Vol. XXX No. 01
January 2013

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OTC Revived
New Publications
State Conferences
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Focus

Library Facility Revived
MOUs with Chambers
WIRO Governance Protocol

ICSI-WIRC Completes A Historic Year With Unprecedented Developments and Quantum Improvement

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FRANCHISEES INVITED FOR ACROSS THE INDIA
The year 2012 has been historic – a year of quantum improvement and unparallel development. It could rather be said that this Regional Council has laid down a strong foundation of next-level growth and development.

After a very hectic and satisfying year at the helm of the Institute of Company Secretaries of India, Western India Regional Council, the time to bid adieu as Chairman, ICSI-WIRC has finally come! In my personal communiqué before elections for the new Council in the year 2010, I emphasised on various areas including (a) improved infrastructure and facilities, (b) increased awareness and strengthen knowledge access, (c) channelizing the interface between members, regional council and Chapters and (d) improved corporate governance at WIRO. Having been elected to ICSI-WIRC with the highest-ever mandate, I had the challenging task of living up to the expectations of the electorate and meeting the targets set by my predecessors.

It gives me immense sense of accomplishment that this Regional Council has reached new milestones and outperformed in all the spheres of ICSI-WIRC towards its theme, “Educate, Empower & Execute”, including pioneering certain unprecedented activities and generating handsome resources overall.

I am emphatic that our successors in Regional Council would outperform us and set even higher standards of achievement. It is my firm belief that when successive Regional Council outperforms its predecessors, it is not individuals but the profession as a whole, which excels and strides forward.

We are in a highly competitive and dynamic environment with high degree of obsolescence. I pray the almighty to lend each one of us the courage to face adversities, the determination to accomplish tasks and the desire to keep constantly updated so that all of us surge and leap ahead in the year 2013 and further.

I would be failing in duty if I don’t thank all those who extended great help and unstinted support including WIRO staff, volunteers, active members, seniors, council colleagues, office colleagues (PwC and Sarthi Advisors), team of SAP Print Solutions, team of Free Press Journal, Bombay Stock Exchange & other Sponsors, team MCA, dignitaries & speakers visited, PPP centres, OTC centres, and last but not least, my family who sacrificed a lot while I was away on duty for my beloved profession!

I pledge my unconditional support to the incoming Regional Councils and wish them all the very best. I also wish each one of you a very happy, prosperous and professionally relevant 2013.

Best Wishes and Happy Times Ahead,

Cordially – Mahavir Lunawat
January 18, 2013

“The future belongs to those who believe in the beauty of their dreams.” - Eleanor Roosevelt
Corporate Laws Companion 2013

Agrawal & Baby on

SEBI ACT

A Legal Commentary on Securities & Exchange Board of India Act, 1992

Sumit Agrawal

Edited by:

Robin Joseph Baby

Also Available

- Company Rules & Forms
  A Compendium of more than 50 Rules & Regulations framed under Companies Act, 1956

- Circulars & Clarifications on Company Law
  A Comprehensive & Authentic Compendium of Circulars & Notifications issued under Companies Act since 1956

Other Manuals

- Labour Laws
  Incorporating 17 Labour Laws

- Business Laws
  Incorporating 15 Business and Commercial Laws

- Economic Laws
  Incorporating 22 Economic Legislation

- Indirect Tax Laws

- Statutory Manual
  Incorporating 88 Statutes of day-to-day used (A set of 2 Vols.)

- Bankers’ Manual
  Incorporating 68 Bank related Statutes

Guide to Companies Bill, 2012
(As passed by Lok Sabha on 18-12-2012)

SEBI Manual
A Complete Compendium of SEBI Rules, Regulations/Master Circulars/Guidelines, etc. (A set of 2 Volumes)

Companies Act
With SEBI Rules/Regulations & Guidelines (A set of 2 Hard Bound Volumes)

Statutory Guide for Non-Banking Financial Companies
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0932444746
Year 2012 – A Historic Year With Unprecedented Developments and Quantum Improvement

'Inform, Empower And Execute'
STUDENTS’ SERVICING: ICSI-WIRC PIONEERED SERIES OF INITIATIVES

ICSI-WIRC launched new OTC with various useful services to its students. Besides quality education with practice sessions, mock tests and revision classes, the newly revamped OTC has several value-added features such as

(a) Students’ visits to SEBI, Stock Exchanges, Court rooms
(b) Guest lectures by experts from industry & regulators
(c) Special sessions on skill enhancement, stress management and behavioural patterns
(d) Free Access to WIRC’s students’ conferences and library facilities
(e) Outbound picnic and fellowship get-togethers and the like.

With the help of aggressive career awareness and other initiatives across the region, ICSI-WIRC secured “highest percentage increase in number of students registered in 2012” compared to the other regions.

ICSI-WIRC rolled-out the unique concept of ‘EduCamp’ for ICSI-WIRC students. ‘EduCamp’ is in addition to the mandatory trainings of ICSI and its basic purpose is to counsel newly enrolled students of ICSI inter alia about the CS course, career opportunities and WIRC OTC. More than 1000 students have been benefitted out of EduCamp so far. This initiative is unique and pioneered by ICSI-WIRC.

New centres have been opened under the public private partnership (PPP) model at various locations including Mumbai, Raipur, Vapi, Singrauli, Gwalior, Nanded, Rajkot, Indore. Some of the PPP centres are also being used as extended centres for exam forms, CC collection etc.

- WIRC Regional Students’ Conferences Across Western Region on theme ‘Educate, Evolve & Empower’
- Students’ Learning Module with useful articles and write-ups – A unique delivery to the students of ICSI-WIRC
- Zero waiting-list for training programs (SIP, EDP and MSOP) with advance calendar published
- MSOP re-union organised for the first time

"Unique Facilities to Students at ICSI-WIRC OTC"

‘Educate, Empower And Execute’
Members’ Development Initiatives – Unprecedented

Revamped FOCUS: One of the significant milestone we achieved was revamping ‘FOCUS’ – from a few pages to a 50+ pages Journal for corporate executives & professionals. The new ‘FOCUS’ with various value added features is being well appreciated. BSE was chosen as the Principal Sponsor of FOCUS, besides several other sponsors. This brought added visibility and credence to ‘FOCUS’. Indeed the best magazine by any regional council.

EMPOWER: Another pioneering and unparallel delivery of ICSI-WIRC was ‘EMPOWER’, a unique e-weekly of ICSI-WIRC. EMPOWER un-clutters the clutter and brings together important news stories and updates in a capsule form such that the readers can flip through over the weekend or while on the move. EMPOWER has received wide acknowledgement and appreciation across the region.

Capacity building for emerging areas: ICSI-WIRC has organised seminars / discussions on emerging areas aiming at capacity building of its members and aiding to their development to enable them to exploit newer opportunities. Programs on SME, LLP, Competition Law, New Company Law, Due Diligence helped members gain cutting-edge knowledge to exploit emerging opportunities.

‘Educate, Empower And Execute’
Introduction of State Conferences to deliberate on challenges and opportunities in particular State of western region and discussion with State Governmental authorities

Joint Programs with Chambers and Industry Associations

Others
- Highest number of Programs with focus on quality
  - Hallmark of ICSI-WIRC Programs: Speakers having subject expertise, well planned & organised schedule and backgrounders - have become the hallmark of ICSI-WIRC’s programs.
  - Eminent Speakers included MCA Minister, State Govt Ministers, SAT Presiding Officer, SEBI WTM / ED, Stock Exchanges’ MD, Regional Director, MCA and Senior executives from institutions like SIDBI, IDBI, SBI and industry.
  - Monthly Program Calendar in advance to enable members to schedule their work accordingly.
  - Varied formats – Conclave, Residential, Workshop, Lecture Series etc.
- Programs in remote locations across the region
- Four Regions Joint Programs
- Joint Programs with Chapters
- Free Study Circle Meetings across sub-urbs of Mumbai
- PMS Membership: ICSI-WIRC launched PMS Scheme with various value-added features.

Study Circle Meetings

'Educate, Empower And Execute'
Renovation: ICSI-WIRC completed renovation of its first floor office of the WIRO at Jolly Maker, Mumbai. Renovation of 5th floor offices has also been approved and is expected to commence soon. Earlier this year, ICSI-WIRC organised a gala fund raising awareness programme in the Asia’s biggest hall – The Shanmukhananda Hall, Mumbai, where about 1,000 participants witnessed and enjoyed, perhaps, the biggest cultural evening organised by ICSI-WIRC.

Bhayander Chapter: Landmark development was opening of a new Chapter at Bhayander. More than 200 members and thousands of students would be benefitted by Chapter infrastructure.

Library Revamped: After years, ICSI-WIRO’s library facility was revamped with various value-added features including access to legal portals, legal journals, annual report section, computer facility etc.

Renovation: ICSI-WIRC rolled out web-casting of its programs enabling members participation from remote locations.

Web-portal: ICSI-WIRC has launched fully revamped web-portal with several value-added features. The most comprehensive and attractive web-portal of any regional council http://www.icsi.edu/wirc/index.html

Functioning & Governance: ICSI-WIRC not only took specific steps for improved internal functioning but also laid down formal Corporate Governance Protocol and adopted Finance & Accounts Manual as well.

Campus Placement: For the first time, ICSI-WIRC has organised structured series of campus placements.

'Educate, Empower And Execute'
Brand Building & Profession Recognition

- MoU with Chamber of Marathwada Industries & Agriculture (CMIA)
- MoU with Goa Chamber of Commerce & Industry (GCCI)
- Meetings with various Government Ministries for increasing recognition of profession including Chief Minister, Goa, Finance Minister, MP, Commerce & Industry Minister, MP, Education Minister, Chattisgarh, Hon’ble Governor, Maharashtra, Hon’ble Governor, MP.
- Meetings with SEBI officials, Stock Exchanges’ apex management, chambers, educational institutions, colleges etc.
- Publications: ICSI-WIRC came out with researched publications on Competition Law, Related Party Provisions (revised) and Supreme Court on SEBI Law.
- Career Awareness: ICSI-WIRC launched very aggressive career awareness campaign through career awareness camps at colleges and schools at remote locations, career awareness fairs etc. Highest number of career awareness campaigns perhaps.
- Brand Building & Visibility: Small steps towards brand building and visibility of Institute included
  - Press conferences
  - Visibility through coverage in print, online & electronic media including CNBC, moneycontrol.com, ET, Times, Business Standard and regional media.
  - ICSI advertisements on Mumbai Locals - First time a mass publicity measure at WIRC
  - ICSI-WIRC Program Kit and Students’ Power-Pack folders
  - ICSI-WIRC Reaching New Heights’ - Video unveiled
Other Development Activities

Health, Sports & Culture Initiatives: For the first time, ICSI-WIRC has taken up it as a dedicated focus area and a committee has been formed to spearhead initiatives in the areas of health, sports and culture. Some of the initiatives in this direction include the following:

- **Health**:
  - MoU with Narmada Valley Foundation for free medical check up for ICSI members/candidates
  - Health Camp of MCA and ICSI-WIRC
  - Free medical check-up
  - Blood donation camp

- **Sports & Culture**
  - 1st-ever inter region sports meet pioneered and hosted by ICSI-WIRC alongwith Surat Chapter
  - ICSI-WIRC 41st Anniversary celebrations
  - CSBF culture evening alongwith Nagpur Chapter - WIRC’s maiden attempt for this noble cause
  - MCA-WIRC Cricket match at one of the reputed cricket ground at Mumbai
  - Republic Day celebration
  - Members’ picnic to Tiku-ji-ni-wadi, Mumbai

Investor Awareness Quarter: ICSI-WIRC declared IAQ and organised 100 investor awareness programs across Maharashtra and Goa, in a short span of 3 months. Widely appreciated by various stakeholders, this initiative has brought laurels to ICSI-WIRC.

Hosting 40th National Convention at the dream city – Aambey Valley.

100 Investor Awareness Programs in a Quarter - Unbelievable Efforts of WIRO!
<table>
<thead>
<tr>
<th>Sr. No</th>
<th>PARTICULARS</th>
<th>19.01.12 to 18.01.13</th>
<th>19.01.11 to 18.01.12</th>
<th>2010-11</th>
<th>2009-10</th>
<th>2008-09</th>
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<tbody>
<tr>
<td>1</td>
<td>Infrastructure Improvement Initiatives (Capex Deployed in Rs.)</td>
<td>23,64,872</td>
<td>3,03,950</td>
<td>32,148</td>
<td>8,32,971</td>
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<td></td>
<td>1.1 Renovation</td>
<td>23,02,052</td>
<td>NE</td>
<td>NE</td>
<td>NA</td>
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<td></td>
<td>1.2 Furniture</td>
<td>NE</td>
<td>NE</td>
<td>NE</td>
<td>4,79,620</td>
<td>NE</td>
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<td></td>
<td>1.3 Information Technology deployment</td>
<td>45,800</td>
<td>2,12,100</td>
<td>32,148</td>
<td>1,41,750</td>
<td>45,000</td>
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<td>1.4 Office Equipment</td>
<td>17,020</td>
<td>91,850</td>
<td>NE</td>
<td>2,11,601</td>
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<td>Student Related Activities</td>
<td>53</td>
<td>50</td>
<td>37</td>
<td>30</td>
<td>29</td>
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<td></td>
<td>2.1 Oral Tuition Centre (OTC) in operation</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
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<td></td>
<td>2.2 Training Oriented Programmes (TOP) (EDP)</td>
<td>13</td>
<td>6</td>
<td>8</td>
<td>12</td>
<td>10</td>
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<td></td>
<td>2.3 ADP / SIP</td>
<td>28</td>
<td>32</td>
<td>18</td>
<td>5</td>
<td>7</td>
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<tr>
<td></td>
<td>2.4 MSOP / SMTP</td>
<td>8</td>
<td>9</td>
<td>8</td>
<td>10</td>
<td>9</td>
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<td>3</td>
<td>Member Related Activities</td>
<td>107</td>
<td>95</td>
<td>72</td>
<td>48</td>
<td>50</td>
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<td>3.1 Seminars Held</td>
<td>37</td>
<td>31</td>
<td>24</td>
<td>24</td>
<td>18</td>
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<tr>
<td></td>
<td>3.2 Work Shops / Two Days Conference / Lecture Series</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>NA</td>
<td>1</td>
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<td>3.3 Total Study Circle Meetings including Kandivili</td>
<td>67</td>
<td>59</td>
<td>47</td>
<td>24</td>
<td>31</td>
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<td>4</td>
<td>Career Awareness Programs</td>
<td>324</td>
<td>202</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>5</td>
<td>Investor Awareness Programs Held</td>
<td>118</td>
<td>16</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>6</td>
<td>Research Publications</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
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NE - Not estimated
NA - Not available
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<th>Sr. No</th>
<th>PARTICULARS</th>
<th>19.01.12-18.01.13@</th>
<th>19.01.11-18.01.12</th>
<th>2010-11</th>
<th>2009-10</th>
<th>2008-09</th>
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<tr>
<td>1</td>
<td>Income from Members Programs (including RC)</td>
<td>50,37,907</td>
<td>36,07,631</td>
<td>31,94,499</td>
<td>33,42,773</td>
<td>24,79,949</td>
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<td>2</td>
<td>Income from Publication (WIRC)</td>
<td>1,04,475</td>
<td>13,125</td>
<td>25,701</td>
<td>1,36,235</td>
<td>1,55,493</td>
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<td>3</td>
<td>Advertisements Focus</td>
<td>11,13,717</td>
<td>1,48,920</td>
<td>77,900</td>
<td>1,47,383</td>
<td>1,75,908</td>
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<td>4</td>
<td>Commission of sale of publications</td>
<td>Yet to receive</td>
<td>27,084</td>
<td>1,67,963</td>
<td>63,113</td>
<td>1,26,766</td>
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<td><strong>Total</strong></td>
<td><strong>62,56,099</strong></td>
<td><strong>37,96,760</strong></td>
<td><strong>34,66,063</strong></td>
<td><strong>36,89,504</strong></td>
<td><strong>29,38,116</strong></td>
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<tr>
<td>5</td>
<td>Income from MSOP / SMTP</td>
<td>35,09,550</td>
<td>35,30,820</td>
<td>36,44,870</td>
<td>38,77,983</td>
<td>34,65,000</td>
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<td>6</td>
<td>Income from TOP/EDP</td>
<td>11,42,200</td>
<td>6,08,000</td>
<td>6,47,000</td>
<td>4,41,300</td>
<td>6,46,500</td>
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<td>7</td>
<td>Income from SIP/ADP</td>
<td>26,34,000</td>
<td>31,91,430</td>
<td>15,69,000</td>
<td>1,64,376</td>
<td>2,78,500</td>
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<td>8</td>
<td>Income from Library Fees</td>
<td>1,900</td>
<td>700</td>
<td>500</td>
<td>1,000</td>
<td>450</td>
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<tr>
<td>9</td>
<td>Income from Oral Tuition</td>
<td>50,38,365</td>
<td>24,04,264</td>
<td>28,76,934</td>
<td>34,26,161</td>
<td>21,28,261</td>
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<tr>
<td></td>
<td><strong>Total Income from Students Programs</strong></td>
<td><strong>1,23,26,015</strong></td>
<td><strong>97,35,214</strong></td>
<td><strong>87,38,304</strong></td>
<td><strong>79,10,820</strong></td>
<td><strong>65,18,711</strong></td>
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<tr>
<td>10</td>
<td>Income from Incentives and Grants from ICSI</td>
<td>8,61,170</td>
<td>5,51,300</td>
<td>11,46,330</td>
<td>6,34,710</td>
<td>2,08,080</td>
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<tr>
<td>11</td>
<td>Income from Interest</td>
<td>79,898</td>
<td>26,124</td>
<td>23,305</td>
<td>2,68,782</td>
<td>4,09,687</td>
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<tr>
<td>12</td>
<td>Sponsorships / Misc. Income</td>
<td>10,40,650</td>
<td>23,883</td>
<td>25,940</td>
<td>10,299</td>
<td>5,560</td>
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<tr>
<td>13</td>
<td>Scrap Sale</td>
<td>1,100</td>
<td>NE</td>
<td>NE</td>
<td>5,180</td>
<td>NE</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>19,82,818</strong></td>
<td><strong>6,01,307</strong></td>
<td><strong>11,95,575</strong></td>
<td><strong>9,18,971</strong></td>
<td><strong>6,23,327</strong></td>
</tr>
<tr>
<td></td>
<td><strong>GROSS INCOME FOR THE YEAR</strong></td>
<td><strong>2,05,64,932</strong></td>
<td><strong>1,41,33,281</strong></td>
<td><strong>1,33,99,942</strong></td>
<td><strong>1,25,19,295</strong></td>
<td><strong>1,00,80,154</strong></td>
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<tr>
<td></td>
<td><strong>SURPLUS FOR THE YEAR</strong></td>
<td><strong>55,58,589</strong></td>
<td><strong>11,09,104</strong></td>
<td><strong>29,67,939</strong></td>
<td><strong>17,58,345</strong></td>
<td><strong>43,56,952</strong></td>
</tr>
<tr>
<td></td>
<td>National Convention share</td>
<td>Yet to receive</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
<td>8,84,000</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL SURPLUS</strong></td>
<td><strong>55,58,589</strong></td>
<td><strong>11,09,104</strong></td>
<td><strong>29,67,939</strong></td>
<td><strong>17,58,345</strong></td>
<td><strong>52,40,952</strong></td>
</tr>
</tbody>
</table>

* If unclaimed potential receivables are to be considered, total surplus could be around Rs.70 lacs. Also National Convention surplus allocation not considered.

