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FRANCHISEES INVITED FOR ACROSS THE INDIA
New President and Vice President of the Council of the Institute of Company Secretaries of India (ICSI) for 2013

**CS S. N. Ananthasubramanian**, a Fellow Member of the Institute has been elected as **PRESIDENT** of the Council of the Institute of Company Secretaries of India (ICSI) w.e.f 19th January 2013.

CS S. N. Ananthasubramanian has been elected as the **PRESIDENT** of the Council of the Institute Company Secretaries of India (ICSI) w.e.f. 19th January, 2013. He was the Vice-President of ICSI in 2012. A member of the Council of ICSI since 2007, he was re-elected in 2010 for the term 2011-2014. Shri Ananthasubramanian, B.Com (Hons), FCS has been in practice as a Company Secretary at Thane since 1991, having been in employment from 1976.

CS Ananthasubramanian has contributed to the visibility and growth of the profession as member of ICSI-WIRC between 2001 and 2006. As its Chairman in 2005, he was actively associated in ICSI-NSE Collaboration towards the inclusion of Corporate Governance Module in National Certificate in Financial Markets (NCFM) and as its Secretary, facilitated the formation of Thane Chapter of ICSI in 2003.

It was primarily due to the initiatives taken by CS Ananthasubramanian that the RBI introduced in 2008, Diligence Report to be obtained by Banks in respect of multiple-banking arrangements from professionals preferably, Practicing Company Secretaries. He has been actively associated with formulation of Compliance Certificate for companies seeking listing on the SME platform of BSE and NSE; introduction of Networth Certificate by PCS in respect of broking firms by BSE and NSE; formulation of IPO/FPO Certification; tie-ups with IIM, Indore, Indian Institute of Banking and Finance (IIBF) and Insurance Institute of India (III), Mumbai.

He was a member of various Committees of the Council of the ICSI including the Core Group for formulating the ICSI-Vision 2020. As Chairman, Management Committee of ICSI-Centre for Corporate Governance, Research & Training, Navi Mumbai between 2007-09, he successfully spearheaded the turnaround of the ICSI-CCGRT and its activities.

As member of Syllabus Review Committee and Board of Studies in 2007 and in 2011, he has contributed significantly in the development of contemporary syllabus for Company Secretaryship Course. He was the Chairman of the Task Force on Training in 2008 and in 2011 which has introduced the New Training Structure for students including the introduction of e-SIP, e-EDP, ICSI-Direct signifying online registration of students.

CS Ananthasubramanian also piloted the Guidelines for Advertisement by Company Secretary in Practice in 2007.

A strong votary of good governance practices, CS Ananthasubramanian anchored the Special Debate on Corporate Governance during the ICSI National Award for Excellence in Corporate Governance held in Mumbai in 2009. He has also attended the Training of Trainers programme organised by the Global Corporate Governance Forum, IFC, Washington. He is a regular speaker at Seminars, Workshops, Conferences, Shri Ananthasubramanian is also associated with public charitable institutions in Thane and Mumbai.

**CS Harish K. Vaid** also a Fellow Member of the Institute has been elected as the **VICE PRESIDENT** of the Council of the Institute of Company Secretaries of India w.e.f 19th January 2013.

CS Harish K. Vaid has been elected as the **VICE-PRESIDENT** of the Council of the Institute of Company Secretaries of India (ICSI) w.e.f 19th January 2013. He is a Fellow Member of The Institute of Company Secretaries of India, Life Member of Indian Law Institute, Member of All India Management Association and Fellow Member of the Institute of Administrative Management. Having served the Government of India for about 7 years, he is with Jaypee Group for the last 31 years and is presently Sr. President (Corporate Affairs) & Company Secretary of Jaiprakash Associates Limited, the flagship Company of the Jaypee Group.

CS Harish K. Vaid has been a Member of various Committees on Corporate Laws constituted by ASSOCHAM, Confederation of Indian Industries and PHD Chambers of Commerce & Industry. He is also on the board of various listed and unlisted companies.

With an illustrious good academic career backed by widely acclaimed acumen in his chosen field of professional pursuit, CS Harish K. Vaid has been taking keen and active interest in the activities of The Institute of Company Secretaries of India. He had been Chairman of the NIRC of the ICSI in the year 1987 and has been elected to the Central Council of the Institute for 6 terms, including the present term.

CS Harish K. Vaid is regular Honorary faculty Member of Professional Bodies / Investor Protection Fund set up by Ministry of Corporate Affairs and the MSOP sessions being conducted by the Institute, its Regional Councils & Chapters. CS Harish K. Vaid is widely travelled within India and abroad.

**Perceive - Plan – Perform**
NEW TEAM of ICSI for 2013

CS MS SAHOO, an officer of the Indian Economic Service (IES) takes over as the SECRETARY of the Institute of Company Secretaries of India (ICSI) w.e.f 1st January 2013.

CS MS SAHOO, a Fellow Member of the Institute of Company Secretaries of India, and a M. Phil, M.A. (Economics), LL.B., FCS, PGDM has over three decades of rich work experience in self-employment, private sector, public sector, regulator and government in varied functional areas such as reforms, policy, regulations, research and analysis. Before joining the ICSI, he was an eminent legal practitioner in the field of securities laws. He was a Whole Time Member of the Securities and Exchange Board of India (SEBI) during 2008-11. Prior to this, he served as the Joint Secretary (non-functional), Director and Joint Director in the Ministry of Finance, as the Chief General Manager with SEBI, and as Economic Adviser with National Stock Exchange of India Limited (NSE). As an officer of Indian Economic Service (1985 batch), he served the Government of India for 22 years. He played a key role in designing of major reforms in securities market, including dematerialization of securities, trading of derivatives, corporatisation and demutualization of exchanges, building regulatory and market infrastructural institutions, enforcement process / actions. He was instrumental in development of human resource capacity in securities markets through various interventions such as NSE’s Certification in Financial Markets (NCFM), National Institute of Securities Markets (NISM) and a number of reputed publications. He has served / serves as a member on several expert committees / boards and professional groups. He has delivered talks at various national and international fora and written over 100 articles.

CS Sutanu Sinha has taken over as the CHIEF EXECUTIVE of the Institute of Company Secretaries of India (ICSI) w.e.f 1st January 2013

CS Sutanu Sinha is a Fellow Member of the Institute of Company Secretaries of India and also a Member of the Institute of Chartered Secretaries and Administrators, London (UK). A Post Graduate in Commerce from the Calcutta University, he stood First Class First in the Post Graduate Diploma in German Examination of the Calcutta University.

Before assuming the office of CHIEF EXECUTIVE from 1st January, 2013, Mr. Sinha was heading the Academics & Professional Development Directorate of the Institute of Company Secretaries of India (ICSI) and was appointed as Chief Executive Designate from 31st August, 2012 to 31st December, 2012 by the Council of the ICSI.

He has over twenty five years of professional experience in the Company Secretarial and Corporate Functioning. He possesses a vast work experience in Corporate Planning, Finance, International Trade and other allied areas in the course of his previous assignments in MNC/PSUs. An avid reader and a corporate analyst, Mr. Sinha has contributed several important papers and articles on different aspects of Governance and Management and addressed various Workshops, Seminars and Conferences, both in India and abroad.

His areas of specialization include Corporate Governance, Sustainability and Enterprise Resource Planning. He is also Global Corporate Governance Forum (GCGF), Washington (World Bank Group) trained Trainer for Directors Development Programmes. He has contributed significantly in Institute’s initiatives to promote corporate governance in India and overseas.

He has been appointed by the Government of India as Director in the Board of Canara Bank, which is one of the leading Public Sector Banks of the Country. Fluent in many foreign languages, his hobby traverses from instrumental music, painting, photography to Documentary Film-making.

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NEW TEAM of ICSI - WIRC

CS Hitesh D. Buch, Chairman

CS Hitesh D. Buch, is a Graduate in Management (B.B.A.) and Law (Special), and Fellow Member of the ICSI having overall experience of more than 30 years. He possesses more than 23 years post qualification experience as Company Secretary. He started his career with Reserve Bank of India in 1983 and switched to the profession in 1989 on acquiring the membership of the ICSI. After working in industry for about five years, he joined the practicing side of the profession in 1995. He possesses wide spectrum exposure and rich experience in all the spheres of corporate secretarial and legal matters, including appearance before CLB, SAT, SEBI and Consumer Courts.

He has been contributing as an active member since last about 20 years to the activities of the ICSI at Chapter and Regional level. He is a regular faculty for programs and training sessions conducted by ICSI – Ahmedabad Chapter. He has held membership and chairmanship of various Committees at ICSI -Ahmedabad Chapter and WIRC.

He held the Chairmanship of ICSI-Ahmedabad Chapter in 1996. He was also elected to WIRC for 2004-2006, and again for the 2011-14. He was elected as Vice-Chairman of the ICSI - WIRC for 2012. He assumed the office of Chairman of ICSI-WIRC on 19th January 2013.

Ragini Chokshi, Vice Chairperson

CS Ragini Chokshi, she is a founder partner of the firm Ragini Chokshi & Co. Practicing Company Secretaries in Mumbai. The firm has specialization in corporate laws, listing, merger & amalgamation, managerial remuneration, organization restructuring, conversion of balance sheet & profit & loss a/c into XBRL & corporate legal counseling to companies & appearance before company law board, regional director, ministry of corporate affairs, SAT, SEBI, etc. The firm is associated with listed and unlisted companies. The firm has an in-depth knowledge of corporate governance, compliance certificate related aspects, secretarial audit, due diligence matters, listing and re-listing of securities on stock exchange and other corporate law matters for domestic and international clients.

CS Ashish Garg, Secretary

CS Ashish Garg, is a Post Graduate in Economics and Commerce and Graduate in Law from the Vikram University, Ujjain and a Fellow Member of the Institute of the Company Secretaries of India. He is a member of the Western India Regional Council of The ICSI for 2007 to 2010 and again re-elected for 2011-2014. Presently He is elected as the Secretary of WIRC for 2013. Earlier he was the Chairman of Information Technology Committee of the WIRC in 2007 and part in recommendation and implementation of IT Policy in New Look - WIRC and Editor of monthly journal FOCUS of WIRC in 2008 and 2009 and commenced the circulation of Focus into an Electronic Newsletter and Chairman of Practicing Company Secretary Committee of WIRC for 2011 and in 2012 he was Treasurer of WIRC. He was the Secretary and Vice Chairman of Indore Chapter of the ICSI in 2004 and 2005.

He is Practicing Company Secretary at Indore since more then last one decade and having specialization in corporate laws, organizational restructuring and corporate legal counseling to companies and appearances before Company Law Board, Regional Director, Ministry Corporate Affairs.

Mr. Ashish Garg is highly concerned about Profession and he actively participates in the activities of the Institute. He is a visionary, good organizer and a friendly gentleman. He has been the visiting faculty at various Management Institutes of Indore for MBA and other Professional courses and delivered lectures regularly as invited speaker in the conference of Company Secretaries and Chartered Accountants.

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NEW TEAM of ICSI - WIRC

CS Sanjay Gupta, Treasurer

CS Sanjay Gupta, CS, LLB, ICWA & M.Com with over 22 years post qualification experience in Corporate Secretarial, Legal, Compliances and Corporate Affairs in renowned Groups including ICICI, Reliance, KK Birla, Jaypee & DCM-Shriram.

First Source Solutions Ltd. (Formerly ICICI one Source Ltd.), Since January 2007

An elected Council member of Western India Regional Council of the Institute of Company Secretaries of India (WIRC of ICSI) for its present term of 4 years i.e. 2011-2014. Presently holding the office of Treasurer of WIRC of ICSI. Held the office of Chairman of Professional Development Committee of WIRC of ICSI for 2011 and 2012, with responsibility of conducting of Seminars, Conferences in entire Western Region. Also held the office of Chairman of Accounts and Finance Committee of WIRC of ICSI in 2011.

OTHERS MEMBERS OF THE REGIONAL COUNCIL

| CS Ashish C. Bhatt, Regional Council Member | CS Prakash K Pandya, Regional Council Member |
| CS Ashish C. Doshi, Regional Council Member | CS S.N. Ananthasubramanian, President ICSI |
| CS Amit Kumar Jain, Regional Council Member | CS Vikas Y. Khare, Central Council Member |
| CS Chandrashekhar S. Kelkar, Regional Council Member | CS Atul Mehta, Central Council Member |
| CS Hitesh Kothari, Regional Council Member | CS B. Narasimhan, Central Council Member |
| CS Makarand Lele, Regional Council Member | CS Umesh H. Ved, Central Council Member |
| CS Mahavir Lunawat, Regional Council Member |

COMMITTEES OF ICSI-WIRC FOR THE YEAR 2013

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<td>Editorial Board of FOCUS</td>
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<td>Health, Sports and Culture Committee</td>
<td>CS Hitesh Kothari</td>
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Perceive - Plan – Perform
CS Makarand Lele, Editor Focus

CS Makarand Lele, a Fellow Company Secretary (FCS) and a member of Institute of Company Secretaries of India since 1993.

He has co-founded MRM ASSOCIATES, a firm of Company Secretaries in Pune in the year 2001 and MRM Corporate Advisor Private Limited in the year 2006.

He holds the Certificate of Practice of ICSI since 1994. He has gained proficiency in the fields of corporate laws, Foreign Exchange laws, Industrial laws, Corporate Compliance Management, Business set up services, Drafting, due diligence and Audits. He has a flare in Cyber Laws and Information Technology. He has handled varied assignments like mergers, restructuring, IPO, listing, formations, registrations, joint ventures. He is involved in providing total business solutions and is consulting to various Indian and International businesses on routine and critical matters. He advises to NGO & section 25 companies on registrations, business structuring and compliances.

He is active participant and contributor to the activities of Institute of Company Secretaries of India (ICSI) since 1994. He was a Chairman of the Pune Chapter for the year 2003, the year in which Chapter adjudged as Best National Chapter in India, exclusively for the first time. He has been elected for the second time to the Western India Regional Council of ICSI for the terms of 2010-14. He was a Chairman of Western Regional Council in the year 2011. He is also an ex-officio member of the managing committee of Pune Chapter.
"Surround yourself with the best people you can find, delegate authority, and don’t interfere as long as the policy you’ve decided upon is being carried out."

