THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Azadi Ka Amrit Mahotsav

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.

Mission
"To develop high calibre professionals facilitating good corporate governance"

Volume 3 I November 2021

ICSI Global Connect

International Newsletter for Governance Professionals

Company Secretary

Mastering Global Corporate Governance

ICSI GLOBAL CONNECT

International Newsletter for Governance Professionals

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PRESIDENT MESSAGE

Dear Professional Colleagues,

यद्यदाचरति श्रेष्ठस्तत्तदेवेतरो जनः।
स यत्प्रमाणं कुरुते लोकस्तदनुवर्तते।।

Whatever action is performed by a great man, common men follow in his footsteps. And whatever standards he sets by exemplary acts, all the world pursues.

These verses of the Shrimad Bhagavad Gita, not only act as a guiding light for the profession motivating them to march towards true perfection and excellence in the conduct, but are a reminder and reiteration of our role as an Institute, and more so as an Institute which takes pride in being the Alma Mater to more than half the CS population across the globe.

The ICSI Global Connect – the Global Journal for Company Secretaries, is an attempt of the Institute of Company Secretaries of India, to not only cover the territorial gaps in learning, but build both capabilities as well as synergies that shall pave the way for laying the foundation of a rock solid governance framework globally.

With the dynamics of the entire world having altered drastically in the past two years, the profession too has witnessed a 360^0 transformation lending an unprecedented expansiveness to the activities and responsibilities undertaken by us. The influx of technology, the impact of Artificial Intelligence has all moved from academic discussions to the real world. The visions and plans for the upcoming decade are looking to be revamped only to inculcate the bearing of these subtleties. But what shall definitely remain a constant in this equation, is the need of the corporates for constant handholding and guidance both for complete compliance as well as strategizing the plans for long-term and short-term goals and objectives.

In the light of all these developments, if the present and future of the profession of Company Secretaries is to be deliberated upon, needless to say, there has been and will continue to be, both a horizontal as well as vertical expansion of our responsibilities, one which is bound to continue in the times to follow. And further, if I was to focus on the Indian mainland, where on a micro level, we are moving from the financial to non-financial reporting; at a macro level, the Indian diaspora is witnessing an overhaul in the corporate culture in totality.

With its 66000 members and a dedicated approach towards its vision to be a global leader in promoting good corporate governance, the ICSI is on its toes not only to participate in global governance deliberations but to undertake initiatives which can further its objectives, strengthen the profession and professionals globally arming, equipping, and nurture them to take up their roles with the right knowledge and skill.

The ICSI Global Connect with its all-inclusive approach towards corporate governance is another attempt of the Institute to create a platform of futuristic discussion and deliberation. While we all have sailed through plenty a challenges posed by the pandemic, the idea is to smoothen the road that lies ahead.

As professionals, and as the caretakers of good governance, as we strive towards the achievement of our common objective of promoting good corporate governance, we cannot stop until our ultimate goal is achieved – the goal of strengthening the foundations of the Corporate Sectors in our respective nations, and the goal of being the torchbearer of best practices in corporate governance. For as we have always believed,

Together we can. Together we will.

Happy reading !!!

With warm regards,

CS Nagendra D. Rao

President

The Institute of Company Secretaries of India

CHAIRMAN MESSAGE

Dear Professional Colleagues,

As we walk our way towards the end of the year, let us look back and reflect on the challenges and successes of 2021.

The past 20 months have given us some of the most important lessons. Besides balancing personal and professional life and prioritizing health, the crisis taught us to be open to learning and adopting new roles.

Let us leverage on this resilience and adaptability of ours and step into the New Year with renewed vigour and zeal. Let us don the hat of the torchbearers of best practices for sustainable development and effective governance.

It is with this thought and intent that ICSI is presenting to you the third issue of **ICSI Global Connect**, a newsletter that gives us a platform to exchange views and updates from different jurisdictions, essential for getting a global perspective of Risk and Governance.

The growing exposure of the economy is bringing forth opportunities of knowledge sharing between organizations as well as economies. As Governance Professionals, it is important for us to create a channel and pool of information from all over the world so as to thrive in environments of disruption, uncertainty and change.

The Governance Codes developed by International Bodies has induced a lot of transparency in terms of better disclosure standards and protection of stakeholders, paving the way for delivering high quality governance standards.

Corporate Secretaries, thus need to equip themselves and play the crucial role of implementing these indices and help in the evaluation of governance practices in each of the countries that have adopted them.

Let us all march ahead and embrace a more holistic approach to governance. Let us all create an environment of learning, growth and development of the Company Secretary Profession all across.

Best Regards,

CS Ashish Garg
Chairman, International Affairs Committee, The ICSI
and President, CSIA

Recent Regulatory Developments around the World

Central Bank UAE issues new guidance on anti-money laundering and combatting the financing of terrorism for licensed exchange houses

The Central Bank of the UAE (CBUAE) has issued new guidance on anti money laundering and combatting the financing of terrorism (AML/CFT) for licensed exchange houses (LEH).

The guidance will assist LEH's understanding of risks and effective implementation of their statutory AML/CFT obligations, and takes Financial Action Task Force (FATF) standards into account. The guidance requires LEH to demonstrate compliance with its requirements within one month.

The Exchange Houses sector is weighted as highly important in terms of risk and materiality in the UAE, which is increased notably by their exposure to cash and crossborder transactions. As stipulated in the guidance, LEH must maintain an effective AML/CFT programme designed to prevent misuse of their business to facilitate money laundering or terrorist financing. LEH must take a risk-based AML/CFT approach by conducting a regular risk assessment process that covers all commensurate risks to their exchange business, including customer, products and services, delivery channel, new technologies, geographic, counterparty and illicit finance risks. In tandem, the risk assessment findings should inform the programme's comprehensive policies, procedures, internal controls and employee training to mitigate risks effectively.

Further essential components of the AML/CFT programme include dedicated compliance function, strong customer due diligence, continuous transaction monitoring and full compliance with the UAE's requirements on Targeted Financial Sanctions and Suspicious Transaction Reporting. The CBUAE issued AML/CFT Guidance recently on these components, which are applicable to all its Licensed Financial Institutions.

His Excellency Khaled Mohamed Balama, Governor of the CBUAE, said: "The CBUAE takes its regulatory and supervisory duties extremely seriously. We want to ensure that all licensed exchange houses in the UAE understand their AML/CFT responsibilities, have adequate programmes to identify and mitigate AML/CFT risks in their operations, and comply fully with their statutory obligations." To view the Guidance, please click on the following link https://bit.ly/3CTYvtD.

Source: https://www.wam.ae/en/details/1395302993848

UAE regulatory authorities jointly issue 'Guidelines for Financial Institutions Adopting Enabling Technologies

The Central Bank of the UAE (CBUAE), the Securities and Commodities Authority (SCA), the Dubai Financial Services Authority (DFSA) of the Dubai International Financial Centre (DIFC) and the Financial Services Regulatory Authority (FSRA) of Abu Dhabi Global Market (ADGM) (the Regulators) have jointly issued "Guidelines for Financial Institutions Adopting Enabling Technologies" (the Guidelines).

The Guidelines, published on 15th November, 2021, set out cross-sectoral principles and best practices for financial institutions when adopting enabling technologies for the development or offering of innovative products and services. The enabling technologies include Application Programming Interfaces; Big Data Analytics and Artificial Intelligence; Biometrics; Cloud Computing; and Distributed Ledger Technology.

The objectives of these Guidelines are to promote the safe and sound adoption of these technologies by financial institutions across the UAE, so that the risks arising from the adoption of innovative activities are proactively and appropriately managed. The issuance of the final Guidelines follows a public consultation launched in June 2021. In finalising the Guidelines, the Regulators have considered international standards, industry best practices and the valuable feedback received from market participants during the public consultation.

The Guidelines will apply to all financial institutions that are licensed and supervised by any of the Regulators and that utilise the enabling technologies, irrespective of the financial activities conducted.

Commenting on the launch of the guidelines, Saif Al Dhaheri, Assistant Governor - Strategy, Financial Infrastructure and Digital Transformation at the CBUAE, said: "Through the guidelines, we aim to direct licensed financial institutions to adopt technologies that enable modern financial services and promote innovation. These guidelines reflect the Central Bank's keenness to team up with regulatory authorities in various fields, including issuing unified and common guidelines to achieve the growth of the UAE's economic sectors."

Dr. Maryam Buti Al Suwaidi, Chief Executive Officer of the Securities and Commodities Authority (SCA), said: "Undoubtedly, the release of Guidelines for Financial Institutions Adopting Enabling Technologies is of paramount importance given that they enhance the safe and proper adoption of these technologies by the financial institutions

operating in the UAE's financial sector, especially that they are consistent with the best global standards and practices. Serving as a guide for all financial institutions that fall under the supervision of SCA or the other regulatory authorities taking part in this initiative, these guidelines will encourage enhanced proactive management of the risks of innovative activities."

F. Christopher Calabia, Chief Executive of the DFSA, said: "Finance has long drawn on the latest technology, now more so than ever. As a risk-based regulator, the DFSA welcomes innovation and the prudent adoption of enabling technologies by the firms it supervises. In developing this Joint Guidance with fellow UAE regulators, we encourage all firms to deploy new technology in line with good practice and clear guidelines so that the financial system and customers remain properly protected."

Emmanuel Givanakis, CEO of the FSRA at the ADGM, said, "Modern financial institutions need their technology to be robust and resilient. These Guidelines will help financial institutions by providing best practices on how to manage and mitigate risks arising from the use of innovative technologies. In turn, this will let institutions better serve their customers. We have closely collaborated with the other UAE regulators on these Guidelines and look forward to similar joint efforts in future."

To view and download the Guidelines, please click on any of the following links:

- Central Bank of the UAE https://bit.ly/3CYDFcL .
- Securities and Commodities Authority https://bit.ly/3rf1vie .
- Dubai Financial Services Authority https://www.dfsa.ae/innovation
- Financial Services Regulatory Authority, ADGM https://bit.ly/3reHbNK

Source: https://www.wam.ae/en/details/1395302992820

Singapore Summary of responses to public consultation on the draft Corporate Registers (Miscellaneous Amendments) Bill 2021

1. The Ministry of Finance (MOF) and the Accounting and Corporate Regulatory Authority (ACRA) invited the public to provide feedback on the draft Corporate Registers (Miscellaneous Amendments) Bill 2021 ("the Bill") from 2 to 30 July 2021.
2. The proposed amendments in the Corporate Registers (Miscellaneous Amendments) Bill 2021 aim to enhance Singapore's regime on the transparency and beneficial ownership of companies and limited liability partnerships (LLPs). These amendments serve to reduce any opportunities for the misuse of corporate entities for illicit purposes and are in line with international standards set by the Financial Action Task Force for combating money laundering, terrorism financing and other threats to the integrity of the international financial system.
3. The proposed legislative amendments in the public consultation are as follows:
   (a) Specify a 14-day time frame for foreign companies to update their register of members;
   (b) Require local companies, foreign companies and limited liability partnerships ("LLPs") to enter the particulars of the individual(s) with executive control in their registers of controllers if no individual or legal entity having significant interest in or significant control over the company or LLP has been identified;
   (c) Clarify that local companies should update their register of nominee directors within 7 days after receiving information from the directors; and
   (d) Require local and foreign companies to keep non-public registers of nominee shareholders.
4. The key feedback received in response to the amendments, and our responses to the feedback, are in (Annex A) https://bit.ly/3HY33CV. ACRA will address the clarifications sought in the feedback by publishing guidance on compliance when the legislative amendments are implemented. Feedback received on areas not under the scope of the Bill may be considered by MOF and ACRA in a future review.
5. The proposed legislative amendments in the Corporate Registers (Miscellaneous Amendments) Bill 2021 will be presented in Parliament.
6. MOF and ACRA would like to thank all respondents who have provided their feedback in this public consultation.

Source: https://www.acra.gov.sg/legislation/legislative-reform/

Legal & Regulatory Updates from India

सत्यमेव जयते

Ministry of Corporate Affairs

MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
सत्यमेव जयते

Ministry of Corporate Affairs

MCA and IEPFA further simplify IEPFA Claim Settlement Process towards Ease of Doing Business and Ease of Living

In a major step towards the mission and vision of Government of India of Ease of Living and Ease of Doing Business, Ministry of Corporate Affairs (MCA) has further simplified claim settlement process through rationalization of various requirements under Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

For claimants, requirement of Advance Receipt has been waived off, requirement of Succession Certificate/ Probate of Will/ Will has been relaxed up to Rs 5,00,000 (five lakh) both for Physical & DEMAT shares, notarization of documents has been replaced with self-attestation and requirements of Affidavits and Surety relatively have been eased.

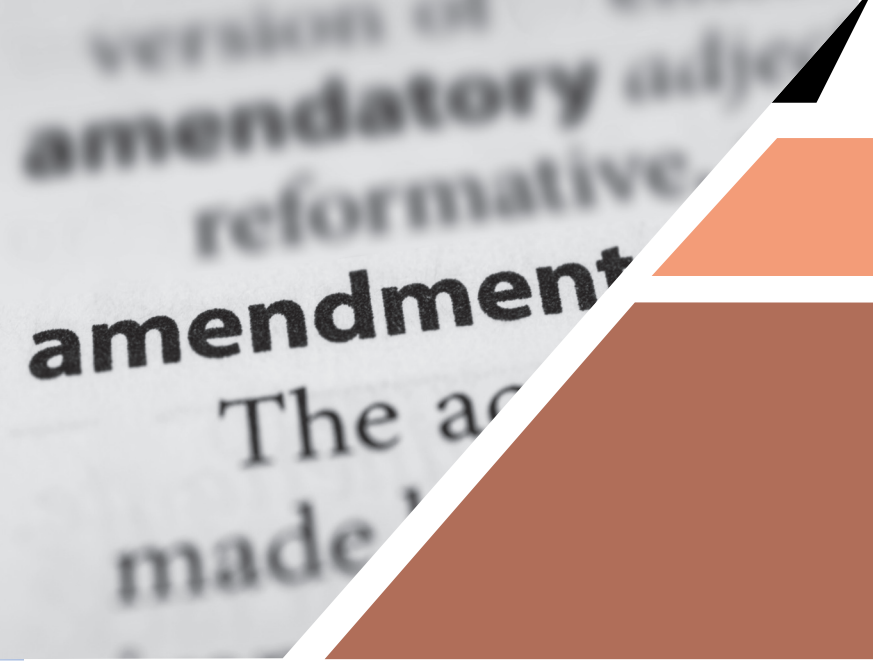
For companies, requirement of attaching documents related to Unclaimed Suspense Account has been eased and companies have been given flexibility to accept transmission document viz. Succession Certificate, Will etc. as per their internal approved procedures and Newspaper Advertisement requirement for loss of physical Share Certificate has been waived off up to an amount of Rs.5,00,000.