@ Figures from 01.04.12 to 18.01.13 are provisional/unaudited.
Feedback

Hi..

“Empower” is very Informative weekly. Thank you for circulating such informative reading material...

Regards,
Madhushree More | Senior Manager | National Securities Depository Ltd.

Dear Sir,
The one unique thing I found is the subject matter of the weekly which is not general in nature but exclusive not finding place in other sources of communication. So I feel that the weekly is filtering the news which not found generally in other sources and induced me to read and enhanced my information so keep this filtration of articles, news etc which will make the weekly attractive for viewer-ship

Thanks and all the best
Shailesh Kachalia
Company Secretary

Dear Mr. Mahavir
I find each & every issue of “Empower” virtually informative & interesting too !!!!!!!!
Apropos its title, it must be empowering all our members across the Region be they in Employment or in Practice !!!!!
My Best Wishes for future journey in this regard !!!!!!

 Regards,
P B Savalia
Sr. General Manager (Indirect taxation)
RIL-Hazira manufacturing Division
ACS- 11371

I was indeed very pleasantly surprised to see the FOCUS Feb.2012. The overhaul it has undergone has made it impressive in looks.

More importantly, the contents have been thoughtfully organised and are useful for the members. A great start, the challenge is to sustain and improve.

Congratulations to you and the Editorial Team lead by CS Amit Kumar Jain.

Best wishes.
SV Subramanian

To,
Chairman
WIRC-ICSI,
Mumbai.

Compliments to you and your team for enhanced level of magazine-FOCUS. In response to your invitation for suggestions, I suggest that there should be a section for "readers' response". The readers' response would motivate, encourage and gratify the contributors to the magazine.

With regards,
S. G. Gokhale.
FCS 1450

It was really very REFRESHING to receive the FOCUS Magazine- April 2012 edition.

Many of our CS Publications give us the required information but the FOCUS really brought out the much awaited and desired contents.

The varied Articles therein on our professional Updates & Compliances which had been interspersed with Quotations at the beginning as well as the end of pages alongwith extra-curricular Articles on Soft-Communication skills, Health-tips etc ) made it GREAT reading!!!.
Also the smooth quality of the pages, pastel colours, indeed added to the Excellence of the reading experience.

Thanks a lot and Keep it up! Good efforts and CONGRATULATIONS!
CS Manisha Vhatkar
FCS 3905

P.S. Regrettfully, I have received the April 2012 edition only today i.e.4th May 2012.Hence would request to pl ensure that we get the timely delivery of this valuable Magazine !

Dear Mr. Lunawat,
Since you have taken over as the Chairman of WIRC, there are many visible and welcome changes in WIRC. The Empower Magazine, the Monthly Bulletin, training programs and skills development programs for the members and students alike are very noteworthy.

My firm belief is that these measures will surely help in the development of our students, members and the society as a whole.
Keep up all the good work.
Kind regards,
Anurag Chauhan
Vice President | Legal Counsel
Deutsche Bank AG, Filiale Mumbai

Dear Mr. Lunawat,
I would like to extend my sincere appreciation to you and your team at WIRC for doing excellant work at WIRC. I read the newspaper "EMPOWER" and i m very very happy by reading all the articles.

With best wishes
K. K. Patel & Associates
Company Secretaries

Hello Mahavir,
Heartiest congratulations to you! Not only for you being a Chairman but the role and responsibilities you are successfully carrying as a Chairman of WIRC. First time I could see so many activities and engagement by WIRC with its members & students.
WIRC started interacting with PMS members proactively, EMPOWER (which I never miss to read) – The quality of presentation, news etc. are awesome. Great efforts by you folks.
As a Member, I would like to bring one grievance to your notice. When we receive seminar update from WIRC, we immediately revert back to confirm the attendance (since this is requirement from WIRC, of course to arrange for logistics etc.). However, we don’t receive timely confirmation from WIRC despite of several reminders (mail trail is attached for your reference). At times, we receive confirmation very late because if which we cannot attend the seminar. One tries calling on the given numbers, but they are always busy.
I would like you to kindly look into this and provide a resolution at the earliest.
Once again, very happy for you. You are successfully leading the renowned way which you deserve and not just for the name sake. Bravo!

Regards,
Varsha Sangam
Company Secretary, Deputy Manager - Legal & Compliance,
TechProcess Solutions Limited.

Hi Mahavir,
Doing a great job. Keep it up. The change is felt....
SAP is a Mumbai based comprehensive print solutions company offering content management, pre-press, press, post-press & logistics management. The infrastructure set up is spread over 65000 sq. ft. with 6 web fed and 5 offset machines.

It is India’s youngest print company with certification from ISO:9001:2008, FSC CoC and also accredited with CRISIL rating SE 2A for “High Performance Capabilities and Financial strength”.

SAP is one of the leading players in printing of Annual Reports and IPO stationery printing. Annual Report is like an Annual Examination for Company Secretaries. Endless late night sitting with Auditors, ensuring timely availability of information and planning for AGM to timely dispatch of the Annual Reports.

SAP is an end-to-end solutions provider for Annual Report that makes us their best friend. Our efforts and experience enables you to be rest assured in the comfort that you have a partner who will surely take care of the deliverables.

We have printed Annual Reports for more than 200 companies and we serve more than 40% of the Nifty Fifty Companies for all their Corporate Actions.

We have also been consistently ranked among top 3 print companies by PRIME DATABASE for IPO stationery printing.
Dear Readers,

No great man ever complains of want of opportunities..

- Ralph Waldo Emerson

First of all wishing you a very happy and prosperous New Year – May this year bring success and peace in your lives.

Before penning down my last editorial for this tenure, I take this opportunity to thank Shri Mahavir Lunawat, Chairman WIRC and our Council of Western Region, our Editorial Team, SAP Print Solutions Pvt. Ltd., Regional Director-West, entire WIRO staff and Authors who contributed articles of interest and last but not least Bombay Stock Exchange our Principal Sponsor, Taxmann, and other sponsors who played vital role in the successful publication of this newsletter.

It gives me immense pleasure to say that at last the Companies Bill is looking the light of the day – the Bill got passed in the Lok Sabha last month and once the same is passed by the Rajya Sabha and get the presidential assent, we can expect its enactment replacing the existing Companies Act, 1956 – the new law is expected to give more teeth to the regulators for keeping a check on the unwarranted action of the promoters/directors and maintain transparency in various areas and create more opportunities for the professionals like Company Secretaries.

It will be a real challenge for the profession to update itself with the new law and we sincerely expect that we will collectively be able to deal with this change. The new law will throw an open challenge and the one who takes the first shot to crack the code will always have an upper hand in this competitive environment – so this is an ideal platform for our professional fraternity to grab this opportunity.

This is just a beginning and given the change in the global economic environment, other legal reforms are due on the cards and will be carried out in the upcoming days – so let’s prepare ourselves for the change with greater focus and target to overcome all odds with hard work and perseverance.

In expectation of the same support and cooperation in the future wishing everybody best of luck in their future endeavors.

Happy reading!!!

CS Amit Kumar Jain
EDITORIAL ADVISORY BOARD

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Monthly TARIFF for advertisement in Focus

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Annual Contract : (1) Out of 12 issues you have to remit only 10 issue charges, i.e. 2 issues will be free. (2) *For Principal Sponsorship: Out of 12 issues you have to remit only 9 issue charges (i.e. 3 issues will be free) – INR 9,00,000.

Half Yearly Contract : (1) Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free. (2) * For Principal Sponsorship: Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free.

Term of Payment : Advance Payment in favour of ‘WIRC of ICSI’ by way of a Cheque / Demand Draft payable at Mumbai along with your release order / advertisement material.

DISCLAIMER

The ICSI is not in any way responsible for the result of any action taken on the basis of the advertisement published in the journal.
Lately there has been considerable criticism that the registered offices of the company are not functioning at the addresses which have been notified to the ROC in Form No.18. The blame has been placed squarely at the doors of ROC for not verifying the actual existence of the registered office of the companies at the addresses notified to the ROC as mandated u/s.146 of the Companies Act, 1956. The criticism cannot be ignored as baseless. In fact, it is necessary to study the issue in depth and provide for a proper check so as to ensure that the details of the registered office notified u/s. 146 are based on valid documents.

To examine the issue further let us examine the format of Form 18 which is filed for notifying the situation of the registered office and of every change therein. The format mainly furnishes the name of the company, purpose of the forms viz. whether it is (a) change within local limits of city, town or village (b) change outside local limits of city, town or village (c) change in office of ROC within same state (d) change in state within office of same ROC (e) change in state outside office of existing ROC and then there is the option of ‘situation of registered office from the date of incorporation’. The form also requires the full address of the police station under whose jurisdiction the registered office of the company is situated. On the basis of the aforesaid change in the situation of registered office, SRN of Form 23, Form 1AD, 21 (if applicable) are also required to be furnished. The Form 18 also provides for attachment of optional attachments. It has to be digitally signed by Managing Director or Director or Manager or Secretary of the Company.

Finally, the Form 18 is certified by a professional. The Certificate reads as follows:

“It is hereby certified that I have verified the above particulars (including attachments from the records of the company and found them to be true and correct. I further certify that all required attachments have been completely attached to the form.” This certificate is digitally signed by either a Chartered Accountant, Cost Accountant or Company Secretary in whole time practice. Now the issue is what is the verification done by professionals? Are they verifying the rental agreement or lease agreement or sale deed to prove the ownership right of the company or its directors over the registered office premises? If so, is the document being attached along with Form 18? If not, are the professionals who certify this Form 18 liable u/s. 628 of the Companies Act, 1956, which reads as follows:

“If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purpose of any of the provisions of this Act, any person makes a statement –

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact, knowing it to be material;

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.”

The offence is liable for punishment with imprisonment for two years and also to fine. It means the offence cannot be compounded u/s. 621A of the Companies Act, 1956.

The purpose of writing this small article is to alert the professionals that it is in their interest that they attach the documents proving the right of the company to establish the registered office at the said premise by conducting a due diligence. The time may not be far away when some professional would be hauled up u/s. 628 for false statement in his certificate made out in Form 18.

It is always better to certify with care rather than repent later for carelessness.

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

“Opportunities don’t happen, you create them.” via Chris Grosser
CASE LAWS AT A GLANCE
RECENT JUDGEMENTS ON COMPANY LAW

CS Ajay Kumar, Practising Company Secretary, Mumbai

1. POWER OF REGISTRAR TO STRIKE DEFUNCT COMPANY OFF REGISTER

A company can only be declared defunct under section 560, if it does not reply to notice of ROC or says in reply thereto that it does not carry on any business or is not in operation; if it asserts to contrary, it cannot be struck off at all. Therefore, striking off is done on admission by company that it is defunct. Same principle applies in application of section 3(3), 3(4) and 3(5) - BASANTI COTTON MILLS (1998) (P.) LTD. V. REGISTRAR OF COMPANIES, WEST BENGAL [2012] 116 SCL 1 (CAL)

2. ANNUAL RETURN

Petitioner filed instant petition seeking to challenge registration of cases under sections 159, 162 and 220(3). Petitioner further challenged consequential summons issued to him apart from seeking to challenge order taking cognizance in aforesaid cases. Since offence alleged in complaint against petitioner was not a ‘continuous wrong’, bar to take cognizance as contemplated under section 468 (2) (b) of Code of Criminal Procedure applied to complaint lodged in instant case and, therefore, taking cognizance of such an offence after more than 11 years was clearly beyond period of limitation - SIDDHARTHA SEN V. REGISTRAR OF COMPANIES [2012] 144 SCL 338 (ORISSA)

3. CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP

A company, named HCL, engaged in excavation of copper and copper ore, entered into an agreement with ICC for excavation of copper ore. ICC executed work and raised bills which were paid. However, a certain sum became due and payable. ICC prayed for payment HCL did not reply. ICC filed winding up petition. On self-same issue, winding up petition was pending disposal before arbitrator. HCL was having Rs. 490 crores profit for financial year 2010-2011 and manpower of fifty one hundred. HCL could not have been wound up that too, at instance of an unsecured creditor whose claim was yet to be adjudicated upon in a pending arbitration proceeding - HINDUSTHAN COPPER LTD. V. INTEGRAL CONSTRUCTION COMPANY INDIA [2012] 116 SCL 39 (CAL).

4. DOES LIABILITY OF SURETY BEFORE SETTLEMENT CONTINUES EVEN AFTER EXTINGUISHMENT OF LIABILITY OF PRINCIPAL

DEBTOR COMPANY- EFFECT OF DEEMED CONTRACT IN VIEW OF BINDING SCHEME OF ARRANGEMENT- SECTIONS 391 AND 394 READ WITH SECTIONS 134, 135, 139 AND 140 OF CONTRACT ACT, 1872 AND SECTION 32G OF STATE FINANCIAL CORPORATIONS ACT, 1951

With extinction of claim of creditor under the scheme of arrangement sanctioned by the court under section 391, the surety stands discharged as he cannot step into the shoes of creditor in terms of sections 139 and 140 of the Contract Act, 1872, and, hence, any show cause notices issued to the surety- Petitioner to determine his liability as surety of principal debtor company would be illegal - KUNDANMAL DABRIWALA V. HARYANA FINANCIAL CORPORATION [2012] 108 CLA 389 (P&H)

5. APPOINTMENT OF ADDITIONAL DIRECTORS IN VIOLATION OF PRESCRIBED PROCEDURE AND WITH AN OBLIQUE MOTIVE - SECTION 397/398

Where appointment of additional directors is made in violation of prescribed procedure despite the objections from the Petitioners and the same is held to be malafide, prejudicial to the interest of the company and the Petitioners, besides being unfair, it is certainly an act of oppression, even if appearing to be legal. Therefore, it deserves to be set aside to restore status quo of equal representation on the Board in view of the settled law that any act done with an oblique motive of gaining control and management cannot be upheld by the Company Law Board exercising equitable jurisdiction – R S REDDI V. HIMALAYA HYDRO (P.) LTD. [2012] 108 CLA 426 (CLB)

6. OBJECTION TO SCHEME THAT STAKE OF PROMOTERS OF TRANSFEROR-COMPANY HAS BEEN INCREASED BY DEMERGER - HOW FARTENABLE- SECTIONS 391 TO 394

Where the apprehension that the directors are incapable of independent approach and outlook is nothing but casting aspersions on them without any material, and it is not as if the promoter group is associated/involved in the management for the first time, since several members of the family and the promoters group have been on the Board for all these years, there is no merit in the apprehension that this changing of name with family name is nothing but an attempt to increase the stranglehold of the promoter group of the transferor-company - ZUARI HOLDINGS LTD. IN RE. [2012] 108 CLA 371 (BOM).

“Don’t complain; just work harder.” via Chris Grosser
STATUTES

- IT: IT department releases FAQs to redress QFIs grievances - PRESS RELEASE, DATED 26-12-2012
- CL: Compliance Report and Cost Audit Report are now required to be filed in XBRL mode - NOTIFICATION [F. NO. 171/61/2012-CL(V)], DATED 30-11-2012
- CL: Comparative Study of Companies Bill, 2011 and Companies Bill, 2012 [AS PASSED BY LOK SABHA]
- CL: Companies Bill, 2012 [AS PASSED BY LOK SABHA]
- CL: For LLPs established to carry on a profession it is now necessary to obtain NOC at the time of change of name - GENERAL CIRCULAR NO. 40/2012, DATED 17-12-2012
- CL: MCA releases new form for application of DIN - GENERAL CIRCULAR NO. 43/2012, DATED 26-12-2012
- ST: Amendment in Form ST-1 consequent to restoration of accounting codes - LETTER [F. NO.137/22/2012-ST], DATED 30-11-2012