— Ronald Reagan

My Dear Professional Friends,

With the dawn of 2013, there is change of guards at various levels of our Institute. I am entrusted onerous task of heading the ICSI-WIRC; and I am aware that with support, co-operation and contribution, from each of you, I will be able to do justice to my job. The footprints left by my predecessors will guide me to scale new heights. I welcome suggestions and ideas from all of you as I believe in “Inclusive Participation”.

I am extremely delighted that my term as Chairman, ICSI-WIRC coincides with the term of Mr. S. N. Ananthasubramanian, who has taken over as the President of our esteemed Institute. It is also a moment to rejoice, as it is after 22 years, that a member from Mumbai has been selected for the top position. Mr. S. N. Ananthasubramanian is a visionary with innovative ideas and will set the “TONE AT THE TOP”. ICSI -WIRC will look forward to his support and co-operation, ideas and suggestions, guidance and advice during the year.

At the ICSI-WIRC, I have the continued support of CS Ragini Chokshi – Vice Chairperson, CS Ashish Garg - Secretary and CS Sanjay Gupta – Treasurer, and untiring efforts of other colleagues on the Regional Council. The members of various sub-committees constituted have been our strength and their contribution has remained and will remain inevitable for us at ICSI-WIRC. The list of the sub-committees will be printed in FOCUS.

Coming to the programs held till date of this communication, I have to inform that CS Prakash Pandya, Chairman-Professional Development Committee has started working rigorously to ensure that the programs are regularly conducted. A series of Professional Development programs are lined up which includes programs on Companies Bill, 2012, Personality Development & Communication, Appearance before various Authorities like CLB, NCLT, SAT etc. during the year.

I await your response and reaction and hope to convert this “Monologue” into Dialogue.

Thanks and Best Wishes.

Yours Cordially,

CS Hitesh Buch
7th Feb 2013 - Ahmedabad
Email: wiro@icsi.edu

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**APPEAL**

Join Company Secretaries Benevolent Fund as Member – Think of your kin
Contribute to Fund Raising Initiatives of ICSI-WIRC - Any amount, any time
Join Professional Membership Scheme of ICSI-WIRC as Annual Member
FROM THE EDITOR

Dear Readers,

“Read, every day, something no one else is reading. Think, every
day, something no one else is thinking. Do, every day, something
no one else would be silly enough to do. It is bad for the mind to be
always part of unanimity.”

- Christopher Morley (1890 - 1957)
American journalist, novelist, essayist and poet.

I am extremely happy to reach to you through this editorial of
“Focus”, a Newsletter of WIRC of ICSI.

Over the years “Focus” has established as a professional newsletter for quick reference and guidance
among the readers.

Reading is a very good habit for any human being. We are attempting to spread the reading habits
among our members by providing rich food for thought through “Focus”.

While we continue to have the traditional printed form of “Focus” (which I personally find very
convenient for reading) we are also experimenting to have “Focus” in digital book form. The current
“Focus” edition soon will be available on a portal as an eBook. The eBook facility will be free of cost
to readers. They are just expected to do one-time registration to the portal. Additionally “Focus” is
being uploaded on WIRC child portal (www.icsi.edu/wiro ) under newsletter section for free PDF
download.

This is a small step towards a global mission “Save Paper, Save Earth”

“Focus” is equipped with the rich team of “Editorial Advisory Board” consist of stalwarts of the
profession. Additionally “Focus” has an “Editorial Team” to take care of activities of the “Focus” on
continuous basis. The names of the “Team Focus” is printed elsewhere in this edition.

Our objective is to provide you the Fresh “Focus” every month.

I am sure you will continue to support this cause. We need your help for good articles, columns,
suggestions, feedbacks, leads for advertisements and sponsorships. Please have a close look at

If you have any suggestions, then please write to me.

Let’s spread the habit of reading & writing.

Thanks and Regards,

CS Makarand Lele
Editor “Focus”
WIRC 2013
makarand.lele@mrmcs.com
The transition of the service providers viz from TCS to Infosys has with respect to MCA-21 thrown up considerable issues for the stakeholders. There have been complaints of inability to login, inability to generate challan, inability to make payments and a host of other issues. The Ministry has now come out with Circular No.03/2013 dt.08/02/2013 granting relaxation of additional fees and extension of last date in filing of various forms with Ministry of Corporate Affairs which ought to have been filed on or after 17/01/2013.

The following are the salient features of the aforesaid Circular dt. 08/02/2013.

“"The following relaxation shall be considered by the Regional Director/Registrar of Companies on case to case basis while allowing for relaxation of fees or extension of last date with regard to forms to be filed by the stakeholders wherein:

(i) Last date of filing for Forms where the due date is falling on or after 17th January, 2013 is without charging additional fee.

(ii) All the documents which have been expired on or after 17th January due to non-submission/re-submission PUCL may be restored back.

(iii) All the cases related to filing of Court orders/competent authority where the due date/date of filing was falling on or after 17th January is extended without payment of additional fees.

(iv) Name availability expired due to non-submission of incorporation documents will be made available for filing of the same.

(v) In case of charge documents the due date will be extended by Regional Director on case to case basis where the due date of filing was falling on or after 17/01/2013 and could not be filed.

(vi) The due date in above cases is hereby extended till 28/02/2013.

3) The Regional Director/Registrar of Companies will examine the request on case to case basis upon receipt of request from the stakeholders for allowing the relaxation without levying the additional fee.

4) The process of extending date will be as under:

   a) Company/professional will make request by e-mail/post with RD/ROC along with the supporting documents, if any;

   b) RC/ROC will raise ticket on service desk immediately after examining the application;

   c) The team of operator will resolve the ticket as per the request of RD/ROC. A system generated mail will be sent to RD/ROC and user will be informed accordingly;

   d) User should file the documents within the time given in the email;

5) The Regional Director/Registrar of Companies is authorized to allow such extension of time for filing form/along with necessary documents. The RD/ROC will raise ticket in the service desk for allowing such extension of time for filing forms.

6) The stakeholders who are able to file the documents on or after 17/01/2013 till the date of this circular are not eligible for any fees relaxation or extension of last dates. Further they are not entitled for any refund.”

As the process will require time and patience, the Companies/Professionals are advised to furnish the request along with supporting documents by hard copies also even if emails are forwarded.

Incidentally, I am retiring on superannuation on 28/02/2013 after serving in the Ministry for nearly 4 decades. It has been a wonderful experience interacting with all of you. I am sure that the coming days would throw up lots of opportunities as a result of the new Companies Act which is likely to be enacted this year. I am sure all of you would utilize the future days to sharpen your skill, upgrade your knowledge and enhance your overall capacity to meet the huge opportunities and responsibilities that would come your way after the enactment of new Companies Bill.

I am signing off by wishing all you a very fruitful, enjoyable and productive professional career.

(S. M. AMEERUL MILLATH)
REGIONAL DIRECTOR, WR

“"We are what we repeatedly do. Excellence, therefore, is not an act but a habit” - Aristotle
CASE LAWS AT A GLANCE
RECENT JUDGEMENTS ON COMPANY LAW

CS Ajay Kumar, Practicing Company Secretary, Mumbai

1) ENFORCEMENT OF ORDERS OF ONE COURT BY OTHER COURTS

Procedure to be followed in matter of execution of order made by Company Court is different from that laid down in Code of Civil Procedure. As per section 635, it is sufficient to produce to executing Court which is required to execute order of Company Court, a certified copy of order sought to be executed and it is not necessary to comply with procedure laid down in section 39 and Order 21, rules 4 and 5 of Code of Civil Procedure and get order first transferred by Court which made it to Court which is to enforce it and then make an application to execute it - SAMVIDHA CHIT FUNDS (P.) LTD. (IN LIQUIDATION) V. ADDITIONAL JUNIOR CIVIL JUDGE (AP) [2012] 114 SCL 385 (ANDHRA PRADESH)

2) RECTIFICATION OF REGISTER ON TRANSFER OF SHARES

Petitioner filed a Petition under section 111A seeking directions against Respondent-Company for rectification of share register for disputed 200 shares of Respondent-company. Since issue had been already tried and adjudicated by Civil Court in a suit between same parties on same cause of action, Petition filed under section 111A was hit by principle of res judicata as Petitioner was re-agitating over self - same cause of action before CLB. Since matter being decided by a competent forum, Petitioner had no right to seek relief on self - same cause of action between same parties. Therefore, Petition was to be dismissed. SMC SHARE BROKERS LTD V. ITC LTD. [2012] 114 SCL 246 (CLB-KOLKATA)

3) COMPROMISE AND ARRANGEMENT

Company in question took a loan from Respondent Corporation. For said loan Managing Director of Company stood as a guarantor. Company faced financial constraints and for that reason a winding up order was passed by BIFR and an Official Liquidator was appointed. Subsequently, a Petition under section 391/394 was filed for revival of Company with a revival scheme which results in 100 per cent shareholding to a particular group. Therefore, Writ Petition was to be allowed - KUNDANMAL DABRIWALA V. HARYANA FINANCIAL CORPORATION [2012] 114 SCL 609 (PUNJAB AND HARYANA)

4) SCHEME HAVING EFFECT OF EXTINGUISHING SMALL SHAREHOLDINGS AND RESULTING INTO 100 PER CENT SHAREHOLDING TO PARTICULAR GROUP - CAN SCHEME BE QUESTIONED AS IMPROPER PER SE - SECTION 391/394

Merely because the applicants are having small fractions of shares would not make them a separate class and they would remain the same category as other equity shareholders. Section 391 does not postulate different categories of shareholding within the same class. The arrangement which results in extinguishing some shares and results into 100 per cent shareholding in the hands of particular group cannot be treated improper per se - INDRAMAX INVESTMENT (P.) LTD. V. SELECT HOLIDAY RESORTS LTD. [2012] 109 CLA 356 (DEL.)

5) INABILITY TO PAY DEBTS - DISPUTE BEING SUBSTANTIAL AND GENUINE - CAN IT BE RAISED BEFORE ISSUE OF STATUTORY NOTICE - SECTION 433 (E)

Dispute is substantive and genuine should be raised before issue of statutory notice and not one raise for the first time when the statutory notice is issued or in objection statement filed before the Court. In that perspective the case needs to be examined and the materials on record are to be appreciated without doing it in the nature of trial to determine the right of the parties, except to arrive at the prima facie opinion as to if it needs determination elsewhere or as to it is so clinching and indisputable that the Petition is to be entertained - D S NANDISH V. TECHNICOLOUR INDIA (P.) LTD. [2012] 109 CLA (SNR.) 14 (KAR.)

6) ‘COMPANY’ AS DEFINED IN SECTION 3 AND FOREIGN COMPANY REFERRED TO IN SECTION 591 - ARE THEY DISTINCT JURISTIC ENTITIES - SECTIONS 3 AND 591

The term ‘Company’ as defined in section 3 and the term ‘Foreign Company’ as referred to in section 591 are distinct juristic entities for purpose of the Act. The legal fiction created by sub-section (2) of section 591 does not confer on a Foreign Company any exalted status so as to be treated as a Company incorporated in India - YASHDEEP TREXIM V. BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION [2012] 109 CLA (SNR.) 13 (CAL.)

“\n- The great blessings of mankind are within us, and within our reach; but we shut our eyes, and, like people in the dark, we fall foul upon the very thing we search for, without finding it” - Seneca
MINISTRY OF CORPORATE AFFAIRS

1. FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT IN EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE FOR THE FINANCIAL YEAR COMMENCING ON OR AFTER 01.04.2011

General Circular No. 01/2013

Source: www.mca.gov.in

In continuation of General Circular No. 16/2012 dated 06.07.2012, 34/2012 dated 25.10.2012 and 39/2012 dated 12.12.2012 on the subject cited above, It is stated that time limit for file the financial statements in XBRL mode without any additional fee/penalty has been extended upto 15th February, 2013 or within 30 Days from the due date of AGM of the company, whichever is later.

2. All other terms and conditions of the General Circular No. 16/2012 dated 06.07.2012 will remain the same.

2. FILING OF COST AUDIT REPORT AND COMPLIANCE REPORT IN THE EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE.

General Circular No. 02/2013

Source: www.mca.gov.in

In continuation of MCA’s General Circular Nos. 8/2012 dated May 10, 2012 [as amended on June 29, 2012], 18/2012 dated July 26, 2012 and 43/2012 dated December 26, 2012, it has been decided that all cost auditors and the companies concerned are allowed to file their Cost Audit Reports and Compliance Reports for the year 2011-12 [including the overdue reports relating to any previous year(s)] with the Central Government in the XBRL mode, without any penalty, within 180 days from the close of the company’s financial year to which the report relates or by February 28, 2013, whichever is later. The Institute is requested to circulate this for the information of all concerned.

CUSTOMS CIRCULARS:

1. REGARDING DISPOSAL OF FIREARMS IMPORTED AS BAGGAGE UNDER TRANSFER OF RESIDENCE.

Circular No. 04/2013-Customs

Source: www.cbec.gov.in

The undersigned is directed to refer to Ministry’s letter F. No. 497/57/87-Cus-VI, dated 05.01.1998 whereby

it was clarified firearms imported as baggage are not allowed to be transferred to any person for consideration or otherwise during the lifetime of the importer and to state that this issue has been re-examined in the context of a reference requesting permission to dispose an imported firearm on ground of old age.

2. In this regard it is observed that DGFT has revised the import policy on disposal of imported firearms vide Public Notice No. 82/2009-2014(RE-2010), dated 17.10.2011. Accordingly, Para 2.43.2 of the Handbook of Procedures Vol.1, 2009-2014 stands modified and amongst other changes it now provides that transfer of imported firearms will not require permission from DGFT after ten years of import. Imports under baggage are exempt from the normal provisions of the Foreign Trade Policy in terms the Foreign Trade (Exemptions from Application of Rules in Certain Cases) Order, 1993. Thus, the said DGFT’s Public Notice dated 17.10.2011 does not apply to imports as baggage. The implication is that the relaxation provided by DGFT does not apply to firearms imported as baggage under transfer of residence and the restriction that these cannot be disposed in any manner during the lifetime of the importer continues to apply. This places persons importing firearms as baggage at a disadvantage viz-a-viz other importers.

3. DGFT was consulted in order to address the inequitable situation aforementioned. DGFT has clarified that the relaxation at their end in regard to allowing the disposal of imported firearms was made in consultation with the Ministry of Home Affairs, amongst others. DGFT has also recommended that it is desirable to liberalize the provision of disposal of firearms imported as baggage and harmonize it with their Public Notice.