The focus of the change has been to make the process simpler and quicker for the claimants. The new regime envisages a trust-based model for faster citizen centric services and turnaround time. It is expected that with these changes many more claimants shall come forward to claim their shares and amounts from Investor Education and Protection Fund Authority (IEPFA). Till date IEPFA has approved more than 20,000 claims refunding more than 1.29 crore shares. Shares of market value of more than Rs 1,011 crore and dividends and other amounts exceeding Rs 20 crore have been refunded.

ABOUT IEPFA

Investor Education and Protection Fund Authority (IEPFA) has been established under Section 125 of the Companies Act 2013 for administration of the IEPF fund as per section 125 (3) of Companies Act 2013. The main objective of the authority includes to promote Investor Education, Awareness & Protection, refund unclaimed shares, dividends and other amounts transferred to it under sections 124 and 125 of the Companies Act 2013 to the rightful claimants. IEPFA works under the administrative control of MCA.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1771138



Ministry of Corporate Affairs

MCA amends Schedule III of Companies Act on disclosure norms in financial statements

In order to bring in greater transparency in reporting of financial statements, the Ministry of Corporate Affairs (MCA) vide notification dated 24.03.2021 has amended the Schedule III to the Companies Act, 2013 effective from 01st April, 2021 to mandate various disclosures by companies in their financial statements. This was stated by Union Minister of State for Corporate Affairs Shri Rao Inderjit Singh in a written reply to a question in Rajya Sabha.

The new disclosures with respect to the virtual currency/ crypto currency transactions and CSR spending undertaken by companies during a financial year are:-

1. Details of Crypto Currency or Virtual Currency

Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed:-

a. profit or loss on transactions involving Crypto currency or Virtual Currency
b. amount of currency held as at the reporting date,
c. deposits or advances from any person for the purpose of trading or investing in Crypto Currency/virtual currency.

2. 2. Details of Corporate Social Responsibility (CSR)

Where the company covered under section 135 of the companies act, the following shall be disclosed with regard to CSR activities:-

a. amount required to be spent by the company during the year,
b. amount of expenditure incurred,
c. shortfall at the end of the year,
d. total of previous years shortfall,
e. reason for shortfall,
f. nature of CSR activities,
g. details of related party transactions, e., contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard,
h. where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1744542

Ministry of Corporate Affairs

Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2016 on 14th July, 2021.

The amendment regulations enhance the discipline, transparency, and accountability in corporate insolvency proceedings:

a. A corporate debtor (CD) may have changed its name or registered office address prior to commencement of insolvency. The stakeholders may find it difficult to relate to the new name or registered office address and consequently fail to participate in the CIRP. The amendment requires an insolvency professional (IP) conducting CIRP to disclose all former names and registered office address(es) so changed in the two years preceding the commencement of insolvency along with the current name and registered office address of the CD, in all its communications and records.

b. The interim resolution professional (IRP) or resolution professional (RP) may appoint any professional, including registered valuers, to assist him in discharge of his duties in conduct of the CIRP. The amendment provides that the IRP/RP may appoint a professional, other than registered valuers, if he is of the opinion that the services of such professional are required and such services are not available with the CD. Such appointments shall be made on an arm's length basis following an objective and transparent process. The invoice for fee shall be raised in the name of the professional and be paid into his bank account.

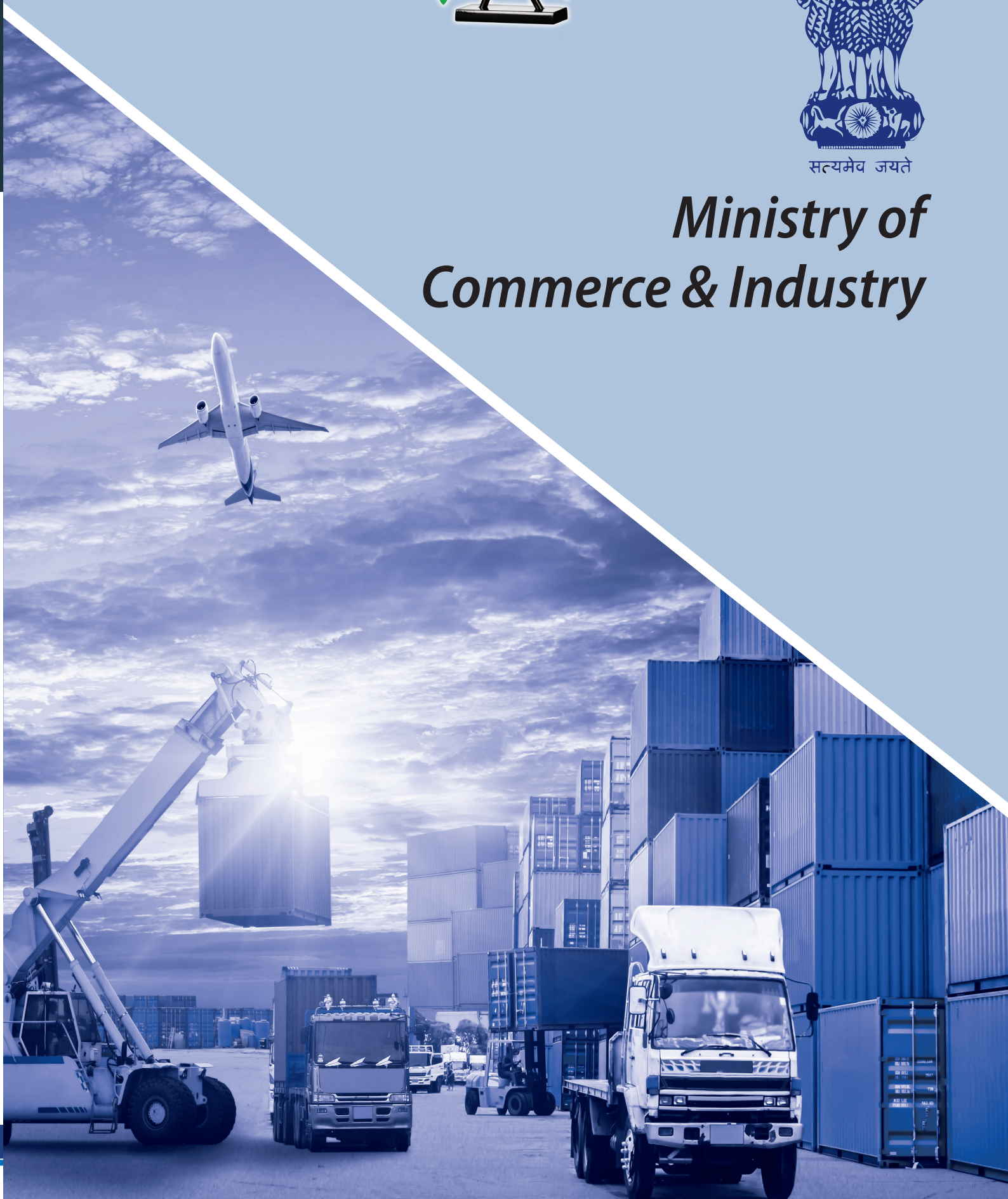
c. The RP is duty bound to find out if a CD has been subject to avoidance transactions, namely, preferential transactions, undervalued transactions, extortionate credit transactions, fraudulent trading and wrongful trading, and file applications with the Adjudicating Authority seeking appropriate relief. This not only claws back the value lost in such transactions increasing the possibility of reorganisation of the CD through a resolution plan, but also disincentivises such transactions preventing stress to the CD. For effective monitoring, the amendment requires the RP to file Form CIRP 8 on the electronic platform of the Board, intimating details of his opinion and determination in respect of avoidance transactions. The IBBI has specified the format of CIRP 8 through a Circular issued yesterday. This Form needs to be filed in respect of every CIRP ongoing or commencing on or after 14th July, 2021.

The amended regulations are effective from 14th July, 2021. These are available at www.mca.gov.in and www.ibbi.gov.in.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1737438

सत्यमेव जयते

Ministry of Commerce & Industry



Ministry of Commerce & Industry

9th Meeting of the India-UAE High Level Joint Task Force on Investments

His Highness Sheikh Hamed bin Zayed Al Nahyan, Member of the Executive Council of the Emirate of Abu Dhabi, and Shri Piyush Goyal, Minister of Commerce & Industry, Consumer Affairs, Food & Public Distribution, and Textiles, Government of India, co-chaired the ninth meeting of the UAE-India High Level Joint Task Force on Investments ('the Joint Task Force') in Dubai. Senior officials representing relevant government authorities and various investment entities from both countries took part in the meeting.

The Joint Task Force was established in 2013 as a key forum for promoting economic ties between the UAE and India, which were further strengthened by the signing of the Comprehensive Strategic Partnership Agreement between the two countries in January 2017 by Indian Prime Minister Shri Narendra Modi and His Highness Sheikh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi and Deputy Supreme Commander of the UAE Armed Forces.

At this ninth meeting of the Joint Task Force, the two sides noted the impact of the COVID-19 pandemic on global trade and investment and reiterated the importance of continuing to strengthen the deep economic ties between the two countries. Both sides recognised the collaboration between India and UAE during this difficult period and appreciated the leadership provided by the two countries in their regions to confront the pandemic.

The meeting reviewed the positive outcomes achieved through the work of the Joint Task Force to date, and the two sides agreed to continue exploring ways to facilitate investment in areas of mutual interest with the potential for economic growth.

The progress of ongoing discussions for the India-UAE Comprehensive Economic Partnership Agreement, which will be a significant and wide-reaching step in promoting trade and investment between the two countries, was reviewed during the meeting. In this regard, both sides appreciated the efforts made to expedite discussions towards a well-balanced agreement that will considerably deepen bilateral economic ties and benefit the economies of both countries.

Participants also considered ongoing efforts to amend the UAE and India's longstanding Bilateral Investment Treaty and noted the importance of concluding the negotiation process as soon as possible.

At the meeting, discussions were also held on exploring mutually beneficial methods and incentives to facilitate further investment from UAE sovereign investment entities in key priority sectors in India. The positive steps made by the Indian government in this context were noted and both sides agreed to continue to focus on ways of providing tax incentives to certain UAE sovereign investment entities.

The importance of active involvement from the UAE Special Desk within Invest India, the National Investment Promotion Agency of India, in expediting the resolution of both legacy issues and current difficulties experienced by UAE companies and banks in India was discussed. The Indian

side also highlighted some long-standing issues faced by Indian investors in the UAE. Both sides agreed to continue coordination and cooperation at the highest official levels for the early resolution of these issues.

Given the importance of air transport in facilitating bilateral ties and people-to-people connections, both sides agreed that their respective civil aviation authorities should continue to work together on a priority basis, for their mutual benefit, to ensure the speedy normalisation of air transport operations between the two countries.

Commenting on the ninth meeting of the Joint Task Force, His Highness Sheikh Hamed bin Zayed Al Nahyan, Co-Chair of the Joint Task Force and Member of the Executive Council of the Emirate of Abu Dhabi, said:

"India and the UAE share a broad and deep strategic partnership, and this has helped bilateral economic ties continue to strengthen despite the challenges of the COVID-19 pandemic. The Joint Task Force offers an important platform for dialogue between our two countries, raising new opportunities for trade and investment, and removing bottlenecks to further cooperation. Looking ahead, India and the UAE share ambitious goals to expand trade and investment activities between our countries, and the Joint Task Force will continue to play an important role in achieving these objectives."

Shri Piyush Goyal, Co-Chair of the Joint Task Force and Minister of Commerce & Industry, Consumer Affairs, Food & Public Distribution, and Textiles, Government of India, said:

"India and UAE have longstanding ties which have become stronger in the recent times and our continued engagement even during the pandemic reflects the priority this partnership holds for both our nations. Our leadership accords a special place to our relationship with the UAE and our bilateral forums like the Joint Task Force provide effective mechanisms to build on our long-standing friendship. Given the strong growth prospects of the Indian economy, we look forward to increased investment from the UAE in diverse sectors of India. We are sure that the world will continue to witness greater achievements in the India-UAE partnership in the future.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1760406

Ministry of Commerce & Industry

More than 22000 compliances reduced in Government

A big exercise is being carried out by Central Ministries & States/UTs to reduce compliance burden and the aim of this exercise is to simplify, decriminalize & remove redundant laws, said Shri Piyush Goyal, Minister of Commerce & Industry, Consumer Affairs, Food & Public Distribution, Textiles, while speaking at the workshop on National Workshop on Reducing Compliance Burden organised by DPIIT.

Shri Goyal said that India, under PM Modi, has come a long way from red-tapism to laying the red carpet for businesses.

The mindset has evolved from "Not able to understand complexities" to "It's so simple to start a business".

He said that numerous regulatory compliances only confused the new prospects & built hesitation in investors but today we are creating a most conducive environment for entrepreneurs.

The Minister said that the soft launch of the National Single Window System is an outstanding example of Government's commitment to simply and rationalise things.

The NSWS portal hosts approvals across 18 Central Departments & 9 States and another 14 Central depts & 5 states will be added by Dec'21.

Shri Goyal said that through a participative & consultative approach with all stakeholders we are identifying & eliminating hurdles in a timebound manner.

Speaking on the occasion Secretary DPIIT said that more than 22,000 compliances have been reduced by Union Ministries, States & UTs so far under the initiative and about 13,000 compliances simplified while more than 1,200 processes have been digitized. It may be noted that during last few years 103 offences have been decriminalized and 327 redundant provisions/laws removed.

Shri Goyal said that the National Workshop on Reducing Compliance Burden will showcase the progress, achievements and notable initiatives under the exercise of Reducing Compliance Burden to ensure Ease of Living and Ease of Doing Business.