CASE LAWS

- Subject matter to initiate winding-up proceedings isn't subordinate to pending arbitration on such matter - MAHESHWARY ISPAT LTD., IN RE [2012] 28 taxmann.com 4 (CAL)
- IPO allotment through 'benami allottees' is a fraud and prone to penalty under FUTP Regulations - DJPAK J. PANCHAL v. SEBI [2012] 28 taxmann.com 103 (SAT)
- CA is supposed to be diligent and careful enough in his professional work; a member suspended for being negligent - CA RAJESH v. DISCIPLINARY COMMITTEE [2012] 28 taxmann.com 105 (Guj)
- Even dishonour of cheque due to 'signature mismatch' would be violation of sec. 138 - LAXMI DYECHEM v. STATE OF GUJARAT [2012] 28 taxmann.com 1 (SC)
- SEBI need not provide opportunity of being heard while initiating investigation under sec. 11C - DLK LTD. v. SEBI [2012] 28 taxmann.com 92 (DElHI)
- Payment for making logistic arrangements in connection with shooting of Indian film abroad is not FTS - YASH RAJ FILMS (P.) LTD. v. ITO (INTERNATIONAL TAXATION) [2012] 28 taxmann.com 247 (MUM - ITAT)
- Income of NR accrues only after RBI's approval; Taxability in Article 12 of Indo-USA DTA arises on payment basis - BOOZ. ALLEN & HAMILTON (INDIA) LTD. v. ASSTT. DIT (INTERNATIONAL TAXATION) [2012] 28 taxmann.com 245 (MUM - ITAT)
- Tribunal applied 'force of attraction rule' to tax income indirectly connected to PE in India - LINKLATTERS & PAINES v. ITO (INTERNATIONAL TAXATION) [2012] 28 taxmann.com 250 (MUM - ITAT)
- Capital gain assessable in year of development agreement; no matter when physical possession of asset is given - G. SREENIVASAN v. DY CIT [2012] 28 taxmann.com 200 (COCH - ITAT)
- 'Grossing up' in absence of PAN should be at the rates in force and not at 20%; charges for preventive repairs are FTS - BOSCH LTD. v. ITO [2012] 28 taxmann.com 228 (BANG - ITAT)
- Retro amendments don't automatically alter analogous DTAA provisions and can't be read into DTAA provisions - WNS NORTH AMERICA INC. v. ASSTT. DIT (INTERNATIONAL TAXATION) [2012] 28 taxmann.com 173 (MUM - ITAT)
- Non-compliance with ICAI guidelines wouldn't invite TP adjustment, unless authenticity of books is doubted - HINDUSTAN UNILEVER LTD. v. ADDL. CIT [2012] 28 taxmann.com 142 (MUM - ITAT)
- ITAT accepts lacuna in law as sec. 41(1) doesn't tax depreciation claim if capital loan is waived off by lender - AKZO NOBEL COATINGS INDIA (P.) LTD. v. DY CIT [2012] 28 taxmann.com 82 (BANG - ITAT)
- ALV of a property to be taken as 'nil' if it has been let out in earlier years but lying vacant in previous year - ASSTT. CIT v. DR. PRAKASH SANGHI [2012] 27 taxmann.com 317 (DElHI - ITAT)
- Investment under sec. 54EC can be made out of earnest money received prior to transfer of capital asset - MRS. PARVEEN P. BAHURUJA v. CIT [2012] 28 taxmann.com 274 (BOM)
- HC held regulatory function of a State Agency an economic activity to deny registration; BIS's verdict contradicted - ANDHRA PRADESH STATE SEED CERTIFICATION AGENCY v. CHIEF CIT [2012] 28 taxmann.com 288 (AP)
- Reasons for reassessment may originate either from scrutinized records or otherwise - ARUN KUMAR GOYAL v. CIT [2012] 28 taxmann.com 248 (PUNJ & HAR)
- Withdrawal of sec. 10(23C)(v) registration doesn't mean withdrawal of sec. 12 registration as well - CIT v. JEEVAN DEEP CHARITABLE TRUST [2012] 28 taxmann.com 242 (ALL)
- Balance in excise PLA can't be treated as advance to disallow it under sec. 43B - CIT v. MARUTI SUZUKI INDIA LTD. [2012] 28 taxmann.com 216 (DElHI)
- 'Corporate veil' can be lifted even in cases beyond legal boundaries; director of public co. can be held liable for recovery of co. dues - CIT v. VACHANBAND INVESTMENT LTD. [2012] 28 taxmann.com 111 (GUJ)
- Department can't question own records and deny assessee's 'full & true disclosure' claim to justify reassessment - MEINHARDT SINGAPORE PTE. LTD. v. ASSTT. DIT (INTERNATIONAL TAXATION) [2012] 28 taxmann.com 95 (DElHI)
- Cevalt credit gets transferred with shifting of factory nonetheless the factory is shifted to an existing site - FABRICO INDIA (P.) LTD. v. CCE [2012] 28 taxmann.com 263 (NEW DELHI - CEStAT)
- Penalty not to be waived of merely because tax along with interest is paid before issue of SCN - MAHA MARUTI LOGISTICS (P.) LTD. v. CCE [2012] 28 taxmann.com 186 (BANG - CEStAT)
- Refund of Cevalt credit can be claimed even without registration - CIT v. VARINZ DATABASE SERVICES (I) (P.) LTD. [2012] 28 taxmann.com 136 (CHENNAI - CEStAT)
- More intention to carry taxable transaction makes an assessee eligible to claim Cevalt credit - INTERCOMMUNALE VOOR ZEEWATERSONTZETING (INZo) v. BELGIAN STATE [2012] 27 taxmann.com 216 (ECJ)
- Encashment of bank guarantee on finalization of provisional assessment is payment of tax - PACE MARKETING SPECIALITIES v. CCE [2012] 28 taxmann.com 215 (ALL)
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. 39/2012
Source: www.mca.gov.in

In continuation of General Circular No. 16/2012 dated 06.07.2012 and 34/2012 dated 25.10.2012 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 January, 2013 or within 30 Days from the 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 and 39/2012 dated 12.12.2012 will remain the same.

2. NOC FROM THE CONCERNED REGULATOR / INSTITUTE FOR LLP NAME APPROVAL / INCORPORATION.

General Circular No. 40/2012
Source: www.mca.gov.in

In continuation of General Circular No. 2/2012 dated 01.03.2012 on registration of companies or LLPs where one of their objects is to carry on the profession, of Chartered Accountant, Company Secretary, Cost Accountant, Architect etc., relating to the requirement of obtaining NOC from the concerned regulator, it is hereby stated that the approval of the council/regulator governing the profession shall be obtained both at the time of application for incorporation and while seeking to change the name of an existing Limited Liability Partnership.

2. All ROCs are accordingly advised to ensure that in-principle approval/NOC of the regulator/institute governing such profession is obtained at the time of incorporation/conversion into LLP and not while making application for name approval of new LLP.

3. However, in case of change of name of an existing LLP, NOC from the concerned regulator shall be obtained at the time of application for name approval because change of name LLP is made by filing form 5 through STP mode.

3. 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-CORRIGENDUM TO GENERAL CIRCULAR NO:39/2012.

General Circular No. 41/2012
Source: www.mca.gov.in

In continuation of General Circular No. 39/2012 dated 12.12.2012 of this Ministry on the subject cited above, the following words in Para-1 “or within 30 days from the date of AGM of the company” should be read as “or within 30 days from the DUE date of AGM of the company”.

2. All other terms and conditions of the General Circular No. 16/2012 dated 06.07.2012 and 39/2012 dated 12.12.2012 will remain the same.

4. FILING OF FORM 68 FOR RECTIFICATION OF MISTAKES IN FORM 1, FORM 1A AND FORM 44.

General Circular No. 42/2012
Source: www.mca.gov.in

Rule 20G (1) of the Companies (Central Government’s) General Rules and forms (Second amendment), 2010 allows for filing of an application for rectification of mistakes made while filing Form No. 1, Form No.1A and Form No. 44 electronically, on the Ministry’s website. Such applications are to be made to the Registrars of Companies in Form No. 68 and are required to be accompanied by a fee of Rs. 1000 in case of Forms No.1., Form 1.A and Rs. 1000 for Form 44. Rule 20G (1) permits filing of an application in Form No. 68 to be filed with the Registrar within a period of Three hundred and Sixty Five Days from the date of approval of the aforesaid forms by the Registrars concerned.

2. Requests have been received from time to time by this Ministry to extend the facilities for rectification of mistakes as above companies incorporated prior to the year 2009 and to other companies which could not avail of this facility earlier. After due consideration it has been decided to allow such companies to rectify mistakes in Form 1, 1A, 44 by filing form 68 on payment of fees stipulated above.

3. Form 68 (electronic mode) may be filed for rectification of mistakes in the forms referred above within a period of 180 days from the effective date.

4. This Circular is effective from 23.12.2012.

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

General Circular No. 43/2012
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] and 18/2012 dated July 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 January 31, 2013, whichever is later.

**NOTIFICATIONS:**

1. **AMEND THE COMPANIES (CENTRAL GOVERNMENT’S) GENERAL RULES AND FORMS, 1956.**
   
   
   **Source:** www.mca.gov.in
   
   G.S.R. 906(E). – In exercise of the powers conferred by sub-section (1) of section 642 read with section 610B of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Central Government’s) General Rules and Forms, 1956, namely: –
   
   1. (1) These rules may be called the Companies (Central Government’s) General Rules and Forms (Seventh Amendment) Rules, 2012.
   
   (2) These rules shall come into force with effect from the 23rd December, 2012.
   
   2. Amendment has been made in Form 23C.

2. **AMEND THE COMPANIES (CENTRAL GOVERNMENT’S) GENERAL RULES AND FORMS, 1956.**
   
   
   **Source:** www.mca.gov.in
   
   In exercise of the powers conferred by sub-section (1) of section 637 of the Companies Act, 1956 (1 of 1956), the Central Government hereby delegates its under sections 388B, 388C, and 388E of the said Act in relation to banking companies falling within the purview of the Banking Regulation Act, 1949 (10 of 1949) to the Reserve Bank of India subject to condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if, in its opinion, such a course of action is necessary in the public interest.

3. **THE COMPANIES (CENTRAL GOVERNMENT’S) GENERAL RULES AND FORMS (SEVENTH AMENDMENT) RULES 2012.**
   
   
   **Source:** www.mca.gov.in
   
   In exercise of the powers conferred by sub-section (1) of section 642 read with section 610B of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Central Government’s) General Rules and Forms, 1956, namely: –
   
   1. (1) These rules may be called the Companies (Central Government’s) General Rules and Forms (Seventh Amendment) Rules, 2012.
   
   (2) These rules shall come into force with effect from the 25.12.2012.

4. **THE COMPANIES DIRECTORS IDENTIFICATION NUMBER (THIRD AMENDMENT) RULES 2012-DIN1 & DIN4**
   
   
   **Source:** www.mca.gov.in
   
   In exercise of the powers conferred by sub-section (1) of section 642 read with sections 266A, 266B, 266D & 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Director’s Identification Number) Rules, 2006 namely: –
   
   1. DIN 1: Following amendments have been made in form DIN 1
      
      1. Under Point No. 4B, current occupation and educational qualification are required to be compulsorily filled in.
      
      2. Second certification on page no. 2 ; and
      
      3. Verification to be made in an Affidavit (format prescribed in help form DIN1)
   
   2. DIN 4: The certification column after serial no. 17, the following 2nd Para of the certification in DIN-4, shall be substituted, namely:
   
      1. “I hereby verify that I have satisfied myself about the identity of the Director/ Designated Partner based on the perusal of the original of the attached documents”.
      
      2. “I also verify having attested the photograph of the said person 1 Who is personally known to me, or 2 Who met me in person along with the original of the attached documents”.
      
      3. “It is further certified that all required attachments have been completely attached to this application”.

**SERVICE TAX**

1. **CLARIFICATION IN RESPECT OF NOTICES/REMINDER LETTERS ISSUED FOR LIFE INSURANCE POLICIES - REGARDING.**
   
   **Circular No.166/1/2013 -ST**
   
   **Source:** www.servicetax.gov.in
   
   1. It has been represented by life insurance companies that in terms of the practice followed, reminder notices/letters are being issued to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Clarification has been desired whether service tax needs to be paid on the basis of such reminders.

   “Persevere...because on the road to success there is never a crowd on the extra mile!” via Charity Gibson
The matter has been examined. Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules 1994. No tax point arises on account of such reminders. Thus it is clarified that reminder letters/notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined.

3. The above clarification is issued only for life insurance sector.

**CUSTOMS**

1. **CLASSIFICATION OF CORDLESS INFRARED DEVICES FOR THE REMOTE CONTROL - REG.**

Circular No.01 / 2013- Customs
Source: www.cbec.gov.in

The issue of classification of cordless infrared devices for the remote control was taken up for discussion in the May, 2012 Mumbai Conference of Chief Commissioners of Customs and Directors General. The entries in National Import Data Base (NIDB) in tariff item 84159000 (Parts of heading 8415), 85290090 (Part of TV, etc), indicated that cordless infrared devices for the remote control is often being treated as a part of the main device / equipment, while the entry in heading 85437099 – “Other”, under the heading 8543 provided that it is treated as, “electrical machines and apparatus having individual functions, not specified or including elsewhere in this chapter”. During the conference it was decided to further examine this issue in the Board.

2. Accordingly, this issue was examined in the Board. It emerged that when cordless infrared devices for the remote control are imported along with the main equipment as a set, then the “essential character rule” of GRI 3(b) has to be applied in order to determine under which single heading the set had to be classified. However, when this product is presented separately, then the classification is to be determined by application of the General Rule for the Interpretation (GRIs) of the First Schedule to the Customs Tariff Act CTA), 1975. GRI 1 requires that the classification is to be made in accordance with the meanings of the headings and any relative Section or Chapter Notes,...”. Hence, all relevant legal texts must be considered. Chapter Note 1(m) to Chapter 95 reads as:

“Pumps for liquids (heading 84.13), filtering or purifying machinery and apparatus for liquids or gases (heading 84.21), electric motors (heading 85.01), electric transformers (heading 85.04), discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded (heading 85.23), radio remote control apparatus (heading 85.26) or cordless infrared remote control devices (heading 85.43)”. Heading 8543 provides for “Electrical ... apparatus, having individual functions, not specified or included elsewhere ... “.

Chapter Note 7 to Chapter 85 reads as:

“Heading 8537 does not include cordless infrared devices for the remote control of television receivers or other electrical equipment (heading 8543).

3. The Explanatory Notes to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the CTA, 1975 by offering guidance in understanding the scope of the headings and the GRIs, and for the harmonized Customs Tariff Heading 8543, it states that, “the heading includes, “Cordless infrared devices for the remote control of television receivers, video recorders, or other electrical equipment”. In addition, the exclusion clause in the Explanatory Notes to Chapter 8537 provides that the heading excludes, “Cordless infrared devices for the remote control of television receivers, video recorders, or other electrical equipment (8543)”.

4. In view of the aforesaid, the Board of the considered view that:

(a) When cordless infrared devices for the remote control are presented in a set put up for retail sale, that is, they are put up in a manner suitable for sale directly to users without repacking, along with principal / main device with which they are to be used, they shall be classified along with the principal / main device by application of GRI 3(b) and 6.

(b) In cases where cordless infrared devices for the remote control are presented separately, they shall be classified under heading 8543, sub-heading 8543.70, by application of GRI 1 and 6.

2. **REPLACEMENT OF FIXED DEPOSIT RECEIPTS (FDRS) FURNISHED IN RESPECT OF PROVISIONAL MEGA OR ULTRA MEGA POWER PROJECTS WITH BANK GUARANTEES (BGS) - REG.**

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

Kind attention is invited to notification Nos. 12/2012-Customs (S.No.507) and 12/2012-Central Excise (S. No. 337 and 338), both dated 17-03-2012, granting exemption from customs and excise duties for provisional mega and ultra-mega power projects. One of the conditions specified for availing of the said exemption is that the importer/project developer furnishes a security in the form of a Fixed Deposit Receipt (FDR) or Bank Guarantee from a Scheduled Bank for a term of 36 months or more for an amount equal to the duty payable but for this exemption. This condition was amended w.e.f 27-06-2012 when the importer/ project developer was given the option of furnishing either FDR or Bank Guarantee from a Scheduled Bank.

2. It has been represented by the Association of Power Producers that the developers should be allowed to
secure release of the FDRs submitted by them prior to 27-06-2012 (i.e. date of DoR notifications) and the same should be substituted with Bank Guarantees. The matter has been examined by the Ministry. It has been felt that as long as a FDR was furnished as security, the FDR continued to operate as security. If an importer/ developer wishes to replace the FDR by a Bank Guarantee, the Bank Guarantee will operate from the date of replacement. Since under the amended notifications, FDR and Bank Guarantee are considered equally effective securities, it has been decided that there should not be any difficulty in allowing the importer/project developer to replace the FDR with the Bank Guarantee.

3. INSTALLATION OF CLOSE CIRCUIT TELEVISION SYSTEMS (CCTV) - REGARDING.

Circular No.03 / 2013- Customs
Source: www.cbec.gov.in

Attention is invited to Para 5(1)(i)(n) of the ‘Handling of Cargo in /Custom Areas Regulations, 2009’ which stipulates that Customs Cargo Services provider (CCSP) or the applicant shall provide security and access control to prohibit unauthorized access to the premises.

2. Security of imported and export goods is of utmost importance and any unauthorized access / entry should be prohibited at any cost. One methodology is to use Video Cameras and CCTVs systems. CVC has also emphasized the utility of Video Cameras and CCTVs systems with the view point of preventive vigilance. It has however been noticed that Video Cameras and CCTVs systems are not installed by many custodians/CCSPs.

3. Accordingly, Board has decided that Commissioner of Customs, at the time of notification/order under section 8 of the Customs Act, 1962 for specifying Customs area for loading and unloading of imported or export goods and appointment of custodian under section 45 of the Customs Act, 1962, should ensure that Video Cameras and CCTVs systems are installed in the custom area for security and to prohibit unauthorized access to the premises. The video footage should be available to the Customs, which shall regularly monitor the same. This should be ensured by the custodians/CCSPs within one month of issue of this Circular.

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Western India Regional Council
ICSI-WIRC Program Membership Scheme
For Professional Development Programmes 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, on quarterly basis.

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

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Annual Fees:
1. Individual Members of ICSI: ₹ 2,000/- (Individual Members will not be eligible to depute any other person.)
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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.

“IT’S not the cards you’re dealt it’s how you play the game” via Chris Pardo
Companies Bill-2012- Provisions relating to Company Directors-An analysis

Ramaswami Kalidas

Introduction
The long awaited Companies Bill, 2012 (hereinafter referred to as “The bill”) appears to be well on course to becoming the Law in the near future what with its smooth passage in the lower House of Parliament on December,18, 2012. Members of the professional fraternity are well aware that the Bill as also its previous incarnations have had a chequered past and one can only hope that the latest version will not meet with any more stumbling blocks thus paving the way for the substitution of the existing Act, which has withstood the trials and tribulations of Corporate Inc. over its prolonged period of existence and which, in many ways, is an anachronism in the present day.

We shall preface our discussion by stating in the first place, that in the bill there is prima facie an over dose of sub-ordinate legislation in the form of Rules to be prescribed by the Government in so far as the administration of the major portents of the proposed legislation is concerned. Therefore unless the Rules are also notified in the near future to facilitate a conjoint reading of the substantive law with the Rules, no objective evaluation can be made as to the appropriateness of the proposed law, against the backdrop of a dynamic economic environment to which India Inc is exposed to in the aftermath of the reform process which was set in motion in the Nineties.

We would also submit that as the present Bill is no less than a magnum opus, it is well neigh impossible to encapsulate in a discussion paper such as this, the implications of the major changes proposed.

Having said this, it would be now be appropriate to make an examination of some of the specific proposals in the Bill relating to Directors. In the process of dissecting the provisions, we hope we would be able to provide enough food for thought.