4. In view of the above, I am directed to state that Government has decided to allow passengers importing a firearm as baggage on transfer of residence to dispose the same after ten years of import. The disposal will be to persons legally entitled to possess the firearm. The condition that no disposal can take place till ten years of import may be endorsed on the arms license of the passenger at the time of granting the facility under transfer of residence.

5. Further, in view of the sensitive nature of the item viz. firearm, Government has decided that an eligible person would be allowed to import only

“If you do not hope, you will not find what is beyond your hopes” - St. Clement of Alexandra
one firearm under transfer of residence in his/her lifetime. In other words, even though the facility of transfer of residence can be availed every three years at present, a firearm can be imported only once.


7. The change in Government policy may be brought to the notice of all concerned. Difficulty, if any, in implementing this decision may be immediately informed to the Board.

2. REGARDING SINGLE REVOLVING BANK GUARANTEE FOR DIFFERENT TRANSACTIONS FOR IMPORT OF SILVER OR GOLD OR PLATINUM.

Circular No. 30/2013-Customs

Source: www.cbic.gov.in

Representations have been received from the Gem & Jewellery sector to allow their exporters to execute revolving Bank Guarantee to be used for import of gold/silver/platinum, alloys, findings and mountings of gold/silver/platinum and plain semi-finished gold/silver/platinum jewellery.

2. Notification No. 56/2000-Cus dated 05.05.2000, as amended, exempts gold/silver/platinum, alloys, findings and mountings of gold/silver/platinum and plain semi-finished gold/silver/platinum jewellery falling within Chapter 71 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India by, inter alia, status holders, or exporters of three years’ standing, having an annual average turnover of five crore rupees during the preceding three licensing years under the scheme for ‘Export Against Supply by Foreign Buyer’ as referred to in paragraph 4A.8 of the Foreign Trade Policy, from the whole of the duty of customs leviable under the First Schedule to the Customs Tariff Act, and from the whole of the additional duty leviable under section 3 of the said Tariff Act, subject to the conditions specified in the said notification. Duty free import is allowed for manufacturing and export of gold/silver/platinum jewellery or articles as laid down in the said notification subject to furnishing a Bond of an appropriate amount and Bank Guarantee for a sum equivalent to one and half times of the Customs duty leviable on the said goods imported.

3. The matter has been examined. The request of the Gem & Jewellery sector is to allow revolving use of the Bank Guarantee. After considering the representations from the trade & industry, it has been decided that the Bank Guarantee furnished by the importer can be used for subsequent consignments, if the importer has fulfilled the export obligation and export proceeds realized in respect of the earlier consignments. The bank guarantee may be so used for subsequent import consignments, provided it is sufficient to cover the duty involved and has validity for sufficient time period with self-renewal in-built provision. The field formations need to take care to ensure that the Bank Guarantee remains valid till the export proceeds are realized.

3. REGARDING ISSUE OF CUSTOM HOUSE AGENT LICENSE.

Circular No. 06/2013-Customs

Source: www.cbic.gov.in

Attention is invited to Board’s Circular No. 9/2010- Customs dated 08.04.2010 on the above cited subject.

2. The Hon’ble Supreme Court in Civil Appeal Nos. 4053-4061 of 2012 (arising out of SLP (C) Nos. 19124-19132 of 2010) in the case of Sunil Kohli and others vs. Union of India and others vide order dated 27.04.2012 has held that those who had passed the examination under Customs House Agents Licensing Regulations, 1984 not have to again appear for examination under the Customs House Agents Licensing Regulations 2004 (CHALR 2004).

3. In order to implement the aforementioned decision of Hon’ble Supreme Court, Board has decided to delete Para 8.1 and Para 8.2 of Circular No. 9/2010- Customs dated 08.04.2010. The implication of this modification of Board Circular No. 9/2010- Customs dated 08.04.2010 is that the Custom shall no longer insist that persons who have passed the examination under the 1984 Regulations have no longer insist that persons who have passed the examination under the 1984 Regulations have to additionally qualify in the new subjects given below.

(a) The Patents Act, 1970 and Indian Copyright Act 1957;
(b) Central Excise Act, 1944;
(c) Export promotion schemes;
(d) Procedure on appeal and revision petition;
(e) Prevention of Corruption Act, 1988;
(f) Online filing of electronic Customs declarations;
(g) Narcotics Drug and Psychotropic Substances Act, 1985; and
(h) Foreign Exchange management Act, 1999.
Thus, subject to fulfillment of all other requirements such persons will now be directly eligible for grant of CHA license.

4. These instructions may be brought to the notice of the trade by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the field officers. Pending court cases, if any, may also be suitably handled.

NOTIFICATIONS:

1. AMENDS NOTIFICATION NO. 12/2012-CUSTOMS, DATED THE 17TH MARCH, 2012

Notification No. 1/2013-Customs
Source: www.cbec.gov.in

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 185(E) dated the 17th March, 2012, namely: -

In the said notification, in the Table,-

(i) Against S. No. 116, for the entry in column (5), the entry “4%” shall be substituted;
(ii) Against S. No. 318, for the entry in column (5), the entry “4%” shall be substituted;
(iii) In S. No. 321, against item (i), for the entry in column (4), the entry “6%” shall be substituted;
(iv) Against S. No. 323, for the entry in column (4), the entry “6%” shall be substituted;
(v) Against S. No. 65, for the entry in column (4), the entry “5%” shall be substituted.

2. REGARDING INCREASE IN BASIC CUSTOM DUTY ON ALL TYPES OF CRUDE EDIBLE OIL.

Notification No. 02/2013-Customs
Source: www.cbec.gov.in

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Central Excise, dated the 17th March, 2012 which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 163(E) dated the 17th March, 2012, namely: -

In the said notification, in the Table,-

(i) for S. No. 189 and the entries relating thereto, the following shall be substituted-

<table>
<thead>
<tr>
<th>189</th>
<th>Gold bars, other than tola bars, bearing manufacturer’s engraved serial number and weight expressed in metric units manufactured in a factory starting from the stage of-</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>(i) (a) Gold ore or concentrate; (b) Gold dore bar; or (ii) Silver dore bar</td>
</tr>
</tbody>
</table>

Explanation.-For the purposes of this entry, ‘gold dore bar’ shall mean dore bars having gold content not exceeding 95% and ‘silver dore bar’ shall mean dore bars having silver content not exceeding 95% accompanied by an assay certificate issued by the mining company, giving details of composition |

(ii) in S. No. 191, against item (i), for the entry in column (4), the entry “5%” shall be substituted.
In the Budget, 2012, our present President and the then Finance Minister had announced a very nice scheme for the benefit of the first time investors in the Indian capital market. The main purpose is promoting the financial inclusion of common investors in the ‘Equity Culture’ in India and to encourage investors’ savings to Domestic Capital Market.

Out of population of 121 Crores Indians, more than 90 Crores have mobile facility; while about 20-22 Crores have bank account. However, just about 2-2.5 Crores have trading - demat account for investment in the capital market. This is only 1.7 to 2% of total population. This is very sorry state of affairs of Indian capital market. In USA and European countries this ratio is about 40-50% of the population.

Hence, the finance Minister has introduced this scheme to help improve the depth of the capital market and also widening the retail investor base in the Indian securities markets. The scheme is for the new retail investors, who have not traded in the equity or derivatives market earlier. Another condition is that the gross total income of the investor should be up to Rs.10 Lakhs in the financial year. Such person should not be a first holder of any demat account. Person should open a fresh demat account or designate the existing demat account for the scheme.

Tax deduction under the scheme is available to investor under section 80 CCG over and above Rs.1 Lakh exemption limit under section 80 C. A person may invest any amount, but maximum of Rs.50,000/- investment is eligible for tax benefit for the first year of investment only. Out of this investment, 50% amount will be eligible for deduction from gross total income. Accordingly, investor in the 10% tax bracket will save Rs. 2,500/- for an investment of Rs. 50,000/-. Investor in the 20% tax bracket will save Rs.5,000/- for an investment of Rs.50,000/-. Eligible securities for investment are defined as securities issued by - the PSUs (Public sector Units) viz; Maharatna, Navratna and Miniratna in their IPOs (Initial Public Offer) as well as FPOs (Follow on Public Offers); IPO & FPO of Companies under BSE-100 or CNX-100; Units of Mutual funds or Exchange traded funds which have invested in RGESS eligible securities and their New fund offers; IPO of PSU with 51% or more government holding.

This is a very flexible investment scheme, as a person can invest in instalments throughout the year subject to a total of Rs.50,000/-. A person can invest higher amount, however, it will not qualify for the tax benefit. Investor should give a declaration in Form ‘A’ and furnish Permanent Account Number (PAN) to DP (Depository Participant). There is a condition about three year lock-in period for the eligible investment to get the tax benefit. One year fixed period & Two years flexible period; permitted to trade the eligible securities after keeping minimum 270 days in each year. After 3 years, it becomes general Demat A/c in which investor may keep other securities. Early exit will result in reversal of tax benefit.

When foreign investors are taking benefit of Indian capital market, why our Indian counterpart is afraid or shy of it. Indian investor has to change its attitude towards Indian capital market and take some calculated risk. Greater participation by the people would bring down volatility in the Indian capital market as also cost of investment. Increase in higher demand form Indian investor will bring better service at the reasonable rate.

Hope to see you in the Indian capital market soon.

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“The lofty by reading, hearing and seeing great work at some moment every day” - Thornton Wilder
The provision of Companies Act, 1956, specifically section 391-394, contain an elaborate framework that enables the company to give effect to arrangement and compromise with share holders and creditors, etc. The expression “arrangement” has been interpreted include a wide range of transaction, such as mergers, demergers and other forms of corporate restructuring.

The Companies Bill 2012 seeks to make a number of changes to this framework that are likely to have an impact on mergers and acquisitions (M&A) transactions involving Indian Companies. While some of the proposals are intended to make it easier for companies to implement schemes of arrangement, others impose the much required checks and balances to prevent possible abuse of these enabling provisions of the companies. Chapter XV in the companies bill, 2012 proposes to regulate mergers and acquisitions.

**Cross border Mergers**

- A path has been cleared for Indian companies to merge with foreign companies. Currently, a foreign company can merge with an Indian company, but the reverse is not permitted.
- However, cross border mergers with companies incorporated in countries specified by the Government will be permitted. This reduces the flexibility that is currently available, at least for inbound mergers.
- Furthermore, a requirement to obtain prior Reserve Bank of India approval for these mergers has been introduced.
- The restriction on structuring of capital through issuance of shares with differential voting and dividend rights under the 2009 Bill have been done away with, which have been well appreciated.
- A Foreign Company subject to the approval of Reserve Bank Of India, may merge or amalgamate into a company registered under Indian Companies Act or vice versa.
- As on date Companies Act, 1956 does not permit merger of Indian Company into Foreign Company.

**Prohibition of Issue of Shares to Trust**

- No specific provisions governing or regulating the issue of shares to a trust on merger is provided under the Companies Act, 1956. However, this practice is currently prevalent in corporate Mergers & Amalgamations.
- The Bill prohibits a company from the creation of treasury stock in the name of a trust, either on its behalf or on behalf of its subsidiary.
- Treasury stock effectively means a company holding shares of itself through a trust or subsidiary. Using treasury stock to shore-up net worth, consolidate promoter control, and raise funds by selling such shares will no longer be permitted.
- Treatment of existing treasury stock of companies is not dealt with.
- Further the shares of the transferee company should not be held in the name of the transferee company or under a trust for the benefit of the transferee company or its subsidiary or associate company and shall be cancelled or extinguished.
- Further the Bill stipulates that any intercompany investments would have to be cancelled in a scheme and holding shares in the name of the transferee or under a trust would not be allowed.

“The only way of finding the limits of the possible is by going beyond them into the impossible” - Arthur C. Clarke
The treasury shares arising on account of Merger of cross holding company will be invalid.

Fast track mergers

- In case of small companies various relaxations in terms of reporting requirement, board meeting and procedure of mergers and amalgamations have been introduced.
- A fast track approach for mergers between two or more small companies (as defined in the Bill), or between a parent and its wholly-owned subsidiary has been provided. Companies are required to file a declaration of solvency and the scheme must be approved by at least 90 per cent of the creditors or their classes.
- The Bill has made a welcome move aimed at simplifying the merger process for these classes of companies. Merger and Amalgamation between two small Companies or between holding company and its wholly owned subsidiary or prescribed class of companies have now been simplified without the requirement of a court process.
- Notice has to be issued to Registrar of Companies and Official Liquidator first and objections/ suggestions have to be placed before the members in general meeting. Once the scheme is approved by members and creditors notice would have been given to Central Government, Registrar of Companies and Official Liquidator.
- If Central Government has any objections, it may file an application with the Tribunal and seek its approval.

Merger of a listed entity with an unlisted entity

- The merger of a listed company with an unlisted company would not automatically result in a listed entity. This seems to provide for an indirect delisting of listed companies that merge into an unlisted company.
- An exit offer needs to be provided by the unlisted company to the shareholders of the listed transferor company.
- What remains to be seen is whether SEBI will allow companies to delist under this mechanism, bypassing the delisting regulations.
- There does not appear to be a relaxation where the unlisted transferee company intends to list but is obligated to make an offer to shareholders of the listed transferor company.
- The Bill gives an option to the transferee company to continue as an unlisted company with payment of cash to the shareholders of the listed transferor company who decide to opt out of the unlisted transferee company, which is not provided in the existing Act.

Mandatory compliance with accounting standards

- The Bill mandates that the accounting treatment in the scheme must comply with accounting standards. Certificate from statutory auditors has to be submitted along with the scheme.

Hitherto, this requirement was applicable only to listed companies. Accounting treatment specified in the Scheme Amalgamation/ Arrangement has to be compliant with prescribed accounting standard and auditor’s certificate to that effect needs to be filed with tribunal.