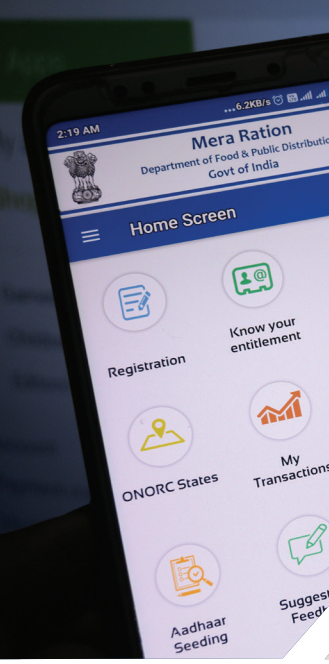
During the workshop Ministries and States showcased iconic reforms, shared Best Practices and highlighted impact created in continuous endeavour to reduce compliance burden and improve quality of living for citizens.

On the occasion Shri Piyush Goyal also released the Stakeholders Booklet on Reduction of Compliances.

The Workshop is going to promote peer learning among Ministries and States/UTs to facilitate swift adoption of Best Practices for improved Service Delivery to citizens and businesses.

With the intent to ensure "Minimum Government, Maximum Governance" the Government of India embarked on an ambitious journey to reduce burdensome compliances.

Department for Promotion of Industry and Internal Trade (DPIIT) pioneered this initiative and closely engaged with the



States/UTs and Ministries for more than two years to improve the regulatory and governance model across the country.

Under the aegis of 'Azadi Ka Amrit Mahotsav', an initiative of the Government of India to celebrate and commemorate 75 years of progressive India and its achievements, DPIIT held this National Workshop on Reducing Compliance Burden.

The workshop was chaired by Shri Piyush Goyal, and also addressed by Ministers of State for Commerce and Industry Shri Som Parkash and Smt. Anupriya Patel.

Some of the iconic reforms implemented by the Centre to ease compliance burden on citizens and businesses are-

1) Removal of distinction between Domestic and International OSP (other service provider) which will provide thrust to voice-based BPO and ITeS organizations in India,
2) liberalized access to geospatial data,
3) Introduction of 'Mera Ration' mobile app,
4) Introduction of single step online Aadhaar validation process for 18 services associated with Driving License and Registration Certificate.
5) 46 penal provisions of the Companies Act, 2013 and 12 offences under the Limited Liability Partnership (LLP) Act, 2008 decriminalized.
6) Through business process re-engineering, States/UTs have reduced time for granting approvals/licenses, eliminated physical touch-points and brought transparency in inspections.
7) Single window clearances for new investors have reduced the time to start operations across businesses.

It was noted that many State Governments have also maintained the momentum of continued reforms by implementing licensing reforms, computerized central random inspection system, labour reforms, initiatives to support Medium, Small and Micro Enterprises (MSMEs) and promote industrial development in the true spirit of cooperative federalism.

In July 2020, Cabinet Secretary had written to all Ministries to set up a dedicated team to examine the Acts and Regulations under their purview and reduce the compliance burden for citizens and business activities. DPIIT has been directed to act as a Nodal Department to coordinate this exercise of reducing compliance burden on citizens and business activities.

The objective for this comprehensive exercise is to improve ease of living and ease of doing business by simplifying, rationalizing, digitizing and decriminalizing government to business and citizen interfaces across all Ministries and States/Union Territories. Following are the focus areas of this exercise:-

1) Eliminate compliance burden across all procedures, rules, notifications, circulars, office memorandums, etc. which merely add to time and cost without achieving any tangible improvement in governance.
2) Repeal/amend/subsume redundant laws.
3) Decriminalize laws pertaining to technical and minor non-compliance issues to eliminate constant fear of being prosecuted for trivial defaults, while retaining strict criminal enforcement for serious fraudulent offences that jeopardize and prejudice public interest.

So far, through a simple, transparent, and time-bound exercise various government agencies have reduced more than 22,000 compliances across Ministries and States/UTs.

Source: https://pib.gov.in/PressReleasePage.aspx?PRID=1758949

Ministry of Commerce & Industry
Launch of National Single Window System for Investors and Businesses

Launch of National Single Window System (NSWS), is a giant leap, towards making India Aatmanirbhar" said Shri Piyush Goyal while Launching the facility.

Union Minister for Commerce & Industry, Textiles, Consumer Affairs & Public Distribution Shri Piyush Goyal said that NSWS will usher in Azadi from legacy of running to Govt. offices for approvals and registrations He said that in this 75 weeks of "Azadi ka Amrit Mahotsav", we can share "Azadi ka Amrit" with Investors, Business owners (MSMEs) not only form India but from the world.The Minister said that NSWS would usher in Azadi from legacy of running to Govt. offices, i.e. Ease of doing business & Ease of living Azadi from paperwork, duplication & information asymmetry Azadi from Windows within Window..

The Minister said that PM Modi's, decisive & bold leadership has enabled & encouraged India to dream bigger

His vision has become our mission for the progress of nation & prosperity for crores of citizens Need for a single interface between businesses & Govt at national level has been felt for a long time

Speaking on the occasion, Shri Goyal said that this single window portal will become a one-stop-shop for investors for approvals & clearances

The portal as of September, 2021, hosts approvals across 18 Central Departments & 9 States, another 14 Central depts & 5 states will be added by Dec'21

Shri Goyal added that all solutions will be there for all at one click of the mouse through 'End to End' facilitation .

This would bring Transparency, Accountability & Responsiveness in the ecosystem and all information will. be available on a single dashboard. An applicant Dashboard would be there to apply, track & respond to queries.

Services include Know Your Approval (KYA), Common Registration & State registration Form, Document repository & E-Communication

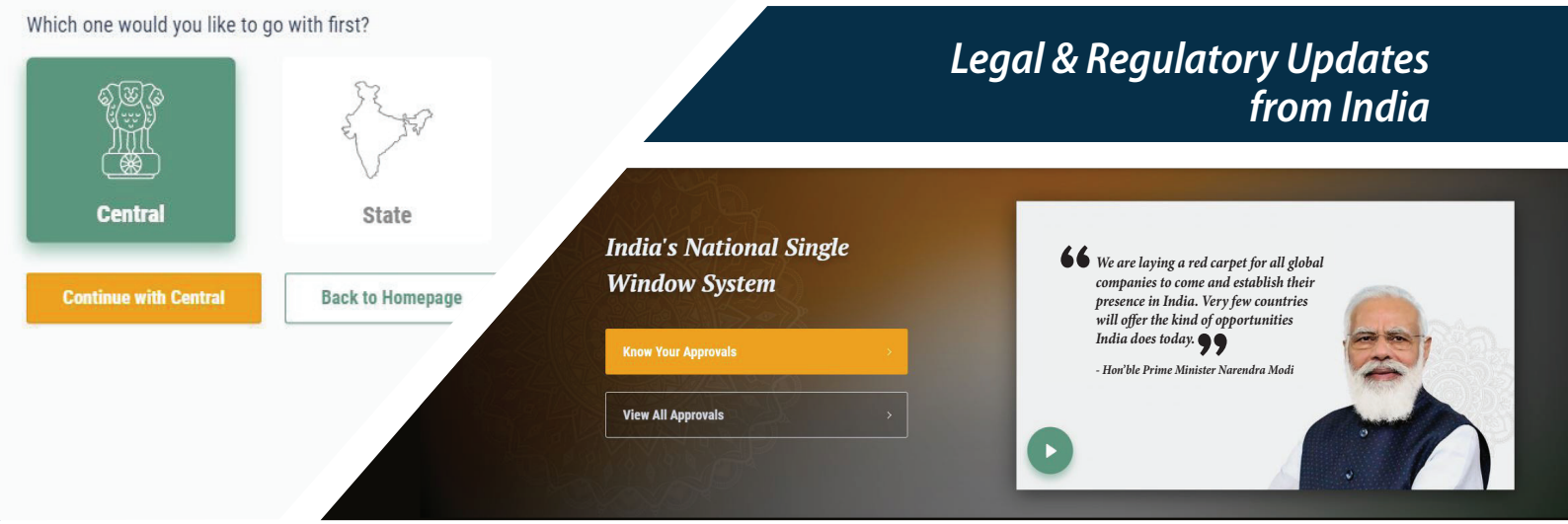
Shri Goyal said India holds the attention of the world & the entire world is looking at India to rise & claim its rightful place as an economic powerhouse.GDP has grown at over 20% in Q1FY22, Exports jumped 45.17% in Aug w.r.t. Aug 2020 Record FDI investment of $81.72 bn in 2020, $ 22.53 bn inflow in first 3 months of this FY ~2X w.r.t. Same period in 2020 Recently, India has jumped to 46th spot on GII, a jump of 35 places in last 6 years

He said that with a rapid recovery, we are back on track to become one of the fastest growing large economies Like the other transformative & nation building initiatives launched in the last 7 years

The Minister said that NSWS will provide strength to other schemes e.g. Make in India, Startup India, PLI scheme etc.

It may be noted that improving India's business climate is one of the key focus areas of the Government of India. Reiterating its commitment to "Make in India, make for the world", the government has launched several initiatives recently, including the flagship Production Linked Incentive Scheme (PLI) and the India Industrial Land Bank System. The PLI schemes have been announced for 13 sectors with an overall outlay of USD 27 billion and is set to create manufacturing global champions for an Atmanirbhar Bharat.

One such crucial initiative, announced by the Finance Minister in the Union Budget speech 2020, is the ambitious Investment Clearance Cell (ICC). While presenting Budget 2020-21, the Finance Minister announced plans to set up an Investment Clearance Cell (ICC) that will provide "end to end" facilitation and support to investors, including pre-investment advisory, provide information related to land banks and facilitate clearances at Centre and State level. The



cell was proposed to operate through a online digital portal.

Subsequently, DPIIT along with Invest India initiated the process of developing the portal as a National Single Window System (NSWS), which will provide a single platform to enable investors to identify and obtain approvals and clearances needed by investors, entrepreneurs, and businesses in India.

The system is envisioned to address information asymmetry, duplication of information submitted across platforms and authorities and inefficient tracking of approvals and registration faced by investors.

NSWS has been designed keeping the needs of entrepreneurs and investors at the center.

NSWS provides following online services: -

- **Know Your Approval** (KYA) Service: an intelligent information wizard that generates a list of approvals required by any business to commence operations. It does so by asking the investor a series of dynamic questions about their planned business activities and identifies the applicable approvals basis the responses provided. The questionnaire, simple and user friendly on the surface, has a complex, automated logic built into it to sieve through hundreds of approvals, and shortlists only those relevant to the specific investor or entrepreneur. This service was launched on 21.07.2021 with over 500 approvals across 32 Central Departments and over 2000 approvals across 14 states.

This service is only for guidance purposes and does not constitute any legal advice.

- **Common Registration Form**: To ensure a single point of submission of information and documents across Ministries and States, a unified information capturing system along with a common registration form has been introduced. Information is auto-populated on forms, eliminating the need to fill in the same information again.
- State registration form: Enables investor to have seamless single click access to respective State Single Window System.
- Applicant dashboard: Provides a single online interface to apply, track and respond to the queries pertaining to approvals and registrations across ministries and States.
- Document repository: An online centralized storage service for investors to enable one-time document submission and use the same across multiple approvals. This eliminates the need to submit documents at multiple portals.
- E-Communication module: Enables online response to queries and clarification requests related to applications by Ministries and States.

The beta version of the portal has now been completed and is being opened to all stakeholders and the public as trial soft launch. The beta version of the portal (under Phase I), hosts approvals from 18 Central departments and 9 States and is aimed at guiding investors to the list of business approvals they may need, based on information provided by them. Another 14 Central departments and 5 States will be onboarded by December 2021 (under Phase II)

The portal will progressively onboard a greater number of approvals and licenses, based on user / industry feedback. Though extensive testing by Ministries/States is ongoing, and will continue for next three months to stabilize & optimize the platform, it is critical that extensive feedback from the industry users is accommodated to ensure comprehensiveness and high utility for Investors & Entrepreneurs.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1756966

Ministry of Commerce & Industry

Government Provides Big Boost to Exporters

Under the decisive leadership of Hon'ble Prime Minister Shri NarendraModi, Government of India has decided to budget Rs 56,027 crore in this Financial Year FY 21-22 itself in order to disburse all pending export incentives due to exporters. This amount includes claims relating to MEIS, SEIS, RoSL, RoSCTL, other scrip based schemes relating to earlier policies and the remission support for RoDTEP and RoSCTL for exports made in the 4th quarter of FY 20-21. Benefits would be disbursed to more than 45,000 exporters, out of which about 98% are small exporters in the MSME category.

The amount of Rs 56,027 crores of arrears is for different export promotion and remission schemes: MEIS (Rs 33,010 crore), SEIS (Rs 10,002 crore), RoSCTL (Rs 5,286 cr), RoSL (Rs 330 crore), RoDTEP (Rs 2,568 crore), other legacy Schemes like Target Plus etc (Rs 4,831 crore). This amount is over and above duty remission amount of Rs 12,454 crore for the RoDTEP scheme and Rs 6,946 crore for RoSCTL scheme already announced for exports made in this year i.e. FY 2021-22.

Exports in India have seen robust growth in recent months. Merchandise exports for April-August, 2021 was nearly $164 billion, which is an increase of 67% over 2020-21 and 23% over 2019-20. This decision to clear all pending export incentives within this financial year, will lead to even more rapid export growth in coming months.

For merchandise exports, all sectors covered under MEIS, such as Pharmaceuticals, Iron and steel, Engineering, Chemicals, Fisheries, Agriculture and allied Sectors, Auto and Auto Components would be able to claim benefits for exports made in earlier years. Benefits would help such sectors to maintain cash flows and meet export demand in international market, which is recovering fast this financial year.

Service sector exporters, including those in the travel, tourism and hospitality segments will be able to claim SEIS benefits for FY 2019-2020, for which Rs 2,061 crore has been provisioned. The SEIS for FY 2019-20 with certain revisions in service categories and rates is being notified. This support would have a multiplier effect and spur employment generation.

The apparel sector, which is a major labour-intensive sector, would get past arrears under ROSCTL and ROSL, and all stakeholders in the interconnected supply chains would be strengthened to meet the festive season demand in international markets.

Export claims relating to earlier years will need to be filed by the exporters by 31st December 2021 beyond which they will become time barred. The Online IT portal will be enabled shortly to accept MEIS and other scrip based applications and would be integrated with a robust mechanism set up by Ministry of Finance to monitor provisioning and disbursement of the export incentives under a budgetary framework.

A decision to clear all pending export incentives within this Financial Year itself despite other budgetary commitments arising out of the pandemic is with the objective of providing timely and crucial support to this vital pillar of Indian economy.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1753551

Ministry of Commerce & Industry

Simplified Patent and Copyright Registration helping India become an innovation hub

Union Minister for Commerce & Industry, Consumer Affairs and Textile, Shri Piyush Goyal has expressed satisfaction over the reforms introduced in examining and granting of patents, designs, copyrights and trademarks, saying the 'ease of doing business' will go a long way in catapulting India as an innovation hub.