Major Changes proposed in the Bill relating to Directors
- **Clause 149**: The maximum number of directors in the case of both a public and Private Company can be 15 instead of 12 as per existing law. The maximum number can be increased beyond 15 with approval of members by special resolution. Further having regard to the fact that the Bill has given recognition to the concept of a “one person company”, it automatically follows that in a Company of that genre, it would be adequate to have a single director.
- **Yes to Women Power**: The Bill seeks to shake up the traditionally male bastion of the Board Room through the provision for appointment of at least one woman director. The Central Government will, however, prescribe the class of companies to which this requirement will apply.
- **Resident Director-Clause 149 (2)** This Clause provides that every company without exception should have at least one Director who is an Indian Resident.
- **Composition of Board-Listed Companies-Clause 149(3)**: This Clause which applies only to listed public companies provides that every such Company shall have on the Board, Independent directors who shall constitute at least 1/3rd of total strength. The above requirement as to the configuration of the Board is at variance with the existing prescription contained in the listing agreement which means that the listing agreement will have to be harmonized to be in sync with the above proposal. SEBI have indicated in the Annexure to their consultative paper dated January 4, 2013 on review of corporate governance norms in India that the constitution of the Board as prescribed in Clause 49 is unlikely to be aligned with the Bill. Given the fact that as per the Bill, Independent directors are not liable to retire by rotation, it will be a veritable tight rope walk for listed Companies to balance both the requirements of clause 49 and the Bill in so far as the constitution of the Board is concerned.
- **Clause 149(4)** functions as a “grand fathering” clause to the existing provisions in that existing companies shall also apply to unlisted public Companies. The Central govt. shall specify the number of directors and class of companies to which this requirement will apply. It is only hoped that the criteria to be laid down for compliance of the above, are drawn up realistically, given the cost associated with ushering in a robust corporate governance environment in a Company.
- **Independent Director defined - Clause 149(5)**
  The definition is wider and more comprehensive than the existing definition as per the Listing Agreement. An Independent Director should have the following qualifications:
  - He should be a person of integrity with relevant expertise and experience. Mercifully, no litmus test has been prescribed for determining integrity which is a relative concept. Otherwise it would be a case of over legislation with its inherent perils. It is therefore left to the collective wisdom of the Board to set the criteria for determining the bench marks for the person sought to be appointed to the august office of Independent director.
  - He is/was not the promoter of the company or its subsidiary or Associate Company.
  - He is not related to the promoters of the Company, its subsidiary or its associates.
  - There should be no pecuniary relationship with the Company for at least two years preceding the appointment.

“A new position of responsibility will usually show a man to be a far stronger creature than was supposed.” - William James
CORPORATE LAW

Companies Bill-2012- Provisions relating to Company Directors-An analysis

- Neither he nor his relatives should have been an employee or been a key managerial person in the company in any of the three years prior to appointment.
- He should have no association as partner/employee of a firm of Accountants/Cost Accountants/Company Secretaries or any legal or consulting firm rendering services to the company.
- He or his relatives cannot hold more than 2% of the share capital in the Company.
- He should have no association as CEO or Director of a non-profit body which receives 25% or more of its receipts from the company or none of the promoters /Directors of the company should hold 2% or more of the capital of the non-profit body.
- He should possess such qualifications as may be prescribed by the Rules.
- A “Nominee Director” representing an Institution cannot be considered as an “Independent director”. The definition of the “Independent director” as above needs to be aligned to the definition given to the term as per the Listing agreement as otherwise confusion is bound to be caused especially for listed entities unless in the interregnum, the definition of “independence” in the listing agreement is dovetailed with the mother legislation. SEBI have thankfully clarified that the definition contained in clause 49 will be aligned with the prescription provided in the bill.
- **No ESOPs for an Independent Director:** Clause 149(8) provides that an Independent Director can be remunerated either by way of fees for attending Meetings and as commission based on the Company’s profits. From the above, it is obvious that an Independent director shall not be entitled to ESOPs as is possible at present. The listing agreement is proposed to be amended by SEBI in line with the provisions of the bill.
- **Term of office of independent Director-clause 149(9)** This clause provides that the Independent Director can hold office for a period of five consecutive years. However, appointment beyond five years is possible with approval of members by special Resolution. Eligibility to appointment for a period beyond two consecutive terms of five years each however, shall be possible only after the expiry of a three year “cool-off” period upon completion of their second term as Independent Director.
- A “grand fathering” provision similar to Clause 149(4) as elucidated above has been provided by the Explanation under Clause 149(10) which clarifies that the tenure of office completed by an incumbent as Independent Director prior to coming into force of new enactment shall not be considered for determination of the term as above.
- **Immunity from omissions and commissions by Company-Clause 149(11)** Through the above clause which begins with a *non obstante* clause and is thus intended to override other provisions in the new legislation, an Independent Director and Non-executive director (not being a promoter or key management personnel) shall enjoy immunity from punishment for acts of commission or omissions by the Company which have happened without his consent or connivance or where he has acted diligently.
- One can observe an inherent contradiction in the above proposal. The term “key managerial personnel’ (KMP) has been defined by Clause 2(51) to cover persons who hold executive positions in the company. It is therefore difficult to conceive how a KMP can be considered as holding a non-executive office for the purposes of the above Clause.
- **Clause 149(12)-No retirement by rotation for Independent Director** An Independent director shall not be liable to retire by rotation. His tenure of office will therefore remain uninterrupted. Companies may have to therefore, restructure their Boards in a manner to ensure the right combination of Directors, both liable and not liable to retire by rotation.
- **Data Bank of Independent directors(Clause 150)**
  Selection of Independent Directors shall be made from a data bank which will be maintained by a specialized Body /Institution to be set up specially for this purpose by the Central Govt.
- **Listed companies should have one director to be appointed by small shareholders -Clause 151**
  A Small shareholder refers to a person holding shares with a face value not exceeding Rs.20000/ as per the existing provision u/s 252. However, the proposed clause provides for a threshold of Rs 20000/ or such other value as may be prescribed. It is not, however, clear from the proposals whether the incumbent will be liable to retire by rotation nor has the manner of his appointment been specified. In as much as clause 149 (13) stipulates that the provisions relating to retirement of Directors by rotation shall not apply to Independent directors, an inference can be drawn that a Director appointed by the small shareholders shall be liable to retire by rotation.
- **Maximum Number of Directorships -Clause 165**
  The maximum number of Directorships a person can hold shall be 20 including alternate Directorships as against 15 at present. Out of the total, the number of directorships in Public Companies cannot exceed 10. Directorships held in Private Companies which are either holding or subsidiary Companies of public Companies shall be taken into account in determining the maximum number of ten Directorships in public Companies. In determining the maximum of 20 directorships, directorships held in private Companies, not for profit Companies, unlimited companies will also be counted in departure from the existing provisions of Section 278. One interesting proposal pertains to the empowerment given to the members of a Company who can by special resolution decide on a lesser number of companies with which a director of their Company can be associated as Director. This is obviously intended to ensure that the incumbent is in a position to devote adequate time to the Companies of which he is a director.
- **Duties of a Director-Clause 166**
  For the first time, duties of a director are proposed to be laid down in the Statute. The major duties shall include:
  - Acting in good faith for promoting the objects, for the benefit of all the stake holders, the community and for the protection of the environment.
  - Performance of duties with due and reasonable care, skill

“Mistakes fail in their mission of helping the person who blames them on the other fellow.” - Henry S. Haskins

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and diligence, and exercise of independent judgment.

- Director shall not have direct or indirect interest in any situation in which there is a conflict or potential conflict of interest with the company.

- No undue gain/advantage shall be taken from the office by the director or his relatives, partners or associates with provision for restitution of such gains.

- A director shall not assign his office and the assignment so made shall be void.

If there is failure to perform the above duties, there exists a provision for imposition of fine of Rs 1 lac which may extend to Rs 5 lacs.

The above proposal is salutary in that there will be exercise of adequate care and diligence by persons desirous of donning the mantle of Directors.

- **Vacancy in the Office of Director-Clauses 167**

Circumstances in which there would be automatic vacation of office by a Director have been prescribed which correspond to Section 283 in the existing law. Under the existing provisions, a director vacates office, *inter alia*, if he absents himself from three consecutive Meetings of the Board without seeking leave of absence. The proposed law contemplates vacation of office if the director absents himself from all meetings of the Board held during twelve months either with or without seeking leave of absence. Therefore a Director cannot continue on the Board unless he is present at least in one meeting of the Board held during a period of 12 months. In our view even this provision is lenient and paradoxical in the present environment, given the fact that a Director is expected to devote proper time and energy to the company in which he is involved. It would have been appropriate to provide that disqualification would be invited for failure to attend at least 50% of the Meetings of the Board held in a year.

The manner in which leave can be sought by a director is not provided in the present law. It would have been appropriate if the Bill had laid down the procedure for the same.

- **Resignation by Director -Clause 168**

It appears from a plain reading of the proviso contained under the above clause that the Director resigning his position will have to file a copy of his resignation within 30 days stating the reasons for his action in such manner as may be prescribed. This is an additional responsibility cast on the resigning Director as no such requirement is contemplated by Section 303(2) in the present law. Clause 168(2) postulates that the resignation shall take effect from the date on which the notice is received by the Company or the date *if* any, specified by the Director in the Notice whichever is later. From the above, it follows that the resignation of the director would take effect even if the Director has omitted to file a copy of his resignation with the ROC. Considering the above, one fails to see the need for the resignation to be accepted by the Board. The requirement of the Director filing a copy of his resignation along with the detailed reasons for the same would appear unnecessary unless the intention of the proposed law was to provide that the resignation process would have culminated only upon the director filing a copy of his resignation with the ROC.

- **Removal of Director-169**

Under the existing law, a share holder holding even a single share can move a resolution for removal of a director. However there are conflicting High court decisions on this issue with the balance of justice being tilted in favour of the above proposition. It would be pertinent to point out the conflict in the Law on this issue. Based on the decision of the English court in *Pedley Vs.Inland Waterways Association Ltd* (1977)1 All ER 209(Ch.D) the Delhi HC in *Amar Nath Malhotra Vs.MCS Ltd* (1993)76 Comp Cases 469(Del) had held that a resolution for the removal in this case Auditors moved by one or more shareholders would have to satisfy the requirements of Section 188 relating to circulation of members’ resolutions. However, in the following cases it was held that the powers of the shareholders for moving a notice u/s 284 for removal of a Director cannot be whittled down by referring to any other provision of the Act and hence a resolution moved u/s 284 of the Act by a single Member should be acted upon by the Company.

i) *Gopal Vyas Vs.Sinclair Hotels Transportation Ltd* (1990)68 Comp Cases 5116

ii) *Karnataka Bank Ltd Vs.A.B.Datar* (1994)79 Com Cases 417(Kar)

Notwithstanding the above, the above provision is being tightened to provide that such a motion can be moved only by members holding 1/10th of total voting power or shares with a nominal value of Rs 5 lacs or above. This is a welcome proposal, considering that there has been, in recent times, a tendency on the part of certain shareholders holding insignificant number of shares to cause unnecessary embarrassment to Company Managements by proposing the removal of directors to further their own *mala fide* Agenda.

Conclusion

In the above exposition we have endeavoured only to touch the tip of the iceberg in a manner of speaking, given the ramifications of the changes brought about by the proposed law. One observation we would like to share before closing is that the drafting of the bill is quite lucid, easy on the eye and energy to the company in which he is involved. It would have been appropriate to provide that disqualification would be invited for failure to attend at least 50% of the Meetings of the Board held in a year. The manner in which leave can be sought by a director is not provided in the present law. It would have been appropriate if the Bill had laid down the procedure for the same.

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The statutory provision as to director’s interests in contracts

Section 299(1) of the Companies Act 1956 (‘the Act’) requires every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, to disclose the nature of his concern or interest at a meeting of the Board of directors.”

Section 299 applies to arrangements, besides contracts, in which a director is concerned or interested ‘in any way’, ‘whether directly or indirectly’, eg, a contract in which a director is interested through his relatives [Pydah Venkatachalapati v Guntur Cotton, Jute & Paper Mills Co Ltd AIR 1929 Mad 353].

Nature of relationship between a company and its managing director

There are several court decisions holding the relationship between a company and its managing director is contractual and the contract is the contract of employment.

In one case, Anderson v James Sutherland (Peterhead) Ltd. 1941 AC 203, the question was whether the managing director was ‘employed’ by the company in any capacity. The managing director had claimed that he was not employed by the company, but that his position was an office or function of a director, i.e. he was an ordinary director entrusted with some special powers. However, this argument was rejected, and it was held that the proposition that a director can be regarded as having not only the persona of director but also the persona of employee was plain from the case of Beeton & Co In re (1913) 2 Ch 279. Lord Normand summarised the position as follows:

“In my opinion, therefore, the managing director has two functions and two capacities. Qua managing director he is a party to a contract with the company, and this contract is a contract of employment; more specifically I am of opinion that it is a contract of service and not a contract for services. There is nothing anomalous in this; indeed it is a common place of law that the same individual may have two or more capacities, each including special rights and duties in relation to the same thing or matter or in relation to the same persons.”

There may be a formal contract between a managing director and the company, evidencing the contractual relationship between the two. However, in the absence of a formal agreement the relationship may be established by an implied contract. Where a managing director is appointed, and acts as such, in accordance with the company’s articles, and no separate formal contract is entered into, the existence of an implied contract may be inferred, although the articles do not constitute a contract between the company and the managing director qua managing director. An implied contract on the terms of the company’s articles, which included a provision regarding managing director, was held to have been proved in absence of a formal express contract. The court observed:

“A contract may be either express or implied. An express contract can be proved by written or spoken words which constitute an agreement between the parties and an implied contract, on the other hand, may be proved by circumstantial evidence of an agreement. A contract may also be of a mixed character, that is, partly expressed in words and partly implied from acts of the parties and circumstances [Sardar Gulab Singh v Punjab Zamindara Bank Ltd. (1941) 11 Comp Cas 301 (Lahore)].

In Sardar Gulab Singh’s case it was held that as the contract between the managing director and the company could not be specifically enforced and as the breach of such contract could be adequately compensated, an injunction should not be issued. The Court did not agree to the proposition that a managing director could be called an employee or servant (although it applied the same principles as to the issue of an injunction as they apply when a dismissed employee or servant would seek an injunction), but the Calcutta High
Court treated the managing director as an employee and refused to grant an injunction against his removal, inasmuch as the court would not compel a company to keep one of its employees as the court does not enforce an agreement for employment specifically in case of personal service, and no court can compel an unwilling employer to keep a particular employee in whom the employer has lost confidence [Joginder Singh Patla v Time Travels Pet Ltd. (1984) 56 Comp Cas 103 (Cal); See also Gobind Pritamdas Malkani v Amarendra Nath Sircar (1980) 50 Comp Cas 219 (Cal).]

**Whether appointment of a director is a contract or arrangement**

It has been held that appointment of an additional director is not a contract or arrangement under this section [Madras Tube Co. Ltd. v Hari Kishen Somany (1985) 1 Comp LJ 195 (Mad); Shailesh Harilal Shah v Matushree Textiles Ltd. (1994) 2 Comp LJ 291 (Bom); (1995) 82 Comp Cas 5: (1994) 14 CLA 177]. However in Foster v Foster (1916) 1 Ch 532, Article 93 of a company provided that a director might contract with the company but prohibited a director from voting in respect of any contract in which he was interested, and under Article 99 the directors “may from time to time appoint any one or more of their body to be managing director or directors, for such period, at such remuneration and upon such terms as the directors think fit”.

One Mrs. Foster who was one of the directors was appointed as chairman and joint managing director of the company without remuneration. The resolution appointing her to this office was passed at a meeting of the Board at which she was present and in which she voted, and the validity of those appointments was challenged on the ground of contravention of Article 93. Peterson J. rejected this contention by saying:

“In my judgment, if a resolution is passed at a directors’ meeting that one of the directors be appointed a managing director at a remuneration and that director is present and accepts the appointment, there is a contract between the company and the director, and the director is not under article 93 able to vote in support of such a contract”.

This issue has been dealt with by the Queen’s Bench Division in its decision, Runciman v Walter Runciman Plc (1992) BCLC 1084 (QBD) where the learned judge observed:

“... to exclude service contracts from the ambit of section 317 (of the English Companies Act 1985, corresponding to section 299) would involve ridiculous and pointless distinctions being drawn: (a) between the employed and the self-employed director; and (b) between benefits given to a director as part of his contract of employment and those given separately. Finally on this point the defendants drew my attention to Foster v Foster All ER Rep 856 a decision holding in terms that the statutory predecessor to section 317 applied to service contracts ... And I accept too the defendants’ fundamental argument that a variation of contract is itself a contract and that to construe section 317 otherwise would lead to pointless debate about whether a given agreement constitutes a variation or a fresh contract. Looking moreover to the purpose of the legislation and the mischief against which it is directed, there will certainly be cases where it is necessary for an interest to be declared in a variation of contract as in the making of the contract in the first place; take Guinness and suppose that the consideration for Ward’s services had initially and in conformity with the articles been agreed at 5,000 and only later varied to the eventual figure of 5.2 m.”

**Conclusion**

In conclusion, the relationship between a company and its managing director is contractual and the contract is the contract of employment. This contract is evidenced by either a resolution by which the managing director is appointed and, additionally, a formal agreement and hence it is a contract (and in any case arrangement) in which a director is interested (the managing director himself and besides his relative, if any, who is a director of the company) requiring disclosure of his interest as required by section 299 and also compliance with sections 300 and 301. This is equally applicable in the case of appointment of a whole-time director.
1. The Court Fee is payable in respect of various matters in the Courts. The levy of Court Fee is a State subject. Accordingly, in the State of Maharashtra the same is levied pursuant to The Bombay Court Fees Act, 1959 (the Act). The amount of Court Fee is calculated on ad valorem basis or is in fixed amount.

2. a) Schedule I to the Act specifies the rates of ad valorem Court Fee under 18 different articles. The fee is on slab basis. The effective rate of fee goes on decreasing with increase in value except for fee on Probate/ Letters of Administration/ Succession Certificate where rate increases with every subsequent slab. Two small slabs dealt with later are also exception. In case of a complaint for dishonor of cheque the rate is uniform. However, there is an upper limit in all cases.

b) Article 1 covers most of the cases being Suits, Appeals, Cross Objections presented to the Civil and Revenue Courts. The rates of the fee of the said Article are applied to many other cases with some modifications. The fee structure only under the said Article is analyzed for the present purpose. The first slab is of value upto Rs. 1,000/- and the fee is Rs. 200/-. Thus, for the highest amount of the first slab the fee is at 20%. The same amount is payable in respect of the value even if it is less than Rs.200/-.