- Currently in the Companies Act, 1956 there is no requirement for an auditor to certify that the requirements of accounting standards have been complied to in the scheme. However, the courts in few precedents have insisted on such expert opinions.
- Further, listed company needs to submit an auditor’s certificate as per the provisions of clause 24 of listing agreement.
- The Bill requires Statutory Auditor’s certificate (both for listed and unlisted) stating that the accounting treatment mentioned in the scheme is compliant with the accounting standards.
- The concern of the regulators has already been addressed in the listing agreement, but now inserted in the Bill so as to apply even to the unlisted company.
- Further Indian Accounting Standard AS 33- Earning per share requires companies to recalculate EPS in case the court prescribed accounting treatment is not in sync with the requirements of accounting standards.
- The Bill also provides in certain instances for a report from an expert registered value to be disclosed to the shareholder along with the valuation report.

“Without inspiration the best powers of the mind remain dormant. There is a fuel in us which needs to be ignited with sparks” - Johann Gottfried Von Herder
MERGERS & AMALGAMATIONS

Corporate Restructuring Mergers and Amalgamations with reference to Companies Bill 2012

Buy Back through the Scheme of Arrangement

- Since section 391 to 394 comprise in a code in itself, buyback through the scheme of arrangement has been allowed.
- The same is allowed in the Bill, however the same has to be comply with the provisions of comply with the buyback provisions mentioned under the bill.

Raising Objection to the proposed scheme of Amalgamation

- As per the Companies Bill an objection as to the scheme can be raised only by person holding not less than 10% of the shareholding or having outstanding debt amounting not less than 5% of the total outstanding debt as per latest audited financial statement.
- These provisions are intended to ensure that insignificant minority interest do not hold the minority at ransom.

Dispensation from calling of Meeting by the Tribunal

- The Companies Act, 1956 does not provide any threshold limits mentioned for tribunal to approve the dispensation of the meeting.
- It is an arbitrary power of the courts.
- The New Bill gives the power to the Tribunal to dispense with calling of meeting if the concerned parties (i.e. shareholders or creditors, as the case may be) representing at least 90% in value agree and confirm, by the way of an Affidavit, to the scheme of compromise and arrangement.

Corporate Debt Restructuring

- The Bill permits an application to be made to the tribunal for making compromise or arrangement which involves corporate debt restructuring. The modalities of such an exercise are still to be clarified.
- No specific provisions governing or regulating corporate debt restructuring.

RBI and other regulators have set up cells to deal with corporate debt restructuring debts.

National Company Law Tribunal

- The Formation of NCLT has been sub-judice since a long time. In absence of NCLT the respective high courts were enable to matters pertaining to NCLT.
- As per the Companies Bill, no civil court shall have jurisdiction over any suit and proceeding in respect of any matter that the NCLT is empowered to determine under the Bill.
- The bill proposes the establishment of NCLT and the National Company Law Appellate Tribunal replacing several existing forums, including the CLB, BIFR and the appellate authority for the Industrial and Financial Reconstruction.
- The Bill provides for appeals from NCLT going to NCLAT, and thereafter directly to the Supreme Court ensuring uniform decisions on a particular subject by the NCLAT instead of different decisions on similar matters by different High Courts.

Authorized Capital available to the Transferee Company

- No specific provisions governing or regulating clubbing of Authorized capital under the Companies Act, 1956.
- However in practice the courts in India have allowed credit of Authorized capital to the transferee company.
- Specifically permits the clubbing of authorized capital of merged companies.
- The fees payable in this regard will be saved.

Note: The Bill has been passed by Loksabha and introduced in Rajyasabha. However Rajyasabha has not yet passed the Bill. Also post passing by Rajyasabha, assent of President of India will be necessary before the bill becomes an Act. Once the Bill becomes an Act, the central government will notify a date for coming into force of the Act, and only from such date/ dates the provisions of the Act will come into force.

Our SPECIAL Thanks to

CS Pramod Shah for providing support to arrange for the Ground at Hindu Gymkhana, Marine Lines for WIRC & MCA cricket match
CS Sanjay Rathi for arranging sponsorship of Kits for players from Future group

“Hope is like the sun, which, as we journey toward it, casts the shadow of our burden behind us” - Samuel Smiles
An article in the articles of association of a company states, among other things, that the company “may make payment out of its free reserves or securities premium account...” for the shares bought back. This phraseology indicates that the company will source the money required for payment to the shareholders, whose shares are bought by the company under the buyback scheme, from the money lying in free reserves or securities premium account. This phraseology, which is the modified version of the provision in section 77A(1) of the Companies Act, 1956 (the Act), purports to indicate that a reserve or securities premium is represented by an equivalent amount of money. The said provision reads as follows:

“Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as “buy-back”) out of—

(i) its free reserves; or
(ii) the securities premium account; or
(iii) the proceeds of any shares or other specified securities.

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.”

Incidentally, the proviso below clause (iii) qualifies only clause (iii) and not the preceding two clauses. According to the proviso, a company cannot, for the purpose of buyback of shares, make use of, the proceeds of an earlier issue of the same kind of shares. Similarly, a company cannot, for the purpose of buyback of other (specified) securities, make use of, the same kind of other (specified) securities. This means, for example, that if a company is buying back equity shares, it can make use of proceeds of the issue of equity shares made earlier by the company; but it can make use of the proceeds of the issue of preference shares made earlier by the company and vice versa. The words “an earlier issue” are ambiguous and confusing; whether they refer to the issue immediately preceding the buyback or any issue made at point of time preceding the buyback.

Analogous provision : Power to issue redeemable preference shares

Now, as regards the phrase “out of”, section 80(1) of the Act contains an analogous provision. It provides that a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed; provided that no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

The only difference between the two provisions is that while section 77A allows a buyback out of free reserves and securities premium, section 80 allows redemption of preference shares out of profits of the company which would otherwise be available for dividend. In both, the provision regarding the proceeds of a fresh issue of shares is common.

Meaning of “out of”

Now, in section 77A(1), quoted above, while the items mentioned in clauses (i) and (ii) are not in the nature of money held aside and lying in a bank account, or invested in assets convertible into money (such as investment in fixed deposit or securities), the item mentioned in clause (iii) is in the nature of money raised and lying in a bank account of the company. Therefore, clubbing them together in one provision, indicating they are all of the same character, is a drafting error (maybe unintentional or unmindful).

In the phraseology “a company may purchase its own shares …. out of ….” the phrase "out of" is misleading; if you take something out of the container or place where it has been, you remove it so that it is no longer there; it is used to show that something comes from or obtained from something. Used as a function word to indicate direction or movement from within to the outside of; used as a function word to indicate a change in quality, state, or form.

2 Oxford Advanced Learner’s Dictionary, 6th edn.
3 Merriam-Websters 11th Colligate Dictionary.
In any case, the company which goes in for buy-back of shares has to have money with it to pay the shareholders whose shares are bought; the company cannot say that it will pay the shareholders in free reserves or securities premium account. It has to pay money; not in reserve or premium, which appear on the liabilities side of the balance sheet and there is no corresponding money on the assets side. So, reserve or premium is not represented by cash (money); it is only a book entry.

Clause (iii) is not the same as clauses (i) and (ii) in character. It refers to money. But even in relation to the third clause, the proceeds of the issue of shares are not kept in a separate bank account; they just get mixed with other money of the company and the equivalent amount is credited to share capital account (and also to securities premium account if the issue was made at a premium).

Therefore, so far as the items mentioned in clauses (i) and (ii) are concerned, what the words "a company may purchase its own shares ..... out of ....." really seek to convey is that a company intending to buy its shares/other securities must have, at the time of the buyback, balance in any one or more of these accounts sufficient to accommodate the total value of the buyback; they don’t have to be backed or represented by equivalent amount of money or investments (and indeed that never is the situation in reality).

Thus, buyback of shares out of free reserves/securities premium account does not mean that the amount in the reserve or premium account is represented by equivalent cash in hand or invested so that the company draws requisite amount of cash from it for the purpose of payment to the shareholders whose shares are bought back.

So far as securities premium is concerned, even though at the time of issue of shares it is received in cash, it does not remain in that form forever or invested in securities, since it is used by the company for its business and thus used up.

Therefore, a company which buys its securities by debiting to free reserve or premium account must have liquid cash sufficient to meet its obligation of payment to the shareholders whose securities are bought.

Application of share premium account and use of money received as premium

According to section 78(2) of the Act, the securities premium account may be applied by the company—

(a) in paying up unissued securities of the company to be issued to members of the company as fully paid bonus securities;
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of securities or debentures of the company; or
(d) in providing for the premium payable on the redemption of any redeemable preference securities or of any debentures of the company.

An amount of premium received in cash or kind, when shares are allotted at a premium, must be transferred to a separate account in the books of account titled “Securities Premium Account”. The Securities Premium Account must be shown in the Balance Sheet in accordance with requirements in Schedule VI, till it is applied for any of the specified purposes.

As noted above, the amount of Securities Premium received is credited to securities premium account and debited to cash or bank account. Section 78 permits ‘application’ of securities premium account only for the purposes specified in the subsection (2). It also requires that a company desirous of applying the securities premium for a purpose other than those specified in the section to comply with the requirements of the Act regarding the reduction of capital.

If a company proposes/desires to apply securities premium for any purpose other than those mentioned above, it must comply with the requirements of the Act with respect to reduction of share capital.

In the year of application of the Securities Premium Account in any financial year, fully or partly, details of the application for any of the purposes laid down in section 78 must also be disclosed in the balance sheet of that year.

The amount credited to the securities premium account, however, does not represent equivalent amount of cash or investment. Section 78 does not forbid ‘use’ of money received as a premium; the company can use the amount of premium received for its business purposes. There is difference between ‘application of securities premium account and use of money received against premium.

When a company proposes to apply the securities premium account for any of the specified purposes, it debits the securities premium account by a requisite amount and
credits an account that is relevant. For example, if a company applies the securities premium account for issuing bonus shares, the securities premium account will be debited and the share capital account will be credited. There is, thus, no outflow of money.

It is not uncommon to state in the resolution (or its accompanying explanatory statement) or in the offer document concerning issue of shares, meeting expenditure (capital or revenue) in connection with existing or new business of the company as one of the objects of the issue and similarly in the statement of utilization of funds being raised through the issue. This applies to both money raised by share capital (face value of the shares issued) and premium. Accordingly, money raised by premium is used for business purposes.

In *Hill Crest Realty SND.BHD v Ram Purshottam Mittal*, a company wanted to use the money raised by premium for upgrading its business (purchase of equipments, renovation, etc). A single judge of the Delhi High Court held that the provisions of, and procedure prescribed for under sections 100-102 of the Act, for reduction of share capital would apply, wherever a company proposes to utilise amounts from the securities premium account, for any purpose, other than what is provided for under section 78, and the learned Judge said: “…in view of section 78, the plaintiff is directed to seek approval, in accordance with law, in respect of the expenditure proposed by it, for the purposes which do not fall within section 78(2).”

As noted above, when a company received premium on issue of shares, the amount of securities premium received is credited to securities premium account and debited to cash or bank account. The credit entry, however, does not mean that the amount is represented by equivalent cash or investments. The company can use the amount of premium received (like money received by it from any other source) for its business purposes. The money raised through premium goes into the common kitty and is used by the company for the objects of the issue as specified in the offer document and if no such object is stated in the offer document (for example, in the case of an unlisted company) the company can use it for any purpose relating to its business; even to meet working capital requirement or to meet capital expenditure. Therefore, the proposition that to use money received as securities premium for business purposes the provisions regarding reduction of capital will apply, does not seem to be in accord with section 78.

What section 78 really prevents is debiting securities premium account by anything other than the four things specified in section 78(2). The section contains provisions regarding “application of securities premium account” and not use of money raised by premium. Application of securities premium account should not be confused with application (use) of money raised by share premium; application of the account is not the application of money since the securities premium account does not show money kept in a locker or in a bank or invested in securities. Like share capital (which remains credited to share capital account), the company can make use of the money raised by securities premium. The amount securities premium remains credited to the share premium account and the company can make use of the money so raised (which is debited to bank account) for its business purposes. Section 78 doesn’t prohibit that; what it prohibits is debiting the securities premium account with anything other than the four things specified in sub-section (2). When a company proposes to apply (i.e. use) the securities premium account for any of the specified purposes, it debits the share premium account by a requisite amount and credits an account that is relevant. For example, if the company wants to ‘apply’ the securities premium account for writing off accumulated losses, it will debit the share premium account and credit the loss account so that it will be the case of ‘application’ of securities premium account for a purpose other than the four purposes specified in section 78(2) and it will require compliance with section 100 as if it was a case of reduction of capital. But the money raised by securities premium has already been used by the company (maybe long ago) as the money had gone into the common pool of the company’s funds and the company can use it for any purpose (including payment of dividend).

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In the past, the legislation in its wisdom has protected the rights of women by passing various laws, which was the need of the hour. The following are the primary laws which deal with the protection of modesty/dignity of women in India to save them from the clutches of ill-treatment by their husbands and in-laws, to equate them in par with their men counterparts, to protect them without any discriminations in job and also to save them from sexual harassments, etc:-

A Constitution :-
1. Article 15 A woman cannot be discriminated on the ground of sex (gender)
2. Article 16 Equality in matters relating to employment or appointment.

B The Indian Penal Code :-
1. Chapter XVI :-
   Sec 304-B : Dowry Deaths
   Sec 312/313/314/315 : relating to Causing Miscarriage
   Sec 354: Assault or criminal force to a woman with intent to outrage woman’s modesty
2. Sec 366: Kidnapping, abducting or inducing woman to compel her marriage, etc.
   Sec 366-A : Procreation of Minor Girl
   Sec 366-B : Importation of girl from foreign country
3. Sec 375 : Rape
   Sec 376 : Punishment for rape
   Sec 376-A : Intercourse by a man with his wife during separation
   Sec 376-B : Intercourse by public servant with woman in his custody
   Sec 376-C : Intercourse by Superintendent of Jail, Remand Home, etc.
   Sec 376-D : Intercourse by any member of the management or staff of a hospital with any woman in that hospital.