The Minister reviewed the functioning of the Office of Controller General of Patents, Designs and Trademarks in Mumbai yesterday and deliberated on ways to build a robust Intellectual Property Rights infrastructure.

Shri Goyal reiterated Government's commitment to bolster the ecosystem of patents, design, trademarks, GI (Geographical Indication) systems; to encourage innovation, research & development in the country and bring newer inventions and knowledge from India's heritage systems to global platform.

He emphasized Prime Minister Shri Narendra Modi has been closely monitoring developments in this field since 2014 itself.

Shri Goyal while speaking about the CGPDT's speedy disposal of applications informed that, "The pendency in the IPR department has come down drastically. It has also been decided that any pending application should be completed within days and not months."

Fees for Start-ups, MSMEs, women entrepreneurs reduced by 80%

Shri Goyal also mentioned about the reduction in fee allowed by the department in order to help and support Startups and Women entrepreneurs in the country. Filing fees for Startups, MSMEs, Women entrepreneurs has been reduced by 80%.

The Minister added that emphasis has been laid on using Digital means. Every application is now processed online from start to finish, hearings are conducted on phones, people don't have to travel to patent offices now.

Shri Goyal also made a few suggestions to make the whole process more user friendly. He called for more efforts to increase awareness about GI tag and its significance. He also asked to consider instituting scholarships for students studying the Intellectual Property law as well as engage faculty from renowned institutions on a part time basis to help in the patent examination process.

Simplified procedure, growing innovation

Officials of CGPDT briefed how the IP process has been simplified and streamlined than before and also about the re-engineering of the whole process including new timelines for disposal and shift to digital mode to promote ease of filing and obtaining services. For example, under Trade Mark Rules 74 Forms have been replaced by 8 Consolidated Forms.

They also mentioned that special care is being given to expedite examination of patents filed especially for applications filed by Startups, Women Entrepreneurs etc. While assessing impact of measures taken, it is noted that E-filing has increased from 30 % to more than 95%.

India has also seen a rapid increase in grant of patents, copyrights in the last 5-6 years. The number of patents granted has gone up from 6,326 in 2015-16 to 28,391 in 2020-21, while Trade Marks registration has shot up from 65,045 in 2015-16 to 2,55,993 in 2020-21. Similarly, while 4,505 Copyrights were granted in 2015-16, a total of 16,402 were granted last fiscal.

These developments have reflected positively in improvement of India's ranking in Global Innovation Index. India has climbed 33 notches from 81st position in 2015-16 to 48th in 2020.

Source: https://pib.gov.in/PressReleseDetail.aspx?PRID=1741281

News from the Institute

Finance Minister Smt. Nirmala Sitharaman graces the 53rd Foundation Day of the ICSI

"Company Secretaries should look beyond their existing set of responsibilities and partner with Ministries and Regulatory Authorities in easing compliances for the tax paying citizens", Union Minister of Finance & Corporate Affairs Smt. Nirmala Sitharaman at the 53rd Foundation Day celebrations of the Institute of Company Secretaries of India (ICSI) on 4th October, 2021.

Hon'ble Minister of Finance & Corporate Affairs, Smt. Sitharaman also appreciated the ICSI for attuning the 53rd Foundation Day celebration with Azadi Ka Amrit Mahotsav and choosing the theme "Powering Atmanirbhar Bharat

through Entrepreneurship and Innovation" in tandem with this vision.

The Finance Minister expressed her delight while complimenting the Company Secretaries for their commendable job during the COVID-19 pandemic and further urged the youth of the country to join this profession as this role will expand further in the future in Sunrise Sector.

The commemoration also witnessed the presence of Dr. T.V. Somanathan, Finance Secretary & Secretary, Department of Expenditure, Ministry of Finance, Government of India and Shri Rajesh Verma, Secretary, Ministry of Corporate Affairs, as Guest(s) of Honour.

Dr. T.V. Somanathan complimented the Institute for doing a remarkable job in promoting Good Corporate Governance in the last 53 years. While discussing about the importance of the role of Company Secretaries he said, "You are the experts of compliances and your exemplary advice will help corporates in getting rid of extra compliance".

Shri Rajesh Verma lauded the efforts of Company Secretaries in providing every assistance to the Ministry for various incorporations and other services to the stakeholders. Shri Verma also mentioned that "ICSI has been instrumental in providing valuable suggestions for bringing necessary amendments in the Companies Act, LLP Act and formulation of BRR Committee Report".

On this momentous occasion, the ICSI launched its 5th Overseas Centre in Australia at the hands of the Finance Minister, Smt. Nirmala Sitharaman, reaffirming the progression of the profession and the evolved role of the Institute in global Corporate Governance arena. The Institute also launched a publication, Referencer on SEBI (Share based employee benefit and sweat equity) Regulations 2021.

Elated to be a part of this glorious journey of ICSI, CS Nagendra D. Rao, president, the ICSI, emphasised on taking forward the recovery and the re-growth process to build a strong and resilient economic system that will be dominant in the world. He mentioned that "the focus of the Institute in the near future will be upon: Skill Based Development; Usage of Technology; Globalisation of the Profession; Research & Skill Development Centres & Propagation of Governance Standards build by ICSI".

CS Devendra V Deshpande, Vice-President, the ICSI, highlighted on the various collaborations undertaken by the ICSI. He further added "Let us go beyond our recognition of KMP & become professionals with holistic approach and provide solutions to all stakeholders.

CS Ranjeet Pandey, Past President, ICSI, in his address shared the glorious journey of 53 years of the ICSI.

The second half of the celebration continued with a thematic Panel Discussion on "Powering Atmanirbhar Bharat through Entrepreneurship and Innovation". Distinguished panelists comprised of Mr Deepak Bagla, MD & CEO, Invest India; Mr Bejon Kumar Misra, International Consumer Policy Expert and Founder, Consumer Online Foundation; Mr Yadvendra Tyagi, Founder ENKASH and Mr Narendra Kumar Shyamsukha, Founder & Chairman, ICA Eduskills, who all gave excellent insights on Entrepreneurship and Innovation ecosystem in India.

Inauguration of ICSI Overseas Centre, Australia

The Institute of Company Secretaries of India inaugurated its fifth Overseas Centre in Australia on the momentous occasion of 53rd Foundation Day, on 4th October 2021, at the hands of Hon'ble Minister of Finance and Corporate Affairs, Government of India Smt. Nirmala Sitharaman at Vigyan Bhawan, New Delhi.

Aligning with its vision "to be a global leader in promoting good corporate governance", the ICSI has already made headway in growing its global footprint by setting up ICSI Overseas Centres in UAE, USA, UK and Singapore, which are actively engaged in organizing capacity building programmes for members of the ICSI diaspora.

The setting up of the ICSI Overseas Centre in Australia will further strengthen the global outreach of the profession along with tapping all opportunities to nurture, grow and sustain two-way flow of knowledge and professional potential.

The ICSI Overseas Centre, Australia will function from:

Address: Unit 23, 1689-93 Pacific Highway, Wahroonga, New South Wales 2076

Email id: australiacentre@icsi.edu

Committee of Members:

CS Joginder Sharma Chairman	CS Anil Kumar Jain Vice-Chairman	CS Anusha Vyas Secretary	CS Harman Jot Treasurer
CS Manish Ghiya Member	CS Anisha Chandna Member	CS Nirupama Ravindran Member	

The launch video is available at https://www.youtube.com/watch?v=HXvRlpBzsWA

- Participate in programmes / seminars / conferences organised by the Institute for continuing professional development.
- Participate in the Institute's democratic process.
- Get Chartered Secretary - The Journal for Governance Professionals (monthly Journal of the Institute) prospectively.
- ICSI Membership enables entering into new emerging professions such as Insolvency Profession/Registered Valuer.
- You are required to pay the arrears of annual membership fee, entrance fee and membership restoration fee with applicable GST.
- 75% concession in annual membership fee for members above the age of seventy years.
- Restore your membership online at **www.icsi.edu**.
- Due date for payment of annual membership fee is **1st April, every year.**
- Online helpdesk **http://support.icsi.edu**

Take pride being an esteemed **CS Professional Restore Your Membership**

Restore Your Membership

Restoration of membership will be effective from the date of receipt of Form-BB

49th National Convention of Company Secretaries on January 6-7-8, 2022

Registration link: **https://tinyurl.com/49th-National-Convention**

Particulars	Super Early Bird Offer (from 20th November, 2021 to 15th December, 2021)	Early Bird Offer (from 16th December, 2021 to 3rd January, 2022)	Delegate Fee (on or after 4th January, 2022 including on the spot registration)
Member of ICSI/ICAI/ICMAI	₹6,500/-	₹8,000/-	₹9,000/-
Practising Company Secretary	₹6,000/-	₹7,500/-	₹8,500/-
Accompanying Spouse / Child (5 year and above) / Sr. Member (60 years and above)	₹5,500/-	₹7,000/-	₹8,000/-
Student of ICSI	₹4,500/-	₹6,000/-	₹7,000/-
Non-Member/Guest	₹7,000/-	₹ 8,500/-	₹9,500/-
Foreign Delegate	USD 150	USD 200	USD 250

*Inclusive of GST @18% on non-residential basis. GST is not applicable for foreign delegates.
Registration for the Convention shall be through Online Mode only.

CS Nagendra D. Rao
President, The ICSI

For more details visit: https://www.icsi.edu/49-national-convention/

ARTICLES

Governance, Risk and Compliance of Data Privacy Law- Mena Region

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Introduction

MENA has been the hub of Business activities since last few decades. United Arab Emeritus (UAE) is amongst one of the international Business Hub in MENA. Most of the companies which are established here either have their sister concern across Globe or they are dealing regularly with companies which are situated outside Dubai. During these dealings data are transferred from UAE to other jurisdictions or from other jurisdictions to UAE. Similarly various other countries of MENA region like Egypt which is another Major Business hub in this region and being seen as regional Hub for BPO industries. Saudi Arabia is another such destination.

Since in this era of globalization, organization are interacting and transferring the data to different countries. Since these data contains personal & sensitive information about organization, employees, customer etc, the need of having right legal framework is need of the hour. European Union (EU) has taken lead in this process and implemented a comprehensive Data Privacy law, known as General Data Protection Regulations (GDPR"). Other countries of the globe also started framing and implementing Data Privacy Law in their own Jurisdiction. Most of these Laws has taken inspiration from GDPR. Concurrently, law of privacy with respect to privacy of data is evolving across the world. In this ever-changing and evolving environment CS /Legal team now have greater influence over processes and technologies that can help mitigate increasing cybersecurity, privacy and compliance risks.

General Data Protection Regulation 2016/679 (GDPR) and US privacy law are 2 (two) major privacy laws. Most of the countries are following the legal principal enshrined in the GDPR and formulating privacy law accordingly.

There are few concept with respect GDPR which need to be understand thoroughly:

1. Data Subject & its rights
2. Controller obligations
3. Processors obligations
4. Principles of Processing of personal data
5. Cross Border Data transfer.
6. Territorial Scope
7. Representatives
8. Information Security and Personal Data Breaches
9. Administrative fines and regulatory sanctions;

Businesses are facing challenges in complying with the privacy laws. New Data Privacy law grants data subject enormous rights in order to protect his/her personal data. Data Breach has serious consequences. Hefty fines and reputational risk are huge. The CS/legal team working in MENA region must understand risks and implement appropriate processes to prevent it.

In this Article, we will touch Broad Framework of Data Privacy law applicable in these region, country wise. Further we will try to understand the implication with few practical examples.

UAE

Since Dubai & Abu Dhabi are major international business hub in the UAE, we will limit our scope to Dubai Privacy law & Abu Dhabi Privacy Law and applicability of GDPR in Dubai & Abu Dhabi.

UAE can be divided in two Major Jurisdiction:-

1. Federal jurisdiction 2. Free Zone

There is no federal data protection law for Onshore UAE jurisdiction. However there are federal law which protect privacy. There are also sector specific data protection provisions in certain laws such as Banking Telecommunication and health sector. Article 379 of the UAE Penal Code governs Privacy which provides that a person who, by reason of their profession, craft, situation or art, is entrusted with a "secret," from using or disclosing that "secret," without the consent of the person to whom the secret pertains, or otherwise in accordance with the law.

A breach of this provision is punishable by criminal penalty of imprisonment of a minimum of one year, or a fine of a minimum of Twenty Thousand Dirhams, or both.

In addition, Constitution of the UAE (Federal Law 1 of 1971) and Cyber Crime Law (Federal Law 5 of 2012 regarding Information Technology Crime Control) (as amended by Federal Law No. 12 of 2016 and Federal Decree Law No. 2 of 2018) also regulate privacy law.

In July 2020 the Dubai International Financial Centre (**"DIFC"**) brought DPL No. 5 of 2020 (**"DPL"**) into effect and brought it more closely in line with GDPR. A new set of accompanying Data Protection Regulations (**"DPRs"**) were introduced.

The DPL is largely based on GDPR. It has almost similar protections and principles relevant to the collection, use and disclosure of information. However, the DPL only applies to:

- Controllers and processors incorporated in the DIFC (regardless as to whether or not the processing of personal data takes place in the DIFC).
- Controllers or processors that process personal data in the DIFC as part of stable arrangements, other than on an occasional basis, regardless of these entities place of incorporation.
- DPL also applies to the organizations which chose DIFC law to govern their contract.

Abu Dhabi Global Market (ADGM) has also adopted data protection regulations which is largely inspired by Directive 95/46/EC on data protection (Data Protection Directive), the predecessor to the GDPR. The ADGM Regulations apply to data controllers and processors incorporated in ADGM and to any entity processing personal data on their behalf.

Under the DPL and ADGM DP Regulations the following data are considered personal/sensitive data:

- Racial or ethnic origin.
- Communal origin.
- Political affiliations or opinions.
- Religious or philosophical beliefs.
- Criminal record.
- Trade union membership.
- Health or sex life of the data subject, including genetic and biometric data, where it is used for the purpose of uniquely identifying a natural person.

The Dubai Healthcare City (DHCC) free zone has also adopted a health data protection in 2013, which is primarily geared at regulating the collection and use of patient and medical information and records in DHCC.

Health data is also regulated under the federal Health Data Law and, in the DHCC, under the DHCC Health Data Protection Regulation.