There are further 7 slabs upto Rs. 11,0,000/- with reduced rate of fee for every subsequent slab, except a slab between Rs.5001/- to Rs.10000/- with reduced rate of fee for every subsequent slab, which works out to be at 1.25%. The value beyond the said amount of Rs.2,38,97,000/- stands ignored for the purpose of fee in view of the ceiling. In other words the exemption is at upper end.

c) The Court Fee is akin to taxes. The principle of progressive taxation is followed invariably in all cases of taxation. The levy of Court Fee as above follows the principle just opposite which is regressive or retrogate in nature. The structure of the Court Fee is anti poor. The rich litigants are benefited at the cost of poor litigants.

d) For to be in parity with the principle of progressive taxation:

i) There should be full exemption from fee up to certain amount at the lower end instead of at upper end.

ii) The rate of fee should increase with every subsequent slab so that average/effective rate of fee would go on increasing with increase in the aggregate value.

iii) The ceiling on the amount of fee becomes redundant with suggestions (i) & (ii) above. In fact, some States like Karnataka have followed the uniform rate of fee without any ceiling and the same has been upheld by the Supreme Court.

3. Schedule II of the Act specifies the fixed amount of fee on various matters ranging from Rs.5/- to Rs.500/-. The matters attracting fixed amount also requires review. There are litigations with higher stakes, such as certain writ petitions, winding up petitions going with meager fixed amount. There is a recent precedent for this. The criminal complaint for dishonor of cheque used to attract Court Fee in fixed amount of Rs.200/-. After amendment in 2008, it is levied on the ad valorem basis at Rs.200/- for every Rs.10000/- subject to ceiling of Rs.1,50,000/-
MARKET PRICE, MARKET VALUE AND FAIR VALUE: IS GETTING FAIR VALUE ELUSIVE?

CA. Anand Varma

1 Background to “fair value”

Literature on IFRSs widely refers to fair value as the measure to recognise assets and liabilities in an entity’s books. Whilst IFRS 13 Fair Value Measurement has been issued by the IASB, it is necessary first to understand the definition under IFRS 13 followed by the business meaning of fair value and to distinguish it from market price and market value.

2 Fair value under IFRS 13

Fair value is the price that would be received to sell an asset or paid to transfer a liability, in an orderly transaction between market participants (assume to act in their best interests) at the measurement date. Fair value works on the exit price notion that embodies expectations about the:

• future cash flows associated with the asset or liability,
• from the perspective of market participants at the measurement date,
• under current market conditions.

Orderly transaction is a transaction that assumes exposure to the market for a period before the measurement date to allow marketing activities that are usual and customary for transactions involving such assets or liabilities. To put it simply, orderly transaction is not a forced transaction, that is, a forced liquidation or a distressed sale.

3 Comparison of fair value with old definition under IFRSs

Like the old definition, the new definition of fair value assumes that the exchange transaction is hypothetical and is orderly (it is not a forced liquidation or a distress sale). Old definition of fair value,

• did not specify whether an entity is buying or selling an asset,
• did not explicitly state whether the transaction or settlement takes place at the measurement date or some other date

New definition in IFRS 13 remedies these deficiencies, gives market-based measurement, not entity-specific one.

4 The hypothetical transaction assumption

Fair value is a market-based measurement,

• using market participant assumptions including about risk,
• not entity-specific assumptions.

An entity’s own intentions (for example, to hold an asset, or to settle a liability), are not relevant when estimating fair value. Market participants are buyers and sellers in the principal (or most advantageous) market who are (i) independent of each other; (ii) knowledgeable about the asset or liability; and (iii) able and willing to enter into a transaction for the asset or liability.

For example, it is not relevant if the entity asserts that the prices in orderly transactions are too low relative to its own value expectations, and accordingly that the entity would be unwilling to sell at such prices.

5 The business perspective of market price, market value and fair value

(a) All said so far, from accounting perspective, is fine but a business perspective could help to grasp the terms better for a smart application in financial statements.

Statutes don’t define fair value but standards do. Fair value” (FV) is to be distinguished from its better known cousin, “fair market value” (FMV). Fair market value” (FMV) is a widely recognized standard of value used in the business world, in tax assessment proceedings and elsewhere.

Fair value” is

• intertwined with concepts of “fair market value” and equity,
• which can be highly confusing for participants in fair value proceedings (legal cases) and for business appraisers as well

On the whole, whilst getting to “fair value”
Market price, market value and fair value: Is getting fair value elusive?

Market value is the true underlying value of an asset, while market price is the price at which goods and services are sold, depending on demand and supply. Fair value is the price that a willing buyer would pay to a willing seller in an arm's length transaction.

6 Brain storming: distinction between fair value, market price and market value —business perspective

(a) “Market value” is a concept distinct from “market price”.

(b) “Market value” is also distinct from “fair value” in that fair value depends on the parties involved, while “market value” does not.

(c) One school of thought believes that in an organized market, the market price and fair value are very close, if not equal. However, it is also believed that market price deviates from fair value due to bias and other unpredictable anomalies.

(d) “Fair value” requires the assessment of the price that is fair between two specific parties taking into account the respective advantages or disadvantages that each will gain from the transaction.

For example, Fair value is frequently used:

- When undertaking due diligence in corporate transactions,
- Where particular synergies between the two parties may mean,
- That the price that is fair between them ($100),
- Is higher than the price that might be obtainable in the wider market ($90),
- In other words “special value” ($10) may be generated.

Market value requires this element of “special value” to be disregarded, but it forms part of the assessment of fair value.

7 When market price is equal to market value

Term “market value” refers to the price an asset would fetch were it to be sold.

- This price is not necessarily equivalent to what the asset was purchased for, only what it is worth now.
- Since assets can fetch different prices if sold in different locations, an asset can have different market values in different markets.
- For the purposes of investors, this value will usually be restricted to the value within a single market.

Market value and market price are equal only under conditions of market efficiency, equilibrium, and rational expectations.

8 When fair value of an asset is equal to market value

An asset’s fair value is often equivalent to its market value.

- For example, if one company purchasing another company would not have a special advantage or disadvantage if it were to sell that asset right away, and both companies can freely sell the asset on the open market.
- Then the fair value for the asset is the same as its market value.

However, more often, one company will hold a slight advantage, meaning the values will differ.

9 Fair value is how much an asset is worth to the buying party

Sometimes, if an asset changes hands, its value ($90) changes. This is because the new owner may be able to fetch a higher price ($100) or leverage certain efficiencies that result from a transfer of the property. Alternately, the asset may be worth less ($70) if it changes hands.

So, when deciding how much an asset is worth, an investor may attempt to calculate its “fair price,” meaning how much a party wishing to buy it should pay for it.

10 When fair price may be lower or higher than the market price

Fair price may be lower or higher than the market price, depending on how much it is worth to the party buying it.

11 What dictates the use of fair value and market value

Both of these terms “market value” and “fair value” are frequently used by investors and businesses when attempting to determine a company or other entity’s total worth, often when the entity’s assets may soon be bought or sold.

When an investor is valuing an entity, he will generally look only at its market value. However, if he must consider how the price of an asset will change if placed...
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You should know the market value if you are trying to sell your asset or fair value if you are trying to buy an asset.

Term “fair value” is typically used in finance and economics. It is defined as an unbiased estimate of the market price of any good, service or asset. In accounting, the fair value of an asset is used to estimate its market value if there is no established market for the particular asset.

Fair value is also used to determine the worth of an asset for when its value varies from market to market.

12 How to calculate fair value

Fair value is the value of a transaction between two parties that reflects open and willing negotiations.

It can be challenging to calculate fair value if there are no clearly observable market prices - includes value that reflects the amount that would be required currently to replace the service capacity of an asset, adjusted for obsolescence (often referred to as current replacement cost).

In general, fair value calculations fall into one of four categories:

• First category involves using market prices for identical assets that are quoted on a transparent and liquid exchange of some kind, like a stock market.

• Second category uses comparable prices for similar assets under valuation. This often applies to homes and cars.

• Third category is when no quoted or comparable prices, and uses the discounted cash flow method to determine fair value.

• Last category is value that reflects the amount that would be required currently to replace the service capacity of an asset, adjusted for obsolescence (often referred to as current replacement cost).

Inputs based on bid and ask prices: remember, bid and ask prices are common within markets for securities, financial instruments and commodities. In these markets, dealers stand ready to buy at the bid price and sell at the ask price. If an input within the fair value hierarchy is based on bid prices and ask prices, the price within the bid-ask spread is most representative of fair value in the circumstances is used to measure fair value. [IFRS 13.70].

Previously, IFRS required the use of bid prices for asset positions and ask prices for liability positions. These prices can still be used if they are most representative of fair value in the circumstances, but they are no longer required.

IFRS 13 does not preclude the use of mid-market pricing (average of the current bid and ask prices being quoted), or other pricing conventions that are used by market participants as a practical expedient for fair value. Once management has established which convention it is using, it should follow its accounting policy consistently. [IFRS 13.71].

Offsetting positions in market or counterparty credit risk: If an entity manages a group of financial assets and financial liabilities on the basis of its net exposure to either market risks or counterparty risks (as defined in IFRS 7), it can opt to measure the fair value of that group on the basis of the net position (that is, the net position is the unit of account that is being measured at fair value, not the individual financial assets and liabilities). [IFRS 13.48].

Transfer of liabilities: A fair value measurement assumes that a financial or non-financial liability or an entity’s own equity instrument (e.g. equity interests issued as consideration in a business combination) is transferred to a market participant at the measurement date. The transfer of a liability or an entity’s own equity instrument assumes the following:

(a) A liability would remain outstanding and the market participant transferee would be required to fulfill the obligation. The liability would not be settled with the counterparty or otherwise extinguished on the measurement date.

(b) An entity’s own equity instrument would remain outstanding and the market participant transferee would take on the rights and responsibilities associated with the instrument. The instrument would not be cancelled or otherwise extinguished on the measurement date.”

Example

A bank holds a debt obligation with a face value of $100,000 and a market value of $95,000. Market interest rates are consistent with the amount in the note; however, there is a $5,000 discount due to market concerns about the risk of non-performance.

Settlement value: in exceptional circumstances will be equal to the face value $100,000 as we expect that the counterparty (counterparty A) would be required to pay the full face value of the note to settle the obligation, as the bank may not be willing to discount the note by the market discount or the credit risk adjustment.

(To be continued next issue)
REFERENCE TO COMMISSIONER AND APPROVING PANEL INCLUDING BURDEN OF PROOF:

(1) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.

(2) The Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such an opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.

(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the Commissioner shall issue such directions as it deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

(4) In case the assessee objects to the proposed action, and the Commissioner, after hearing the assessee in the matter, is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.

(5) If the Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of reference from the Commissioner under sub-section (4) shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction under sub-section (6),—

(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Commissioner to make such further inquiry or cause to make such further inquiry to be made by any other income-tax authority and furnish a report containing the results of such inquiry to it; or

(ii) call for and examine such records related to the matter as it deems fit; or

(iii) require the assessee to furnish such document and evidence as it may so direct.

(9) If the members of the Approving Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction, issued by the Approving Panel under sub-section (6) or the Commissioner under sub-section (3), shall be binding on the Assessing Officer and the Assessing Officer on receipt of the directions shall proceed to complete the proceedings referred to in sub-section (1) in accordance with the directions and provisions of Chapter X-A.
(11) If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year to which the proceeding referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.

(12) No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the Commissioner if any tax consequences have been determined in the order under the provisions of Chapter X-A pursuant to a direction issued under sub-section (6) or sub-section (3) declaring the arrangement as impermissible avoidance arrangement.

(13) No direction under sub-section (6) shall be issued after a period of six months from the end of the month in which the reference under sub-section (4) was received by the Approving Panel.

(14) The Board shall, for the purposes of this section constitute an Approving Panel consisting of not less than three members, being

(i) income-tax authorities not below the rank of Commissioner; and

(ii) an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.

(15) The Board may make rules for the purposes of the efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4).

NOTES:

1. "associated person", in relation to a person, means—
   (a) any relative of the person, if the person is an individual;
   (b) any director of the company or any relative of such director, if the person is a company;
   (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member if the person is a firm or association of persons or body of individuals;
   (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;
   (e) any individual who has a substantial interest in the business of the person or any relative of such individual;
   (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;
   (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member have a substantial interest in the business of the person, or family or any relative of such director, partner or member;
   (h) any other person who carries on a business, if—
      (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or
      (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

2. "connected person" means any person who is connected directly or indirectly to another person and includes associated person

3. "tax benefit" means—
   (a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or
   (b) an increase in a refund of tax or other amount under this Act; or (c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or

"The grass is greener where you water it” via Danielle Luedtke
(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or
(e) a reduction in total income including increase in loss, in the relevant previous year or any other previous year.

4. a person shall be deemed to have a substantial interest in the business, if—
   (a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent or more, of the voting power; or
   (b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent or more, of the profits of such business.

5. "step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement.

6. "benefit" includes a payment of any kind whether in tangible or intangible form;

7. Treaty Override
   Notwithstanding anything contained in sub-section (2) of Section 90, the provisions of Chapter X-A of the Act shall apply to the assesse, even if such provisions are not beneficial to him.

**Expert Committee on GAAR**

The Prime Minister constituted an Expert Committee on General Anti Avoidance Rules (GAAR) on 17th July, 2012 to undertake stakeholder consultations and finalise the guidelines for GAAR after widespread consultations so that there is a greater clarity on GAAR issues.

The Expert Committee is also referred to as Shome Committee as Dr. Parthasarathi Shome was the Chairman of the Committee.

The terms of reference of the Committee were:

i) Receive comments from stakeholders and the general public on the draft GAAR guidelines which have been published by the Government on its website.

ii) Vet and rework the guidelines based on this feedback and publish the second draft of the GAAR guidelines for comments and consultations.

iii) Undertake widespread consultations on the second draft GAAR guidelines.

iv) Finalise the GAAR guidelines and a roadmap for implementation and submit these to the government.

**The Parthasarathi Shome panel submitted its draft report on September 1st 2012 and final report on GAAR on 1st October 2012.**


The Expert Committee on General Anti Avoidance Rules (GAAR) gave its draft report on 1st September, 2012.

It gave a list of recommendations for amendment in The Income Tax Act, 1961.

Some of these recommendations are:

1. The implementation of GAAR may be deferred by three years on administrative grounds.

2. The Income Tax Act 1961 should be amended to provide that only arrangements which have the main purpose (and not one of the main purposes) of obtaining tax benefit should be covered under GAAR.

3. Section 97 of the Income Tax Act, 1961 should be amended to include a definition of “commercial substance” as under –

   "An arrangement shall be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows, of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the provisions of this Chapter."

4. The definition of “connected person” may be restricted to “associated person” under section 102 and “associated enterprise” under section 92A of the Income Tax Act 1961

5. Constitution of the Approving Panel (AP)

   The Approving Panel should consist of five members including Chairman;

   The Chairman should be a retired judge of the High Court;

   Two members should be from outside Govt. and persons of eminence drawn from the fields of accountancy, economics or business, with knowledge of matters of income-tax; and

   Two members should be Chief Commissioners of income tax; or one Chief Commissioner and one Commissioner.

   The AP should be a permanent body with a secretariat.

“For you are going to fear anything fear success. Think about what you are doing and when you succeed what life you will have” via Brandon Chalmers
It should have a two year term.

In the first AP that is to be appointed, one Chief Commissioner and one external member from a specified field would be appointed to a one-year term.

If there is any need for further representation from particularly specialized fields, an updated roster of specialists should be maintained from which any additional member, may be drawn in an individual GAAR case.

A decision of the AP should occur by a majority of members.

Some recommendations have been made by the Committee for incorporation in guidelines to be prescribed under section 101 and 144BA of the Act in the Income-tax Rules, 1962. Some of these are:

1. The GAAR provisions should be subject to an overarching principle that
   - Tax mitigation should be distinguished from tax avoidance before invoking GAAR.
   - An illustrative list of tax mitigation or a negative list for the purposes of invoking GAAR, as mentioned in the Committee Report, should be specified.
   - GAAR should not be invoked in intra-group transactions which may result in tax benefit to one person but overall tax revenue is not affected either by actual loss of revenue or deferral of revenue.
   - GAAR is to be applicable only in cases of abusive, contrived and artificial arrangements.

2. A monetary threshold of Rs 3 crore of tax benefit (including tax only, and not interest etc) to a taxpayer in a year should be used for the applicability of GAAR provisions. In case of tax deferral, the tax benefit shall be determined based on the present value of money.

3. Where SAAR is applicable to a particular aspect/element, then GAAR shall not be invoked to look into that aspect/element. Similarly, where anti-avoidance rules are provided in a tax treaty in the form of limitation of benefit etc., the GAAR provisions shall not apply overriding the treaty.

4. A requirement of detailed reasoning by the Assessing Officer in the show cause to the taxpayer may be prescribed in the rules.

5. The tax audit report may be amended to include reporting of tax avoidance schemes above a specific threshold of tax benefit of Rs. 3 crores or above.

6. Statutory forms and Time Limits need to be prescribed
The Committee has recommended that the GAAR provisions in the statute as well in the rules should be explained through a circular as discussed in the report with categorical clarification on the following issues:-

(i) GAAR shall apply only to the income received, accruing or arising, or deemed to accrue or arise, to the taxpayers on or after the date GAAR provisions come into force. In other words, GAAR will apply to income of the previous year, relevant to the assessment year in which GAAR becomes effective, and subsequent years.

(ii) Where Circular No. 789 of 2000 with respect to Mauritius is applicable, GAAR provisions shall not apply to examine the genuineness of the residency of an entity set up in Mauritius.

(iii) When the AO informs the assessee in his initial intimation invoking GAAR, he should include how the factors listed in section 97(2) have been considered (after amendment as recommended).

Other Recommendations made by the Committee in respect of tax administration are:

(i) The administration of Authority for Advance Ruling (AAR) should be strengthened so that an advance ruling may be obtained within the statutory time frame of six months.

(ii) Until the abolition of the tax on transfer of listed securities, the Circular 789 of 2000 accepting Tax Residence Certificate (TRC) issued by the Mauritius authorities may be retained.

(iii) When the Assessing Officer may or may not invoke GAAR while processing applications under section 195(2) or 197 of the Act, pertaining to the withholding of taxes

(iv) To minimize the deficiency of trust between the tax administration and taxpayers, concerted training programmes should be initiated for all Assessing Officers placed, or to be placed, in the area of international taxation.

Conclusion

Outlining the timelines as regards future course of action on GAAR, The Finance Minister has split it into three stages - While the first stage related to the Ministry’s finalisation of views on the Shome panel’s final report, the second stage relates to finalising GAAR rules. The third stage, if necessary, would be to amend the income tax law.