4. Chapter XX :-
   Sec 493 : Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.
   Sec 494 : Marrying again during lifetime of husband or wife.
   Sec 495: Some offence with concealment of former marriage from person with whom subsequent marriage is contracted.
   Sec 496 : Marriage ceremony fraudulently gone through without lawful marriage.
   (495, 496: applicable to both man and woman)
   Sec 497 : Adultery
   (Primafacie it is applicable to man, but it should be applicable to man and woman both),

5. Chapter XX-A :-
   Sec 498-A : Husband or relative of husband of a woman subjecting her to cruelty.

C The Domestic Violence Act, 2005

D Other Imp Acts :-
• Equal Remuneration Act, 1976
• Maternity Benefit Act, 1971

Though the law was enacted to safeguard the interest of the women, but as far as its application in its true spirit is concerned it suffers from infirmities which can be seen at the stage of recording of the evidence. Though the Judiciary, being the guardian of the constitution and interpretation of law, is always conscious to see that the spirit of law is not carried away but properly delivered. However, while meeting with the wild allegations by the complainant against the accused in cross examination, the defense lawyer sometimes and in many of the cases find it difficult to impeach the witness for the want of documentary evidence and Court has to rely upon the oral /circumstantial evidence. In order to overcome these difficulties, it is utmost important to invite the suggestions of the legal luminary to overcome this lacuna.

“Reflect a long time, then decide promptly” - Mayer Anselm Bauer von Rothschild
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For instance, in cases registered under Sec 498 A of IPC and other cases registered in family courts, there is always an accusation against the husband in respect of STREEDHAN (Dowry)/Gifts without any documentary proof. It is seen that in many of the cases the averment is made in the petition/complaint by the wife that at the time of her marriage. For example: 100 tolas of gold were given by her father along with other precious gifts without any documentary evidence apart from other allegations of cruelty etc. To overcome this,

1. Firstly, before marriage, the parties should settle the exchange of articles unanimously decided by them to be given by way of gifts such as gold ornaments and precious gifts (including cash) and then they should prepare a proper list of the same duly signed by both the spouses and their parents in the presence of witnesses.

2. It should be notarized and registered with the registrar of marriage within stipulated time to avoid any future counter allegations in the cross examination or to otherwise and to make the entire transaction foolproof.

In India, a marriage is considered as sacrament. It has its own social value and if some differences arose between the parties, the same should be resolved in a very cordial and healthy atmosphere and to see that the spouses do not throw dirty linen with each other. It is generally seen that their focus remain on the gift articles, streedhans etc and on this issue they become poles apart. Therefore if this suggestion, if implemented by way of amendment, then it will save a lot of time of the court as the same list will be construed as a conclusive proof.

Further in cases of outraging the modesty (Sec 354 of IPC) of woman, the accusation is to be looked into with utmost care to prevent the misuse of the said Section to discourage a segment of society and to misuse the said law in order to achieve their malafied intentions.

It is also necessary that the Police machinery should also restrain from recording the FIR, though the offence is cognizable, unless the credentials of the complainant prima facie is properly scrutinized.

As far as, Domestic Violence is concerned, primarily it was enacted to safeguard the women from domestic violence as described under the act and for other reliefs. But it is seen that the basic problem with the present law dealing with domestic discord and marital abuse is that instead of providing effective remedies through civil Laws, the whole matter has been put under the jurisdiction of criminal laws, with very draconian provision to make their implementation stringent.

Conclusion:

Though the other sections enacted for the protection of the women, undoubtedly to safeguards their interest, but an utmost care and caution should be taken while dealing with the same. There is a probability of the rampant misuse of the same to settle their personal vendetta with the complainant, to see that the accused is convicted though he may be innocent.

India, being an ancient country known for its cultural heritage, family values, patriotism and respecting the women by protecting their dignity and self esteem. But needless to say that every citizen of India enjoys freedom as enshrined in the constitution of India, but one should not forget that such freedom should be exercised by everyone with self-restraint to keep a harmonious atmosphere in the society.

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**OBITUARY**

“FOCUS” deeply regrets to record the sad demise of Shri A K Modi, Fellow Member of the Institute from Vadodara.

He was Central Council Member of the ICSI.
He was Chairman of ICSI-WIRC in the year 1990.
May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed soul rest in peace.

“Do not wait to strike till the iron is hot; but make it hot by striking” - William B. Sprague
The thrust for Contributions to the Society is rampant amongst people, as it affords a leverage to them to either have profound satisfaction of DOING GOOD or gives Public Projection. The evolution of Corporate Social Responsibility (CSR) in India corresponds to Changes overtime in India of the cultural norms and ethos of Corporations engaged in CSR activities. In common parlance CSR reforms are transformation of business to bring about an overall positive impact on the communities, culture and the environment in which they operate. To put it differently, corporate are accountable to address social issues. India as one of the growing economies on the world map has been confronted with host of social issues associated with the quality of life of the people of this country. May that be in the field of Education, vocational skills, social business projects, healthcare, environment or for promoting gender equality etc. A number of individuals, NGO’s, Trusts, Foundations and Associations have all along been engaged in rendering social services in different fields aimed at offering better quality of life to the society. Many have been noticing social, spiritual and cultural objectives within their endeavors and deeds. Conglomerates like Tata Group, Aditya Birla Group, Indian Oil Corporation have been evolved since inception in serving the community at large.

Corporate Social Responsibility initiatives are now getting integrated with strategic management and Corporate Governance. Companies moreover are developing management of organizational mechanisms for its society conscious policies and practices. The companies are also addressing a much larger number of stakeholders than in the past. Social Responsibility may be no panacea for all social problems, but it is something that should guide business in the future. Philanthropy as manifestation of CSR has been ad-hoc, subject to Boards whims and significantly in response to a demand from beneficiary organizations.

CSR is now legalized. India is the first country in the world top mandate CSR through a statutory provision. CSR has now emerged as a new spin aiming at DOING GOOD. Companies Bill, 2012 passed by LOK SABHA on 18th December, 2012 and in the waiting at RAJYA SABHA during the BUDGET SESSION of the PARLIAMENT has carved a niche for the Central Govt. to incorporate a CSR Clause 135 in the Companies Bill, 2012.

SALIANT FEATURES OF CSR are: Every Company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

The concerned companies should spend in every financial year a minimum of 2% of the Average Net Profits of the Company (as computed cl. 349 of this Bill) made during the preceding three financial years on Corporate Social Responsibility Policy. There is a general consensus among Corporate that CSR is not merely a form of indirect expense but is significant for harnessing Goodwill and reputation of the Company but also increasing business competitiveness. Companies often design policies and strategies to sub serve the interest of stakeholders and pursue the same as a step towards main streaming the concept of business responsibilities. Companies like HUL, BPCL, Maruti Suzuki have been following comprehensive methods of welfare measures like medical and sanitation factors, building Schools and houses, providing vocational training and imparting knowledge of business operations. Some other companies have been laying focus on Health Camps in tribal villages conducting medical checkup and carrying out health awareness programme. This is essentially done through Charity or Donations.

The CSR policy formulated by the Company and by the Board must articulate co’s projects and plans and the same shall be displayed in the ANNUAL REPORTS of the Company as well on its website. The amount has to be necessarily spent by co’s within the broad parameters prescribed in SCH VII of the Co’s Bill, 2012. The Company should oversee from time to time the progress in the regard.

“Nothing will ever be attempted if all possible objections must first be overcome” - Samuel Johnson
In case if the co’s do not spend the amount, the Board of Directors Report published in the ANNUAL REPORT should specify the reasons for not spending these amounts. Though unwritten, the Bill puts an obligation upon the Board members. If one is not able to give satisfactory explanation for not spending on CSR activities, then the regulator will certainly have the power to question their roles and responsibility.

It is imperative for the Govt. to formulate standards of evolving the CSR Policy in the company. Ministry of Corporate Affairs- the regulator is likely to incorporate the measures through Guidelines and Rules to make the scenario steer clear. While formulating these guidelines the regulators will have to bear in mind that the co’s frame their respective CSR deeply integrated with the business aimed at social causes.

CSR according to the Company Law experts postulate formation of larger CSR Teams in companies, where employees from different departments including the ones from the lowest cadre would interact. This being a new concept, strategies and Modus Operandi would have to be drawn very carefully so that CSR is not spoilt. The spending will be on structured manner through indulgence regularly from NGO’S, Trusts and Associations.

The Govt. as a policy measure has to monitor the spending by Co’s on a continuous basis and inquire as to whether there is any lacunae in the system. For instance, it should be enquired whether the Company indirectly benefits through such spending in other words, CSR should primarily and significantly aimed at social upbringing of the poor and downtrodden coupled with Social Welfare Schemes aimed at betterment of their living standards.

It is quintessential to set up a driving force or mechanism to monitor CSR spending by co’s through Special Audit by professionals who should ensure and report that the money is spent by the corporate in the manner prescribed by the regulators necessarily not bypassing the objectives enshrined in the statute. The Govt in consonance with ICSI/ICAI and other professional bodies should be held responsible to formulate CSR Audit Policy also incorporating therein the necessary ingredients to be looked into by co’s in their Agreements, Memorandum understanding, and communication with body corporate, private enterprises, NGO’S AND Trusts.

A feature of the CSR (Cl 135) in the Co’s Bill 2012 which is distinct from the Co’s Bill 2011 is perhaps the fact that the co’s will have to more focus on spending in local areas where it operates. Several Companies have already collaborated with NGOs to tackle large size social problems. SAP India, Hope foundation, Cry organization have set exemplary standards to help the poor and needy sections of the society, with an objective to make values and ethical standards a part of the social fabric of our society and to take agenda of CSR further, the government has incorporated certain legal provisions in the Companies Bill 2012. The step initiated will not only encourage the existing companies evolved in the process to continue their endeavor but also enthuse other corporate to improve the quality of life of the people of our country and to bring about social changes rapidly to finally put the socio-economic development of India on a fast track.

Institutions like ICSI/ICAI/IIM and other Accounting and Management bodies would be required to gather momentum to impart special intensive education and training to the young aspirants duly making them aware of the nuances and merits of the CSR initiatives of the Central Govt. These aspirants should be able to diagnose various ethics and principles associated with social and business issues. Those entangled in Social work may find solace to their competence and contribute their best to the betterment of society. A lot of employment potentiality could therefore, be envisaged in the process. Corporate Social Responsibility will emerge as an independent stream, attracting talent that understands business as well as social issues.

Activities broadly relates to: eradicating extreme hunger and poverty; promotion of education; promoting gender equality and empowering women; reducing child mortality and improving maternal health; combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; ensuring environmental sustainability; employment enhancing vocational skills; social business projects; contribution to Prime Minister’s National Relief Fund or any other fund set up by the Central Government or the State Government for socio-economic development and relief and funds for welfare of the Scheduled Tribes, other backward classes, minorities and women and such other matters as may be prescribed.

The Ministry of Corporate Affairs would do well in elucidating corporate on all these activities and with the passage of time social responsibility would also become sine-qua-non of doing business in the country.

“When the best things are not possible, the best may be made of those that are” - Richard Hooker
In Excise & Service Tax matters, Cenvat Credit is an important facility. Under this mechanism, credit is available in respect of the following:
1. Excise duty suffered on purchase of inputs
2. Service tax suffered on input services
3. Excise duty suffered on purchase of capital goods

Different conditions are prescribed for availment of credit in respect of inputs, input services & capital goods. In respect of input services, Cenvat credit is available in relation to Sales Promotions, by definition. Does Sale Promotion include Sales Commission Agency Services?

In industry, the value chain involves progress of the input from the vendor’s hands through the factory up to the customer’s door. Sales agents appear towards the end of the value chain. Their role is essentially to place the Principal’s product into the hands of the customer. Their remuneration is often fixed as a percentage of the value of the products passing through their hands, to the customer and is known as Sales Commission. They are therefore termed as Sales Commission Agents.

At the end of every month, the Sales Commission Agent raises a bill on the Principal as a percentage of the value of goods passing through his hands, towards remuneration by way of Commission. He also adds service tax on the value of his commission. After paying the bills, the Principal claims Cenvat Credit of service tax suffered on Sales Commission Agency Services. The Honourable Tribunal has consistently held that such credit is admissible. Recently however, the department’s thinking seems to have undergone a shift. It is now argued as follows:

Sales Promotion is a larger phenomenon involving products of the assessee, generally. Under this phenomenon would fall activities such as advertising, conferences, campaigns, contests, brand building etc. These activities are carried out generally in respect of the company & its products. These activities are continually performed & they transcend time boundaries i.e. may be performed before removal or after removal. The activities of a Sales Commission Agent are very narrow & much different from Sales Promotion. The Sales Commission Agent is concerned ONLY with the transaction handled by him e.g. Commission Agent at Mumbai for Product X (determined by agreement) would be interested in promoting the Sales of Product X in Mumbai & he would be immune to sales of Product X in Goa & Sales of Product Z in Mumbai. Sales Commission Agent’s activity is linked to post removal phase, in the value chain. This activity is essentially “furthering” or “completion” service. He is thus not “Promoting Sales” of Products, generally.

If this rationale finds place in a judgment, then past cases would be opened & re-assessed/re-adjudicated up to the normal period of limitation, i.e. 1 year. Can this happen? Despite the fact that in April 2011, the CBEC had clarified as follows:

The definition of input services allows all credit on services used for clearance of final products up to the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.

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A man is flying in a hot air balloon and realizes he is lost. He reduces height and spots a man on the ground.

He lowers the balloon further and shouts: “Excuse me, can you tell me where I am?”

The man below says, “Yes, you’re in a hot air balloon, hovering 30 feet above this field. You are between 40 & 42 degrees North latitude and between 58 & 60 degrees West longitude.”

“You must work in information technology,” says the balloonist.

“I do,” replies the man, “but how did you know?”

“Well,” says the balloonist, “everything you have told me is technically correct, but it’s of no use to me.”

The man below says, “You must be a corporate manager.”

“I am,” replies the balloonist, “but how did you know?”

“Well,” says the man, “You don’t know where you are, or where you’re going, but you expect me to be able to help. You’re in the same position you were before we met, but now it’s my fault.”

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“Great spirits have always encountered violent opposition from mediocre minds” - Albert Einstein

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CS Prafulla Deullkar, Company Secretary, Pune

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CS Smitesh Desai, Valsad, Gujarat

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29
FORGET FEAR FROM FAILURE: START STEPS TO SUCCESS

CS Pawan Kumar Baid, Practicing Company Secretary, Surat

In our daily life, everyone is action-packed in some or other work, from student to professional, from a layman to anthropologist and from MNC employees to Government employees. But every chore initiated, need not result in successful completion. Failure, however minute, may create fear, lead to inaction, de-motivates and demoralize, creates stress and fatigue.