Financial data

There are some restrictions that apply to the collection, retention and storage of data collected by electronic payment service providers, as set out in the EPS Regulation

Basically DPL and ADGM Date Protection principals promotes concepts of structure, governance and risk-based approach to compliance

- Data subject rights are aligned to absorb impact of emerging technology.
- Introduction of DPO and other controls such as prior consultation and processor provisions
- Scope of Security breach reporting is enhanced. Now the processor will have to play a larger role in accountability overall and for breach reporting.
- International transfer provision is enhanced to align with current international adequacy standards, processors more accountable.

Data residency laws in UAE

UAE has a number of laws which deals with data localisation laws. So question about can personal data be transferred to third parties inside and/or outside of the UAE? According to the Penal Code of federal law (Clause 379), it can be, if the concerned person has consented in writing to such transfer. There should be consent from concerned person for transferring of Data.

However, there are few exceptions. The 'Regulatory Framework For Stored Values and Electronic Payment Systems' by the Central Bank of The UAE obligates all Payment System Operators (PSPs) to store and retain all User and transaction data exclusively within the borders of the UAE.

Similarly Health care records must also be stored in UAE only. Certain restrictions exist in the telecom industry as well.

Below is the Broad level information about the data security law in different MENA jurisdiction other than UAE:

COUNTRY	STATUS OF DATA PRIVACY LAW
BAHRAIN	Bahrain enacted Data privacy law in 2018. This Law is based on the GDPR. It includes the protection of individuals' privacy and specific consent requirements for data Processing, as well as the creation of a Personal Data Protection Authority.
TURKEY	Turkey's Data Protection Law is based on the European Data Protection Directive (Directive 95/46/EC) https://www.dataguidance.com/legal-research/data-protection-directive-directive-9546ec . Secondary legislation in Turkey, in the form of regulations and communications, has been evolving in line with the General Data Protection Regulation (Regulation (EU) 2016/679) https://bit.ly/3E15eTX ('GDPR').
QATAR	Qatar was the first GCC nation to enacted Data Protection law. The law is heavily inspired by international privacy frameworks, such as the 1995 Directive (and by extension the GDPR).
FINANCIAL CENTRE	The Qatar Financial Centre has its own Data Protection Regulations. The regulations are inspired by, the privacy and data protection principles and guidelines contained in the 1995 Directive and the OECD Guidelines on the Protection of Privacy and cross-border Flows of Personal Data.
EGYPT	The Egyptian government enacted data protection law and On 15 July 2020, was published in the Official Gazette. This law is heavily inspired by GDPR and having similar concepts and definitions. Companies will have a 12-month grace period to comply with the Law from the date of publication of the Regulation (i.e., compliance is expected to be required within a minimum of 18 months from 15 October 2020, if the Regulation is issued effectively within 6 months. Still regulation has not been issued.
JORDAN	Jordan does not currently have a data protection law in place. In 2014, the Ministry of Digital Economy (https://modee.gov.jo/Default/Ar) and Entrepreneurship submitted a draft data protection bill ('the Draft Bill') which proposed, among other things, the establishment of an assigned council for the privacy commission. The Draft Bill is also inspired by GDPR and incorporates some of the main principles of the GDPR such as transparency, accuracy, storage limitation, and data minimisation. An updated version of the Draft Bill was issued on 23 January 2020 but still has not been approved. Currently data protection is regulated through the Constitution and sectoral legislation.
SAUDI ARABIA	The Personal Data Protection Law, implemented by Royal Decree M/19 of 17 September 2021 approving Resolution No.98 dated 14 September 2021 ('PDPL'). The PDPL was published in the Official Gazette on 24 September 2021 and marks the introduction of Saudi Arabia's first data protection law. In particular, the PDPL provides for an 18-month transition period, meaning that it will take full effect on 23 March 2022, with the executive regulations supplementing the law also to be issued within this period references to privacy can also be found in other legislation, such as the Basic Law of Governance of 1992 (Royal Order No. A/91 of 1992) (https://bit.ly/3HXZgpm) ('the Basic Law'). The Basic Law defines privacy as a right related to the dignity of an individual, guarantees the privacy of communication, and generally prohibits surveillance unless an exception applies. The Basic Law also includes Shari'ah principles against the invasion of privacy or disclosure of secrets. SA has Anti-Cyber Crime Law of 2007 (Royal Decree No. M/17), https://bit.ly/3HXCSfP the E-commerce Law of 2019, (https://www.dataguidance.com/legal-research/e-commerce-law-2019) and other sectorial regulations contain privacy provisions. These laws establish the regulatory powers of the Communications and Information Technology Commission (https://bit.ly/3cU7RLs) and the National Cybersecurity Authority in their respective sectors.

LEBANON	Data protection is governed in Lebanon by the E-Transactions and Personal Data Law, introduced in 2004 and updated in 2018. While the Law is not a comprehensive piece data protection legislation when compared with international standards, it does establish the essential legal regime governing the protection of personal data in relation to any automatic or non-automatic processing activity in Lebanon. The Law further includes specific privacy requirements in relation to data subjects' rights, transparency and information to be provided to data subjects, data retention periods, sensitive personal data, and appropriate security measures to be adopted by data controllers. Law also has certain criminal penalties for the violation.
KUWAIT	There is currently no specific data protection law in Kuwait. There are limited provisions in cyber security and electronic transactions legislation the Cyber Security Framework for the Kuwaiti Banking Sector (https://bit.ly/31732LZ) establishes several data protection related obligations. The Labour Law No. 6/2010 for the Private Sector (https://bit.ly/3CRd80Q) similarly sets out requirements that overlap and impact data protection in relation to employment.
OMAN	Oman does not currently have a specific privacy or data protection law. there are relevant provisions in various pieces of legislation which deals with Privacy. Such as ('the Electronic Transactions Law', general cybercrime law, Royal Decree No. 12/2011 issuing the Cyber Crime Law (https://bit.ly/3raj037) ('the Cybercrime Law'), which regulates unlawful practices in cyberspace.
TUNISIA	Tunisia adopted its first data protection law in 2004. Several technical regulations have been enacted such as the Law and Decree No. 2007-3004 of 27 November 2007 Laying Down the Conditions and Procedures for the Declaration and Authorisation of the Processing Of Personal Data. Tunisia is a signatory to Convention 108 (https://bit.ly/3xtaZYa) and, in 2019, Tunisia also signed Convention 108+ (https://www.dataguidance.com/legal-research/convention-108-convention-protection) although it has yet to ratify this latter protocol.

Now we should discuss the practicality of applicability of GDPR in Middle East. Below question will be discussed to understand in better way.

- How do GDPR apply to controller/processor located in the UAE?
- Does an EU regulator have the ability to fine company in Dubai?
- What are the risks of non-compliance?

The CS/Legal team should keep following key provision of GDPR in mind while evaluating of applicability of DPA and GDPR on his/her organization and devising risk mitigation and compliance policy.

1. Article 3 – Territorial Scope

Territorial scope based on three criteria as set out in Article 3 of the GDPR. One of these criteria must be met for the GDPR to be applicable.

- Processing of personal data when a controller or processor is established in the EU (regardless of whether or not the actual processing takes place in the EU).
- Processing the personal data of data subjects in the EU relating to offering goods or services or monitoring behaviour in the EU (where the controller or processor is not established in the EU).or
- Processing of personal data by a controller not established in the EU but in a place where member state law applies by virtue of public international law.

2. Article 27 – Representatives

Article 27 of the GDPR put obligation on controllers and processors who process personal data within the territorial scope of Article 3(2) to designate a representative within the EU of the data subjects to whom that processing applies.

Article 3(2) describes the processing of data subjects in the EU by controllers or processors not established in the EU where the processing activities are related to offering them goods or services or monitoring their behavior that takes place within the EU.

A controller or processor must designate a representative within the EU, the representative must be mandated by the controller or processor to be addressed in addition to

or instead of the controller or processor, in particular by supervisory authorities and data subjects. The designation of a representative must be made without prejudice to legal actions, which could be initiated against the controller or processor.

Exceptions to this obligation include processing that is:

- Occasional, not including (on a large scale) processing of special categories of data or processing of personal data relating to criminal convictions
- And is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing

Article 28 – Appointment of data processors

A data processor is a third party that processes data on behalf of a data controller. Article 28 of the GDPR states, 'The controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject'.

In addition to a contract, the term 'sufficient guarantees' covers assurance mechanisms, such as appropriate checking and vetting of the processor by the supplier through a third-party assessment of certification validations before and after creating a contract.

Contract stipulations

- Process the personal data only on documented instructions from the controller unless required by EU or member state law
- Ensure that those individuals authorised to process the personal data have committed themselves to confidentiality or are under appropriate statutory obligation of confidentiality

  -Implement appropriate technical and organisational measures, as set out in Article 32, regarding security of processing
- Assist the controller in fulfilling its obligation to respond to requests for exercising data subjects' rights
- Assist the controller in ensuring compliance with obligations specifically related to security and prior consultation with supervisory authorities when required
- Make available to the controller all information necessary to demonstrate compliance with Article 28 (these processor rules)
- Delete or return all personal data at the end of the processing services or if instructed by the controller
- Contribute to audits by the controller or another auditor chosen by the controller, and immediately inform the controller if it believes any instruction infringes the GDPR or member state law

3. Articles 32 – 36 – Information Security and Personal Data Breaches

Article 32 of the GDPR addresses controller and processor security obligations. It states, 'Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk

Article 4(12)

Article 4(12) of the GDPR defines a 'personal data breach' as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Articles 33 and 34

Articles 33 and 34 specify controller and processor obligations for communicating that a personal data breach has occurred. A processor must inform the controller without undue delay after becoming aware of a breach. Depending on the circumstances, a controller must inform the supervisory authority and may be required to inform the affected data

subjects. Click on the arrows to learn more about controller notification requirements.

Some practical aspect of Territorial Provision

The territorial provisions of the GDPR may even apply to organization in MENA despite they do not have branches/ subsidiaries in EU. We can understand this by following examples.

- Organisation in MENA region if processes European personal data on behalf an EU client then it will have to comply with GDPR regulations. GDPR mandated to enter into contractual obligation if EU organisations are working with non-EU organisations
- Organisations in MENA region which establish subsidiaries/associate company or working with some vendors in EU to process EU personal data on their behalf need to comply with GDPR regulation. The activities should be regular and systematic commercial activity arrangement in EU.
- If Organization in MENA are advertising to cater customers in the EU through trade shows/EU PR agencies or part of network which focuses on EU customer and collecting the personal & sensitive data, then GDPR may become applicable to such organization.
- If Organization in MENA create profiles of EU customer to analysis customer behavior with the purpose of marketing their product may attract GDPR
- Marketing campaigns directed towards EU customer may also attract GDPR.
- Cookies policy:- A cookie is data that through which organisation website identify users. As per GDPR, cookies constitute personal data because servers collect information about devices, applications, and IP addresses that then allow you to connect them back to the visitor. Therefore the regulation about taking consent and collection applies. To obtain informed opt-in and consent, website cookie pop-up should clearly explain the types of information oranisations are collecting based on the types of cookies.

CASE STUDIES

Example 1

An IT & ITES company with head office in Dubai has a fully-owned branch and office located in Hungary. Hungary office look after all EU operations, including marketing and advertising. In this case it can be said that Hungary branch is in a stable relationship with the Dubai office and Hungary office exercises regular and systematic business activities on behalf of the Dubai IT &ITES company.

So, in this case GDPR shall be applicable to the Hungary office as well as Dubai office.

Example 2

A FMCG company based in Cyprus send data to its branch in Oman for clinical trial purpose. The branch office of Oman process the Data. In this case GDPR shall also be applicable to Oman branch even though Oman branch is processing data as per direction and under control of Cyprus office.

Example 3

A company in DIFC or the Abu Dhabi Global Market (ADGM) contracts a company in Germany to process personal data on its behalf. Data is being sent from DIFC/ADGM to Germany. The DIFC/ADGM Company is offering its services exclusively at the Middle East market and no services are directed at people in the EU. In this case, GDPR is not applicable on company situated in DIFC/ADGM. However, the Data Protection law of DIFC/ADGM shall be applicable and company need to comply with the same.

Example 4

XYZ LLC a Technology company incorporated in the UAE creating mobile and other applications, and software which is licensed on a SaaS basis. It uses data processors in the UAE for data hosting and data analytics services. It is now planning to offer its product in Germany & Switzerland. So invested material amounts in social media and PPC advertising; and developed local language versions of its website to enhance accessibility for local consumers.

- **Key Issue which should be ponder upon by CS/Lawyer in this case**
  - Does the EU GDPR apply to XYZ in UAE?
  - Switzerland is not in the EU – what laws need to be considered by XYZ?
  - What does XYZ need to do in order to comply with the EU GDPR?
  - How do EU data protection laws apply to XYZ's data (sub) processors located in the UAE?
  - Does an EU regulator have the ability to fine XYZ in Dubai?
  - What are the risks of non-compliance?

Foreign Direct Investment in India- Rules, Procedures, Restrictions

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Introduction

Foreign investment is one of the main sources of investments in several growing nations and India is one of them. Foreign Direct Investment or FDI has been the stimulus of growth in several sectors in India. Through Foreign Direct Investment, an individual or entity can invest overseas money in an Indian Company. The Foreign Exchange Management Act, 1999 ("FEMA") along with the Foreign Investment Promotion Board's Policy ("FIPB Policy") are the twin tenets on which the Government's FDI Policy hinges. The concerned department under the Finance Ministry which implements the FIPB Policy is the Secretariat of Industrial Assistance ("SIA"), Department for Promotion of Industry and Internal Trade (DPIIT), Government of India or the Foreign Investment Promotion Board. The FEMA is administered and implemented by the Reserve Bank of India ("RBI"). As per FEMA, Foreign Direct Investment (FDI) is the investment through capital instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

FEMA Compliances

FEMA acts as an essential source for the growth and development of various sectors in India. The primary aim of FEMA is to facilitate external trade, promote orderly development, and balance payments and also to maintain foreign exchange in India.

Below is the list of important provisions for Foreign Investment Compliance under FEMA:

- **Annual Return on Foreign Liabilities and Assets**

  An Annual Return must be mandatorily filed by all the Indian resident companies which have received FDI or made ODI(Overseas Direct Investment) in any of the previous financial years, including the current year. This annual return is made for foreign assets and liabilities, also known as FLA Return.

