listed Company is only details of shares that are pledged/revoked/invoked and there is no obligation cast upon promoter/promoter group to disclose shares that are otherwise encumbered.

In amending clause 35 to introduce its current language, it was argued that while SEBI’s circular merely advised the stock exchanges to amend the clause, there was no actual evidence of amendment by the exchanges. However, based on statements provided by the stock exchanges that they have amended the listing agreement, SAT “proceeded on the basis that the amendments have been carried out in accordance with law”.

Although the issue did not emerge to the forefront in this case, the manner of regulating corporate governance and disclosure norms through the listing agreement is bound to raise some consternation. While the listing agreement is essentially contractual in nature between the issuer company and the stock exchange, it derives its legal validity from the Securities Contracts (Regulation) Act. Despite its contractual foundations, it can be amended at SEBI’s instance so as to bind the listed companies without their concurrence. In that sense, it begets unilateral alteration to which issuers are implicitly bound. Matters of procedure regarding the announcement and effectuation of amendments ought to be streamlined further between SEBI and the stock exchanges to obviate such issues.

SAT also called for uniformity in the approach of SEBI’s adjudicating officers in similar cases, and also reaffirmed their duty to passed reasoned orders after considering relevant circumstances. The allegation was that the adjudicating officer in this case disregarded a contrary view of another officer in a different case without assigning reasons. SAT observed that:

The Adjudicating Officer in the case of Dewan Housing Finance Corporation Ltd. (Supra) has held that the words ‘shares pledged or otherwise encumbered’ used in the format appended to clause 35 of the Listing Agreement covers only pledge of shares. Admittedly, the above order was brought to the notice of the Adjudicating Officer in the present case but the Adjudicating Officer, without assigning any reasons has taken a view contrary to the view taken in case of Dewan Housing Finance Corporation Ltd. (Supra).

Such an attitude on part of the Adjudicating Officer of SEBI deserves to be condemned. View taken by one Adjudicating Officer of SEBI cannot be disregarded by another Adjudication order without assigning any reasons. It is high time that SEBI takes remedial measures and ensure that its Adjudicating Officers respect orders passed by each other. We make it clear, respecting each others order does not mean that even an erroneously order, passed by the Adjudicating Officer must be followed blindly. In such a case, contrary view could be taken by recording reasons for taking such contrary view.

Conclusion

In this case it was unjustified on the part of the Assessing Officer to take a contrary view in case of Golden Tobacco Limited without assigning reasons thereto. Therefore (SAT) said in an order on 30th October set aside penalties totalling Rs 2.25 crore on Golden Tobacco and GHCL Limited imposed by Sebi in a matter related to disclosures of pledged shares by promoter entity on ground that the appellants have failed to disclose to the exchanges, fact that the shares of the appellant company held by the respective promoter/promoter group have been encumbered pursuant to an order passed by the arbitrator in the arbitration proceedings between the promoter/promoter group and some third party,”

This step would introduce greater consistency in SEBI’s approach in similar cases.

Compiled by:

--CS Manish Gupta
<table>
<thead>
<tr>
<th>Date</th>
<th>Program</th>
<th>Chief Guest(s)/Guest of Honour(s)/Speakers/members Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.2015</td>
<td>4th Convocation of Northern Region</td>
<td>Chief Guest: Shri Satish Kumar Agarwal, CMD, Kamdhenu Ispat Limited CS R Sridharan, President, ICSI, CS Shyam Agrawal &amp; CS Sutanu Sinha</td>
</tr>
<tr>
<td>10.1.2015</td>
<td>Regional PCS Conference – Host Jaipur Chapter on PCS – Road Ahead</td>
<td>Shri Shrinivasan , CS R Sridharan, President, ICSI, CS Shyam Agrawal CS P K Mittal, CS S K Jain, CS T R Ramamurthy, CS Jitesh Gupta &amp; CS Girish Goyal</td>
</tr>
<tr>
<td>12.1.2015</td>
<td>Swachh Bharat Mission – ICSI Cleanliness Drive</td>
<td>CS Shyam Agrawal, Members, Staff &amp; Students</td>
</tr>
<tr>
<td>12.1.2015</td>
<td>Saraswati Moorti Sthapana Ceremony at NIRO</td>
<td>CS R Sridharan, President, ICSI, CS Vikas Khare, Vice President, ICSI, CS Shyam Agrawal, CS Ranjeet Pandey &amp; CS Sutanu Sinha</td>
</tr>
<tr>
<td>13.1.2015</td>
<td>Inauguration of Bikaner Chapter</td>
<td>Shri Gopal Krishan Joshi, MLA, Bikaner (west), CS R Sridharan, President, ICSI &amp; CS Shyam Agrawal</td>
</tr>
<tr>
<td>14.1.2015</td>
<td>UP State Conference – Host Lucknow Chapter on the theme &quot;Convergence of 'Make in India' mission through small &amp; medium enterprises – opportunities and challenges&quot;</td>
<td>Shri Narender Kumar, Past President, Reliance Industries Ltd, Barabanki Complex, CS Rupendra Kumar Porwal, Shri Rajesh Kumar Verma, Deputy Director(IMT) Kanpur &amp; Anil Kumar Tripathi, Joint director (IMT) Kanpur</td>
</tr>
<tr>
<td>17.1.2015</td>
<td>One Day Seminar on the topic &quot;Contentious Issues under Companies Act, 2013&quot;</td>
<td>CS R Sridharan, President, ICSI, CS Ilam C Kamboj, A.V.P. - Legal &amp; Company Secretary, Hero MotoCorp Ltd, CA Ravindra Vadali, Managing Director, Rhapsody Accounting &amp; Advisory Services Pvt. Ltd. &amp; Mr. Vijay Batra, Internationally Renowned Inspirational and Motivational Speaker</td>
</tr>
<tr>
<td>26.1.2015</td>
<td>66th Republic Day Celebrations</td>
<td>Special Guests: CS R K Manocha, IAS (Allied), Executive Director, Railway Board, Government of India &amp; Ms. Neera Bharhoke, Joint Registrar, Delhi High Court. CS NPS Chawla, CS Rajiv Bajaj, CS Manish Gupta, CS Dhananjay Shukla, CS Pradeep Debnath &amp; other members</td>
</tr>
<tr>
<td>30.1.2015</td>
<td>Inauguration of 205th MSOP</td>
<td>Chief Guest: CS Sunil Rai, Executive Director - Finance Viridian Real Estate Development, CS NPS Chawla, CS Rajiv Bajaj, CS Manish Gupta, CS Dhananjay Shukla, CS Pradeep Debnath &amp; CS Nitesh K Sinha</td>
</tr>
</tbody>
</table>
LIGHTER SIDE OF THE PROFESSION