What Does Failure Means

Failure means deviation between expected and actual results. If expectation is more than actual result it may be called failure, but not in all cases. Sometimes people are not able to absorb positive results too, which also lead to failure. Daewoo Group, which was largest conglomerate of Korea after Hyundai group, which had its exposure in around 100 countries, collapsed in 1999 with a debt of around US $ 84 billion. Same result happened to many other renowned companies like Nissan Life, Kodak, WorldCom, Lehman Brother and so on. For all these companies, the over success became the reason of failure.

Characteristics of Failure

Failure may result from action as well as inaction: On the one hand if you are working at our best, still desired results may not be attained. Say, a dexterous farmer devoting his entire time and efforts, but still he may not get expected harvest due to any reason like short-fall in rain or lack of knowledge of fertilizers etc. On the other hand if you are not able to work even, failure will definitely occur.

How a person takes failure, depends upon his motivation level: Some person takes it positively and tries to learn from mistakes, but others may loose hope. Thomas Alva Edison¹, holder of 1093 US patents, initially when he failed again and again, he said “I have not failed; I’ve just found 10,000 ways that won’t work”.

Nelson Mandela², former President of South Africa (1994 – 1999) and holder of Nobel Piece Prize, was arrested and convicted of sabotage in 1962. Can you imagine, a person is arrested at the age of 44 years, remain in Jail for 27 years, still psychologically so strong to fight election and win. He made failure ashamed.

Failure is natural phenomenon: There are always two sides of a coin-the head and the tail, two creations of nature-male and female, and two possible outcome of an action, i.e. failure or success. Sometimes you can’t predict all possible consequences of an action initiated. Mr. Thomas J Watson, former chairman of IBM, once said “I think there is a world market for about five computers”³. What is present scenario?

Even one professional have more than five computers in his office. It proves that the person on the top can also predict wrong, which mean, failure is seldom attached to personality.

Seeds of Failure are in our Childhood: Do you remember (hopefully not) at the age of 1 or 2, when you tried some adventure to run, to climb on a chair, to jump on a bed, you must have heard some instruction from your parents “don’t do this “else” you will fall and get hurt”. We use to hear consequences of failure, but we ignored because our “mother nature” has made us courageous, but when we hear same and same “don’ts” millions of time, it goes to our subconscious mind which reappears at appropriate time in adult age.

Advantages Derived From Failure

Do you think that failure can be advantageous for your career, vision or prophecy? Yes, it can be, provided you can learn a lesson from it. There is no great teacher than failure. You must remember one and only one thing, don’t loose hope.

“Believe with all of your heart that you will do what you were made to do” - Orison Swett Marden
Forget Fear from Failure: Start Steps to Success

**Improved Learning:** While experiencing failure, we actually go through the whole process of the work, which gives us practical experience about how work can (can’t) be accomplished. A medical student is not expert while operating first time on a patient, rather he is given an opportunity to make mistakes. With the same thought, requirement of Articleship in CA or Management Training in CS profession is in vogue. Man is a creation of desire, not creation of need. The quality of our being is and will be reflection of how well we develop, train and utilize our learning skill.

**Improved Decision Making:** If we have already experienced the failure, we will never repeat the same thing in the same manner; hence we will make our decision making more effective and fool-proof.

**Trying Something Else:** Unless you experience failure, you will not try new venture. If you wait more before buying a mobile, or if you wait before deciding for marriage, you can get a better piece. Jokes apart, but drawback of success is that you don’t try different things, or different way to do same thing.

**Cost of Failure**
If you fail in a task, it may cost you a lot, not always, but many times. There may be some circumstances, where you can’t afford to fail. A Doctor on an operation table, a lawyer at a pleading or even a housewife cooking food can’t afford failure.

**Loss of Earning:** If you fail, you are definitely going to loose money. This loss can be double, one which you were supposed to earn, had you been successful, and other, loss caused by failure itself.

**Loss of Goodwill:** If you fail, you loose faith and no one will believe you again for the same task, which can result in loss of future earnings too.

**Loss of Valuable Time:** Every task need time to complete it. If it is not completed, you loose money, reputation and time. Recovery of money is possible, recovery of goodwill is near impossible, but recovery of time is absolutely impossible. Time, which has gone, will never come back. I got few sms on 12-Dec-2012 saying that the date showing 12-12-12 will come back again after 100 year long period. But I say, neither it, nor any other time will come back.

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**Recovering from Failure**

**Learn from Children:** As we read that failure is a natural phenomenon, we can’t avoid it, but we can recover from it provided we can conserve our hope. Have you seen a child aged 6 months who fall from his foot and never rose? If you have experienced failure, and feeling nervous, just go and see some videos of mischievous children easily available at any website like youtube. Most interesting fact is that, when a child falls, he may cry once but definitely stands-up again and forgets his earlier failure. Why don’t we forget our failure so easily now.

**Read Biographies:** Next technique to recover from failure is, keep and read biographies of some great personalities to whom you admire. Take example of Abraham Lincoln. At the age of 9, his mother died, at the age of 22, he was defeated in legislative election, he failed in business at the age of 24, his love died at the age of 26, he lost election again at the age of 34 and 45, and he decided to leave politics. At the age of 47 he tried for vice-president but failed. He won only one election in his life, i.e. Presidential election at the age of 52, and we know he was one of the best US President.

Mohd. Gori, who caught Prithviraj Chauhan and blinded him, still Prithviraj didn’t lose hope and killed Gori with Shabdhihedi arrow. Founder of Godrej Group, Mr. Ardeshir Godrej failed twice, once as a lawyer and then manufacturer of surgical equipments, then became “lock master” of India. Don’t turn back half way from your destiny, because the destiny remains the same either way. Life of Dhirubhai Ambani, N Narainmurthy, Swami Vivekanand etc., all these inspires us for back to work.

**Other:** Listen motivating and energetic music. You can join such groups who are always engaged in some cause like helping poor, helping animals etc., and lastly if you are of religious nature, engage yourself in religious activities which can help you to get out of feelings of failure.

Sometime people fail due to inferiority complex. Remember, a little lamp can do which Sun can’t; needle can do what a sword can’t. At the same time, don’t be too honest, as Kautilya said that straight trees are chosen first for cutting. Conclusively, feel the failure, face the failure, but do not fear from it. Loosing a heart always means winning the person. Accept failure as a part of your life and let your life live in a more matured way.

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“Knowing is not enough; we must apply. Willing is not enough; we must do” - Johann Wolfgang von Goethe
MARKET PRICE, MARKET VALUE AND FAIR VALUE: IS GETTING FAIR VALUE ELUSIVE?

CS Anand Varma, Company Secretary

(Continued from previous issue)

Transfer value: Counterparty A (issuer) must construct a hypothetical transaction in which another party (counterparty B), with a similar credit profile, is seeking financing on terms that are substantially the same as the note. Counterparty B could choose to enter into a new note agreement with the bank or receive the existing note from counterparty A in a transfer transaction. Counterparty B should be indifferent to obtaining financing through a new bank note or assumption of the existing note in transfer for a payment of $95,000. The transfer value would therefore be $95,000; $5,000 less than the settlement value. This amount is the value ascribed by a market participant holding the identical liability as an asset, consistent with the guidance in IFRS 13.37.

Liability and equity instruments held by other parties as asset: In comparison to assets, observable active markets for liabilities and equities are much less likely to exist due to contractual and legal restrictions on liability and equity transfers. Even for quoted debt or equity securities, the market serves as an exit mechanism for the counterparty security holders rather than for the issuer.

As a result the quoted price reflects the exit price for the investor rather than the issuer. IFRS 13 distinguishes such situations from the situation in which an exit market exists directly for the liability or equity instrument. When a quoted transfer price is not available for the issuer but the instrument is held by another investor as an asset, management should measure fair value from the perspective of the investor. [IFRS 13.37].

Using quoted prices and observable inputs: A quoted asset price may have to be adjusted to derive the fair value of the corresponding liability or equity instrument if there are asset-specific factors that are not applicable to the liability or equity instrument. For example, a quoted debt security may be secured by a third-party guarantee. The quoted price of such a security would reflect the value of the guarantee. The issuer should exclude the effect of the guarantee from the quoted price if the issuer is measuring only the fair value of its own liability and the unit of account excludes the guarantee. [IFRS 13.39b].

If the management uses the quoted price for a similar (but not identical) debt or equity instrument to value its own debt, it would have to adjust for any differences between the debt or equity instruments. [IFRS 13.39a].

The price of the asset used to measure the fair value of the corresponding liability or equity instrument should not reflect the effect of a restriction preventing the sale of the asset. [IFRS 13.39].

Liabilities not held by other parties as assets: There are certain liabilities that are not held by another party as an asset. An example is a decommissioning liability. [IFRS 13.B31]. In such cases, the fair value of the liability would have to be measured from the perspective of the liability issuer. If a market is not available for the liability, a valuation technique is required to measure the fair value from the perspective of the liability issuer. [IFRS 13.40].

These valuation techniques can include a present value technique that considers either: (a) the future cash outflows that a market participant would expect to incur in fulfilling the obligation, including the compensation that a market participant would require for taking on the obligation; or (b) the amount that a market participant would receive to enter into or issue an identical liability instrument,

---

Value from perspective of market participant that holds the asset

Quoted price in active mkt. held by another entity as asset or quoted price of a similar liability or similar liability held as asset by 3rd party - using observable inputs. If such inputs aren’t available, then

Use a valuation technique

Quoted price in inactive mkt. held by another entity as asset or quoted price of a similar liability or similar liability held as asset by 3rd party - using observable inputs. If such inputs aren’t available, then

Use a valuation technique

I "We are still masters of our fate. We are still captains of our souls" - Winston Churchill
Market Price, Market Value and Fair Value: is Getting Fair Value Elusive?

using the assumptions that market participants would use when pricing the identical item (for example, having the same credit characteristics) in the principal (or most advantageous) market for issuing a liability with the same contractual terms.

13 Principles for selection of a valuation technique

A valuation technique should be:
• Appropriate based on the circumstances,
• A technique for which sufficient data is available,
• Maximise the use of relevant observable inputs and minimise the use of unobservable inputs,
• Market, income or cost approach, and
• Consistent with the objective of estimating the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions.

14 Investor and business perspective v. consumer perspective

Whilst fair value and market value are relevant for investors and businesses, market price is relevant for consumers in the marketplace.

15 Market price often diverges from fair value

Market price often diverges from fair value because of various, common cognitive biases among buyers or sellers, especially when accounting for transaction costs to be included in market price.

Transaction cost is a cost incurred in making an economic exchange (restated: the cost of participating in a market). For example, most people, when buying or selling a stock, must pay a commission to their broker; that commission is a transaction cost of doing the stock deal.

Likewise, transport cost is included in market price.

In contrast, whilst transport cost is deducted from estimating fair value, transaction cost remains excluded from fair value calculation. This principle holds good whilst calculating fair value in the principal market.

In computing net proceeds in the most advantageous market (when data on principal market isn’t available or entity doesn’t have access to principal market, both transaction cost and transport cost are considered but deducted.

16 Fair value revolution

Accounting has long operated under a “mixed attribute” model, which records many items at historical cost while requiring that entities mark to market certain asset classes (such as securities, derivatives, and intangible assets obtained in a merger).

• But a host of factors have suddenly propelled the calculation of fair value from a secondary concern to a dominant theme of corporate accounting, and many entities are just beginning to understand the ramifications.

• If fair value takes full hold, as some have suggested it should, company results may look far different than they do today.

17 Mark-to-market: profound effect on array of core business activities

Fair value’s tipping point lies in the innocuously titled IFRS 13 Fair Value Measurement, a standard issued by IASB.

• Better known as IFRS 13 and effective for annual periods beginning on or after 1 January 2013, the standard spells out how entities should determine the valuations of the assets and liabilities they mark to market.

• But it is far more than a how-to guide. Because it affects a broad array of core activities, including
  • Contingent liabilities,
  • Mergers and acquisitions,
  • Intangible assets, pensions, hedges,
  • Environmental-cleanup obligations, and loans,

F its effect will be profound.

18 Fair value critique

For those not as well acquainted with marking credit swaps and interest-rate derivatives to market, the demands of the new regime can represent radical change.

• Entities may not find it easy to estimate what was formerly thought inestimable.

• There’s a concern that fair value gives far too much latitude - You don’t have the objectivity of a historical cost figure to base your numbers on.

• It’s hard at this juncture for executives to tally up a net gain from fair-value accounting. The new standard, of course, is crafted to benefit shareholders, not corporate management.

• But if they help boost investor confidence, CFOs may decide that the march to fair value is worth it.

Concluding comment:

With the above, though complex and wide literature, it makes the job easier to estimate fair value of assets and liabilities. It is hoped that it isn’t elusive to estimate a fair value.

“Nothing great was ever achieved without enthusiasm” - Ralph Waldo Emerson
Western India Regional Council
ICSI-WIRC Programmes Membership Scheme

For Professional Development Programmes for Members of ICSI-WIRC

The Western India Regional Council (WIRC) of the Institute of Company Secretaries (ICSI) organizes number of high quality professional development programmes on contemporary issues and on topics of emerging importance. In order to facilitate the members to register for the programmes and pay fees and get benefits, ICSI- WIRC is pleased to announce continuation of its popular Programme Membership Scheme.

The details of the Scheme are as follows;

Credit Hours:
Credit Hours would be granted to member (s) attending programme as per guidelines of the ICSI.

Validity:
The Membership is valid for one year from the date of registration(subject of maximum of 8 full day/ half day Programmes).

Annual Fees:
1. Individual Members of ICSI: Rs.7500/- (Inclusive of Service Tax) (Individual Members will not be eligible to depute any other person.)
2. Corporate Members: Rs.12500/- (Inclusive of Service Tax) (Corporate Members may depute any one person from their organization/ Firm of PCS to attend the programme, who need not be a member.)
3. Self Sponsored Senior Citizen members (Age – above 60 years) : Rs. 6000/- (Inclusive of Service Tax). The fee may be paid by way of cheque / demand draft in favour of “WIRC of ICSI” payable at Mumbai and forward the same to ICSI-WIRC, 13 Jolly Maker Chambers No. 2, First Floor, Nariman Point, Mumbai – 400021.
Total number of members as on 31/08/2012 - 9533

... And it’s all so easy to become a member of the CSBF. 