“God gives every bird his worm but He does not throw it into the nest” via Liam Carey
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Email: info@icsi.edu; website: www.icsi.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, some of the tragic incidences, although the Institute was able to extend 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.icsi.edu

N.K. Jain
SECRETARY & CEO

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

Upto the age of 60 years
- Upto ₹2,00,000 in deserving cases or 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 or 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
Saathi Haath Badhana

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 @₹140,000 for every completed year of membership or part thereof in excess of six months subject to a minimum of ₹50,000 and a maximum of ₹1,00,000

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.

Financial position of the Fund (as on 31.03.2012)
- Corpus ₹3,61,24,964
- Investments ₹6,87,81,018
- Total assistance provided in the year 2011-12: ₹21,11,481
COMPOUNDING OF OFFENCES UNDER FEMA

CS Ishan Jain, Indore

1. Statutory provisions

FEMA (Compounding Proceedings) Rules, 2000, framed by the CG in exercise of the powers conferred by Section 46 read with sub-section (1) of section 15 of the FEMA, 1999, provide for compounding of contraventions under Chapter IV of FEMA, 1999 and as per the Circular No. 09/2012-13, dated 2-7-2012 on Compounding of Contraventions.

2. Who are the Compounding Authorities (CA)?

(i) An officer of the Enforcement Directorate as per Table 2.
(ii) An officer of the RBI as per Table 1.

3. Power of the RBI to compound contravention

CA at RBI is empowered to compound contraventions of any of the provisions of FEMA, 1999 except section 3(a) of the Act. Table 1 given below indicates ‘CA’ in RBI who, depending upon the sum involved in contravention, are empowered to exercise compounding powers:

<table>
<thead>
<tr>
<th>Amount Involved</th>
<th>CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to Rs. 10.00 lakhs;</td>
<td>AGM</td>
</tr>
<tr>
<td>More than Rs. 10.00 lakhs but less than</td>
<td>DGM</td>
</tr>
<tr>
<td>Rs. 40.00 lakhs</td>
<td></td>
</tr>
<tr>
<td>Rs. 100.00 lakhs or more but less than</td>
<td>GM</td>
</tr>
<tr>
<td>Rs. 100.00 lakhs or more</td>
<td>CGM</td>
</tr>
</tbody>
</table>

3.1 Delegation of Powers by RBI

As per recent amendment made by RBI, compounding powers were delegated to the RO of the RBI, to compound the contraventions of FEMA involving delay in

(i) reporting of inward remittance;
(ii) filing of form FC-GPR after allotment of shares and;
(iii) issue of shares beyond 180 days.

a) Contravention below Rs. 1,00,00,000/-.

Bhopal, Bhubaneshwar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji.

b) Contravention without any limit.

Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi.

Other applications may be submitted to the Compounding Authority, Cell for Effective implementation of FEMA (CEFA), Foreign Exchange Department, 5th floor, Amar Building, Sir P.M.Road, Fort, Mumbai-400001, as hitherto.

4. Fees Required

Rs. 5000/- by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at the Regional Office OR at Mumbai if the application is submitted at CEFA, Mumbai.

5. Application for Compounding

(i) As per sub-rule (3) of Rule 4 of the Compounding Rules, the compounding process would be subject to the direction, control and supervision of the Governor of the RBI.

(ii) An application for compounding of a contravention under FEMA, 1999 may be submitted to the RBI on being advised of a contravention under FEMA, 1999 either through a memorandum or suo moto being made or becoming aware of the contravention.

(iii) The compounding order shall be issued by the Authority within 180 days from the date of the receipt of the complete application.

(iv) On receipt of the application, the RBI shall examine the application based on the documents and submissions made in the application and assess whether contravention is quantifiable and, if so, the amount of contravention.

(v) The RBI shall examine the nature of contravention keeping in view, inter alia, the following indicative points related to:

a. contravention is technical and/or minor in nature and needs only an administrative cautionary advice;
b. contravention is serious and warrants compounding of the contravention;
c. contravention, prima facie, involves money-laundering, national and security concerns involving serious infringements of the regulatory framework.
OTHER EMERGING AREAS
Compounding of Offences under FEMA

However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as ‘technical’ or ‘minor’ in nature.

(vi) The CA at the RBI shall consider the application and shall pass an order of compounding after affording the contravener an opportunity of being heard as expeditiously as possible but not later than 180 days from the date of receipt of the completed application.

(vii) It has been observed that there is no uniformity in submitting the required details with supporting documents along with the compounding application. Therefore been decided that along with the application in the prescribed format, the applicant may also furnish the details relating to FDI, ECB, ODI and BO/LO, as applicable, along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the MOA and latest audited balance sheet while applying for compounding.

(viii) If, before disposal of the application by issue of order the RBI finds that there is sufficient cause for further investigation, it may recommend the matter to the DoE for further investigation and necessary action under the FEMA, 1999 by them. In that case compounding application will be disposed of by returning the application to the applicant in view of such investigation required to be conducted.

6. Compounding Process – Indicative Operational Check Points

(i) Contraventions which are wilful, intentional or having malafide and fraudulent intentions shall not be considered for compounding.

(ii) The application has to be made in the prescribed Form given in the Rules, duly completed in all respect in duplicate, with the prescribed fee and all supporting documents to the Compounding Authority, as per point 3 above or as advised in the memorandum issued by the RBI.

(iii) Application Fee as per Point 4.

(iv) The applicant must indicate the following information about the authorized person, who would be handling the complete process of the compounding:

a. Name and Designation
b. Telephone/Fax/Email.

(v) The contravener/applicant shall also specify/describe in the application the details/facts of the case for which the contravention has occurred.

(vi) The compounding applications found incomplete shall be rejected and appropriate action for the contravention of the FEMA shall be taken accordingly.

(vii) The contravener/applicant shall submit all the required information/document together with the application, on the basis of which the gravity and nature of the contravention would be assessed by the compounding authority and accordingly the sum for which the contravention shall be compounded would be determined.

(viii) Communications and orders issued under the compounding process shall be served on the authorised person in any of the following manners, say by fax/Courier/Registered Post by sending it to the address/information given in the compounding application.

7. Scope and Manner of Compounding

(i) The CA, shall exercise jurisdiction in respect of the contraventions alleged to have been committed in relation to any of the provisions of the FEMA, 1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under the FEMA, 1999;

(ii) The CA on the basis of the application together with the documents submitted and the submissions made during the personal hearing shall form an opinion on the nature of the contravention;

(iii) Application for compounding shall be processed further and disposed of on merits upon consideration of the records and submissions and at the absolute discretion of the CA. The following factors, which are only indicative, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

a. the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;

b. the amount of loss caused to any authority/agency/exchequer as a result of the contravention;

"The elevator to success is out of order. You’ll have to use the stairs…. One step at a time.” via Rande Wilson
c. economic benefits accruing to the contravener from delayed compliance or compliance avoided;

d. the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;

e. contravener’s conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and

f. any other factor as considered relevant and appropriate.

8. Issue of the Compounding Order

In this respect following directions are applicable:

(i) The applicant/contravener shall be given an opportunity for personal hearing for further submission of documents in person in support of the application within a specified period. If they fail to appear in person or make any submissions before the CA for personal hearing, the CA shall proceed with the processing of the compounding application on the basis of available information and documents submitted along with the application for compounding.

(ii) The CA shall pass a compounding order on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings.

(iii) One copy of the compounding order issued shall be supplied to the applicant and also to the Adjudicating Authority, where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of the FEMA, as the case may be.

9. Payment of the amount for which contravention is compounded

In this respect following points are noteworthy:

(i) The sum as specified in the order of compounding shall be paid by way of demand draft in favour of the “Reserve Bank of India” within 15 days from the date of the order of compounding.

(ii) Contravener do not have any right after a compounding order is passed, to withdraw the order or to hold that the compounding order is void or request review of the order passed by the CA.

(iii) In case of failure to pay the sum compounded within the time specified in the compounding order and the Rules, it shall be deemed in terms of Rule 10 of the Rules that the contravener had never made an application for compounding of any contravention under these Rules.

(iv) On realization of the sum for which contravention is compounded a certificate in this regard shall be issued by the RBI subject to the specified conditions, if any, in the order.

10. Power of the Enforcement Directorate to compound contravention

The CA at Enforcement Directorate is empowered to compound contraventions of the provisions of section 3(a) of FEMA, 1999. Following ‘Compounding Authorities’ in Enforcement Directorate who, depending upon the sum involved in contravention, are empowered to exercise compounding powers:

<table>
<thead>
<tr>
<th>Amount involved</th>
<th>CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to Rs 5.00 lakhs</td>
<td>Deputy Director</td>
</tr>
<tr>
<td>More than Rs 5.00 lakhs but less than Rs 10.00 lakhs</td>
<td>Additional Director</td>
</tr>
<tr>
<td>Rs 10.00 lakhs or more but less Rs 50.00 lakhs</td>
<td>Special Director</td>
</tr>
<tr>
<td>Rs 50.00 lakhs or more but less than Rs 1.00 Crore</td>
<td>Special Director with Deputy Legal Adviser</td>
</tr>
<tr>
<td>Rs 1.00 crore or more</td>
<td>Director of Enforcement with Special Director</td>
</tr>
</tbody>
</table>

11. Compounding not possible

(i) amount involved is not quantifiable;

(ii) which has been finally adjudicated and disposed off by the Adjudicating Authority;

(iii) which has been committed within a period of 3 years from the date on which a similar contravention committed by him was compounded. Note: Such contravention may be referred to DOE under Section 37 of FEMA, 1999 for further investigation.

(iv) Any contravention in respect of which an appeal has been filed u/s 17 or 19 of FEMA, 1999.

(v) Any contravention relating to a transaction requiring proper approval or permission from the concerned Authority under the relevant laws/regulations as envisaged under FEMA, 1999 but no approval has been obtained from the concerned authorities.

12. Forms for Compounding may be downloaded from Master Circular on Compounding of Contraventions.

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“The only time success occurs before work is in the dictionary.” via Cameron Cashmore
Information Technology Act: Attracting Offences While Using Social Networking Websites and Routine Work

CS Pawan Kumar Baid, Practicing Company Secretary, Surat

Introduction

Major part of life of today’s humankind, is lived in virtual world. All of us are surrounded by high configuration electronic gadgets and equipments. Most of us have a smart mobile phone or tablet in our hand or an ultrabook containing fast speed internet. Many cyborg or bions are also available in market making our work easy. Everyone knows how to use smart phone, internet or technology, but seldom aware with the fact that any data, once it is transmitted on any network always has a risk of being eavesdropped.

The Information Technology Act, 2000

All the torts and crimes relating to or happening at virtual world are governed by The Information Technology Act, 2000 (hereinafter called the Act or this Act). This Act was enacted in year 2000 to recognize all transactions which take place in electronic mode; and to amend certain law, viz., Indian Evidence Act, Bankers’ Books Evidence Act, Indian Penal Code and Reserve Bank of India Act. The Act was enacted in India as compliance to UNCITRAL (United Nations Commission on International Trade Law). Interestingly, unlike any other Law, this Act applies not only to whole of India (not excluding Jammu & Kashmir), but also to any offence committed outside India by any person.

Who is Liable for What

“Originator” is a person who directly or indirectly sends, generates, stores or transmits any electronic message to any person but does not include an intermediary. “Addressee” is intended recipient of the electronic record but does not include any intermediary. “Intermediary” with respect to any particular electronic message mean any person who on behalf of another person receives stores or transmits that message or provides any service with respect to that message.

Let’s illustrate, if you sent a mail to me via your gmail id and I got the same in my ymail id. In this transaction, you are originator, I am addressee and gmail and ymail are intermediary.

This definition make it clear that message is sent at the instance of originator and received (or used) by addressee; but intermediary has nothing to do with that message except to act as agent on behalf of originator and addressee.

Some Important Penalty Provisions

Following is gist of provisions which imposes a penalty of either imprisonment or fine or both for doing specified work. Every one of us may attract these consequences while doing our daily routine work as an originator:

Using Social Networking Website: Sec 66A, which drew its attention largely in recent past, provides that if any person who sends by means of computer resource or a communication device:

a. any information which is grossly offensive or has menacing character

b. any information which he knows to be false for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will.

c. electronic message for the purpose of causing annoyance or inconvenience or to deceive or to misled the addressee about the origin of such message shall be punishable with imprisonment upto 3 years and fine.

“Far better it is to dare mighty things, to win glorious triumphs even though checkered by failure, than to rank with those poor spirits who neither enjoy nor suffer much because they live in the gray twilight that knows neither victory nor defeat.” – Theodore Roosevelt via Mike Jones
Have you ever thought before making any tweet, comment or like; or posting or sharing any picture on social networking website, that it can be offensive to any person.

Sec 66A is not the only Section which needs attention; following Sections introduced by the Amendment Act in year 2008 requires attracts focus:

i. Sec 66D provides that whoever, by means of communication device or computer resource, cheat by personating, shall be punishable with imprisonment or fine. Many people have their account on social networking websites in fake name, fake pictures and the whole fake profile; many people open their social networking account using name of some famous personalities so as to get likes, follows and comments easily, they can attract this Section.

ii. Sec 66E provides that whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person shall be punishable. Mobile with camera is most risky combination which can attract this provision. We hear and see countless cases of MMS which ruin whole life. Share and like are frequently used tools on social networking website. Sometimes, people use to share such images which can be offensive to the person who appear in that image.

iii. Sec 67 imposes a penalty for publishing or transmitting any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained in it. There may be some images, which ghastly or explicitly or impliedly encourage sexuality are published by any person, which can be shared by you intentionally or accidently.

While Sending Mail with Attachments: Sec 43 of the Act imposes penalty up to Rupees one crore on a person who access to computer in unauthorized manner or disrupts computer network or introduce any computer contaminant or virus in a computer system. Whenever you send a mail with attachment which is infected by virus, the receiver will download virus along with attachment. Actually you are unknown of the fact that it is infected by virus. Similarly, we frequently use our pendrive which is courier of virus unless it is scanned every time when you insert it in a computer system with anti-virus.

While Dealing with Client’s Data: Sec 43A cast responsibility upon a body corporate (including firm or sole proprietor) for negligently processing, handling or dealing with any sensitive personal data which may wrongfully harms or gains to any person. If you are engaged in a business of providing communication, banking, insurance, finance, mutual fund or broking, CA, CS, CMA, Lawyer etc., you are in possession of lots of personal information of any client while complying with KYC guideline. If this information is passe to other person, either intentionally or negligently you will be held liable under this Section.

Using Any Software or System or Service: Sec 66B provides that whoever dishonestly receive or retain any stolen computer resource or communication device; shall be punishable with imprisonment or fine or both. Many of us use to download software, latest songs or entire movie for free which we know is pirated. Many people does not have original version of their Operating System, numerous person have pirated version of their accounting or other software.

It seems from above provisions, that every penalty is being attracted by originator only. Usually the network service provider or social networking website or intermediary is not held liable. Sec 79 makes intermediary liable, only if any information or link is initiated or transmitted by him.

What Precaution We Should Take

In view of above provisions, an ordinary man may attract penalty while transaction a business or in a social networking website. Prevention is always better then cure, we must take following care while using computer, computer resource or internet.

Original Operating System: Always install genuine (original) version of operating system. Reason is that, if any file or data get corrupted and operating system is affected, you can re-install it by downloading from its website itself, otherwise corrupted data may report your ip (internet protocol) address to the original system provider, which can result in total system crash.

Original Anti-Virus: Always install original anti-virus in your system. Remember, some spite people are always waiting to penetrate secured system to take advantage of your heedlessness. Anti-virus will protect your system from unwanted spam. It will not only protect your computer from malware, spyware or phishing but also protect you from spreading virus accidently either while uploading or downloading any data.

While using any service on World Wide Web, keep your id
or files properly encrypted. Use of firewall can block many unwanted attack. Appropriate security need to be exercised while using credit card or net-banking. Always use secured website assuring prescribed security for transaction. You may see some emails inviting you to accept gift prize or likewise from Britain, Nigeria and so on, avoid any click on link given therein. You may see some luxury product available at some website at very cheap price, say a luxury car available at 30,000 rupees only, avoid such transactions, as they will ask to make payment by wire and will never give delivery.

**Miscellaneous:** Take proper care while using social networking website, whether you are making a tweet, or comment or like or share. Don’t store much information on free websites; avoid sharing your or your family’s pictures on free websites. Sometimes you are added in a group by any person without your knowledge, keep track on that. Do not click on advertisements, it may be a spam. Do not save your passwords on any website. Do not join or comment on cultural-political-racial-religious communities or issues.

While creating data room, always use paid service from reliable service providers. Always prefer secured browsing; opt for “https” instead of “http”. While making advertisement via sms or e-mail, you should be careful enough not to violate Sec 66A, i.e. making inconvenience to the recipient. While using bulk sms, assure that it is DND (Do Not Disturbed) filtered, also avoid bulk sms available on re-sale. Lastly but not exhaustively, always use original software for day-routine work. If you are abused or offended, complain immediately to Police Inspector (replaced for Dy. SP in 2008 Amendment Act).

**Some Important Cases**

- In Parliament Attack (in 2001), Court said that if any one wish to challenge accuracy of electronic evidence, he has to establish inaccuracy.
- In State of Tamil Nadu V Suhas Katti, where accused was posting obscene and annoying information of victim, divorcee woman was held guilty.
- In Bazee.com case, (Avinash Bajaj) in which allegations were for publishing of obscene information of and with students of DPS, however Avinash Bajaj was acquitted later-on.
- In Vinod Kaushik v Madhvika Joshi, wife was held liable u/s 43 for accessing husband’s mail id in unauthorized manner.

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**OTHER EMERGING AREAS**

**Information Technology Act: Attracting Offences While Using Social Networking Websites and Routine Work**

"Watch your step, Bob. It looks like the company’s trying to cut payroll expenses again."

---

**SAY CHEESE !!!**

**Smile Please**

*Are You Lonely??*

Don’t like working on your own? Hate making decisions?

Then call a **MEETING!!**

You can...

- See people
- DRAW flowcharts
- FEEL important
- IMPRESS your colleagues

... all on COMPANY TIMES !!

The practical alternative to work.