  If in case the Indian Company does not have any outstanding investment with respect to Foreign Direct Investment or ODI as at the end of the reporting year, the Company is not bounded to submit FLA Return.

  Also, if the Indian Company has not received any fresh Foreign Direct Investment or Overseas Direct Investment (ODI), then that Company still needs to submit an FLA Return every year by 15th July.

- **Annual Performance Report (APR)**

  Any resident individual or an Indian party or entity who has made any Overseas direct Investment needs to submit an Annual Performance Report (APR) in Form ODI Part II to the AD (Authorized Dealer) bank. This report is filed with respect to Joint Venture (JV), Wholly Owned Subsidiaries (WOS) outside India. This must be done on or before 31st December every year.

- **External Commercial Borrowings**

  The borrowers need to report all the external commercial borrowings or ECB transactions to the RBI on a monthly basis through an AD Category-I bank. The form prescribed to complete the same is ECB2 Return to be filed on a monthly basis.

- **Single Master Form**

  Form FC-GPR, LLP-I, LLP-II, FC-TRS, CN, ESOP, DI, DRR, InVi needs to be filed and submitted under the head Single Master form. The Reserve Bank of India has also released a user manual to bring clarity regarding the procedure for filing a single master form, which was introduced on 7th June, 2018. This form was introduced for the purpose of integrating the existing reporting norms for foreign investment in India.

- **Advance Reporting Form (ARF)**

  If an Indian Company receives investment from outside India for the issue of shares or any other eligible securities as per the FDI Scheme, the same must be reported to the Regional Office concerned of the Reserve Bank. The

details of the amount must be provided through the AD category bank within 30 days from the date of issue of shares.

- **Form FC-GPR**

  This form is issued by RBI as per the Foreign Exchange Management Act, 1999. This form is furnished when the Indian Company receives the foreign investment and against such investment made the Company allots shares to the foreign investor. It is the duty of the Company to file all the required details regarding such allotment of shares with the RBI. Then the RBI within a time span of 30 days has to use the form FC-GPR or Foreign Currency-Gross Provisional Return for submitting details with the RBI.

- **Form FC-TRS**

  The FC-TRS is also known as Foreign Currency Transfer. It is a form that is used by a shareholder resident outside India, whether it be an Indian resident or vice versa, when they transfer their shares. The form FC-TRS must be filed along with Form FC-GPR, which needs to be submitted to its authorized dealer bank, who will further submit the same document to RBI.

- **Form ODI**

  A resident individual and an Indian party is required to submit form ODI while making an overseas investment. The concerned party must submit the share certificates or any other documentary evidence of investment made in foreign JVs or WOS. The certificate must be submitted to the designated AD within 30 days.

  Source: Master Direction on Reporting under Foreign Exchange Management Act, 1999.

Important FEMA Guidelines and Features for Foreign Direct Investment

As per FEMA, all the forex-related offenses are civil offences, whereas the erstwhile FERA (Foreign Exchange Regulation Act) regarded them as criminal offences. Additionally, there are other guidelines, too, that must be followed. They are as follows:

- FEMA is not applicable to Indian citizens residing outside India. This criterion is calculated by the number of days a person resided in India during the previous financial year i.e., 182 days or more to be a resident. It is important to take note that even a branch, an office, or an agency can be referred to as a 'person' for the purpose of checking residency.

- The Central Government authorizes FEMA to impose restrictions and also to supervise three things, i.e., any payment made to a person outside India, or receipts from them, Forex and foreign security deals.

- It also specifies the areas around acquisition or holding of Forex that need definite permission from the Reserve Bank of India (RBI) or the Government.

- FEMA distributes and puts the foreign exchange transactions into two categories-Capital Account and Current Account. A Capital Account Transaction alters the assets and liabilities outside India. Hence, any transactions that changes the overseas assets and liabilities for an Indian resident in a foreign country or vice versa are classified as Capital Account Transaction. Any other type of transaction falls into the current account category.

How can an Indian Company Receive Foreign Direct Investment?

There are two routes under which foreign investment can be made;

a. **Automatic Route:** Under the automatic route Foreign Investment is allowed without prior approval of the Government or the Reserve Bank of India, in all activities/ sectors as specified in the Regulation 16 of FEMA 20 (R).

   However the entities accepting investment under this route needs to intimate the RBI about such acceptance within 30 days of acceptance of the deposits.

b. **Approval Route:** Foreign investment in activities not covered under the automatic route requires prior approval of the Government for the acceptance of the foreign investment.

The approval shall be obtained via SOP (Standard Operating Procedure).

Source: No. 1/8/2016-FDI Policy Government of India, Ministry of Commerce & Industry Department for Promotion of Industry & Internal Trade, 9th November, 2020, Standard Operating Procedure (SOP) for Processing FDI Proposals

Foreign Direct Investment Policy: Sectors Where Government Approval is Required

S.No.	Sector/Activity	Cap	Government Approval
1	Mining and Mineral Separation of titanium bearing minerals and ores	100%	Up to 100%
2	Food Product Retail Trading	100%	Up to 100%
3	Defence	100%	Beyond 49%
4	Publishing/printing of scientific and technical magazines/speciality journals/ periodicals	100%	Up to 100%
5	Publication of facsimile edition of foreign newspaper	100%	Up to 100%
6	Print Media – Publishing of newspaper and periodicals dealing with news and current affairs	26%	Up to 100%
7	Print Media – Publication of newspaper and periodicals dealing with news and current affairs	26%	Up to 26%
8	Air Transport Service – Scheduled, and Regional Air Transport Service	100%	Beyond 49%
9	Investment by Foreign Airlines	100%	Up to 49%
10	Satellites- establishment and operation	100%	Up to 100%
11	Telecom Services	100%	Beyond 49%
12	Pharmaceutical Brownfield	100%	Beyond 74%
13	Banking-Private Sector	74%	Beyond 49%
14	Banking-Public Sector	20%	Up to 20%
15	Private Security Agencies	74%	Beyond 49%
16	Broadcasting Content Service		
	1. FM Radio 2. Up linking of 'News & Current Affairs' TV Channels	49%	Up to 49%
17	Trading – MBRT	51%	Up to 51%

Source: Regulation 16 of FEMA 20(R)

Sectors where FDI is prohibited

- Gambling and betting, including casinos etc;
- Lottery Business, including Government/private lottery, online lotteries, etc
- Plantation activities or Agricultural (excluding Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture and Cultivation of Vegetables, Mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea plantations)
- Chit funds and Nidhi Company
- Trading in Transferable Development Rights (TDRs)
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment such as Atomic Energy and Railway operations.

Source: FEMA Notification No. FEMA 20(R)/ 2017-RB dtd. November 07, 2017

What are the Instruments Allowed for Receiving Foreign Direct Investment in an Indian Company?

Capital Instruments can be referred to as

- Equity shares,
- Preference shares,
- Debentures, and
- Share warrants issued by an Indian Company

Other Instruments

- Sponsored ADRs/GDRs (American Depository Receipts and Global Depository Receipts respectively)
- DRs, FCCBs (Depository Receipts, Foreign Currency Convertible Bond respectively)

Capital Instruments Allowed for Receiving Foreign Direct Investment in an Indian Company:

Capital Instruments can be referred to as equity shares, preference shares, debentures, and share warrants issued by an Indian Company.

Equity Shares: The shares issued in accordance with the provisions of Companies Act, 2013, are known as equity shares. It includes partly paid equity shares issued on or after 8th July, 2014.

Share warrants: Share warrants that have been issued on or after 8th July, 2014 is considered as capital instruments.

Debentures: Debentures here means fully, mandatorily, and compulsorily convertible debentures.

Preference shares: Preference shares for this purpose means fully, compulsorily and mandatorily convertible preference shares.

- Non-convertible or optionally convertible preference shares or partially convertible preference shares that had been issued on and up to 30th April 2007, including optionally convertible or partially convertible debentures that have been issued up to 7th June 2007 till their original maturity are considered as Foreign Direct Investment compliant capital instruments.
- Non-convertible or optionally convertible shares or partially convertible preference shares that have been issued after 30th April 2007, including optionally convertible or partially convertible debentures issued after 7th June 7, shall be treated as debt. It shall require conforming to the External Commercial Borrowings (ECM) guidelines regulated under the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange Regulations), 2000, which is amended from time to time.

Source: RBI/FED/2017-18/60, FED Master Direction No. 11/2017-18

Who can invest in India?

- A non-resident entity
- NRI-resident in Nepal & Bhutan
- A Company, Trust & Partnership Firm Incorporated outside India
- Foreign Institutional Investor (FII) Foreign Portfolio Investor(FPI)
- A SEBI- registered Foreign Venture Capital Investor(FVCI)
- A non-resident Indian

Can a Person Resident Outside India Acquire Capital Instruments on Stock Exchanges via FDI?

For the purpose of Foreign Direct Investment, the persons who can acquire Capital Instruments on the stock exchanges are as follows:

- FPI or Foreign Portfolio Investment registered with SEBI.
- Non-Resident Indian's or NRI'S.
- If the investors who is a resident outside India already acquired and also continues to hold the control of such Company in accordance with the regulations prescribed by SEBI.

Source: RBI/FED/2017-18/60, FED Master Direction No. 11/2017-18

What are the Guidelines for Reporting of Transfer of Shares in Foreign Direct Investment?

A person resident outside India needs to file form FC-TRS for the purpose of transfer of capital instruments by way of sale in accordance with FEMA 20 R, from:

- A resident outside India is holding the capital instruments in an Indian Company on a repatriable basis to any person who is a resident outside India holding capital instruments on a non-repatriable basis.
- A resident outside India holding the capital instruments in an Indian company on a non-repatriable basis to a resident outside India holding the capital instruments on repatriable basis;
- A person who is a resident in India holding capital instruments in an Indian company to any person resident outside India holding the capital instruments on repatriable basis
- Any sale of capital instruments on a recognized stock exchange by a person who is a resident outside India as per Regulation 10(3) of FEMA 20R has to be reported by such person in Form FC-TRS.

Source: Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017

Exemptions to FC-TRS filing in the following cases:

- For the purpose of transfer of shares of an Indian Company from a non- resident holding the shares on a non-repatriable basis to a resident and vice versa.
- For transferring shares from an outside resident holding capital instruments in an Indian company on a repatriable basis to a person who is a resident outside India on a repatriable basis.
- Transfer of shares made as a gift.of funds or transfer of capital instruments, whichever is earlier.

Is it possible for a resident Outside India Invest in Securities as per FDI?

Foreign Portfolio Investors (FPIs), Overseas Citizens of India (OCIs), Non-Resident Indians (NRIs), Multilateral Development Bank, Foreign Central Banks, Long term investors like the Sovereign Wealth Funds, Multilateral Agencies/ Endowment Funds, Insurance Funds and Pension Funds having done registration with SEBI as a Long Term Investor can invest in other securities as mentioned in Schedule 5 to Notification No FEMA 20.

Can a Foreign Investor make Investment in Rights shares issued by an Indian company?

There are no restrictions under the FEMA for making investment in the Rights shares, which is issued at a discount by an Indian company according to the provisions of the Companies Act, 2013. The actual offer on rights basis made to the persons resident outside India is as follows:

- In shares of a listed company on a recognized stock exchange at a price as fixed by the Company and
- In the case of non-listed Companies at a price, this is not less than the price offered to the resident shareholders.

Source: Companies Act, 2013

Master Direction - Foreign Investment in India dated January 4, 2018, read with Regulation 6 of FEMA 20(R)

Conclusion:

The FDI sector is an ever changing sector, given the current eco-social relations with other countries. According to the new regime, entities from countries which share a land border with India will now be permitted to invest only under approval route. This means that the FDI proposal from bordering countries will now require government clearance, even if foreign investments for that sector is placed under approval route. So, going forward, FDI from China, Pakistan, Bangladesh, Nepal, Myanmar, Bhutan and Afghanistan would compulsorily require Government's approval.

The rules are applicable not just for fresh but existing FDI as well. Transfer of ownership of any existing or future FDI where the direct or indirect beneficiary is from these countries will also require government approval.

Role of Top Management in Fraudulent Practices and Governing Regulation

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Introduction

'No smoke without fire' i.e. where there are rumours or signs that something is true so it must be at least partly true'. That's true as well for the Corporate Frauds which require prompt remedial actions if early signs or red flags about possibility of their existence are raised, to eliminate or mitigate the potential threats from frauds. The whistle blower policy is therefore a means for identifying frauds by those persons covered in it and the manner of dealing with such information as and when it arises.

The financial world is full of such corporate frauds be it relating Enron or Worldcom or prominent frauds in India like relating Satyam Computers; Infrastructure, Leasing and Finance(IL&FS); Kingfisher & Jet airways Airlines etc.

The corporate frauds like Satyam's & similar others resulted in major changes in the Company law and increased focus of the regulators in overhauling corporate regulatory framework to address fraud prevention and detection.

I. Role of Top Management in fraudulent practices:

There have been widespread cases of crimes committed by top management of the Company that were motivated by greed for excessive money to create wealth, get power, personal status etc. Let's examine few cases of corporate frauds perpetrated by Company's top management.

i. **Case Study of Satyam Computer Services Limited:**

"It was like riding a tiger, not knowing how to get off without being eaten" – Yes, this was what Chairman & promoter of Satyam Computer Services Limited, Ramalinga Raju quoted while disclosing fraud of over seven thousand crore rupees to its Board of Directors.

Background of Case: Satyam Computer Services Limited was an upcoming Indian outsourced IT company which won many awards for innovation, corporate governance and accountability including 'Global Peacock Award' in 2008 for global excellence in corporate accountability and its Chairman getting 'Entrepreneur of the year' award in 2007.

In 2009, Satyam was in news again but this time for bad reasons i.e. for 'Accounting Fraud' wherein Raju disclosed in its letter to its Board of Directors that he had been manipulating the company's accounting numbers for years (since 1999) , overstated assets on Satyam's balance sheet - bank loans and cash that the company claimed to own but were non-existent, accrued interest & debtors and also underreported liabilities on its balance sheet, overstated quarterly income, revenues and operating margins in order to meet expectations of the analysts, and created fake salary accounts and appropriated money from company accounts by withdrawing amounts.

Raju used various modus operandi to perpetrate the fraud - like by using his personal computer, Raju created numerous fake bank statements, falsified bank accounts to inflate the balance sheet with the balances that did not exist, inflated the income statement by claiming interest income from the fake bank accounts, overstating revenues and operating margins, created thousands of fake salary accounts and appropriated the money after the company deposited it.