- Make an application in Form-A (available on the Institute’s Web Portal: www.icai.org) 
- Form-A and remittance of one time subscription amount of ₹7,500 can be submitted ONLINE through Institute’s Web Portal: www.icai.in. No transaction charges for online payment will be charged from the Members.
- Alternatively, send / deposit Form - A alongwith Demand Draft payable at New Delhi or Cheque at par drawn in favour of ‘Company Secretaries Benevolent Fund’ at any of the Offices of the Institute / Regional Offices / Chapters.

For further clarification/information please contact Membership Section of the Institute at Telephone no. 45341049/45341047 Fax No. - 24636467
E-mail id: csbf@icai.edu, member@icai.edu

EASTERN INDIA REGIONAL COUNCIL
ICSI-ERIC Building, 3-A, Atibaulpur, 1st Lane, Kolkata 700 019
Phone: 22835073, 22815431, 22815422, 22810955, 2281775-79
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ICSI-NIRC Building, Plot No. 9, Pushp Nagri Institutional Area, New Delhi 110
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SOUTHERN INDIA REGIONAL COUNCIL
ICSI-SIRC House, No. 9 Wella Cross Roads, Nungambakkam, Chennai 600 034
Phone: 28279888, 28228212 Fax: 28298885 E-mail: sirc@icai.edu

WESTERN INDIA REGIONAL COUNCIL
13, Jody Maker Chambers, No.2, (First Floor), Nariman Point, Mumbai 400021
Phone: 22640731, 22647868, 22047598, 22047604 Fax: 22850109
E-mail: vido@icai.edu

An Appeal

The Company Secretaries Benevolent Fund (CSBF) was instituted with an objective of extending financial assistance to its members and their families in times of distress. In the recent past, in some of the tragic incidences, although the Institute was able to extend the financial help to the families of the members immediately, but the Institute would have been able to provide better financial assistance if the membership of CSBF had been larger. We, therefore, appeal to those Company Secretaries who have not yet become members of CSBF to apply for membership immediately. The members who are already members of CSBF are requested to donate generously for the noble cause. The donations to the fund are exempted under section 80G of the Income Tax Act, 1961. For details refer to the website: www.icai.edu

Benefits

Financial Assistance in the event of Death of a member of CSBF

- Upto ₹3.00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time and Group Life Insurance Policy for a sum of ₹2.00,000

Above the age of 60 years
- Upto ₹2.00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time

Reimbursement of Medical expenses
- Upto ₹60,000

Safeguarding and caring for your well being

COMPANY SECRETARIES BENEVOLENT FUND

Sathri Haarth Badhavana

Education Allowance
- Upto ₹20,000 per child subject to maximum of two children in case of the member leaving behind minor children (one time payment)

Benefits to Members admitted to the CSBF after attaining the age of 60 years

The members above the age of 60 years can be admitted to the Fund. However, in the event of death, financial assistance would be released ≥ ₹40,000 for every completed year of membership or part thereof in excess of six months subject to a minimum of ₹50,000 and maximum of ₹2,00,000

ICSI has established the Company Secretaries Benevolent Fund (CSBF) in the year 1976 which seeks to create security umbrella for dependent family members

OBJECTIVE

- Benevolence
- Financial assistance to the families
- Medical assistance
- Assistance for Children Education

Nature of Fund

- Fund is a society registered with the Registrar of Societies, New Delhi under the Societies Registration Act, XXI of 1860
- Fund is managed by the Committee consisting of 12 members.
- President, Vice President and Secretary of the ICSI are ex-officio members of the Managing Committee of the Fund.
- The Fund is recognized under Section 12A of the Income Tax Act.
- Contribution to the Fund qualify for the deduction under section 80G of the Income Tax Act, 1961

Financial position of the Fund (as on 31.03.2012)

- Corpus ₹6,31,24,964
- Investments ₹6,57,81,018
- Total assistance provided in the year 2011-12: ₹21,11,481

February, 2013
"A Ltd acquired 51% of the paid up share capital of B Ltd from 6 shareholders of B Ltd. the remaining 49% is held by one shareholder (C Ltd) which A Ltd proposes to acquire over next one year. Out of the 51% share capital acquired, A Ltd got transferred all but 50 shares in its own name and the 50 shares were transferred to 5 individuals as nominees of A Ltd, so that B Ltd will have the minimum number of members as required by the Act. Is this in accordance with the provisions of the Act? Will sections 153 and 187C apply in respect of the shares registered in the names of 5 individuals?"

**Conditions**

1. Answers should not exceed one typed page in double space.
2. Last date of receipt of answer is 9th of March, 2013.
3. The names of the best contributors will be published in the journal.
4. The envelope should be superscribed ‘Prize Query February 2013 Issue’ and addressed by name to:

   **Makarand Lele, Editor**
   ICSI-WIRC’s FOCUS
   Office No.13, 56 & 57, Jolly Maker Chambers No.2, First & Fifth Floor, Nariman Point, Mumbai - 400 021.

“For hope is but the dream of those that wake” - Matthew Prior
# DATES TO REMEMBER

## Compliance Calendar

**COMPLIANCES FOR THE MONTH OF MARCH**

*CS Hemant V. Pandya, Practicing Company Secretary, Mumbai*

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Thing you need to do</th>
<th>Sections / Rules / Clauses prescribing the activities to be done</th>
<th>Acts / Regulations / Circulars under which the Sections / Rules / Clauses is covered</th>
<th>Due Date before which you need to comply the activity</th>
<th>You need to submit this to</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pay excise duty on the goods removed from the factory or warehouse for the previous month</td>
<td>Rule 8(1) Central Excise Rules, 2002</td>
<td>Central Excise Rules, 2002</td>
<td>March 5</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>2</td>
<td>Pay excise duty on the goods removed from the factory or warehouse for the previous month (E-payment)</td>
<td>Rule 8(1) Central Excise Rules, 2002</td>
<td>Central Excise Rules, 2002</td>
<td>March 6</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>3</td>
<td>Submit monthly Central Excise E.R. 1 Return (E.R. 2 return for 100% EOU / units in FTZ / SEZ)</td>
<td>Rule 12 (1) / 17 (3) Central Excise Rules, 2002</td>
<td>Central Excise Rules, 2002</td>
<td>March 10</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>4</td>
<td>Submit monthly return by manufacturer of Final Product (N.A. for SSI)</td>
<td>Rule 9(7) CENVAT Credit Rules, 2004</td>
<td>CENVAT Credit Rules, 2004</td>
<td>March 10</td>
<td>Supritendent of Central Excise</td>
</tr>
<tr>
<td>5</td>
<td>Submit return containing information of principal input for the preceding month in Form No. E.R. 6</td>
<td>Rule 9A CENVAT Credit Rules, 2004</td>
<td>CENVAT Credit Rules, 2004</td>
<td>March 10</td>
<td>Supritendent of Central Excise</td>
</tr>
<tr>
<td>7</td>
<td>Submit monthly return for receipt of inputs &amp; capital goods for the preceding month in Form No. E.R. 2</td>
<td>Rule 9(7) &amp; Rule 12 CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>March 10</td>
<td>Supritendent of Central Excise</td>
</tr>
<tr>
<td>8</td>
<td>Deposit duty on goods cleared during a calendar month, where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a Financial Year for the previous month i.e. February</td>
<td>Second Proviso to Rule 8(1) Central Excise Rules, 2002</td>
<td>Central Excise Rules, 2002</td>
<td>March 15</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>9</td>
<td>where an assessee is availing of the exemption under a notification based on the value of clearances of goods from factory or warehouse, in a financial year</td>
<td>Second Proviso to Rule 8(1) Central Excise Rules, 2002</td>
<td>Central Excise Rules, 2002</td>
<td>March 15</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>10</td>
<td>Monthly payment of excise duty for the preceding month SSI Units</td>
<td>Rule 8 Central Excise Rules, 2002</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>March 15</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>11</td>
<td>Monthly payment of excise duty for the preceding month SSI Units in (E-payment)</td>
<td>Rule 8 Central Excise Rules, 2002</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>March 16</td>
<td>Excise Authorities</td>
</tr>
</tbody>
</table>

“Our daily thoughts should be elevated above the ceiling” - W. W. Loflin
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Rule/Reference</th>
<th>Date</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 16</td>
<td>Pay excise duty on the goods removed from the factory or warehouse during March</td>
<td>Rule 8(1)</td>
<td>March 31</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>March 31</td>
<td>Deposit duty on goods cleared during March, where an assessee is availing of the exemption</td>
<td>Second Proviso</td>
<td>March 31</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>15</td>
<td>Monthly payment of excise duty for the month of March SSI Units in Form GAR-7 (E-payment &amp; Manual Payment)</td>
<td>Rule 8</td>
<td>March 31</td>
<td>Excise Authorities</td>
</tr>
</tbody>
</table>

**INCOME TAX RELATED COMPLIANCE**

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Rule/Reference</th>
<th>Date</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 30</td>
<td>Deposit TDS from salaries for the previous month in Challan No. 281</td>
<td>Section 192</td>
<td>April 30</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>April 30</td>
<td>Deposit TDS on interest on Securities, Dividends other than dividends referred to in Section 115O, Interest other than interest on Securities, Winnings from Lotteries &amp; crossword puzzles, Winning from Horse Races</td>
<td>Section 193, Section 194 to Section 194BB</td>
<td>April 30</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>April 30</td>
<td>Deposit TDS on Contractor’s Bill / Rent Advertising / Professional Service Bill deducted in the previous month</td>
<td>Section 194C to Section 194H</td>
<td>April 30</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>April 30</td>
<td>Deposit TDS on payment to non-resident, Foreign company being holder of mutual fund units, Units held by an offshore fund, Income from foreign currency bond, Income of FIIs from securities</td>
<td>Section 195, Section 196 A to 196 D</td>
<td>April 30</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>March 7</td>
<td>Payment of Securities Transaction Tax for the previous month (Challan No. ITNS 283)</td>
<td>Section 100</td>
<td>March 7</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>April 30</td>
<td>Payment of Tax Collected at Source</td>
<td>Section 206</td>
<td>April 30</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
</tbody>
</table>

“One of the main weaknesses of mankind is the average man’s familiarity with the word “impossible”.” - Napoleon Hill
### DATES TO REMEMBER

#### Compliance Calendar

**7** Payment of 3rd installment (in case of an assesses other than a company) or 4th installment (in case of a company) of Advance Income Tax for the concerned Assessment Year in Form ITNS 280

- Section 211
- Income Tax Act, 1961
- March 15
- Designated Bank / Income Tax Authorities

**8** Submit return in respect of Securities Transaction Tax in Form 1 (Stock exchange) Form 2 (Mutual Fund)

- Section 101
- Income Tax Act, 1961
- March 31
- Designated Bank / Income Tax Authorities

#### FINANCE ACT & SERVICE TAX RELATED COMPLIANCE

**1** Pay Service tax collected during the previous month by persons other than individuals, proprietor and partnership firms in G.A.R-7

- Section 68 read with Rule 6
- The Finance Act, 1994 read with The Service Tax Rules, 1994
- March 5
- Service Tax Authorities

**2** Pay Service tax collected during the previous month by persons other than individuals, proprietor and partnership firms in G.A.R-7 (E-payment)

- Section 68 read with Rule 6
- The Finance Act, 1994 read with The Service Tax Rules, 1994
- March 6
- Service Tax Authorities

**3** Pay Service tax collected during month (i.e. March) by persons other than individuals, proprietor and partnership firms in G.A.R-7

- Section 68 read with Rule 6
- The Finance Act, 1994 read with The Service Tax Rules, 1994
- March 31
- Service Tax Authorities

**4** Pay Service tax collected during the quarter (i.e. January to March) by individuals, proprietor and partnership firms in G.A.R-7

- Section 68 read with Rule 6
- The Finance Act, 1994 read with The Service Tax Rules, 1994
- March 31
- Service Tax Authorities

#### THE MAHARASHTRA STATE TAX RELATED COMPLIANCE

**1** Submit monthly return and payment of tax for the previous month in Form 209 by Dealer to whom a certificate of entitlement has been granted for availing incentives by way of exemption

- Rule 18
- The Maharashtra Value Added Tax Act, 2005 read with the Rules thereunder
- March 1
- Sales Tax Authorities

**2** Submit monthly return and pay tax for the previous month (if tax liability during the previous year exceeds Rs. 1 Lakh)

- Rules 17 / 18 and 41
- The Maharashtra Value Added Tax Act, 2005 read with the Rules thereunder
- March 25
- Sales Tax Authorities

**3** Submit monthly return of Professional Tax if tax liability is Rs. 20 thousand or more in Form No. III (Return-cum-challan)

- Rule 11 (3) (c)
- The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with The Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975
- March 31
- Profession tax Authorities

**4** Submit quarterly return if Professional tax liability of Rs.5 thousand or more but less than Rs. 20 thousand

- Rule 11 (3) (b)
- The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 read with The Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975
- March 31
- Profession tax Authorities

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“Not what we think or say but what we do, will have its effect upon the world” - Robert Roy McNulty
<table>
<thead>
<tr>
<th>Date</th>
<th>Compliance Details</th>
<th>Section/Rule</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31</td>
<td>Submit Annual Return of tax liability during the previous year or part thereof was less than Rs. 5 thousand</td>
<td>Rule 11 3(a) The Maharashtra State Tax Act on Professions, Traders, callings and Employments Act, 1975</td>
<td>Profession Tax Authorities</td>
</tr>
<tr>
<td>March 31</td>
<td>Credit Professional Tax deducted in the previous month in Form III</td>
<td>Rule 17 The Maharashtra State Tax Act on Professions, Traders, Callings and Employments Act, 1975</td>
<td>Profession Tax Authorities</td>
</tr>
<tr>
<td>March 15</td>
<td>Payment of monthly Provident Fund dues (Corporate) for previous month in prescribed challan</td>
<td>Section 418 Companies Act, 1956</td>
<td>(i) Post Office Saving Bank Account or (ii) Special Account with SBI or any Scheduled Bank</td>
</tr>
<tr>
<td>March 31</td>
<td>Obtain declaration of Interest from Directors (Form 24AA - renewal of notice for General disclosure of interest)</td>
<td>Section 299 Companies Act, 1956</td>
<td>Company - Company Secretary</td>
</tr>
<tr>
<td>March 15</td>
<td>Pay monthly Provident Fund dues (non-corporate)</td>
<td>Paragraph 38 Employees’ Provident Funds Scheme, 1952</td>
<td>Provident Fund Authorities</td>
</tr>
<tr>
<td>March 15</td>
<td>File monthly return for employees leaving in form No. 10/ joining in form No. 5 during the previous month</td>
<td>Paragraph 20(2) read with Paragraph 36(1) &amp; (2) The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)</td>
<td>Provident Fund Commissioner</td>
</tr>
<tr>
<td>March 15</td>
<td>File monthly return in Form no. 2(IF) of employees entitled for membership of Insurance Fund</td>
<td>Paragraph 10 The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)</td>
<td>Provident Fund Commissioner</td>
</tr>
<tr>
<td>March 15</td>
<td>File monthly return in Form no. 3(IF) for members of Insurance Fund leaving service during the previous month i.e. January</td>
<td>Paragraph 10 The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)</td>
<td>Provident Fund Commissioner</td>
</tr>
</tbody>
</table>