"What is the need for an urgent Management Committee meeting?"
"Paramjeet Singh matter."
"What is that?"
"He is a man of high self esteem and our professional company has to dispense with his services."

"How do you say that you are the most suitable Personnel Manager?"
"My communication skill may be the best out of all."
"How?"
"Sometimes in case of need, I can use the Communication Skill of my body language, which I possess."

—CS PARAMJEET 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.
1 Republic Day Celebration (26.1.2015): sitting from L to R student, CS Nitesh Sinha, CS Dhananjay Shukla, CS Manish Gupta, CS NPS Chawla, CS R K Manocha, Ms. Neera Bhardwaj, CS Rajiv Bajaj, CS Pradeep Debnath along-with members.

2 Inauguration of 205th MSOP (30.1.2015): sitting from L to R student, CS Nitesh Sinha, CS Pradeep Debnath, CS Sunil Rai, CS NPS Chawla, CS Manish Gupta, Mr. S K Nagar, CS Alka Arora along-with students.

3 Inauguration of 206th MSOP (5.2.2015): sitting from L to R, CS Nitesh Sinha, CS Manish Gupta, CS Pradeep Debnath, CS NPS Chawla, Mr. Sanjeev Arora, CS Gurinder Singh, CS Dhananjay Shukla, CS Monika Kohli, Mr. S K Nagar, CS Alka Arora along-with students.

4 Valedictory of 205th MSOP (17.2.2015): from L to R, CS Alka Arora, Ms Beena, CS Dhananjay Shukla, CS NPS Chawla, CS A K Rustogi, CS Pradeep Debnath, CS Nitesh Sinha along-with students.

Disclaimer:
While every effort has been made and care has been taken in preparation of this Newsletter and to ensure its accuracy at the time of publication, NIRC of ICSI assumes no responsibility for any errors which, despite all precautions, may creep in. It is suggested that the readers should cross check all the facts and the relevant law position before acting on any matter.

©The Northern India Regional Council of the Institute of Company Secretaries of India, 2014

Printed & Published by:
S. K. Nagar, Regional Director for and on behalf of Northern India Regional Council of the Institute of Company Secretaries of India 4, Prasad Nagar Institutional Area, New Delhi-110005; E-mail: niro@icsi.edu; Phones: 49343000; Fax: 25722662; Printed at : CompuData Services, 42 DSIDC Shed, Scheme-I, Phase-II, Okhla Indl. Complex, New Delhi-20; Published at : NIRC-ICSI, 4, Prasad Nagar Instl. Area, New Delhi. Chief Editor CS NPS Chawla

Help Desk of NIRC-ICSI
011-49343000
niro@icsi.edu
1 Regional Council meeting (19.1.2015): Regional Council Members
2 Interactive Session with President & Vice President, ICSI & Technical Session on Secretarial Audit (12.2.2015): from L to R, CS Ranjeet Pandey, CS Satwinder Singh, CS Dhananjay Shukla, CS Monika Kohli, CS NPS Chawla, CS Atul H Mehta, CS Mamt Binani, CS Nitesh Sinha, CS Pradeep Debnath, CS Vineet Chaudhary, CS Manish Gupta & CS Sutanu Sinha
3 Interactive Session with President & Vice President, ICSI & Technical Session on Secretarial Audit (12.2.2015): Addressing CS Atul H Mehta, CS Mahesh Athavale & CS Rajendra Chopra
4 Interactive Session with President & Vice President, ICSI & Technical Session on Secretarial Audit (12.2.2015): Addressing CS NPS Chawla, sitting CS Dhananjay Shukla, CS Satwinder Singh, CS Mamt Binani, CS Atul H Mehta, CS Ranjeet Pandey, CS Vineet Chaudhary, CS Sutanu Sinha, CS Manish Gupta & CS Pradeep Debnath

If undelivered, please return to:
Northern India Regional Council of the
Institute of Company Secretaries of India
4, Prasad Nagar Institutional Area,
New Delhi-110005