The company's global head of internal audit created fake customer identities and generated fake invoices against their names to inflate revenue in Invoicing Management Software, forged board resolutions and illegally obtained loans for the company and that cash which the company raised through American Depository Receipts(ADRs) in the United States never appeared in the balance sheets.

The company's statutory auditors also neither raised the red flags on non- interest bearing excess cash on balance sheet nor independently verified the banks in which Satyam claimed to have deposits.

Raju disclosed that the gap in the balance sheet had arisen purely on account of inflated numbers over a period of several years since 1999 which had reached

unmanageable proportions as company operations grew significantly and every attempt to eliminate the falsified gap failed including the aborted Maytas (in which the Raju & his family members held stake) acquisition deal by Satyam which was the last attempt to fill the fictitious assets with real ones, wherein investors thought it was a brazen attempt to siphon cash out of Satyam. The fraud took place to divert company funds into real-estate investment, keep high earnings per share, raise executive compensation, and make huge profits by selling stake at inflated share price

Thus Satyam scandal is a classic case of negligence of fiduciary duties, total collapse of ethical, moral and corporate governance standards by top management and greater emphasis on short-term performance.

The factors that contributed to the fraud were greed, ambitious corporate growth, fierce competition, deceptive reporting practices—lack of transparency, need to impress stakeholders especially investors, analysts, shareholders, and excessive interest in maintaining stock prices, executive incentives, stock market expectations, nature of accounting rules, ESOPs issued to those who prepared fake bills, high risk deals that went sour, audit failures (both internal and external), aggressiveness of investment and commercial banks, rating agencies and investors, weak independent directors and audit committee, and whistle-blower policy not being effective.

Inferences from the Case: Satyam scandal brought to fore the following:

a) involvement of company's Chairman/Promoter in:
   - falsifying books of accounts, bank statements and other documents
   - furnishing misleading reports to Board and all its investors,
   - unethical human resource practices- creation of fake salary accounts
   - severe compromise on corporate ethics and corporate governance,
   - conflict of interest by providing excessive compensation to key managerial personnel, auditors and board members
   - not ensuring efficient management monitoring and reporting system

b) collusion of Promoter with global internal audit head who:
   - created fake customer identities and generated fake invoices against their names in invoicing management software to inflate revenues,
   - forged board resolutions and illegally obtained loans for the company through ADRs and siphoned off that cash

c) dereliction of duties by its Board members and compromise on the independence by the Independent Directors who:
   - approved Raju's proposal for Satyam to buy his and his family's stake from Maytas without seeking shareholders' approval
   - surrendered before Promoter for greed of excessive compensation and benefits

d) ineffectiveness of audit committee

e) criminal connivance, unethical and unprofessional role of auditors.

ii. IL&FS case:

Fraud of over one lakh crore is estimated to have been unearthed in August 2018 in IL&FS group which had several group companies which were used as Special Purpose Vehicles(SPVs) to undertake projects wherein the project financing and execution were undertaken by same entity, thereby compromising the conflict of interests, and on which no one raised red flags. These SPVs were used to perpetrate fraud by the then management of IL&FS group, headed by Chairman Ravi Parthasarathy who through his influence in Indian bureaucracy and close nexus with the political leaders, projected IL&FS as a government company when actually it was not, managed to borrow debts of around ninety thousand crores from public sector banks and that too on equity base of just less than ten crore rupees. Thus, it collapsed under the heavy weight of debts and defaulted in their repayments. In this scam, none among its Board of directors that comprised of nominees from public sector enterprises and well-known Independent directors, or statutory auditors or regulatory bodies raised red flags.

In this case, "Whistleblower sought to uncover it in 2017, but top-brass covered it up"

Again this was case of complete compromise on the moral, ethical and corporate governance standards,

conflict of interests, connivance of top management with independent directors, quid pro quo with bureaucrats and patronage of political leaders then in power where bribery and corruption were rampant.

iii. Similarly, Enron is another example of unethical practices, absence of corporate governance and collusion of Company's CEO, CFO, other executives and auditors in perpetrating fraud and so are many other scandals involving company's top management.

II. Governing Regulations:

The major changes in regulatory framework and implementation of the new Companies Act in 2013 has been a step towards improved regulatory environment to address the risk of fraud, alongside prescribing greater responsibility and increased accountability for independent directors and auditors. The board of directors and audit committees have more power, mandatory rotation of the audit firms after every 10 years (effective since April 2017) with strict focus on internal financial controls are some of the steps. The establishment of a vigil mechanism for listed companies, and a greater degree of accountability placed on the Board of Directors are most effective provisions of the law. The organizations are adopting modern technology to secure their business processes and using stronger internal controls to prevent fraud. Let's examine relevant regulations:

i) **Under Companies Act 2013 as amended from time to time:**

a. Punishment for Fraud under Section 447 of the Companies Act 2013: Fraud in relation to affairs of a company or any corporate body, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful/unlawful gain of property; or wrongful/ unlawful loss of property.

The punishment prescribed for frauds (of at least ten lakh rupees or 1% of the company's turnover) shall be at least six months extendable to ten years and shall also be liable to fine of at least the amount involved in the fraud, extendable to three times the fraud amount and in case of frauds involving lesser amounts and where public interest is not involved, the imprisonment may extend to five years or fine which to rupees fifty lakh or with both.

The offence under Section 447 of the Act is cognisable, non-bailable and non-compoundable.

b. Punishment as prescribed in sec 447 is also applicable if any person knowingly makes false statement of material particulars or omits any material facts in any return, report, certificate, financial statement, prospectus, statement or other document required by or for provisions of this Act (S.448)

c. Under Sec 143(12) of the Act and rules made thereunder , if an auditor of a company in the course of his duties as statutory auditor has reason to believe that an offence of fraud involving individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter in Form ADT-4 to the Central Government with a copy to Secretary Ministry of Corporate Affairs but upon seeking prior response from Company's Board or Audit Committee and if response is not received from them within forty five days, then to report directly along with a note that no response was received.

In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee or to the Board immediately within two days specifying the nature of Fraud with description; approximate amount involved; and parties involved.

These provisions shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 (https://bit.ly/3rajSVr) and section 204 (https://bit.ly/3cVqw9z) respectively.

The provisions of the Act have also mandated reporting on internal financial controls(IFC)/ (ICOFR) by the statutory auditors of the Company.

d. Section 134(3)(ca).The details of fraud along with remedial actions taken shall also be disclosed in the Director's report

e. Other provisions of Companies Act 2013 which attract actions under section 447, in addition to punitive actions prescribed in each section below, on the company/its defaulting officers/auditors (as case may be):

- Under section 140(5), if NCLT is satisfied that the auditor of a company has, whether directly or

indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors and upon passing of order, auditor shall cease to be company's auditor, cannot be appointed as an auditor of any company for next five years

- Under section 7(5) for knowingly furnishing of any false or incorrect particulars of any information or suppression of any material information, in any of the documents filed with the Registrar in relation to the registration of a company,
- Under section 8, when it is proved that the affairs of the company are conducted fraudulently
- Under Section 34, there is criminal liability for misstatement or omission of any matter which is likely to mislead, on every person who authorised the issue of Prospectus
- Under Section 36, there is punishment for fraudulently inducing persons to invest money by making any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals material facts
- Section 38 prescribes punishment for making or abetting to making an application in a fictitious name or multiple names or in different combinations of his name or surname to a company for acquiring, or subscribing for, its securities; or otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,
- Under Section 46(5), if a company fraudulently issues a duplicate share certificates it shall be punishable with fine of at least five times the face value of the shares involved which is extendable to higher of ten times of such value or rupees ten crores.
- Section 74(3) and 75(1): Where a company fails to repay the deposit or part thereof or any interest thereon within the specified time or such permitted extended time, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, then every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in section 74(3) i.e. the company in addition to payment of deposit shall be punishable with fine of at

least one crore rupees extendable to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine of at least twenty-five lakh rupees extendable to two crore rupees, or with both and be also personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

- Under Section 206(4),where business of a Company has been carried on for fraudulent or unlawful purpose,
- Section 229 prescribes penalty for furnishing false statement, mutilation, destruction, concealment, tampering or unauthorised removal of documents during investigation
- Under Section 251, where it is found that an application to Registrar for removing the company's name from register of companies under section248 (2) has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management shall, be jointly and severally liable to persons who had incurred loss or damage, notwithstanding that the company has been notified as dissolved,

ii) Investigation into affairs of the Company by Serious Fraud Investigation office(SFIO) :

SFIO constituted under Ministry of Corporate Affairs in 2003 to uncover corporate frauds, and supervise prosecutions under various economic legislations got statutory backing under Companies Act 2013, which was not there under Companies Act 1956.

a) Sec 212 of Companies Act 2013 provides for investigation in affairs of the Company by Serious Fraud Investigation Office (SFIO).

b) Section 212(6) provides that offence under section 447 shall be cognizable (notwithstanding anything contained in code of civil procedures) and a person accused of offence thereunder shall not be released on bail or on its own bond till the following twin conditions are satisfied:

- the public prosecutor has been given opportunity to oppose his release and
- where the public prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and not likely to commit any offence while on bail

c) Section 212(8) read with the Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 confers SFIO with the power to arrest if it has a 'reason to believe' that any person has been guilty of any offence punishable under the section 212(6)

d) Section 212(14) provides for direction by the Central Government to SFIO to initiate prosecution against the company and its officers or employees upon receipt and examination of the investigation report

e) Sec 212(14A) provides that where the investigation report states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such persons liable personally without any limitation of liability.

iii) Under Prevention of Money Laundering Act 2002(PMLA):

a) Section 45 of the Prevention of Money Laundering Act 2002 relating the offences to be cognizable and non bailable covers identical twin conditions as mentioned above in section 212(6) of the Companies Act 2013

b) pursuant to the amendment made in the Prevention of Money Laundering Act, 2002 by the Finance Act, 2018, Section 447 of the Act has now been included in the list of scheduled offences under the PMLA

c) handling of proceeds from corporate frauds will now be a money laundering offence and Enforcement Directorate has the power to attach and confiscate property determined to be "proceeds of crime".

iv) Vigil Mechanism for Listed entities in addition to compliance with other applicable regulations

a) Listed Companies and other companies that have

accepted deposits from public or borrowed money from financial institutions or banks in excess of fifty crores rupees are required to constitute a vigil or whistle blower mechanism for the directors and employees to report genuine concerns.

b) Regulation 4(2)(d)(iv) read with Regulation 22 of SEBI LODR, 2015 provides that the listed entities to devise an effective whistle blower mechanism enabling stakeholders, including individual employees, directors and their representative bodies, to freely communicate to the management their concerns about illegal or unethical practices. The mechanism makes provision for direct access to the chairperson of the Audit Committee in appropriate cases. It also provides for adequate safeguards against victimization of employees and directors who avail of the same.

c) CEO/CFO of the company have to report about the fraud if any in their certificate of compliances to the Board.

d) Considering the provisions of Companies Act and SEBI Listing Regulations, 2015 following shall be disclosed to stock exchange(s) upon occurrence and detection of frauds within 24 hours from the occurrence of event:

- fraud/ default by promoter or by key managerial personnel (KMP) or by listed entity or arrest of KMP or promoter,
- initiation of forensic audit, name of auditing entity, reasons for the same, final forensic audit report (except for forensic audit initiated by regulatory / enforcement agencies) along with comments of the management.
- on its website all such events or information which has been disclosed to stock exchange(s) under Regulation 30

e) SEBI's (Prohibition of Insider Trading) Regulations 2015 has been brought in to put in place framework for prohibition of insider trading in securities and strengthen legal framework thereof.

f) Further SEBI's Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003 as amended from time to time, prohibits dealing in securities in fraudulent manner or by use of manipulative or deceptive device or engaging in any act in any manner that operates as deceit on other person in dealing with securities.

g) While greater accountability has been placed on Company's Board, as an additional initiative, Ministry of Corporate Affairs has established a platform for upgrading the knowledge base and creating databank for Independent Directors who contribute towards corporate governance and to the boards by bringing a diverse set of knowledge, experience and skills.

SEBI is also working on overhauling a framework for Independent Directors.

v) Internal Control Processes and Reporting:

a) Organizations are adopting modern technology and effectively deploying IT infrastructure to secure their business and establish internal control processes.

vi) Income Tax Act 1961, provides for penalty of 100% to 300% of tax evaded in case of concealment of income and tax thereon.

vii) Benami Transactions (Prohibition) Amendment Act, 2016 (Amendment Act), covers comprehensively all aspects of transactions or arrangements where the source of funding for acquisition of a benami property has no permissible links to the ownership structure. The Act empowers the Central Government to confiscate any benami property and further prohibits a benamidar from transferring the benami property to the beneficial owner or any other person acting on his behalf. Thus, it is abundantly clear that the intention of the legislature is to create a mechanism to curb and redress benami transactions.

viii) Under Reserve Bank of India(RBI) Act 1934

a) A fraud reporting to the concerned department of RBI's central & regional offices required that shall contain brief particulars of the fraud such as amount involved, nature of fraud, modus operandi in brief, name of the branch/office, names of parties involved along with the names of owners or directors, officials involved, and whether the complaint has been lodged with the Police/CBI.

b) Fraud cases involving one crore rupees and above need be reported to the Director, Serious Fraud Investigation Office (SFIO) in form FMR-1; Ministry of Company Affairs ; CBI (anticorruption branch) where

staff involvement is prima facie evident and to CBI (Economic Offences wing) where staff involvement is not evident besides the internal reporting to RBI's offices.

c) Cases of attempted fraud, where the likely loss would have been one crore rupees or more, had the fraud taken place, should be reported to the Central Office of the Reserve Bank, Department of Banking Supervision, indicating the modus operandi and how the fraud was detected

ix) Under Foreign Exchange Management Act(FEMA) 1999

Sections 13 to 15, of the FEMA act, impose punitive actions as under on persons involved in unauthorised dealing of currency and violating the Act:

- Penalty up to thrice the sum involved / upto INR 2 lacs (if the amount is not quantifiable)
- Confiscation of currency, security or any other money or property in respect of which the violation has taken place
- Civil imprisonment in case of non-payment of the penalty

x) Indian Penal Code 1860 (IPC) provides for penal provisions concerning cheating, fraud, dishonest misappropriation of property, criminal breach of trust, cheating and dishonestly inducing delivery of property, and forgery and includes fine and imprisonment.

xi) Under GST regulations submission of fake returns/ documents or with a view to evade tax or obtaining refund by fraud or deliberate suppression of sales or issuing fake invoices to evade tax shall be liable for fine and imprisonment.

xii) Under Information Technology Act, fraudulently and dishonestly committing an offence under Section 43 of the IT Act can lead to imprisonment up to 3 years or a fine up to INR 5,00,000. Additionally, the IT Act punishes the fraudulent or dishonest use of an electronic signature, password, or any other unique identification feature, and using a computer resource for cheating, with imprisonment for up to 3 years and fine of up to INR 1,00,000.