“No pessimist ever discovered the secrets of the stars or sailed to uncharted land, or opened a new heaven to human spirit” - Helen Keller
### Dates to Remember

**Compliance Calendar**

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Date</th>
<th>Day</th>
<th>Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2nd March 2013</td>
<td>Saturday</td>
<td>Seminar on Budget 2013</td>
</tr>
<tr>
<td>2</td>
<td>9th March 2013</td>
<td>Saturday</td>
<td>Women's Day Special programme</td>
</tr>
<tr>
<td>3</td>
<td>10th March 2013</td>
<td>Sunday</td>
<td>Seminar on Companies Bill jointly with Surat and Vadodara Chapter</td>
</tr>
</tbody>
</table>

*RBI (NBFC) RELATED COMPLIANCES*

1. File return of exposure of capital markets in Form NB9-6  
   - Para 22  
   - NBFC-D Prudential Norms Directions, 2007  
   - March 7  
   - RBI

2. File a monthly return in prescribed format (NBC-ND)  
   - Circular No. DNBS (RID) CC No. 37/02.02.15/2005-06  
   - Department of Non-Banking Supervision, RBI  
   - March 7  
   - RBI

*SEBI RELATED COMPLIANCES*

1. Certificate on demat/remat of shares  
   - Regulation 54(5)  
   - SEBI (Depositories & Participants) Regulations, 1996  
   - March 31  
   - Stock Exchanges

*Paragraph 10*  
The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)

*Rule 123*  
Factories Act, 1948

*Regulation 31*  
Employee State Insurance Act, 1948 Employees State Insurance (Gen) Regulations

*Paragraph 38*  
Employees’ Provident Funds Scheme, 1952

*Paragraph 36(1) & Paragraph 20(4)*  
Employees’ Provident Funds Scheme, 1952 and Misc. Provision Act, 1952

*Section 2 Rule 14(11)*  
Apprentice Act 1961 and Apprenticeship Rules, 1962

*Section 8*  
Payment of Gratuity Act, 1972

Though all precautions have been taken in compiling this calendar, WIRC of ICSI should not be held responsible in case of any discrepancy. In case of doubt, please refer to relevant law/rules.

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**“Have faith and pursue the unknown end” - Oliver Wendell Holmes**
ICSI-WIRC’S ANDHERI STUDY CIRCLE MEETING

Date: 13th January, 2013
Venue: Andheri
Topic: Critical aspects on Companies Bill, 2012 (as passed by Lok Sabha on 18th December, 2012)
Chief Guest / Speakers: MR. SANJEEV SHAH, CS & CA
Senior Manager, Tax & Regulatory Services
Deloitte Touche Tohmatsu India Pvt Ltd.
Delegates: 72 Participants

ICSI-WIRC’S BORIVALI STUDY CIRCLE MEETING

Date: 19th January, 2013
Venue: Borivali
Chief Guest / Speakers: Shri Atul Mehta, Mehta & Mehta, Practicing Company Secretary and Central Council Member, ICSI
Delegates: 87 Participants

ICSI-WIRC’S GHATKOPAR STUDY CIRCLE MEETING

Date: 18th January, 2013
Venue: Ghatkopar
Topic: Personal excellence-Time Management & Staying Motivated
Chief Guest / Speakers: Mr. Uday Kothari, Company Secretary
Delegates: 17 Participants

KANDIVALI STUDY CIRCLE MEETING

Date: Sunday, 6th January, 2013 – 9:30 a.m. to 1:00 p.m.
Venue: Kandivali Recreation Club, Kandivali (West), Mumbai 400 067
Topic: Compliances-Perspectives in Banking, Financial & Insurance Sector
Chief Guest / Speakers: Mr. Suresh Viswanathan, Company Secretary, Head of Reliance Money compliance
Delegates: 75 Participants had attended the Meeting
Other features: Mr. Suresh Viswanathan addressed in detail the regulations of BFSI sector. He explained the compliances, reporting, penal actions, business losses vis-à-vis non-compliances, regulators & their powers, etc. He also addressed Money laundering and terrorist financing with power point presentation. The session was very interesting and interactive.

NAVI MUMBAI STUDY CIRCLE MEETING

Date: 23rd December, 2012
Venue: Mini Conference Room in 2nd Floor at ICSI-CCGRT
Topic: Analysis on “REVISED SCHEDULE VI” to the Companies Act, 1956
Speakers: CA Kintali T Nageswar Rao
Delegates: Navi Mumbai Region CS Members
Other features: On 23rd December’ 2012, a Study Circle Meeting was organized by the Navi Mumbai Chapter of WIRC of the ICSI. CA Kintali T Nageswar Rao addressed the participants on topic titled “Analysis on Revised Schedule VI” to the Companies Act, 1956. The speaker explained the various aspects related to the topic and dealt in detail with numerous finer issues and simplified the entire concept with various examples. The programme was very interesting and interactive and well attended by many CS Members.

“If you wish to reach the highest, begin at the lowest” - Publilius Syrus
NEWS & EVENTS

ICSI WIRC JOINTLY WITH GOA CHAPTER IN ASSOCIATION WITH GOA CHAMBER OF COMMERCE & INDUSTRY SEMINAR ON GOA STATE LAW AND COMPANIES BILL 2011

<table>
<thead>
<tr>
<th>Date</th>
<th>12th &amp; 13th January, 2013</th>
</tr>
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<tbody>
<tr>
<td>Venue</td>
<td>Goa State Museum Auditorium, Panaji, Goa</td>
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<tr>
<td>Chief Guest / Speakers</td>
<td>Adv Narendra K Sawaikar, Chairman, Goa State Law Commission</td>
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<td>Mr. F Hashmi, Director of Industries, Trade &amp; Commerce, and Managing Director GIDC</td>
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<td>Mr. Salim Veljee, Director, Food &amp; Drugs Administration Commissioner, Food Safety</td>
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<td>Mr. S. M. Paranjape, Chief Inspector of Factories &amp; Boilers</td>
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<td>Mr. S.A. Deshpрабhу, Retd.Commissioner of Labour &amp; Employment</td>
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<td></td>
<td>CS Mahavir Lunawat, CS M.R. Gopinath and CS Sarita D’ Souza</td>
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<tr>
<td>Delegates</td>
<td>61 Participants</td>
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PUNE CHAPTER OF ICSI COMPANIES BILL 2012

<table>
<thead>
<tr>
<th>Date</th>
<th>19th January, 2013</th>
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<tbody>
<tr>
<td>Venue</td>
<td>MA Hall, Pune</td>
</tr>
<tr>
<td>Topic</td>
<td>Companies Bill 2012</td>
</tr>
<tr>
<td>Chief Guest / Speakers</td>
<td>DR K R Chandratre Past President, CS Rajkumar Adukia</td>
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<tr>
<td>Delegates</td>
<td>175 Participants</td>
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<tr>
<td>Other features</td>
<td>Four (4) PCH were allotted to members who attended this programme</td>
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PUNE CHAPTER OF ICSI SPORTS WEEK 2013

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<tr>
<th>Date</th>
<th>20th &amp; 27th January, 2013</th>
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<tbody>
<tr>
<td>Venue</td>
<td>Pune chapter, Katariya High School, PDMBA Modern High School</td>
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<tr>
<td>Chief Guest / Speakers</td>
<td>CS Members &amp; Students participated in large No</td>
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<tr>
<td>Delegates</td>
<td>50+ Participants</td>
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<tr>
<td>Other features</td>
<td>Four (4) PCH were allotted to members who attended this programme</td>
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VAODODARA CHAPTER

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<tr>
<th>Date</th>
<th>16th &amp; 17th January, 2013</th>
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<tbody>
<tr>
<td>Venue</td>
<td>Hotel Surya Palace, Vadodara</td>
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<tr>
<td>Topic</td>
<td>Two Days Conference on Contemporary &amp; Futuristic- The new face of profession</td>
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<tr>
<td>Chief Guest / Speakers</td>
<td>Shri Mayur Popat, Partner &amp; Head of Gujarat Operations, S H Bhatiya &amp; Associates</td>
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<td></td>
<td>Dr. S. D. Israni, Advocate</td>
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<td></td>
<td>Shri Mahavir Lunawat</td>
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<td></td>
<td>Ms Nisha Dhanuka, Co-Founder &amp;CEO, Catalyst2Xcelerate</td>
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<td></td>
<td>Jay Parikh, Partner Verus Advocates</td>
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<td>Dipankar Bandyopadhyay, Partner Verus Advocates</td>
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ADIEU MR. S.M.A MILLATH, Regional Director of the Ministry of Corporate Affairs

Western India Regional Council of ICSI organized a program on Tuesday, February 12, 2013, to bid farewell to Mr. S. M.A Millath, popular Regional Director of the Ministry of Corporate Affairs of the Western Region, who was to retire on superannuation by end of the month. Mr. S. M.A Millath, said that he had enjoyed his long innings in Company Law Services. He recalled how he could help a freedom fighter get his pension, which was capriciously rejected by some people. He had to sweat for nearly 10 days but the feeling of gratitude expressed by the grandson of the veteran freedom fighter was much more satisfying and was a big compensation for the efforts he put. He also recalled that as an Official Liquidator how he helped a watchman to get compensation of Rs 50,000/- from the Electricity Board for the injury suffered by him due to negligence of the State Electricity Board.

Further, Mr. S. M.A Millath expressed that it was a pleasure to work with WIRC of ICSI on various occasions. He recalled in particular the pains taken by WIRC of ICSI to implement the program of Investor Awareness under the able leadership of Mrs. Ragini Chokshi.

He complimented Mr. Kaushik Jhaveri for consistent follow-up for getting the Articles for Focus. He always considered Company Secretaries as the extended family members of Ministry of Corporate Affairs, who help the companies to follow the regulations, hence their aim and the aim of the regulators was the same. Friendly Annual Cricket Match was a token of this spirit, he added.

Earlier Mr. Hitesh Buch, Chairman, ICSI-WIRC welcomed and introduced Mr Millath. Mr. Sanjay Gupta Hon. Treasurer offered him a floral bouquet and Mr. Kaushik Jhaveri, presented a momento on behalf of the ICSI-WIRC. Galaxy of senior members who made inspiring and touching speeches included Mr. Suresh Thakur Desai who had composed an apt song eulogizing the leadership of the retiring Regional Director, Mr. S. M.A Millath. Mr. Navnil Bhatia said that superannuation referred to only the age in years and not the body age. Looking at Mr. S. M.A Millath he said that if body was to be considered he would continue for at least 20 years more. Mr. K. Sethuraman eulogized ever willing helpful attitude of Mr. Millath. Mr. Pramod Shah, Mr. Shubh Karan Jain, Mr. K.G. Saraf, Mr. Hitesh Kothari, Mr. Atul Mehta, Member Central Council, Mrs. Jayshri Joshi, Mr. Ajay Kumar and Mr. Dwarkanath Karande also made apt and spirited speeches on the occasion.

Ms. Ragini Chokshi proposed a Vote of Thanks. Among the VIPS from MCA offices present at this farewell function were Mr. M.R. Bhat, ROC, Maharashtra, Mr. Chandana Mutthu, Jt. Director Mr. Sajeevan, Deputy Director and among present were Company Law Board and OL officers. Mr. S.N. Ananath Subramaniam, President made it a point to address the members by coming to the function after hectic meetings with the SEBI Chairman. He appreciated the helpful and enthusiastic help given by Regional Director.

“You must scale the mountain if you would view the plain” - Chinese Saying

February, 2013
“To me, every hour of the day and night is an unspeakably perfect miracle” - Walt Whitman
REQUIRED COMPANY SECRETARY

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E-mail: corpassistance@yahoo.co.in, ansekhri@hotmail.com

“Life is a series of surprises, and would not be worth taking or keeping if it were not” - Ralph Waldo Emerson
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Website: www.sapprints.com • Email: sapprinters@gmail.com
THANE CHAPTER HAD ORGANISED PROGRAMME ON 'TURNAROUND MANAGEMENT AND CORPORATE RESTRUCTURING' ON 5TH JANUARY 2013

CS Pramod Shah, CS Rahul Sahasrabuddhe, CS Kiran Somvanshi, CS S R Lohokare, CS R.T. Rajguroo

SEMINAR ON COMPANY BILL 2012 ON 19 JANUARY 2013 AT PUNE

CS B. Narasimhan, CS R. Balakrishnan

CS Rajkumar Adukia, CS Pawan Chandak, CS Devendra Deshpande

VADODARA CHAPTER ORG. TWO DAYS CONFERENCE ON CONTEMPORARY & FUTURISTIC- THE NEW FACE OF PROFESSION ON 16TH & 17TH JANUARY, 2013 AT HOTEL SURYA PALACE, VADODARA
ICSI STALL AT VIBRANT GUJARAT

CS Umesh Ved, CS Hitesh Buch, CS Atul Mehta

Dignitaries From ICSI and BSE Brokers' Forum Attending Seminar on the Companies Bill 2012 held on 23rd Feb. 2013 at BSE International Conventional Hall

Dr. V. Aditya Srinivas (COO), Shri. Shankar Jadhav, CS Atul Mehta, Mr. Vispi Rusi Bhathena (CEO), CS Umesh Ved, CS Hitesh Buch, CS Ashish Garg, CS N.L. Bhatia and CS Prakash Pandya

FAREWELL TO RD

CS Hitesh Buch
CS S. N. Ananthasubramanian, President, the ICSI
CS SMA Millath, Regional Director, Western Region, Maharashtra
Audience photo

Views expressed by contributors are their own and the Institute/WIRC does not accept any responsibility.