——

"The present is theirs; the future, for which I really worked, is mine." via Ashwin Bonde
ABC Co Limited is a listed entity. The main business of the Company is organizing tours and travels. As per the latest audited balance sheet of ABC, the paid up capital and free reserve of the Company is Rs. 600 Cr. The shareholders of ABC by a special resolution dated 17th July 2011 authorized the Company to raise Rs. 1500 Cr. ABC proposes to acquire a UK based entity (Target Company), engaged in leisure travel business. As per suggested structure, ABC will incorporate 100% owned SPV in Mauritius (Mauritius SPV). This SPV will, in turn, incorporate a wholly-owned subsidiary in United Kingdom (UK SPV). The UK SPV will ultimately hold 100% paid up capital of the Target Company. The acquisition shall be funded by both options i.e. equity infusion by and debt financing.

Questions:

a) Will the provisions of Section 372A of the Act be attracted if ABC infuses the equity through its wholly-owned subsidiaries in Mauritius and UK SPV?

b) Should ABC take shareholders approval for the above transaction as the ultimate acquisition will be done by its UK SPV?

Conditions

1. Answers should not exceed one typed page in double space.
2. Last date of receipt of answer is 7th of February 2013.
3. Two prizes (a first and a second) in kind will be awarded to the best answers and the names of the contributors will be published in the journal.
4. The envelope should be superscribed ‘Prize Query January 2013 Issue’ and addressed by name to:

   Amit Kumar Jain, Editor
   ICSI-WIRC’s FOCUS
   WIRC Premises No.13, 56 & 57, Jolly Maker Chambers No.2, First Floor, Nariman Point, Mumbai - 400 021.
# Dates to Remember

**Compliance Calendar**

## COMPLIANCES FOR THE MONTH OF FEBRUARY

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

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Activities</th>
<th>Sections / Rules / Clauses, etc.</th>
<th>Acts / Regulations / Circulars, etc.</th>
<th>Compliance Due Date</th>
<th>To whom to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TAX RELATED COMPLIANCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<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)</td>
<td>Central Excise Rules, 2002</td>
<td>February 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)</td>
<td>Central Excise Rules, 2002</td>
<td>February 6</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>3</td>
<td>Submit monthly Return for production and removal of goods and other relevant particulars and CENVAT Credit for preceding month in Form No. E.R. 1</td>
<td>Rule 9(7) &amp; Rule 12</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>February 10</td>
<td>Superintendent of Central Excise</td>
</tr>
<tr>
<td>4</td>
<td>Submit monthly return for 100% Export-oriented undertakings in respect of good manufactured, goods cleared and receipts of inputs and capital goods for the preceding month in Form No. E.R. 2</td>
<td>Rule 9(7) &amp; Rule 17 (3)</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>February 10</td>
<td>Superintendent of Central Excise</td>
</tr>
<tr>
<td>5</td>
<td>Submit monthly return by manufacturer of Final Product (N.A. for SSI)</td>
<td>Rule 9(7)</td>
<td>CENVAT Credit Rules, 2004</td>
<td>February 10</td>
<td>Superintendent of Central Excise</td>
</tr>
<tr>
<td>6</td>
<td>Submit return containing information of principal input for the preceding month in Form No. E.R. 6</td>
<td>Rule 9A</td>
<td>CENVAT Credit Rules, 2004</td>
<td>February 10</td>
<td>Superintendent of Central Excise</td>
</tr>
<tr>
<td>7</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</td>
<td>Second Proviso to Rule 8(1)</td>
<td>Central Excise Rules, 2002</td>
<td>February 15</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>8</td>
<td>Monthly payment of excise duty for the preceding month- SSI Units in Form GAR- 7</td>
<td>Rule 8</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>February 15</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>9</td>
<td>Monthly payment of excise duty for the preceding month- SSI Units in Form GAR- 7 (E-payment)</td>
<td>Rule 8</td>
<td>CENVAT Credit Rules, 2004 &amp; Central Excise Rules, 2002</td>
<td>February 16</td>
<td>Excise Authorities</td>
</tr>
<tr>
<td>10</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 [E-payment]</td>
<td>Second Proviso to Rule 8(1)</td>
<td>Central Excise Rules, 2002</td>
<td>February 16</td>
<td>Excise Authorities</td>
</tr>
</tbody>
</table>

| **INCOME TAX RELATED COMPLIANCE** | | | | | |
| 1 | Payment of Securities Transaction Tax for the previous month (Challan No. ITNS 283) | Section 100 | Income Tax Act,1961 | February 7 | Designated Bank / Income Tax Authorities |

*“Fall down seven times, get up eight times” – Japanese proverb via Tina MiModels*
<table>
<thead>
<tr>
<th>No.</th>
<th>Task Description</th>
<th>Relevant Section</th>
<th>Relevant Act</th>
<th>Due Date</th>
<th>Responsible Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Deposit TDS from salaries for the previous month in Challan No. 281</td>
<td>Section 192</td>
<td>Income Tax Act, 1961</td>
<td>February 7</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>3</td>
<td>Deposit TDS on interest on Securities, Dividends other than dividends referred to in Section 115 O, 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>Income Tax Act, 1961</td>
<td>February 7</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>4</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>Income Tax Act, 1961</td>
<td>February 7</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>5</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 FIs from securities</td>
<td>Section 195, Section 196 A to 196 D</td>
<td>Income Tax Act, 1961</td>
<td>February 7</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>6</td>
<td>Payment of Tax Collected at Source</td>
<td>Section 206</td>
<td>Income Tax Act, 1961</td>
<td>February 7</td>
<td>Designated Bank / Income Tax Authorities</td>
</tr>
<tr>
<td>8</td>
<td>Issue TDS Certificates in Form 16A to vendors (with respect to TDS deducted in the previous month)</td>
<td>Section 203</td>
<td>Income Tax Act, 1961</td>
<td>February 28</td>
<td>Income Tax Authorities</td>
</tr>
</tbody>
</table>

**FINANCE ACT & SERVICE TAX RELATED COMPLIANCE**

<table>
<thead>
<tr>
<th>No.</th>
<th>Task Description</th>
<th>Relevant Section</th>
<th>Relevant Act</th>
<th>Due Date</th>
<th>Responsible Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7</td>
<td>Section 68 read with Rule 6</td>
<td>The Finance Act, 1994 read with The Service Tax Rules, 1994</td>
<td>February 5</td>
<td>Service Tax Authorities</td>
</tr>
<tr>
<td>2</td>
<td>Pay Service tax collected during the previous month by persons other than individuals, proprietors and partnership firms in G.A.R-7 (E-payment)</td>
<td>Section 68 read with Rule 6</td>
<td>The Finance Act, 1994 read with The Service Tax Rules, 1994</td>
<td>February 6</td>
<td>Service Tax Authorities</td>
</tr>
</tbody>
</table>

**THE MAHARASHTRA STATE TAX RELATED COMPLIANCE**

<table>
<thead>
<tr>
<th>No.</th>
<th>Task Description</th>
<th>Relevant Section</th>
<th>Relevant Act</th>
<th>Due Date</th>
<th>Responsible Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>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</td>
<td>Rule 18</td>
<td>The Maharashtra Value Added Tax Act, 2005 read with the Rules there under</td>
<td>February 1</td>
<td>Sales Tax Authorities</td>
</tr>
<tr>
<td>2</td>
<td>Submit monthly return and pay tax for the previous month (if tax liability during the previous year exceeds Rs. 1 Lakh)</td>
<td>Rules 17 / 18 and 41</td>
<td>The Maharashtra Value Added Tax Act, 2005 read with the Rules there under</td>
<td>February 20</td>
<td>Sales Tax Authorities</td>
</tr>
<tr>
<td>3</td>
<td>Submit monthly return of Professional Tax if tax liability is Rs. 20 thousand or more in Form No. III (Return-cum-challan)</td>
<td>Rule 11 (3) (c)</td>
<td>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</td>
<td>February 28</td>
<td>Profession tax Authorities</td>
</tr>
<tr>
<td>Date</td>
<td>Activity Description</td>
<td>Authority</td>
<td>Reference</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
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<td>----------------------</td>
<td>-----------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Credit Professional Tax deducted in the previous month in Form VIII</td>
<td>Rule 17</td>
<td>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</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Within 15 days of such deduction</td>
<td>Profession Tax Authorities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Payment of monthly Provident Fund dues (Corporate) for previous month in prescribed challan</td>
<td>a) Section 418</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>b) Paragraph 38 of Employees' Provident Funds Scheme, 1952</td>
<td>(i) Post Office Saving Bank Account or (ii) Special Account with SBI or any Scheduled Bank</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>a) Companies Act, 1956</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>b) Employees' Provident Funds and Misc. Provisions Act, 1952</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>COMPANY LAW RELATED COMPLIANCES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Pay monthly Provident Fund dues (non-corporate)</td>
<td>Paragraph 38 of Employees' Provident Funds Scheme, 1952</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Employees' Provident Funds and Misc. Provisions Act, 1952</td>
<td>Provident Fund Authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File Form no. 5 for employees joining during the previous month</td>
<td>Paragraph 36 (2) (a) of the Employees' Provident Fund Scheme, 1952</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>For Unexempted establishments under Employees' Provident Fund and Misc. Provisions Act, 1952</td>
<td>Provident Fund Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File Form no. 10 for employees leaving during the previous month</td>
<td>Paragraph 36 (2) (a) &amp; (b) of the Employees' Provident Fund Scheme, 1952</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>For Unexempted establishments under Employees' Provident Fund and Misc. Provisions Act, 1952</td>
<td>Provident Fund Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File monthly return in Form no. F4(PS) of members joining service during the previous month</td>
<td>Paragraph 10 of the Employees' Deposit Linked- Insurance Scheme, 1976</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>For exempted establishments under Employees' Provident Fund and Misc. Provisions Act, 1952</td>
<td>Provident Fund Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File monthly return in Form no. F5(PS) of members leaving service during the previous month</td>
<td>Paragraph 20(2) of the Employees' Pension Scheme, 1995</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>For exempted establishments under Employees' Provident Fund and Misc. Provisions Act, 1952</td>
<td>Provident Fund Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File monthly return in Form no. F2(IF) of employees entitled for membership of Insurance Fund i.e. joining service during the previous month</td>
<td>Paragraph 10 of the Employees' Deposit Linked- Insurance Scheme, 1976</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>For exempted establishments under Employees' Provident Fund and Misc. Provisions Act, 1952</td>
<td>Provident Fund Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File monthly return in Form no. F3(IF) for members of Insurance Fund leaving service during the previous month</td>
<td>Paragraph 10 of the Employees' Deposit Linked- Insurance Scheme, 1976</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>For exempted establishments under Employees' Provident Fund and Misc. Provisions Act, 1952</td>
<td>Provident Fund Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Submit Register of Accidents in Form 30</td>
<td>Rule 123</td>
<td>February 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Factories Act, 1948</td>
<td>Inspector of Factories</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Pay ESI contribution for previous month</td>
<td>Regulation 31</td>
<td>February 21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Employees' State Insurance Act, 1948 &amp; Employees State Insurance (Gen) Regulations,</td>
<td>ESIC Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Task Description</td>
<td>Reference</td>
<td>Due Date</td>
<td>Authority</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>12</td>
<td>Submit monthly return of Provident Fund for the previous month in Form No. 12A</td>
<td>Para 36 (1) of Employees’ Provident Funds Scheme, 1952 and Para 20(4) of the Employees’ Pension Scheme 1995 and The Employees’ Deposit Linked Insurance Scheme, 1976.</td>
<td>February 25</td>
<td>Provident Fund Commissioner</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Submit return of declaration in Form 3 &amp; 1-A</td>
<td>Regulation 14</td>
<td>Within 10 days from the date of receiving the relevant papers</td>
<td>ESIC Authority</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Issue Notice for payment of Gratuity and Notice for Inadmissible claim in Form L &amp; M</td>
<td>Section 8</td>
<td>Within 15 days of receipt of application</td>
<td>Applicant employee or legal heir</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Submit Return of Contributions in Form 6 and 7</td>
<td>Regulation 26</td>
<td>Within 42 days of termination of the contribution period</td>
<td>ESIC Authority</td>
<td></td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td><strong>RBI (NBFC) RELATED COMPLIANCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>File return of exposure of capital markets in Form NBS-6</td>
<td>Para 22</td>
<td>February 7</td>
<td>RBI</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>File a monthly return in prescribed format (NBC-ND)</td>
<td>Circular No. DNBS (RID) CC No. 57/02.02.15/2005-06</td>
<td>February 7</td>
<td>RBI</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>SEBI RELATED COMPLIANCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Certificate on demat/remat of shares</td>
<td>Regulation 54(5)</td>
<td>February 28</td>
<td>Stock Exchanges</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>LISTING AGREEMENT RELATED COMPLIANCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Submit limited review report for the quarter ended December 31</td>
<td>Clause 41</td>
<td>February 28</td>
<td>Stock Exchanges</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>IRDA RELATED COMPLIANCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Submit monthly business number - unaudited</td>
<td>None</td>
<td>February 5</td>
<td>Insurance Regulatory &amp; Development Authority</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Submit capital market exposure report</td>
<td>Regulation 6</td>
<td>February 7</td>
<td>Insurance Regulatory &amp; Development Authority</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>List of Risk underwritten under para 19(v)(Insurance of Large Risk)</td>
<td>None</td>
<td>February 7</td>
<td>Insurance Regulatory &amp; Development Authority</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Monthly Report to be filed with IRDA - under para 17(4) of F&amp;U Guidelines of 28.09.2006 on the risks underwritten in the previous month falling under category 19(v) i.e. large risks</td>
<td>None</td>
<td>February 15</td>
<td>Insurance Regulatory &amp; Development Authority</td>
<td></td>
</tr>
</tbody>
</table>

“Nothing is impossible, the word itself says I’m possible” via Victor Aguirre
### DATES TO REMEMBER

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Relevant Identifier</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 15</td>
<td>Quarterly submit Investment Return in Form No. 1, 2, 3B, 4, 4A5, 5A, 6, 7, 7A, IV-BB</td>
<td>Regulation 6, IRDA (Investment) Regulation, 2000</td>
<td>Insurance Regulatory &amp; Development Authority</td>
</tr>
<tr>
<td>February 15</td>
<td>Submit Quarterly Coinsurance-reinsurance balance reconciliation</td>
<td>None</td>
<td>Insurance Regulatory &amp; Development Authority</td>
</tr>
<tr>
<td>February 15</td>
<td>Submit quarterly (except for the quarter ending March) unaudited segment wise Financial Statements</td>
<td>None</td>
<td>Insurance Regulatory &amp; Development Authority</td>
</tr>
<tr>
<td>February 15</td>
<td>Submit quarterly (except for the quarter ending March) reporting of maintenance of Solvency Margin Ratio in the format specified</td>
<td>None</td>
<td>Insurance Regulatory &amp; Development Authority</td>
</tr>
<tr>
<td>February 15</td>
<td>Submit Audit Report issued by Internal/concurrent Auditors with feedback / implementation plan of BOD [Investment Risk Management Process - implementation status ] as annexure to Form 4 of the Investment Return</td>
<td>None</td>
<td>Insurance Regulatory &amp; Development Authority</td>
</tr>
<tr>
<td>February 15</td>
<td>Submit Monthly Report under para 15(i) of F&amp;U Guidelines of 28.09.2006 on the Business Written - Gross Direct plus Reinsurance Accepted</td>
<td>None</td>
<td>Board of Directors</td>
</tr>
</tbody>
</table>

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**OBITUARY**

“FOCUS” deeply regrets to record the sad demise of Shri Deepak Agarwal, Associate Member of the Institute from Mumbai.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed soul rest in peace.

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*Whoever says ‘Nothing is Impossible’ has obviously never tried stapling Jell-o to a tree* via Charity Gibson
**WIRC NEWS**

### ICSI-WIRC Organized Seminar on Emerging Opportunities in CS Profession

**Date:** 15th December, 2012  
**Venue:** WIRC premises, Mumbai  
**Chief Guest / Speakers:** Shri Harshul Shah, Shri Suresh Thakurdesai, Shri Satyan Israni, Shri Ankur Srivastava  
**Delegates:** Seminar on Emerging Opportunities in CS profession  
**Other features:** Role of CS in Public Sector Undertaking., Advocate, Bombay High Court Appearing before Quasi judicial bodies – Scope for CS in practice Labour Laws & Real Estate Regulations – Role of Company Secretaries.

### ICSI-WIRC Organized Seminar on Preferential Allotment under SEBI (ICDR) Regulations, 2009 and Open Offer under SEBI Takeover Regulation, 2011

**Date:** 22nd December, 2012  
**Venue:** WIRC premises, Mumbai  
**Topics:** Preferential Allotment under SEBI (ICDR) Regulations, 2009 and Open offer under SEBI Takeover Regulation, 2011  
**Chief Guest / Speakers:** Ms. Shailashri Bhaskar, Ex-DGM, SEBI, Ms. Neelam Bhardwaj, Ex-GM, SEBI

### ICSI-WIRC Organized Lecture Series on Company Law Regulatory Perspective & Role of Professionals

**Date:** 18th to 22nd December, 2012  
**Venue:** WIRC premises, Mumbai  
**Topics:** Company Law Regulatory Perspective & Role of Professionals  
**Chief Guest / Speakers:** Shri SMA Millath, Regional Director (West), MCA, Shri Robert Pavery, Practising Company Secretary, Shri M.R. Bhat, Registrar of Companies, Dr. S.D. Israni, Advocate, Shri Arvind Salvi, Ex-RBI, Shri C.V. Sajeevan, Deputy Director, MCA

### BORIVALI Study Circle Meeting on ‘Peer Review of Company Secretaries in Practice’

**Date:** 9th December, 2012  
**Venue:** A V Hall, Don Bosco High School, Borivali (West), Mumbai – 400091  
**Topics:** ‘Peer Review of Company Secretaries in Practice’  
**Chief Guest / Speakers:** CS Umesh Ved, Practising Company Secretary and Central Council Member, ICSI  
**Delegates:** 43 participants  
**Other features:** CS Prakash Pandya was also present.