Similarly, punitive measures are prescribed in other regulations as applicable to different business.

As a measure for ensuring settlement of outstanding claims of financial and operational creditors through Corporate Insolvency Resolution Process (CIRP), Insolvency and Bankruptcy code(IBC) was introduced. However, there have been instances where the efforts are made by the unscrupulous promoters to bid indirectly by submitting resolution plans through their third party connections, where in certain cases the approved resolution plans had offered haircut of as high as 80% to 90% of the total outstanding dues. This is nothing but loot of the bank funds and public money.

Although significant steps have been taken by the regulatory bodies in India, by introducing relevant regulations and bringing in radical changes to existing ones, so as to prevent the risks of corporate frauds and have also laid down penal regulations for fraudsters, however, the key issues exist in weak enforcement of these regulations and bad intentioned unscrupulous promoters in control who try to find loopholes in regulations and take advantage out of the same by leveraging their connections by using all treacherous practices.

Therefore, despite the regulations having been put in place, corporate frauds can only be prevented when the promoters, top management and executives of the Company are well intentioned and are high on integrity, corporate governance policies and internal control processes are well established and adhered to in the organizations, corrupt practices and systems currently prevalent in both internal as well as external environment are cleaned up and there is strong enforcement of regulations by ensuring severe punishment for the fraudsters and all those involved in perpetrating the fraud. Until then, it's a mere wait and watch and it may not be a surprise if another scandal in different form and with new modus operandi may emerge since frauds are inevitable as our economy grows.

Focused CSR approach to create equitable and sustainable financing systems in Health – a New Perspective

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Introduction

CSR is beyond philanthropy to create responsible businesses to ensure corporate accountability by creating shared values. The idea of CSR is giving back to society which has helped in the growth of the businesses. The latest CSR data proudly boasts of its contribution under the various social sectors and the milestones it has reached through making corporate fulfil their social responsibilities. The companies are entitled to contribute 2% of profits towards CSR initiatives which are dependent on the profits of the company and the decision on the projects and the activities to be funded in an annual exercise of the CSR committee.

CSR in Healthcare and the need for sustainability

Health Care sector alone has been able to mobilize 18% of the total CSR funds i.e. 16,703 crores from FY 2014-15 to FY 2019-20. An analysis of the CSR data shows that the contribution of companies towards the health care has increased by 39% in 2015-16, 45% in 2018-19 and 34% in 2019-20 whereas it has decreased by 3% in 2016-17 and 11% in 2017-18.

It is important to consider that regular influx of funds is essential to ensure sustainability of the health care activities, hampering which could lead to all the efforts back to zero. A variation of funding between sectors and activities could impact ongoing activities and endangers the sustainability aspect of the activities which is very crucial for priority sectors such as health care.

Different methods of CSR engagements in Health Care

The different methods of CSR engagements in Health Care which are as under:

1. Activity Funding: Majority of the businesses execute one /few identified health care activity from the CSR funds such as organizing a health camp, construction of a health unit etc directly or through a not for profit organization benefiting the public.
2. Joint Activity with the State/Local government: Some of the bigger businesses tie up with the state and local government to implement their health activities from CSR funds. This helps in utilizing the existing institutional systems and capacity to reach wider population.
3. Support to Autonomous Bodies such as Medical Colleges/ Trust runs hospitals by acquiring assets for them etc or strengthening their systems to enable them discharge better services to the community.

The CSR on health care is executed by companies by either of the following ways:

1. Directly by the Company
2. By Trust / society set up by the company itself
3. By Trust/ society of government/ State
4. Other/ Independent not for profit agencies

Focus Areas and Gaps in CSR activities

The High-Level Committee report on CSR 2018 states that the CSR expenditure should be aligned with the national priorities. To spend the CSR funds in a sector, the objective and the priorities of the respective sector should be followed. For eg. In Health care, the major objective is to achieve the goal of Universal Health Coverage (UHC) and this can be done by improving the health indicators and by reducing the out of pocket expenses (OOPE)borne by the public.

A NITI Aayog Report issued a report on National Health Indicators in 2019 called "Healthy States – Progressive India" throws light on the state wise performance in terms of identified health indicators. The Report indicates that as per overall performance the EAG States which include Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan, Uttar Pradesh, and Uttarakhand – require substantial improvement concerted efforts to improve the health indicators.

However, the CSR data for FY 2019-20 shows that for healthcare activities the major CSR funds are directed towards the state of Maharashtra (17%), Assam (14%), Gujarat (7%), Andhra Pradesh (5%), Karnataka (5%), Tamil Nadu (5%), Delhi (3%) due to the presence of large number of companies and plants/ manufacturing units and 'preference of local area spent' under the CSR act. The states with poor health indicators and high OOPE like Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan, Uttar Pradesh, and Uttarakhand altogether have been receiving only 9% of the total CSR funds contributed for healthcare activities. This scenario further adds to the already persistent health inequities and variations among states. An article published in 'The sprint' - Kerala's poor is UP's rich — on how access to basic services varies in Indian states. It also summarized the existence of variations among states in accessing the basic services.

National Health Accounts are published by the Ministry of Health & Family Welfare which indicates systematic, comprehensive monitoring of resource flows in a country's health system. The report aims to direct efforts of all stakeholders contributing to the health systems in order to create an equitable and efficient health systems. It also helps in understanding resource allocation for the health sector for judicious use of available healthcare resources in the country.

The report issues in 2018 for the FY 2015-16 states that 64.7% of the health expenditure are Out of Pocket Expenditure which are paid from the household income which many times drive people to financial distress or poverty. Besides this, the report highlights that the major proportion of health expenditure are incurred for Pharmacies (27.9%) followed by Private Hospitals (25.9%) and Govt Hospitals (13%). The inpatient and outpatient curative care consists of 51.74% of the health expenditures and 27.54% for medicines. However, the CSR activities undertaken in health does not show how effectively these priorities of providing immediate curative health services and the medicines supply has been factored.

Existing CSR activities in Healthcare

The various models of existing CSR activities executed for Healthcare are:

1. **Activities to Improve service delivery:** This activity targets the curative aspect of health service delivery. It aims to provide treatment and therapies to a patient with an intent to cure a disease or illness. The main component of CSR in healthcare is to address the immediate health needs of the people. Activities executed for health service delivery can diagnose and timely treat people. It helps in saving lives and also support in improving the quality of lives. The demand for healthcare is much higher than the supply of the health services. Therefore, an activity/ activities executed for improving healthcare service delivery would help in narrowing down the gap in demand and supply.
2. **Health Promotion activities:** Health Promotion activities are preventive activities to enhance people wellbeing for contributing to better population health. Under CSR, businesses undertake various health promotion activities are undertaken to promote overall health of the community. These include educating and orienting the public about eating right, how to prevent diseases in a particular season, etc. This activity focuses on a large population at one go eg. A village, a geographical area etc. Health promotion activities are normally adapted to the local needs and possibilities of individual regions to take into account differing social, cultural and economic systems.
3. **Innovation:** Innovation in healthcare is capital intensive. It requires a lot of funds to update with the advance technologies and improved procedures. CSR can go a long way in supporting development of new innovations and cost-effective healthcare services and technologies to improve the services in the country. Businesses associated with healthcare services in any way are in a better position to chip in and contribute their expertise for a greater public impact.
4. **Infrastructure support:** A lot of medical institutions requires infrastructure support to realize their full potential. CSR activities can help in strengthening these health infrastructure needs. Advances machines provided under CSR to the autonomous institutions / medical colleges etc helps in providing advanced care services to the community.

Benefits to businesses to support Healthcare with their existing capacity

A healthy population drives a healthy economy. Contribution to healthcare service has a noticeable and a measurable effect. The already existing demand and supply gap make available a lot of options for the businesses to cover for. Health has a direct impact on the lives of people and any effort in this direction goes a long way in developing the good public

image for the brand visibility of the businesses. It encourages the brand loyalty and results in increased demand for the products of the company. The government also tends to have a soft corner for the businesses contributing towards the nation building efforts. Moreover, in the long run, if executed with the noble responsibility, the idea of social welfare also gets built-in in the overall process flow and organizational culture. It leads to overall development of the organization with maximization of the values.

Under CSR, the companies take up a small geographical area to cater services as per their capacity and choice. This helps them to have a more focused approach while addressing the needs of the community. The fund flow management with achievement indicators are the strategies for linking inputs with outputs. Clear work responsibilities with accountability and transparency help in timely achievement of targets of the planned activities. Further, companies associated with health sector like pharma companies, automation companies, and others are either directly or indirectly can take advantage of specialization and the sources and therefore are in a better position to address the gaps in health care services.

Strategies to align from where we are to where we should

Both the aspects of health equity and sustainability are very much needed to realize the full potential of CSR. Even though a lot of progress has been made towards utilizing the CSR for social development, there is still a long way to go. Strategies which can be helpful in addressing the effective execution of the CSR activities and to address the concerns of health inequities and sustainability of efforts in healthcare are as under:

1. Contribution of Government and allied enterprises for CSR funds is driven by the DPE1order which laid down the priority sectors of the government for the relevant financial year that need added funding. All the enterprises covered by the DPE's order need to adhere the guidelines and contribute their CSR funds. This type of mechanism should also be developed for the private sector; it will help in aligning their **CSR funding towards the priority sectors** to remain well in line with the national agenda.

2. The new CSR amendment 2021 also allowed companies to collaborate with International Organizations in designing, monitoring, and evaluating their CSR projects, and in assisting them with capacity building of their personnel. The CSR project should be implemented in a sector with any partner organization either domestic or international with the **long-term association** point of view. Social sector outcomes normally take more time and the efforts may spread between years to get the desired results. Thus, the focus should be shifted from outputs to outcomes.

1 Dept of Public Enterprises, nodal dept for all the Central Public Sector Enterprises (CPSEs)

3. Many of the CSR activities in health are executed with **support from the State and District health authorities**. One of the renowned companies is working closely with tribal communities in its areas of operation in Jharkhand and Odisha. There are Companies who have been partnering with the State Governments and with various reputed national and international development organizations in delivering its programmes.

4. Several published documents of organizations/ agencies

having expertise in health sector highlights the current scenario of the health status in the country should be referred to for policy reforms from time to time by the CSR committee. These reports not only provide insights on the geographical areas which needs support but also sheds lights on the gap in activities which needs immediate attention. This will help in identification of the activities and the direction of the project within the year.

5. Smaller companies which tend to have fluctuation in the CSR funds owing to change in net profits should **opt for collaborating with the local government or with foundations of other companies** to ensure sustainability of the activities. In case, the company 's profitability is affected in a year, the activities should not abruptly cease.

6. The idea of UHC1 that also drives the National Health Policy should be followed in spirit. The efforts of Trust/ Not for Profit Organizations obtaining CSR funds for the specific activities **should aim to reduce OOPEs and the entrusted services to be provided free of cost**. Any effort to generate income from the CSR resources should be avoided as it defeats the actual intent of the legislation. It also creates a barrier in reaching the population it aims to cover.

7. There is a need for project assessment with respect to health outcomes at the end of the project activity. The achievement of the activity / project should be measured not only in absolute numbers but it should also be expressed against related denominators. It helps in estimating the effectiveness of the activity/ project undertaken.

Conclusion: Proper implementation of CSR activities is the responsibility of the businesses. They are considered successful only when the benefits reach the actual intended beneficiaries. Its success is reflected in improved health outcomes and decreased OOPE not only limited in execution of the activities. The productivity of CSR spending towards healthcare is dependent on how effectively it addresses the concerns of health inequity while ensuring the sustainability of activities.

Last but not the least, concerted efforts in the right direction do make a difference rather than number of fragmented efforts in different directions. The Institute of Company Secretaries of India, an esteemed institution formed to promote good corporate governance practices can help in bridging gap between the CSR funding and the socio-economic requirement of the people to make it more holistic and moving to CSR from **"Policy to Practice" (PToP).**

2 UHC means that all individuals and communities receive the health services they need without suffering financial hardship. It includes the full spectrum of essential, quality health services, from health promotion to prevention, treatment, rehabilitation, and palliative care across the life course (WHO)

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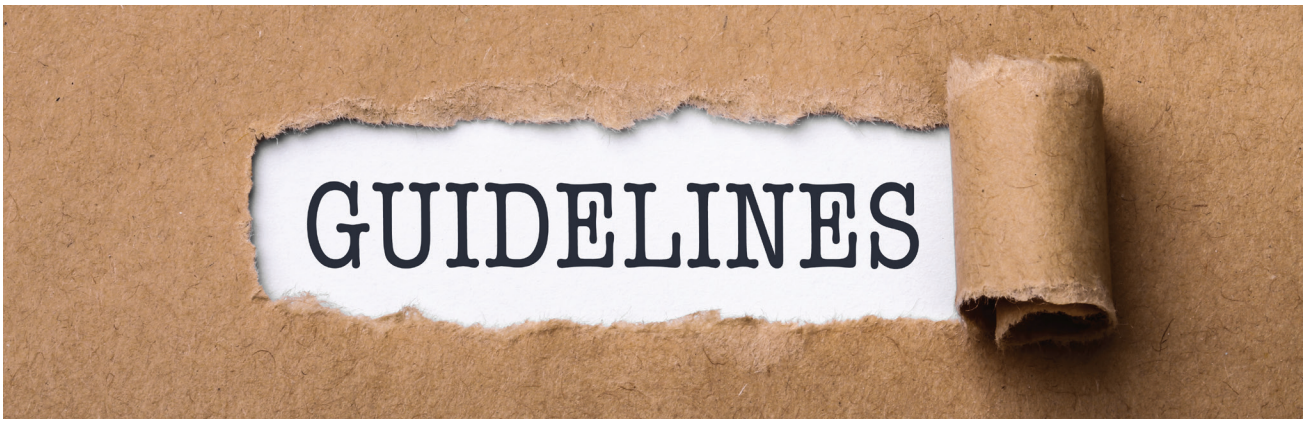

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