### BHAYANDER Study Circle Meeting on Mergers under Competition Act, 2002

**Date:** 16th December, 2012  
**Venue:** Reena Mehta college of commerce & management studies, Bhayander, Thane  
**Topics:** Mergers under Competition Act, 2002  
**Chief Guest / Speakers:** Shri Surendra U Kanstiya  
**Delegates:** 30 participants

### KANDIVALI Study Circle Meeting Special Half Day Seminar

**Date:** 2nd December, 2012  
**Venue:** Kandivali Recreation Club, Kandivali (West), Mumbai 400 067  
**Topics:**  
SESSION I - New Mechanism on Cost Audit & Cost Compliance Report  
SESSION II - Amendments relating to Service Tax by Finance Act 2012 & their Implication  
SESSION III - Stress Management & Meditation  
**Chief Guest / Speakers:** Mr. V. R. Kedia, Advocate Mr. Shailesh Sheth, CS Snehal Shah  
**Delegates:** 77 Participants had attended the Meeting

### KANDIVALI Study Circle Meeting on Success Stories of Turnaround Companies & Film Based Discussion on Stiffen Covins-Effect on Management & Individuals

**Date:** 4th November, 2012  
**Venue:** Kandivali Recreation Club, Kandivali (West), Mumbai 400 067  
**Topics:** “Success Stories of Turnaround Companies & Film Based Discussion on Stiffen Covins-Effect on Management & Individuals”  
**Chief Guest / Speakers:** Mr. Bhaskar Joshi, Chairman – Management Development Programmes Committee and Membership Services and Development Committees of BMA. General Manager - HR, Somaiya Group of Industries  
**Delegates:** 72 Participants had attended the Meeting

“It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change.” Charles Darwin via Ann McCartan
# NEWS & EVENTS

## AURANGABAD CHAPTER FULL DAY WORKSHOP ON SME LISTING - OPPORTUNITIES

<table>
<thead>
<tr>
<th>Date</th>
<th>27th December, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venue</td>
<td>Hotel Ajanta Ambassador, Jalna Road, Aurangabad</td>
</tr>
<tr>
<td>Topics</td>
<td>SME LISTING - Opportunities</td>
</tr>
<tr>
<td>Chief Guest / Speakers</td>
<td>Speakers &amp; Guest of Honour: Shri Ashish Chauhan, MD &amp; CEO of BSE Chief Guest: Shri K. Kumar, President &amp; Director of Endress+ Houser Other Speaker: CS Mahavir Lunawat, WIRC Chairman.</td>
</tr>
<tr>
<td>Delegates</td>
<td>85 Total participants (Members and Students)</td>
</tr>
</tbody>
</table>

## DELEGATES

**85** Total participants (Members and Students)

## OTHER FEATURES

Four (4) PCH were allotted to members who attended this programme.

## PUNE CHAPTER OF ICSI

### SCM ON OVERVIEW OF PROPOSED SECRETARIAL STANDARD ON REGISTRATION, MODIFICATION & SATISFACTION OF CHARGES

<table>
<thead>
<tr>
<th>Date</th>
<th>21st December, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venue</td>
<td>Pune Chapter</td>
</tr>
<tr>
<td>Topics</td>
<td>Overview of Proposed Secretarial Standard on Registration, Modification &amp; Satisfaction of Charges</td>
</tr>
<tr>
<td>Chief Guest / Speakers</td>
<td>CS Devendra Deshpande</td>
</tr>
<tr>
<td>Delegates</td>
<td>25 participants</td>
</tr>
</tbody>
</table>

## OTHER FEATURES

One (1) PCH was allotted to members who attended this programme.

## PUNE CHAPTER OF ICSI

### SEMINAR ON LAW, PRACTICE & PROCEDURE - HISTORICAL PERSPECTIVE, GENESIS OF CLB & NCLT, APPEARING BEFORE CLB

<table>
<thead>
<tr>
<th>Date</th>
<th>22nd December, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venue</td>
<td>Hotel Coronet, Pune</td>
</tr>
<tr>
<td>Topics</td>
<td>Law, Practice &amp; Procedure - Historical Perspective, Genesis Of CLB &amp; NCLT, Appearing Before CLB</td>
</tr>
<tr>
<td>Chief Guest / Speakers</td>
<td>Dr S D Israni &amp; Adv Satyan S Israni</td>
</tr>
<tr>
<td>Delegates</td>
<td>60 participants</td>
</tr>
</tbody>
</table>

## OTHER FEATURES

Four (4) PCH were allotted to members who attended this programme.

## PUNE CHAPTER OF ICSI

### SCM ON DISCUSSION ON NOTIFICATION FOR CHANGE IN FORM DIN 1, DIN 4, & FORM 18

<table>
<thead>
<tr>
<th>Date</th>
<th>29th December, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venue</td>
<td>Pune Chapter</td>
</tr>
<tr>
<td>Topics</td>
<td>Discussion on Notification for Change in form DIN 1, DIN 4, &amp; Form 18</td>
</tr>
<tr>
<td>Chief Guest / Speakers</td>
<td>CS Pawan Chandak</td>
</tr>
<tr>
<td>Delegates</td>
<td>33 participants</td>
</tr>
</tbody>
</table>

## OTHER FEATURES

Two (2) PCH were allotted to members who attended this programme.

---

“Life isn’t about learning how to weather the storm. It’s about learning how to dance in the rain.” via Monica Fish
ARE YOUR EMPLOYEES CONTRIBUTING WELL IN YOUR ORGANIZATION?

CS S K Batra, Practising Company Secretary, Raipur

Here are a few suggestions!

Contribution of employees is to be measured in terms of their increased productivity in their services. Productivity is not restricted to increased production of goods. Organisational productivity is equally important and for discussion, read on.

There are certain dos and certain don’ts to increase the organisational output. Personal productivity is to a good extent dependant on organisational culture and the infrastructure.

It is very essential that jobs in hand are inventoried. Most often, we depend on our personal memory or a diary or slip book or a white board. Some executives use cell phones to store the information. Each method will depend on the individual choice of the executive concerned. Often, memories fail and a fool proof programme must be enforced.

An organisation must have a centralised inventory of incoming tasks, tasks disposed off and tasks in hand. Such methods, to some extent, are prevalent in defense departments, stock exchanges, educational institutes, banks and even in the present e_filing of statutory forms on different portals such as central excise, income tax and MCA. Clubs and membership societies engaged in maintenance services to housing blocks are also listing out the defaulters through a follow up programme. In respect of these organisations, the inventory job is restricted to time bound activities, like filing of annual returns, income tax returns, school fees by students so as to have a list of defaulters. The Customer Ledger programs also run in similar fashion.

There is a good need for looking at the organization as a whole also. It is often seen that many buried matters spring up and these spring up only to add to costs of the organisation and worry of its executives. Let us see how we can avoid such situations.

People often leave their jobs and sooner or later new recruitments join as and when replacements are made. In the intervening period, a lot of actions remain unattended. These also come to notice quite late. Here importance of second line of defense gets attention. Until the replacement comes, the Head of the Institutions must have some side shoots to fill up the gap until the replacement is made. Paying of salaries to such stand by executive is never a waste of money. They are like fire fighters. Money spent is fully realized as and when they fill up a gap. The jobs in the hands of the outgoing executive get attended to in some cases in a better way.

The incoming data consists of telephone calls, visitors, emails, fax, mail, sms on individual executive cell phones. I have seen that in large organizations, all incoming emails are stored at the Centralised CPU and there the monitor marks the data to the concerned user. In some cases, the incoming and outgoing messages are available at the Centralised CPU. However, despite that the desired results or the efficiency level are not achieved. The reason being that very low level staff handles this area of core activities. In my opinion a senior officer should handle this.

I was impressed at Punj Group during my association with them in 1977-78 that one senior officer Mr. Malhotra used to handle the receipt and dispatch... His designation on American Pattern was of ‘Traffic Manager’. Every outgoing mail used to have a tickler (extra copy) which was sent to the Traffic Manager. He received and marked the incoming mail to concerned officials and thereafter after a reasonable gap, ticked out the incoming mail entry with the reply date. For un-replied incoming mail, he used the inter-come for follow up. With tickler copies, he used to get reminders sent from the concerned officer after a reasonable wait, if the address did not respond say 10 to 12 days. Such follow up executives are worth keeping.

I have seen Chairman of a group of companies engaged in engineering industry to daily go through all the incoming and outgoing emails. He uses this exercise to prepare himself for addressing staff meetings.

“Success is not so much what we have, as it is what we are.” – Jim Rohn
via Nicole Elizabeth Shields
SOFT & COMMUNICATION SKILL

Such a follow up helps individuals to remain disciplined and well guided. Opportunity losses are minimized.

Another experience I had relates to the magic of personal touch with the staff by their seniors. One simple way is to mark the papers with the abbreviated name of the staff and pass on the paper to him. Another one is to ask the staff to come and discuss. Sometimes, the guide line has also to be given. Employees hate to be treated as too juniors or as a part of the machine without being recognised.

A reason for an employee to be inefficient is not due to lack of his skill but due to over burden of duties on him. His effective performance is minimized due to multi-tasking. I have often seen the same man performing both field and office duties in equal ratio. What happens is that a lot of time is utilized in conveyance from office to the field place and coming back. Some tiredness is also caused. The organizations must tailor out the duty charts in such a way that field and office staff are identified. The Company may well add more executives but not let the shortage of man power over burden the already hard working executive.

The priorities are often confused. My experience is that the LIFO – last in, first out is the general staff tendency. Staff takes jobs coming on the table with lesser priorities than the job being enquired of by the senior. If you find a staff huffing with some work, his answer for huffing will be that ‘Boss is enquiring about it’.

The culture of the organization also is very material. I was once asked to get performance guarantees issued worth a crore of rupees in one day. I had to manage with availability of the non-fund bank limits in two banks, get the bank guarantee format approved from the bank and also to deposit the cash margin money of Rs.10.00 lacs. I found that the tender was with the Marketing Department for over one month. I protested for diverting me from other priority jobs whereas I could have been informed in advance say one week so that I could have performed efficiently in a better cost effective manner. My protest was that urgency is for everyone in the organization. The Marketing Head was politely but firmly told to be careful in the time planning so that last minute crises are avoided. Where ever and whenever possible, the job must be divided and sub-divided so that work can be accomplished as a team. Many hard working employees tend to over look this important aspect as they feel others are not that competent. That feeling is not altogether correct. I believe efficiencies are very individual but given opportunities, the skills improve. Let the hardworking not remain over loaded and the others under loaded.

Unless the organizations set deadlines, the efficiency cannot be achieved. But the mistake occurs when unrealistic deadlines are set. A company achieving 20% sales growth is justified to fix target 25% higher every month. In reality, 200% of the previous achievement is fixed and the employees treat targets as unachievable and imaginary. The time deadlines sometimes tend to ignore realities. The Chairman of a company was seen to instruct the Company Secretary to declare an interim dividend and to ensure posting of dividend warrants within three days whereas the time to hold the Board Meeting, informing stock exchanges, getting printed dividend warrants and then issue of individual warrants etc required the time to be at least seven days in the non-computer days. Secretary heard the instructions but spent seven days, the time required to work on war footing basis. The result was that instructions of the senior were given deaf ears in future. Let that not happen. Let the senior set reasonable time dead lines.

Another important area is the quality of infrastructure available. I have seen wastage of time due to sharing of printers, office stationery and inadequacy of sub-ordinate staff. Sometimes the seating arrangement is not proper and there are distractions due to passer byes or too much rattling of shoes, etc.

Productivity goes down of an Executive if his span of attention is being over used. Normally, one should have four to five reporting staff. In case this number exceeds, the senior Executive spends more time on training and guidance and has lesser time for his exclusive execution.

We have no clear vision of time required to finish a job. For this reason, most of the young professional do not know fee to be charged. Past experience and level of skill acquired help a lot. Unless, we know the time requirement, we cannot even plan the time. Time is money. If not well planned in terms of time, money is lost in terms of high input cost. One must have a part of the time free for him to THINK. Learned writers on this subject even advocate use of alarms for the time you have set free for yourself. I used to have free time with my evening tea. As soon as the peon came with the cup of tea, my time started.

Lucky you are that you already are doing well and getting the maximum possible output. Else the discussion, if followed, will turn you to better productivity.

The author is a Fellow Member of the Institute of Company Secretaries of India and he is a practicing Company Secretary.

“Create your own destiny. If you don’t, someone else will.” via Chris Leber

January, 2013

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“Success is being able to juggle those Glass Balls called Priorities and keeping them shiny & intact while running the Marathon of Life.” via Jouyin Teoh
Required a qualified Company Secretary at Mumbai proficient in English and well versed with Company Law. The Candidate should be member of ICSI, preferably having experience of 2-3 years in the related field and compliance work with ROC etc. Please apply in confidence to email id: violet@tipco.in along with current CTC.

"Learning from success is important but learning from failure is vital to succeeding" via Jason Platnick

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INVESTOR AWARENESS QUARTER
(11TH OCTOBER, 2012 - 11TH JANUARY, 2013)

100 INVESTOR AWARENESS PROGRAMS ORGANISED ACROSS MAHARASHTRA AND GOA
Investor Awareness Programs - A Glimpse

Ratnagiri
Ayushi Abhay (PCS), Uma Mondal (PCS), Ragini Chokshi (PCS) & N P Pandya (AGM, BSE)

Sangli
Uma Mondal (Practicing Company Secretary)

Kolhapur
Ragini Chokshi (PCS) Offering a Momento to Principal

Pune
N P Pandya (Assistant General Manager, BSE)

Solapur
N P Pandya (Asst General Manager, BSE) & Principal

Nashik
Vrushal Saudagar Presenting a Momento to Principal

Aurangabad
Laxmikant Jaipurkar (Vice Chairman, ICSI Aurangabad Chapter) & Principal

Jalgaon
Mala Jain (Practising Company Secretary)

Dhule
Rajkumar Tiwari (PCS) Presenting a Momento to Principal

Alibag
Suresh Thakur Desai (Past Chairman, ICSI-WIRC)

Nagpur
Rajkumar Tiwari (PCS) addressing to Participants

Wardha
Darshit Parikh (PCS) Presenting a Momento to Principal

Latur
Rajkumar Tiwari (PCS) Presenting a Momento to Principal

Beed
Darshith Parikh (PCS) (Practising Company Secretary)

Ratnagiri
Uma Mondal (PCS) Offering a Moment to Principal

Miraj
Uma Mondal (PCS) Offering a Moment to Principal

Kolhapur
Darshith Parikh (AGM, BSE) Addressing to Participants

Pune
Darshith Parikh (PCS) addressing the Participants

Solapur
Vrushal Saudagar (Secretary, Nashik Chapter of ICSI-WIRC)

Shirdi
Darshith Parikh (PCS) (Practising Company Secretary)

Jalgaon
Laxmikant Jaipurkar (Vice Chairman, ICSI Aurangabad Chapter)

Dhule
N P Pandya (AGM, BSE) Addressing to Participants

Rohad
Suresh Thakur Desai (Past Chairman, ICSI-WIRC)

Nagpur
Darshith Parikh (PCS) (Practising Company Secretary)

Wardha
Rajkumar Tiwari (Practising Company Secretary) & Principal

Latur
Rajkumar Tiwari (Practising Company Secretary)

January, 2013
INAGURATION OF BHAYANDER CHAPTER ON 28TH DECEMBER 2012

Corporator & Mayor, Bhayander, President, VP, Secretary-Designate, ICSI and Chairman, WIRC on the occasion of Bhayander Chapter inauguration

President ICSI, Mayor, Bhayander and Chairman, WIRC inaugurating Bhayander Chapter

Bhayander Managing Committee Members

LAUNCHED REVIVED ICSI-WIRO LIBRARY FACILITIES ON 28TH DECEMBER 2012

President, VP, Secretary Designate, ICSI and Chairman, WIRC inaugurating library

CS Nesar Ahmad, CS Mahavir Lunawat, CS K. Sethuraman

CS Nehal Shah, CS Gopal Chalam, CS Prakash Pandya, CS Hitesh Kothari, CS Sanjay Gupta

FULL DAY SEMINAR ON SME LISTING OPPORTUNITES ORGANISED BY WIRC JOINTLY WITH AURANGABAD CHAPTER AND CMIA ON 27.12.12 AT AURANGABAD

L to R - CS L.A. Jaipurkar, CS Mahesh Singhi, CS Mahavir Lunawat, Shri Sunder Bhothra, Raghvendra Joshi, Ashish Chauhan, Rishi Bagla, Mukund Bhogale, Anil Save, Sunil Raitthatha, Gautam Nandwat, CS Ashish Gupta

SECRETARY DESIGNATE, ICSI INTERACTING WITH WIRC MEMBERS

DADAR STUDY CIRCLE MEETING HELD ON 15.12.2012 AT DADAR

28-12-2012

S.K. Jain

CS Uma Mondal and CS Surendra Kansliya
ICSI-WIRC Photo Gallery

ICSI-WIRC: MCA ANNUAL CRICKET MATCH, 2012


CS Shailashri Bhaskar
Neelam Bhardwaj

ICSI-WIRC thanks CS Kaushik Jhaveri for his active contribution

SEMINAR ON EMERGING OPPORTUNITIES IN CS PROFESSION HELD ON 15TH DECEMBER 2012

CS Sanjay Gupta
CS Suresh ThakurDesai
CS Harshul Shah
CS Satyan Israni
CS Ankur Srivastava

January, 2013
Dear All,

A leader is one who knows the way, goes the way, and shows the way.

— John Maxwell

The sentiments at ICSI-WIRC are on peak with the new-year celebrations, with Lok Sabha passing the Companies Bill and with the completion of one of the most accomplished year at ICSI-WIRC. It lends me a deep sense of pride and privilege to share that ICSI-WIRC pioneered several unprecedented activities with multifarious initiatives getting rolled out one after the other.

It is not possible to make a mention of all those activities and initiatives undertaken by your Regional Council in the year 2012, yet I make an attempt to capture a glimpse of achievements as under:

On a relative basis, the numbers have not only outperformed, rather they are un-comparable. To put up before you the perspective of the magnitude, the following may be of help:

<table>
<thead>
<tr>
<th>Performance Parameter</th>
<th>2012</th>
<th>2011</th>
<th>Highest Performance before 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Revenue (INR)</td>
<td>2,05,64,932</td>
<td>1,41,33,282</td>
<td>1,41,33,282</td>
</tr>
<tr>
<td>Surplus (INR)*</td>
<td>55,58,589</td>
<td>11,09,104</td>
<td>43,56,952</td>
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<tr>
<td>Investor Awareness programs</td>
<td>118</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Professional Development Programs</td>
<td>107</td>
<td>95</td>
<td>95</td>
</tr>
<tr>
<td>Career Awareness Programs</td>
<td>324</td>
<td>202</td>
<td>NA</td>
</tr>
<tr>
<td>OTC Revenue (INR)</td>
<td>50,38,365</td>
<td>24,04,264</td>
<td>34,26,161</td>
</tr>
<tr>
<td>Number of OTC students</td>
<td>516</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Total number of programs (members, students, career awareness &amp; Investor awareness programs)</td>
<td>559</td>
<td>326</td>
<td>NA</td>
</tr>
</tbody>
</table>

NA - Not Available

* INR 70 lacs approx considering unclaimed potential amounts.